

(1984) 10 MAD CK 0029

In the Madras High Court

Case No : Writ Appeal No. 462 of 1981 and Writ Petition No's. 6401, 10751 and etc. of 1981, 11194 of 1984 and etc. etc.

Syed Mohideen

APPELLANT

Vs

Government of Tamil Nadu and Another

RESPONDENT

Date of Decision : 26-10-1984

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : AIR 1986 Mad 188 : (1985) 2 LLJ 348

Hon'ble Judges : M.N. Chandurkar, C.J.;Sathiadev, J;S.A. Kader, J

Bench : Full Bench

Advocate : K. Doraswarm, Rainamurthi, Desappan, Sukantharaj and Muthurarnalinvain, for the Appellant; Selvaraj, Govt. Pleader, for the Respondent

Judgement

M.N. Chandurkar, C.J.—The question which arises for decision before this Full Bench is whether Government Order No. 783 issued by the Rural, Development Department on 30th April, 1981, giving effect to the guidelines with regard to the determination of seniority of persons who were appointed in the Panchayat Development, Units in the Tamil Nadu Ministerial Service is constitutionally valid. Since the impugned Government Order was issued by the Government admittedly with a view to give effect to the decision of a learned single Judge of this Court in W.P. Nos. 40.1. 402 and 403 of 1975 decided on 12-12-1977, which was confirmed by a Division Bench of this Court while disposing of writ Appeals Nos. 394 to 396 of 1979, filed by the State Government, District Collector of Salem, and the Director of Rural Development, Madras and since the contentions raised on behalf of the appellant in W.A. No. 462 of 1984, which was taken up along with the writ petitions which raise the same point, challenge the correctness of the judgment of the learned single Judge as confirmed by the Division Bench. This Full Bench is necessarily called upon to consider the correctness of the view of the learned single Judge, as confirmed by the Division Bench of this Court.

2. At the very outset it may be stated that at the instance of three petitioners, G.O.Ms. No. 862, dt. 27-4-1968. which dealt with Managers and Accountants. Who were appointed subsequent to 16-10-1968, was called in question, because, according to the petitioners before the learned Judge, G.O.Ms. No. 862 was given effect to and the petitioners were reverted from the post of Manager to the post of Accountant, Panchayat Union. The learned Judge by his order, to the details of which we shall refer later, held that the reversions were bad and that the petitioners before him were entitled to seniority on the basis of the dates on which they had acquired the requisite qualifications prior to their being posted as Managers.

3. In order to appreciate the controversy which has given rise to the several writ petitions filed in this Court consequent upon the Government issuing G.O. Ms. No. 783, dt. 30th April, 1981, it is necessary to state certain earlier events and make a reference to the several steps taken by the State of Tamil Nadu while absorbing the erstwhile employees of the District Boards and other Local Authorities by the constitution of three different cadres known as (i) Panchayat Development Unit under the Madras Ministerial Service, (ii) Madras Gram Sevaks Service: and (iii) Madras Panchayat Development Subordinate Service.

4. Initially by G.O. Ms. No. 2155, dt. 16-10-1964 these three cadres were constituted by the State Government by an administrative order. By this Order the Government directed that the Departmental Unit, Item (xi) "Local Administration Department" in Rule 11 of the Madras Ministerial Service Rules should be re-named as Panchayat Development Unit. This Unit would include the posts of Upper Division Clerks (later called Assistants), Accountants and Managers of Panchayat Union Offices, Lower Division Clerks (later designated as Junior Assistants), Assistants/Upper Division Clerks and Accountants in the Panchayat Development Branches in the Collectorates and in the Panchayat Development Sections in the Revenue Divisional Offices. By the same order, the Madras Gram Sevaks Service was created in each Revenue district consisting of the posts of Gram Sevaks and Executive Officers of Town panchayats. The constitution of the Panchayat Development Unit in the Madras Ministerial Service was given in Cl. 5 of this Government Order. So far as we are concerned, the first category of posts was Managers in Panchayat Union Offices and Accountants in Panchayat Development Sections in Revenue Divisional Offices and in Panchayat Development Branches in Collectorates. The second category was Upper Division Clerks and Accountants in Panchayat Union Offices and other offices specified above. The third category was Lower Division Clerks in Panchayat Development Section in the above-mentioned offices. The mode of appointment prescribed for category I was by promotion, from category II; to Category II by promotion from Category III, and to Category III by direct recruitment. Sub-cl. (e) of Cl. 5 prescribed the tests. This clause reads as follows :

