

The Commissioner of Central Excise Vs. India Cements Ltd.

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SooperKanoon Citation : sooperkanoon.com/19601

Court : Chennai

Decided On : Dec-11-2014

Judge : R.Sudhakar

Appellant : The Commissioner of Central Excise

Respondent : India Cements Ltd.

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED : 12.10.2009
CORAM THE HONOURABLE MR.JUSTICE K.CHANDRU W.P.NOs.35548,
37290 and 43968 of 2006 and 336 of 2007 (O.A.NOs.3593 and 9504 OF1998
3880 of 2000 and 7142 of 2001) and M.P.NO.1 OF2008W.P.NO.35548 OF2006
Tamilnadu Govt.

Statistics Subordinate OfficeRs.Association, Regd.

No.268/76, represented by its General Secretary, G.Jaganathan,
D.M.S.Compound, Chennai-600 006.Petitioner versus 1.State of Tamil Nadu,
represented by Secretary, Planning & Development Department, Chennai-600
009.

2.Director, Directorate of Economics and Statistics, D.M.S.Compound, Chennai-
600 006.

3.Tamil Nadu Public Service Commission, represented by its Secretary, Chennai-600 002.Respondents W.P.No.37290 of 2006: Tamilnadu Govt.

Statistics Subordinate OfficeRs.Association, represented by its General Secretary, G.Jaganathan, D.M.S.Compound, Chennai-600 006.Petitioner versus 1.Tamil Nadu Public Service Commission, represented by its Secretary, Chennai-600 002.

2.State of Tamil Nadu, represented by Secretary, Planning & Development Department, Chennai-600 009.

3.Director, Directorate of Economics and Statistics, D.M.S.Compound, Chennai-600 006.Respondents W.P.No.43968 of 2006: Tamilnadu Government Statistical Subordinate OfficeRs.Association, Regd.

No.205/86, represented by its General Secretary, R.Srinivasan, D.M.S.Compound, Chennai-600 006.Petitioner versus 1.State of Tamil Nadu, represented by Secretary, Planning & Development Department, Chennai-600 009.

2.Director, Directorate of Economics and Statistics, D.M.S.Compound, Chennai-600 006.

3.Tamil Nadu Public Service Commission, represented by its Secretary, Chennai-600 002.Respondents W.P.No.336 of 2007: Tamilnadu Government Statistical Subordinate OfficeRs.Association, Regd.

No.297/90, represented by its General Secretary, R.Srinivasan, D.M.S.Compound, Chennai-600 006.Petitioner versus 1.State of Tamil Nadu, represented by Secretary, Planning & Development Department, Chennai-600 009.

2.Director, Directorate of Economics and Statistics, D.M.S.Compound, Chennai-600 006.

3.Tamil Nadu Public Service Commission, represented by its Secretary, Chennai-600 002.Respondents W.P.No.35548 of 2006 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records on the file of the first respondent relating to impugned G.O.Ms.No.155, dated 22.10.1991 and the consequential impugned notification of the third

respondent, dated 10.03.1998 bearing Ref.

Nil and to quash the same.

W.P.No.37290 of 2006 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records on the file of the fiRs.respondent relating to the impugned notification dated 2.9.98 bearing No.24/98 with regard to the appointments for the post of Assistant Director of Statistics and all further recruitment process and to quash the same.

W.P.No.43968 of 2006 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records of the third respondent connected with the impugned notification No.Nil, dated 7.2.2000 calling for applications for direct recruitment to the post of Assistant Director of Statistics and to quash the same.

W.P.No.336 of 2007 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records connected with the impugned notification No.Nil in Advertisement No.020, dated 6.10.2001 issued by the third respondent and to quash the same and consequently allot the above vacancies to the promottees in accordance with the rules.

For Petitioner : Mr.D.Bharatha Chakravarthy for Mr.Perumbulavil Radhakrishnan in W.P.Nos.35548 and 37290 of 2006 Mr.R.Rengaramanujam in W.P.Nos.43968/2006 and 336 of 2007 For Respondents : Mr.Veeraraghavan, Additional Advocate General assisted by Mr.R.Neelakantan, GA Mr.M.Baskar for TNPSC - - - - COMMON

ORDER

The petitioners in all the four writ petitions is the service association representing the Subordinate Officers in the Statistics Department of the State Government represented by its Secretary.

They filed four OAs before the Tribunal.

