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**(2020) 11 RAJ CK 0035**

**In the Rajasthan High Court**

**Case No : Civil Writ Petition No. 12166 Of 2020**

Narayan Lal Raiger And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

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**Date of Decision : 12-11-2020**

**Acts Referred:**

Rajasthan Education Subordinate Service Rules, 1971 — Rule 20, 21

**Citation : (2020) 11 RAJ CK 0035**

**Hon'ble Judges : Dinesh Mehta, J**

**Bench : Single Bench**

**Advocate : Vikram Singh Bhati, Kailash Choudhary, Manish Vyas**

**Final Decision : Disposed Of**

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## **Judgement**

1. It was brought to the notice of this Court that against the order dated 18.12.2019 passed by Co-ordinate Bench of this Court in SB Civil Writ Petition No. 18208/2019, the State preferred an Intra-Court appeal, which was registered as DB Special Appeal Writ No.362/2020, wherein the Division Bench has passed the following order:-

"Shri S.S. Choudhary, Advocate puts in appearance on behalf of the respondents.

Heard. Perused the material available on record. Shri Pankaj Sharma, AAG representing the appellant submits that ex-parte order disposing of the writ petition was passed by learned Single Bench by relying on the order dated 21.11.2017 passed in the case of Om Prakash & Ors v. State of Rajasthan &Ors. : S.B. Civil Writ Petition No.21214/2017. Shri Pankaj Sharma, AAG points out that the controversy involved in the case of Om Prakash (supra) was pertaining to the recruitment of Teachers Grade-III for the year 2012 whereas the case at hand involves the recruitment of LDCs made in the year 1986. Thus, he urges that the order passed in the case of Om Prakash is in no manner applicable to the case of the respondents herein. We feel that the matter requires consideration. Thus, the appeal is admitted.

Admit.

Heard on the stay application. Having regard to the facts and circumstances of the case, it is hereby directed that the effect and operation of the order dated 18.12.2019 passed in S.B. Civil Writ Petition No.18208/2019 shall remain stayed till disposal of the appeal. The stay application is disposed of. Connect with DBSAW No.368/2020."

2. Having regard to the aforesaid position, when the matter was listed for admission, it was deemed appropriate to issue notices to the respondents, with a view to ascertain, as to whether or not the issue is covered by the judgment dated 21.10.2017, rendered in SB Civil Writ Petition No.21214/2017 : Om Prakash Vs. State of Rajasthan.

3. The notices were ordered to be served upon learned Additional Advocate General of the State.

4. Mr. Kailash Choudhary associate of Mr. Manish Vyas, learned AAG submitted that the petitioner(s) has been selected in the recruitment of the year 2012/2013/2016 and thus, the issue is covered by the judgment of this Court rendered in case of Om Prakash (supra). He, however, maintained that the same may not be construed to be an admission of the proposition that the petitioner(s) is/are entitled for the benefits which he/she/they has/have claimed in light of the basic judgment rendered in case of Hemlata Shrimali Vs. State of Rajasthan.

5. Relevant portion whereof of the order in case of Om Prakash(supra) reads thus :

"Learned counsel for the petitioners, at the very outset, submits that the controversy raised in the instant writ application stands resolved in view of the adjudication made by a Coordinate Bench of this Court in a batch of writ applications lead case being S.B. Civil Writ Petition Number 3247/2015: Hemlata Shrimali & Ors. Versus State of Rajasthan & Ors., decided on 1st Apr., 2015, relying upon the adjudication in the case of Suman Bai & Anr. Versus State of Rajasthan & Ors.: 2009 (1) WLC (Raj.) 381, observing thus:

"5. Upon consideration of the arguments aforesaid and the judgment of the Division Bench in Hari Ram and the subsequent order dated 21.7.2001 whereby clarification application of the State Government was dismissed, I find that the entitlement of the petitioner for appointment on the basis of originally prepared merit list cannot be denied. If admittedly the candidates, who are lower in merit, have been granted appointment, those who are above them in the merit cannot be denied such right of appointment. Seniority as per the rules in the case of direct recruitment on the post in question is required to be assigned on the basis of placement of candidates in the select list and when the selection is common and the merit list on the basis of which appointments were made is also common, right to secure appointment to both the set of employees thus flows from their selection which in turn is based on merit. Regard being had to all

these facts, merely because one batch of employee approached this Court later and another earlier, and both of them having been appointed, the candidates who appeared 6 lower in merit cannot certainly be placed at a higher place in seniority. It was on this legal analogy that Division Bench of this Court in Niyaz Mohd.Khan (supra) held that the petitioner therein entitled to be placed in seniority in order of merit of common selection amongst persons appointed in pursuance of the same selection with effect from the date person lower in order of merit than the petitioner was appointed with consequential benefits.

6. I am not inclined to accept the argument of the learned counsel for the respondents No.4 to 8 that the judgment of the learned Single Judge should be so read so as to infer therefrom that though the petitioners would be entitled to claim appointment but not seniority above the candidates who are already appointed even though they admittedly are above them in the merit list. Infact, the judgment of the learned Single Judge merely reiterated the direction of the Division Bench in Hari Ram (supra) in favour of the petitioners. But construction of that judgment in the manner in which the respondents want this Court to do, would negat the mandate of the Rules 20 and 21 of the Rajasthan Education Subordinate Service Rules, 1971, which requires seniority to be assigned as per the inter-se merit of 7 the candidates in the merit list based on common selection. Even otherwise, no such intention of the Court is discernible from reading of that judgment. Mere appointment of the petitioner was a sufficient compliance of the judgment and not total compliance was the view taken by this Court also when contempt petition filed by the petitioners was dismissed.

Question with regard to correct and wrong assignment of seniority having arisen subsequent to appointment of the petitioners would obviously give rise to a afresh cause of action. The writ petition filed by the petitioners, therefore, cannot be thrown either barred by resjudicata or otherwise improperly constituted.

7. In the result, this writ petition is allowed and the respondents are directed to treat the petitioners senior to respondents No.4 to 8 as per their placement in the merit list."

Learned counsel for the petitioners further submits that instant writ application be also disposed off in terms of the order dated 24th May, 2017, as extracted herein above.

Ordered accordingly."

6. In view of the aforesaid, following the judgment in case of Om Prakash (supra), the writ petition is disposed of in same terms.

7. For the purpose aforesaid, the petitioner(s) shall file representation before the competent authority giving out the requisite details along with certified copy of the order instant within a period of four weeks from today. On receipt of the representation, the concerned respondent shall decide the same, in accordance with law within a period of eight weeks from the date of receipt of the

representation and accord notional benefits to the petitioner(s) from the date persons similarly situated to them and lower in merit were given appointment.

8. Upon consideration of the representation so filed, if respondents find the case(s) of the petitioner (s) to be covered by the judgment(s) aforesaid, before giving actual benefits, an undertaking shall be procured from the concerned petitioner(s) to the effect that his/her rights/entitlements shall be subservient to the fate of the judgment(s) aforesaid and in case the same is reversed or modified in any manner, he/she shall also be liable for restitution of any benefits/emoluments so received.

9. The stay application also stands disposed of accordingly.