"5(3) Tests : No person shall be appointed to the posts of Accountants and Managers in Panchayat Union Offices and the posts of Accountants in Panchayat

Development Sections in Revenue Divisional Offices and the Panchayat Development Branches in District Collectorates, unless he has passed both the "Departmental Test in Panchayat Development and the Panchayat Development Account Test."

It is to be noted that these tests were restricted to the posts of Accounts and Managers, and it was not till Nov. 1972, that retrospectively the tests were made a condition precedent for appointment to the post of Assistants, This Government Order was amended on 13-9-1966 by introducing sub-cl. (g) in Cl. 5, and the amendment stated:

"Nothing contained in this order shall adversely affect any person holding any of the posts referred to in sub-paragraph (1) of para. 4 as on the date of issue of these orders".

The effect of this Government Order as on 16-10-1964 was that, if an Assistant, i.e., Upper Division Clerk, wanted to be promoted to the Post of Accountant and Manager, he had to pass the prescribed tests. The details of these tests, with which we are not concerned, were notified by G.O. Ms. No. 101 dt. 16-1-1965. Later, when it was noticed that, even though the passing of the test was a condition precedent for appointment as Managers and Accountants, but that the prescribed examination was held for the first time only in Nov. 1965, with the result that the holders of the posts of Managers and Accountants were unable to qualify themselves the Government decided by G.O. Ms. No. 1678, dt. 7th July, 1966 to give four chances to the person concerned to qualify. The Government directed that, if a person who was already Manager or Accountant, failed to pass the departmental test and account test within the first four chances, his increment would be postponed without cumulative effect until he passed the test.

5. The next order made by the Government is of some importance. The Government issued G.O.Ms. No. 862, dt. 27th April, 1968. By this order the Government took a decision that such of those Managers and Accountants who were appointed subsequent to 16-10-1964 could pass the departmental tests on or before the examination to be held in Nov. 1969, and that, as a matter of concession, the passing of the departmental tests shall not be insisted upon as a qualification for appointment as Managers till December, 1969. The obvious effect of this decision was that such of those Managers and Accountants, who were appointed as on 16-10-1964, could continue in their office, notwithstanding the fact that they had not passed the prescribed tests and they were given a locus to hold office subject to the condition that they should pass the examination before Nov. 1969. It has to be noticed that this was an administrative order issued by the State and this decision ultimately took the form of a statutory rule under Art 309 of the Constitution on 28-8-1973. By a notification issued by the Government in exercise of its powers conferred by the proviso to Art. 309 of the Constitution, the Governor made certain amendments to the Special Rules for the Tamil Nadu Ministerial Service Manual (See. 22 in Vol. III of the Madras Service Manual, 1970). One of the amendments was that in R.

II for item (xxiv) Rural Development and Local Administration Department", new entries specifying the Panchayat Development Department and their units there under, the details of which are not necessary, were substituted. Two sub-rules, (q) and (r), were added under R. 35. These rules run as follows :

(q) If any person holding the post of Manager or Accountant or Assistant in Panchayat Union Offices or the post of Accountant or Assistant in the Panchayat Development Branch of the Collectorates and in Panchayat Development Section of Revenue Divisional Offices as on 16th Oct. 1964, fails to pass the Departmental Test and Panchayat Development Account Test within the first four chances, their increments shall be postponed without cumulative effect until they pass the said tests.

(r) Such of those persons who were appointed subsequent to 16th Oct. 1964, as Manager/ Accountant/Assistant in Panchayat Union Offices or as Accountant/ Assistant in the Panchayat Development Section in Revenue Divisional Offices and in Panchayat Development Branch in the Collectorate, if they do not pass the tests before 31st Dec. 1969, shall be reverted."