2.This matter came to be grouped together and posted before this court by an order of the Hon'ble the Chief Justice, dated 12.9.2009.

3.Heard the arguments of Mr.D.Bharatha Chakravarthy representing Mr.Perumbulavil Radhakrishnan appearing for petitioners in W.P.Nos.35548 and 37290 of 2006, Mr.R.Rengaramanujam, the counsel for petitioner in W.P.Nos.43968 of 2006 and 336 of 2007 and also Mr.Veeraraghavan, learned Additional Advocate General assisted by Mr.R.Neelakandan, learned Government Advocate for respondent State and Mr.M.Baskar, counsel for TNPSC and perused the records.

4.The fiRs.OA filed by them is OA No.3593 of 1998.

The prayer in the said OA is a challenge to the Government Order in G.O.Ms.No.155, Planning and Development (Statistics) Department, dated 22.10.1991 as well as the notification issued by the third respondent TNPSC, dated 10.3.1998.

5.By the impugned order in G.O.Ms.No.155, the State Government amended the Special Rules for the Tamil Nadu Statistics Service.

By the said amendment, the existing sub Rule (b) was substituted and it reads as follows: "(b)Notwithstanding anything contained in rule 6 in Part II of General Rules of the Tamil Nadu State and Subordinate Service Rules, the proportion of all vacancies in category 3 to be filled or reserved to be filled by recruitment by transfer and direct recruitment shall be in the order of rotation specified below:-
(1)Recruitment by Transfer (2)Recruitment by Transfer (3)Direct Recruitment (4)Recruitment by Transfer (5)Recruitment by Transfer " 6.The said amendment had come into effect from the date of the order passed by the Government, dated 22.10.1991.

The amendments were made in exercise of power made under Article 309 of the Constitution.

The reasons for bringing the amendments were set out in the order and it reads as follows: "As per sub-rule (b) of Rule 2 of the Special Rules for the Tamil Nadu

Statistics Service, the proportion of substantive vacancies in the category of Assistant Director of Statistics to be filled or reserved to be filled by recruitment by transfer and direct recruitment shall be in the order of rotation specified below:-
(1)Recruitment by transfer (2)Recruitment by transfer (3)Direct Recruitment
(4)Recruitment by transfer (5)Recruitment by transfer 2.In the Department of Statistics, there are 99 posts of Assistant Director of Statistics at present.

Out of these posts, 36 posts are permanent in nature.

However, 63 posts are temporary in nature.

These temporary posts of Assistant Director of Statistics include the posts borne on foreign service and posts of Assistant Director of Statistics on other duty in other Government Departments.

As per the Special Rules for the Tamil Nadu Statistics Service mentioned in para 1 above, the temporary posts cannot be taken into account for making appointment by direct recruits.

The present procedure of recruiting of direct recruits only against the substantive vacancies has resulted in the situation that the department of Statistics is at present having only 9 direct recruit Assistant Director of Statistics in the service against 99 posts (both permanent and temporary) of Assistant Director of Statistics in the Department.

It was felt that the Statistics Department should be staffed by men of high calibre with adequate educational qualifications, besides appropriate experience.

It was, therefore, suggested that the direct recruits shall be appointed against all vacancies i.e.substantive and non-substantive vacancies, in the department.

In the light of the above position, the Government accept the proposal and accordingly amend the Special Rules for the Tamil Nadu Statistics Service suitably."

(Emphasis added) 7.After amendments were made, the petitioners did not challenge the said amendment.

They were making representations during the said period.

It is only when the third respondent TNPSC issued a notification, dated 10.3.1998, calling for applications to the post of Assistant Director of Statistics in the Tamil Nadu Statistics service, inviting applications for six posts by direct recruitment, they chose to challenge the same.

8.The Tribunal admitting the OA, by an order, dated 4.5.1998, granted an interim order stating that any appointments made pursuant to the G.O.will be subject to the result of the OA.

Pending the OA, the respondent State has filed a reply affidavit, dated 25.2.1999 and the TNPSC has filed an adoption reply affidavit, dated 10.06.1999, adopting the stand of the State.

In view of the abolition of the Tribunal, the matter stood transferred to this court and was renumbered as W.P.No.35548 of 2006.

When the matter was posted before this Court, the official respondents filed M.P.No.1 of 2008 for vacating the interim order, dated 4.5.1998.