6. Later by an amendment a proviso was added to R. 35 (r), which runs as follows :

"Provided that persons selected from the Panchayat Union Service by the Screening Committee and appointed as Assistant who fail to pass the tests before the 31st December, 1969, shall not be reverted to the Panchayat Union Service but their increments shall be postponed without cumulative effect until they pass the tests"

Though this proviso was made on 9-3-1974. the amendment was expressly made retrospective with effect from 16-10-1964. as was also the case with the substantive amendment to R. 35 by introducing sub-rules (q) and (r) by a notification. dt. 28th Aug 1973. Prior to this, that is, on 6th Nov. 1972. when it was noticed that, though the Government Order dt. 16-10-1964 directed that amendments to the Madras Ministerial Service Rules will be issued by the Public (Services) Department. but that no such notification under the proviso to Art. 309 of the Constitution was issued, a notification came to be issued in G.O. Ms. No. 2336 R.D. and F.A., on 6th Nov. 1972. Notifying the rules made by the Governor of State of Tamil Nadu in exercise of the powers conferred by the proviso to Art. 309 of the Constitution, These rules were applicable to three categories of posts, namely, Managers in Panchayat Union Offices. Assistants and Accountants in Panchayat Union Offices, and Junior Assistants in Panchayat Development Sections. and other persons specified in those rules. These rules prescribed the mode of appointment which were the same as in G.O.Ms. No. 2155. dt. 16-10-1964. These rules were specifically intended to give statutory effect and force with effect from 16-10-1964 to the decision of the Government contained in G.O.Ms. No. 2155, dt. 16-10-1964, with one additional fact namely, that it also dealt with the appointment to the post of Assistant as already referred to.

7. On 28-4-1974 another notification came to be issued in G. O. MIs. No. 883 R. D. and L. A. in the name of the Governor under the proviso to Art. 309 of the Constitution, which again was made retrospectively operative from 16-10-1964, and it was directed that the rules, dt. 6-11-1972, G.O.Ms. No. 2336 should be treated as ad hoc, as they were not self contained. In the absence of specific provision requiring that the general and special rules applicable to holders of permanent posts in the Tamil Nadu Ministerial Service shall apply to the Ministerial posts in the Panchayat Development Unit, an amendment came to be made to the rules published on " 28th April, 1973, by adding the following preamble:

"The General and Special Rules applicable to the holders of permanent posts in the Tamil Nadu Ministerial Service shall apply to the Ministerial posts in the Panchayat Development Unit. subject to the following modification";

(ii) For Rule I the following rule shall be substituted, namely :-

"Constitution : These rules shall apply to the following categories of posts and shall be treated as temporary additions to the corresponding posts in the Tamil Nadu Ministerial Service;

Category (i): Managers in Panchayat Union Office, Accountants in Panchayat Development Section in Revenue Divisional Offices and in Panchayat Development Branches - in Collectorates.

Category (ii) : Assistants and Accountants in Panchayat Union Offices, Assistants in Panchayat Development Sections in Revenue Divisional Offices and in Panchayat Development Branches in Collectorates.

Category (iii)- Junior Assistants in Panchayat Development Sections in Revenue Divisional Offices and in Panchayat Development Branch in Collectorates".

These are the rules which are now relevant

8. Coming to the facts of W.P. Nos. 401, 402 and 413 of 1975, which were filed by three petitioners, the judgment of the learned single Judge shows that the petitioner in the first writ petition had qualified himself to be promoted as Manager as early as Nov. 1965, in accordance with the requirements of G.O.Ms. No. 2115 dt. 16-10-1964, and the other two petitioners had qualified themselves by passing the requisite tests as early as in May, 1966, which, according to, them, enabled them to be posted as Managers; and they were in fact posted as Managers.