9.The said association filed an another OA being OA No.9504 of 1998 once again challenging the notification issued by the TNPSC in notification No.24/98, dated 2.9.98, calling for applications to the post of Assistant Director of Statistics with reference to five posts based upon communal roster.

Pending the OA, the Tribunal once again, by an interim order, dated 18.11.1998, stated that any appointment made will be subject to the result of the OA and the respondents were directed to incorporate the interim order in each appointment order.

10.In view of the abolition of the Tribunal, the matter stood transferred to this court and was renumbered as W.P.No.37290 of 2006.

The respondents have filed a reply affidavit, dated 2.2.2007 adopting the earlier counter affidavit filed in the previous OA.

11.The petitioner Association once again filed OA No.3880 of 2000 before the Tribunal, seeking to challenge the notification issued by the TNPSC, dated 7.2.2000, calling for applications to the post of Assistant Director of Statistics in respect of seven vacancies by giving due representation to communal roster.

12.The Tribunal issued notice of motion on 13.6.2000 on this OA and granted an injunction not to publish the result until further orders.But, however the third respondent was directed to proceed with the recruitment process.

Though the respondents filed M.A.No.6568 of 2001, seeking to vacate the interim order, for the reasons best known, the same was not taken up for consideration.

Thereafter, the respondents have filed a detailed reply affidavit, dated 2.5.2001 together with supporting documents.

In view of the abolition of the Tribunal, the matter stood transferred to this court and was renumbered as W.P.No.43968 of 2006.

13.The Association also filed OA No.7142 of 2001 before the Tribunal once again challenging the notification issued by the TNPSC in Advertisement No.020, dated 6.10.2001, calling for applications for the post of Assistant Director in respect of six vacancies provided for communal roster.

14.Pending the OA, the Tribunal granted an interim stay for a period of two weeks, by an order, dated 8.11.2001 and subsequently, by a further order, dated 23.11.2001 extended the interim stay until further orders.In view of the abolition of the Tribunal, the matter stood transferred to this court and was renumbered as W.P.No.336 of 2007.

15.In view of the interconnectivity among the four writ petitions, the matters were grouped together and a common order is passed.

16.The case of the petitioner was that the members of the petitioner's Association were working in the Statistical Department as Assistant Statistical Investigators, Statistical Inspectors and Statistical Officers.They are eligible to be promoted to the posts of Assistant Directors of Statistics by recruitment by

transfer.

As per the Special Rules framed for the Tamil Nadu Statistical Services, the post of Assistant Director of Statistics is filled up by direct recruitment and recruitment by transfer from among the holders of posts of Statistical Officers in the department of Statistics or from the members of any other services other than the Superintendent in the department of Statistics.

17.The method of recruitment for the said post is as follows: Posts Method of appontment Qualifications Assistant Director of Statistics Direct recruitment 1.Must not have completed 30 years of age on the fiRs.day of July of the year in which the selection for appointment to the post is made; 2.Must hold a degree of M.A., or M.Sc., or a fiRs.class degree of B.A., or B.Sc., with Statistics, Mathematics, Economics or Mathematical Economics as the main subject; and 3.Must have experience in the Statistical Investigation for a period of not less than three years in the case of persons holding a Master degree and five years in the case of persons holding a Bachelor degree.

Recruitment by transfer from any other service.

(W.e.f.27.10.87 as per G.O.Ms.No.162, P&D(ST) Dept., dt.24.11.88.

1.Must not have completed 57 years of age on the fiRs.day of July of the year in which the selection for appointment to the post is made ((vide G.O.Ms.No.200, P&D(ST) Dept., dt.22.12.93.

2.Must hold a degree of M.A., or M.Sc., or a fiRs.class degree of B.A., or B.Sc., with Statistics, Mathematics, Economics or Mathematical Economics as the main subject; and 3.Must have experience in Statistical Investigation for a period of not less than three years in the case of persons holding a Master degree and 5 years in the case of persons holding a Bachelor degree.

4."Must have passed the Account Test for Executive OfficeRs.provided that a person who has passed the Account Test for Subordinate Officers Part I need not pass the Account Test for Executive Offices.

Provided that the fiRs.class degree of B.A., B.Sc., with Statistics, Mathematics, Economics or Mathematical Economics as main subject referred to in item (2) above shall not be insisted upon in the case of Statistical Officers of the Statistics Department who have put in a total service of not less than two years of Statistical Officer, either in the Statistics Department or in the borrowing Department, if the person is on other duty, on deputation or on Foreign (W.e.f.29.5.89 as per G.O.Ms.No.88, P&D(ST) Dept., dt.29.5.89) Service from the Statistics Department and are holding a degree of B.A., or B.Sc., with Statistics, Mathematics, Economics or Mathematical Economics as the main subject.