9. The grievance of the petitioners, was that as a result of the implementation of G.O.Ms, No. 862 dt. 27-4-1968 all the qualified junior persons were reverted from the post of Manager and preference was given to seniors who were unqualified persons. This reversion was challenged by one of the petitioners in W.P, No. 571 of 1969. In that writ petition, the petitioner Nagarajan expressly asked for the quashing of G.O.Ms. No. 862 dt. 27-4-1968. The learned Judge

held that G. O. Ms. No. 862 dt. 27-4-1968 purported to make a change in the statutory rules by a mere administrative order and that the Government therefore could not give effect to G.O.Ms. No. 862. It was contended before the learned Judge in W.P. No. 571 of 1969 on behalf of the Government that in Salem District from where the petitioner came there was no person who had become qualified earlier to persons occupying the posts of Managers and Accountants and who were reverted as a consequence of G.O.Ms. No. 862 dt. 27-4-1968 and that it was therefore enough if a mere writ of mandamus was issued directing the Government to restore the petitioner to the post of Manager. The learned Judge accepted the suggestion, and the judgment shows that G.O. Ms. No. 862 was not expressly quashed, but the Government was directed to restore the petitioner to the post of Manager. The petitioner Nagarajan was restored as Manager on 8-5-1970. However, when the statutory rules were brought into force retrospectively by G.O. Ms. No. 2336 dt. 6-11-1972, two other petitions came up before Mohan, J., who heard W.P. No. 401 of 1975, and making a reference to some of the G.Os., the learned Judge directed that the inter se seniority should be refixed in accordance with the legal position contained in G.O. Ms. No. 215-5 which was presumed to contain statutory rules. Consequent upon giving effect to the new statutory rules as promulgated by the notification dt. 6-11-1972, petitioner Manoharan got reverted and it was this reversion which he made a grievance of before Mohan, J. After referring to promotions and reversions made, and, when it was not disputed before the learned Judge that the petitioners had qualified themselves to become Managers by passing the requisite tests and that the reversions were justified because the respondents in the case had passed the examination within the due dates, that is, before 31st Dec. 1969, and that having regard to the fact that they were seniors to the petitioners in the lower cadre Ibt! respondents were entitled to be promoted first in preference to the petitioners, the learned Judge observed as follows :

"There is no rule which enables the authority to place the respondents 4 to 7 as seniors merely because they were so in the lower cadre. Admittedly the petitioners had qualified themselves to the post of Managers long before respondents 4 to 7 by passing the required tests. It is not necessary for me to deal with the nature of G.O. Ms. No. 2155 R.D. & L.A. dt. 16-10-1964 and G.O. Ms. No. 862 R.D., and L.A. dt 27-4-1968. Since it is clearly admitted that there is no rule which enables the authority to take on the seniority of respondents 4 to 7 in the lower cadre to that of Manager. I may incidentally state that G.O. Ms. 2155 R.D. and L.A. dt. 16-10-1964 has already been held to be statutory by this Court. Once, therefore, if the petitioners had qualified themselves earlier to be posted as Managers their seniority will have to be reckoned from the date of attaining these qualifications. Therefore the impugned orders will have to be necessarily quashed and they are quashed.-

10. It has to be pointed out that, when the learned Judge referred to G.O. Ms. No. 2155 dt. 16-10-1964 as already having been held to be statutory by this Court, the learned Judge was referring to the decision of Alagiriswami, J. in W.P;

No. 571 of 1969.

11. The learned Judge assumed that the Government Order dt. 16-10-1964 was statutorily issued under the proviso to Art. 309 of the Constitution, an assumption which it is not disputed, was wholly unwarranted and unjustified.

12. Now the Government filed appeals against the order of Mohan, J., in W.A. Nos. 394 to 396 of 1979. These appeals, however, came to be summarily dismissed at the admission stage, on two grounds. The Division Bench assumed once again that G.O. Ms. No. 2155 dt. 16-10-1964 had statutory force and observed that this view of Alagiriswami, J. was allowed to become final, because the Government did not file any appeal. This is clear from the following observations of the Division Bench (P. 110) :

"It is not in dispute that on an earlier occasion this Court has taken the view that G.O.Ms. No. 2155 Rural Development and Local Administration dt. 16-10-1964 was statutory and that view of this Court was allowed to become final by not preferring any appeal".

13. In view of this the Division Bench found that, the learned Judge could not be said to have committed any error in following that decision and on that basis holding that the petitioners in the writ petitions had-become qualified for appointment as Managers earlier than respondents 4 to 7, admittedly there being no rule to prefer respondents 4 to 7 on the ground that they, were senior to the petitioners in the writ petitions in the lower cadre of Accountant. The Division Bench thus dismissed the appeals.