5."Provided further that field experience for a period of not less than one year on duty in the post of Statistical Officer in any of the Revenue Division in the District Statistical units shall be insisted."

Provided also that such field experience shall not be insisted in respect of recruitment by transfer from any other service to be made, for a period of two years from the 29th May 1989.

(G.O.Ms.No.88, P&D(ST) Dept., dt.29.5.89.) 18.The ratio has also been fixed between the departmental appointees appointed by the method of transfer from the other service and by direct recruitment in the following manner: Assistant Director 1.Direct Recruitment, or of Statistics 2.Recruitment by transfer from among the holders of the posts of Statistical Officers in the Department of Statistics or from Members of any other service other than the Superintendents and Statistical Inspectors in the Department of Statistics.

b)Notwithstanding anything contained in rule 6 in Part II of General Rules of the Tamil Nadu State and Subordinate Service Rules, the proportion of all vacancies in category 3 to be filled or reserved to be filled by recruitment by transfer and direct recruitment shall be in the order of Rotation specified below: 1)Recruitment by Transfer 2)Recruitment by Transfer 3)Direct Recruitment 4)Recruitment by Transfer 5)Recruitment by Transfer .

19.According to the petitioner, originally, vacancies were filled up and the ratio was followed in respect of permanent vacancies alone, but by virtue of amendment,

even temporary vacancies were added for recruiting both streams. This created a problem for the departmental candidates, since direct recruits were allowed to occupy permanent posts.

When there is a temporary vacancy arising out of the post created in this department or in the other department, then departmental appointees were reverted for want of vacancies.

This had resulted in an anomaly in filling up the post.

Therefore, the ratio prescribed in the rules should be as per Rule 6 of the Tamil Nadu State and Subordinate Services Rules, wherein it has been stipulated as follows: "6. Method of Recruitment- Where the normal method of recruitment to any service, class or category is neither solely by direct recruitment nor solely by transfer but is both by direct recruitment and by transfer.- (a) the proportion or order in which the Special Rules concerned may require vacancies to be filled by persons recruited direct and by those recruited by transfer shall be applicable only to substantive vacancies in the permanent cadre; (b) a person shall be recruited direct only against a substantive vacancy in such permanent cadre, and only if the vacancy is one which should be filled by a direct recruit under the special Rules referred to in clause (a). and (c) recruitment to all other vacancies shall be made by transfer: Provided that nothing in this rule shall adversely affect any person who on the date of issue of the Special Rules referred to in clause (a) was a probationer in such service, class or category, as the case may be."

(Emphasis added) 20. While the general rule was about the permanent vacancies, the amendment had calculated entire vacancies (both temporary and permanent). Therefore, the amendment is advantageous to the direct recruits and there is no rationale behind making such an amendment.

What the respondents could not have done directly, they had done it indirectly.

The amendment is arbitrary and violative of Articles 14 and 16 of the Constitution.

The reason set out for making the amendment was that the direct recruits are more efficient was not borne out by records.

Once a rule is framed and departmental candidates were made eligible to the post based upon the same educational qualifications, it is not open to the respondent State to mention that direct recruits are more efficient than the promotees.

This is an insult to the existing departmental promotees.

21.The petitioner had also produced statistics to show the representations given to departmental promotees in the higher posts and it was stated that the ratio had never been followed.

It is also stated that their case had also been recommended favourably by the Director vide her letter to the Development Commissioner, dated 22.10.2008.

Therefore, the impugned rule should be held to be arbitrary and violative of Articles 14 and 16 of the Constitution.

22.Per contra, Mr.S.Veeraraghavan, learned Additional Advocate General stated that the contentions raised by the petitioners were extraneous and at no point of time, the respondents have violated either the quota and rota rule prescribed in terms of Rule 2(b) of the Special Rules.

It may be possible that the departmental promotees may get promotion at the tail end of their career and may get retired from service.

Since rotational appointments were made wherein the departmental promotees have 80% of the share, they have no cause for complaint.

Further, it would be open to the respondent State even to alter the ratio for promotion and it cannot be held to be violative of Articles 14 and 16 of the Constitution.