14. The second ground on which the writ appeals came to be dismissed, and rather unfortunately, was that the State Government could not be said to have been aggrieved by the Judgment of the learned Judge and therefore the appeal was not tenable. The relevant observations areas follows : -

"In any event, there being no charge that the petitioners in the writ petitions were disqualified or inefficient or were not honest in the performance of their duties, if at all any person who could be said to have been aggrieved by the order of the learned Judge, it is respondents 4 to 7 and the State cannot be said to have been aggrieved. From this point of view also, we see no justification for admitting these appeals and hence these appeals are dismissed."

15. There is no doubt that the judgment of Mohan, J., confirmed by the Division Bench, laid down a principle for the determination-of seniority. The State Government implemented the dicision of Mohan, J. by issuing G.O.Ms. No. 783 dt . 30th April, 1981. The State Government's reading of the judgment of M " ohan, J. is indicated by the following passage in the preamble to the Government Order in para 2 :

"The High Court allowed the writ petitions with a direction to the Government that the writ petitioners, who had qualified themselves earlier ought to be posted as Managers over the unqualified persons and that their seniority would have to

be reckoned from the date of their acquiring the test qualification."

16. The impugned Government Order refers to the appeal of the State being dismissed by the Division Bench. Consequent upon this decision of the High Court the State Government decided that "the seniority of Accountants/ Assistants/Managers in the Panchayat Development Units be fixed with reference to the dates of their acquiring the test qualifications. The Director of Rural Development is requested to take action accordingly..

17. This impugned G.O. Ms. No. 783 admittedly affects adversely several of those persons who held the posts of Managers or Accountants for whose benefit sub-rr. (q) and (r) were added in R. 35 of Special Rules hence a large number of writ petitions had been filed in this court making a grievance of the impugned G.O.Ms. No. 783 as adversely affecting them. The appellant in W.A. No. 462 of 1981, whose case is symbolic of the common grievance which is made on behalf of the several writ petitioners in this Court, was appointed as Assistant on 2-10-1961. He had passed the required tests in Nov., 1968. When the original seniority list was made in accordance with G.O.Ms. No. 862 dt. 27-4-1968, he stood at serial No. 25. However, when the new seniority list was sought to be prepared while implementing the impugned G.O.Ms. No. 783 issued in order to implement the decision of this Court, his seniority went down to No. 54. The appellant had filed in his original writ petition a list of Assistants appointed prior to 16-10-1964, who were originally promoted from the cadre of junior Assistants, and the entries of that list would highlight the fact that by giving effect to the principle that seniority should be determined with reference to the date of passing the qualifying tests, the very purpose of sub-rr. (q) and (r) would be defeated, and these rules would be set at naught. In view of the consequences which flowed from the G.O. Ms. No. 783 dt. 30-4-1981, the appellant Syed Mobideen filed the writ petition. The learned Judge, who heard that petition, took the view that the State Government could not overlook the decision of the Division Bench of this Court in W.A. Nos. 394 to 396 of 1979 and since the seniority was fixed in accordance with the guidelines laid down in the judgment of this Court, the petition had to be dismissed. That is how the appeal has been filed against that judgment.

18. Since common questions were involved in these petitions and the writ appeal though the main argument was advanced in the writ appeal by Mr. Doraiswami, we have heard Mr. Sukhaatha Raj, Mr. P. Chidambaram, Mr. Desappan, Mr. Muthuramalingam, Mr. Ramamurthi and Mr. Radhakrishnan on behalf of the petitioners, and Mr. Selvaraj, Government Advocate on behalf of the Government.