23.In the present case, in order to give effect to the ratio, the State Government decided to accommodate both temporary and permanent vacancies for the purpose of ratio.

The petitioner having accepted the ratio cannot contend that temporary vacancy cannot be included while filling up the vacancies.

On the contrary, it is the policy of the State to infuse new hands through direct recruitment and there will be no constitutional violation in making direct recruits to any post.

The State Government has taken a policy decision to include temporary vacancies also for the purpose of recruitment.

It is not open to the petitioner to contend that Rule 6 of the General Rule will still apply.

In fact, it is in order to overcome the restrictions placed in Rule 6, the Special Rules were amended.

When once Special Rules cover the services, then naturally it is the Special Rule which will prevail.

24. In the present case, the amendments have not altered the ratio or the promotional chances of the petitioner.

Even otherwise, the right of the members of the petitioner's association is only a right to be considered for higher post, but not to have certain percentage in any promotion.

The courts have consistently held that mere alteration of the ratio will not violate the Articles 14 and 16 of the Constitution.

25. Since the claim of the petitioner Association is that the chances of promotions of their members will get affected by the impugned amendment it is necessary to refer to certain decisions of the Supreme Court which will have a bearing on the issues raised in the present case:- 26. The Supreme Court in *Union of India v.*

S.L. Dutta reported in (1991) 1 SCC 505 held in paragraphs 14, 17 and 18 as follows: 14.

In connection with the question as to whether the conditions of service of respondent 1 could be said to be adversely affected by the change in the promotional policy, our attention was drawn by learned Additional Solicitor General

to the decision of this Court in State of Maharashtra v.

Chandrakant Anant Kulkarni (1981 (4) SCC130.

There it was held by a bench comprising three learned Judges of this Court that mere chances of promotion are not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service.

A right to be considered for promotion is a term of service, chances of promotion are not.

(See SCC p.

141, para 16.) Reference was also made to the decision of this Court in K.

Jagadeesan v.

Union of India (1990 (2) SCC228 where the decision of this Court in State of Maharashtra v.

Chandrakant Anant Kulkarni⁵ was followed....¹⁷....."We are not able to accept this contention.

In our opinion, what was affected by the change of policy were merely the chances of promotion of the Air Vice-M Marshals in the Navigation Stream.

As far as the posts of Air Marshals open to the Air Vice-M Marshals in the said stream were concerned, their right or eligibility to be considered for promotion still remained and hence, there was no change in their conditions of service."

18....."These are matters regarding which judges and the lawyers of courts can hardly be expected to have much knowledge by reasons of their training and experience.

In the present case there is no question of arbitrary departure from the policy duly adopted because before the decision not to promote respondent 1 was taken, the policy had already been changed.

The question is, therefore, whether this change can be said to be arbitrary or mala fide.

As we have already pointed out, we are not in a position to hold that this change of policy was not warranted by the circumstances prevailing....."

27.2.Further, the Supreme Court in Syed Khalid Rizvi v.

Union of India reported in 1993 Supp (3) SCC575 has held in paragraph 31 which is as follows: 31.

No employee has a right to promotion but he has only the right to be considered for promotion according to rules.

Chances of promotion are not conditions of service and are defeasible.

28.The Supreme Court once again in Union of India v.

N.Y.Apte reported in (1998) 6 SCC741 held in paragraph 8 as follows: 8.

Further, what all has been done in the Rules is only to include such persons in the field of consideration and give an opportunity to them to be considered for promotion....It is too well settled that chance of promotion is not a right, nor a condition of service.

29.The Supreme Court in one of its earlier decision while dealing with the service conditions of Government servants held that even promotion will come within the ambit of Article 16 of the Constitution, vide its decision in S.G.Jaisinghani v.

Union of India reported in (1967) 2 SCR703= AIR 1967 SC1427 In that decision, the Supreme Court had also suggested that to avoid the controversies between two sources of recruitment to posts had suggested adoption of a roster system prescribing quota for the different sources.

The following passages found in paragraphs 9 and 15 can be usefully reproduced below: 9."The relevant law on the subject is well-settled.

Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder.

Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof.

It gives effect to the doctrine of equality in the matter of appointment and promotion.

It follows that there can be reasonable classification of the employees for the purpose of appointment or promotion.

The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source.

If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification...."

.....15.

We should also like to suggest to the Government that for future years the roster system should be adopted by framing an appropriate rule for working out the quota between the direct recruits and the promotees and that a roster should be maintained indicating the order in which appointments are made by direct recruitment and by promotion in accordance with the percentages fixed under the statutory rule for each method of recruitment.

In the present case, the Special Rules not only provides a quota but also rotation by which appointments will have to be effected by the respondents.

30.The Supreme Court in Jitendra Kumar v.

State of Haryana reported in (2008) 2 SCC161 has held that in the absence of any allegation of mala fide or arbitrariness, a rule cannot be challenged.

Further, it was also stated that in such matters there is no promissory estoppel involved.

It is therefore necessary to refer to the following passages found in paragraphs 47, 58 and 60 from the judgment which are as follows: 47.

It is, therefore, evident that whereas the selectee as such has no legal right, the superior court in exercise of its judicial review would not ordinarily direct issuance of any writ in absence of any pleading and proof of mala fide or arbitrariness on its part.

Each case, therefore, must be considered on its own merit....58.

Application of doctrine of legitimate expectation or promissory estoppel must also be considered from the aforementioned viewpoint.

A legitimate expectation is not the same thing as an anticipation.

It is distinct and different from a desire and hope.

It is based on a right.

[See Chanchal Goyal (Dr.) v.

State of Rajasthan¹⁹ and Union of India v.

Hindustan Development Corpn.²⁰]. It is grounded in the rule of law as requiring regularity, predictability and certainty in the Governments dealings with the public.

We have no doubt that the doctrine of legitimate expectation operates both in procedural and substantive matters.....60.

We also fail to see any reason as to why the doctrine of promissory estoppel will apply in the instant case.

In view of the above, the contention that there was a recommendation from the Director and hence the rule must be struck down cannot be accepted.

31. The Supreme Court in *Prasad Kurien v.*

K.J. Augustin reported in (2008) 3 SCC 529 in more or less in similar circumstances dealt with the case of a rule framed by the Kerala Government.

In that case, there was a general rule framed by the Government for all services as to how the vacancies are to be filled up.

It was held that the general rule which was made subsequently will apply to all services covered by Special Rules.

The Government has specifically stated that the term vacancy will mean only the cadre strength.

It is therefore necessary to refer to the following passages found in paragraphs 24, 27 and 28 which are as follows: 24.

By virtue of this amendment which has been brought out under the Rules of 1958 it clearly transpires that this Note (3) was not framed under the exercise of power under proviso to Article 309 of the Constitution.

In fact, learned Senior Counsel gave us an impression during the course of argument that this Note (3) has been framed in exercise of power under proviso to Article 309 of the Constitution but that impression is now removed after perusing the notification which has been issued under the Act of 1968.

Had that not been the position, then perhaps the argument of learned Senior Counsel for the appellants would have survived but after going through the notification it becomes absolutely clear that Note (3) which was inserted in the Rules of 1958 in 1992 was subsequent to the Rules of 1974 and this notification is of 1992 i.e. subsequent in point of time and this having been issued under the Act of 1968, therefore, the Rules of 1958 which have already been deemed to have been made under the Act of 1968 and the amendment which has been brought out by appending Note (3) is also under the Act of 1968.

As such, the argument of learned Senior Counsel cannot now survive.

The Rules of 1958 are of general nature which clearly stipulates that cadre strength has to be taken into consideration for maintaining the ratio in the Special Rules, meaning thereby that these Rules which have come into being at subsequent point of time under the Act of 1968, will hold the field and these Rules are not repugnant to the Rules of 1974.

The Rules of 1974 only laid down that every fourth substantive vacancy shall be filled or reserved to be filled by direct recruitment and now on reading of this Note (3) along with the Rules of 1974 harmoniously then it comes to, at the time of determination of fourth substantive vacancy one has to maintain the ratio or percentage of the cadre strength of the posts to which the recruitment is made and not to the existing vacancies at that time.

If we construe the whole thing in this light and read the Service Rules in a harmonious manner, then the desired result can be achieved.....27.

This Court in S.

Prakash¹ referring to various Acts on the subject with relation to this service has observed as follows: (SCC pp.633-34, para 14) 14.

From the aforesaid discussion, it is clear that if the intention of the rule-making authority was to establish a rule of universal application to all the services in the State of Kerala for which the Special Rules are made, then the Special Rules will give way to the General Rules enacted for that purpose.

This has to be found out from the language used in the rules which may be express or by implication.

If the language is clear and unqualified, the subsequent General Rules would prevail despite repugnancy.

If the intention of the rule-making authority is to sweep away all the Special Rules and to establish a uniform pattern for computation of the ratio or percentage of direct recruits and by transfer, in such a case, the Special Rules will give way.

On the basis of the aforesaid settled principles, let us interpret Rule 5 as well as Note (3) and the method of recruitment prescribed under the Special Rules.

Rule 5 quoted above provides the method of recruitment to any service, class or category where the method of recruitment is neither solely by direct recruitment nor by transfer but is both by direct recruitment and by transfer.

It is made specifically applicable to the Special Rules.

Clause (a) provides that the proportion or order will be applicable only to substantive vacancies in permanent cadre; Clause (b) provides that direct recruitment shall be only against substantive vacancy in permanent cadre; and recruitment to all other vacancies shall be made by transfer.

Notes (1) and (2) provide that all permanent vacancies and temporary vacancies except those of short duration shall be treated as substantive vacancies.

Note (3) specifically provides that whenever a ratio or percentage is fixed (in the Special Rules) for different methods of recruitment to a post, the number of vacancies to be filled up by candidates from each method is to be decided by applying a fixed ratio or percentage to the cadre strength of the post to which the recruitment is made and not to the vacancies existing at that time.

Therefore, the entire Rule 5 deals with the Special Rules which provide for filling up of the vacancies to any service, class or category by direct recruitment and by transfer.

The language of Note (3) is crystal clear and is for removal of any ambiguity by using positive and negative terms. It applies to all the Special Rules whenever a ratio or percentage is prescribed in the rules.

It also emphatically states that it has to be computed on the cadre strength of the post to which the recruitment is to be made and not on the basis of the vacancies existing at that time. (emphasis in original) 28.

Learned counsel for the appellant tried to distinguish the decision in S.

Prakash¹ and submitted that in fact this case related to the recruitment to the post of Sales Tax Officer in the Income Tax and Sales Tax Departments and there a provision was that proportion of 20% of successive substantive vacancies shall be filled or reserved to be filled by direct recruitment and the remaining shall be filled or reserved to be filled by transfer of Assistant Sales Tax OfficeRs. The attempt on the part of learned Senior Counsel for the appellants to distinguish this case is futile.

The percentage may vary.

Here it is 25%, there it may be 20% of the successive vacancies.

But the principle which has been laid down by this Court in S.

Prakash¹ clearly governs this case also as we have already dealt with in detail that the principle, *generalibus specialia derogant* will not be applicable in the present case but what is applicable is *generalia specialibus non derogant* which means general things do not derogate from special things.

In this case, the General Rules which have come at the later point of time and which govern all service rules and not derogant to the Special Rules will prevail and not the Special Rules.

In fact both could be read harmoniously as the intention of both the Rules, if read together is that the ratio of 75%:25% is to be maintained in the whole of the cadre and was accordingly reflected in the subsequent amendment which was brought about in the Rules of 1958 in purported exercise of the power under the Act of 1958 (sic 1968). Therefore, this General Rule which is not repugnant with the Rules of 1974 will prevail and the ratio of 75% promotion and 25% direct recruits is to be maintained on the basis of the cadre strength.

32. But, in the present case, the Government has consciously after taking note of Rule 6 of the General rules amended the Special rules by the impugned amendment and had stated that the vacancies will include both permanent and temporary.

When once the intention of the State is to override the General rule and frame a Special rule, as was done in the present case the Special Rule will prevail over the earlier General rule.

The contention that in other services of the Government there is no such rule, will not help the case of the petitioner.

Each service is a Constituted service and has its own peculiarities.

Therefore, when once the Government takes a policy decision to provide ratio by taking into account the total cadre strength of the department as well as deputation vacancies, such a stand cannot be found fault with only because the members of the petitioner Association are likely to get reduced number of promotions/appointments.

Such claims are not based upon rights flowing from Articles 14 and 16 of the Constitution.

33. In the light of the above, all the petitions must fail and accordingly, all the writ petitions will stand dismissed.

However, there will be no order as to costs.

Consequently, the connected miscellaneous petition is also dismissed.

The interim orders granted by the Tribunal shall stand vacated.

vvk To 1. The Secretary, State of Tamil Nadu, Planning & Development Department, Chennai-600 009.

2. Director, Directorate of Economics and Statistics, D.M.S. Compound, Chennai-600 006.

3. The Secretary, Tamil Nadu Public Service Commission, Chennai 600 002

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