19. It is now conceded by all concerned, that the impugned Government Order had necessarily to be issued by the Government in order to give effect to the judgment of Mohan, J. confirmed by the Division Bench. What is, however, argued before us is that the decision of Mohan, J., as well as the decision of the Division Bench must be considered as a decision per incuriam, inasmuch as not only does it proceed on the assumption that G.O.Ms. No. 2155 dated 16th

October, 19 64, is a statutory rule, but that the statutory rules framed on 6-11-1972, 28-4-1973, 28-8-1973 as well as 9-8-1974, have not at all been considered. Learned counsel have, therefore, contended that the view taken by Mohan, J, that for the purpose of seniority the date of acquiring the qualification or passing the qualifying test should alone be the relevant date, should not be considered as binding, and, in any case, according to teamed counsel, the said decision needs to be overruled, as also the decision of the Division Bench which confirmed the decision of Mohan, J.

20. Now there is no doubt that the assumption that G.O.Ms. No. 2155 dt. 16-10-1964 was a statutory rule is wholly unjustified. Merely because in an earlier litigation between one of the Government employees and the Government, the Court had wrongly assumed that G.O.Ms. No. 2155 dt. 16-10-1964 had statutory force, we fail to see how the State Government was precluded from contending to the contrary and bringing to the notice of the Court in a subsequent litigation in the form of a writ petition filed by another employee that G.O. Ms. No. 2155, dt. 16-10-1964 was, in fact, not a statutory Rule and did not have any statutory force, not having been issued in the exercise of the power conferred under the proviso to Art. 309 of the Constitution., Merely because at one stage the Court. has proceeded on the footing that a particular rule has a statutory status, when in fact that rule did not have the sanction of the proviso to Art. 309 of the Constitution, we fail to see how the failure of the Government to appeal against the earlier decision could prevent the Government from contending that G.O. Ms. No. 2155dt. 16-10-1964 could not be treated on the same footing as a rule framed. by the Governor under the proviso to Art. 309 of the Constitution. The failure to appeal against such a finding cannot have the effect of giving a rule, which does not have its source in a constitutional power, the status of a statutory rule, and, in our view, the Division Bench was clearly in error in holding that the Government could not contend to the contrary, more so when it has been established, and, indeed, could have been established even before the learned Judges of the Division Bench, that G.O.Ms. No. 2155 dt. 16-10-1964 was in fact not made by the Governor at all in the exercise of the power conferred under the proviso to Art. 309 of the Constitution. This one circumstance, in our view, is enough to create a serious infirmity in the decision of the Division Bench, as well as the decision of Mohan, J. The principles of res judicata do not apply to such a case, because strictly, the petitioners were different. There could not have been any estoppel against the statute, much (less?) in respect of rules which were promulgated later in the exercise of power under the proviso to Art. 309 of the Constitution. From this infirmity will also follow the second infirmity, namely, that, if there are service rules which are made under the proviso to Art. 309 of the Constitution, then whether one likes it or not, unless they are challenged as being ultra vires the Court is bound to give effect to such rules. Neither the judgment of Mohan, J., nor that of the Division Bench shows that the very relevant and important rules, i.e. Rr. 35 (q) and 35(r), which were framed by the State Government relating to " in categories of Managers and Assistants, have

noticed Managers and Assistants, or Accountants, for whose benefit these rules have been made, are entitled to the benefit of those rules, and they cannot be prevented from enforcing their rights under those rules, merely on the ground that those rules had not been brought to the notice of the Court on an earlier occasion when a similar question arose or that the State Government had not appealed against the earlier judgment which was based on a wholly erroneous assumption. It also appears that, when a similar matter came up before K.N. Mudaliar, J., in W.P. Nos. 2905 and 3550 of 1970, the learned Judge took notice of these rules, and he directed the State Government to fix the inter se seniority between the writ petitioners and the fourth respondent before the learned Judge, in accordance with law. The order of Mudaliar, J., recites this fact as follows : -

"During the hearing of the present batch of writ petitions, G.O.Ms. No. 2336 dated 6-11-1972 was passed by the Government rendering G.O.MS. No. 2155 RD and LA dated 16-10-1964 retrospectively statutory and operative. In view of this change in the legal position occasioned by the issue of the above G.O. and also the latest position prevailing in the Panchayat Development Unit of Salem district, the Assistant Government Pleader stated that the concerned authority may be directed to fix the inter se seniority between the present writ petitioners and 4th respondent in accordance with law and it is accordingly directed to do so".

21. We may incidentally point out that this decision was rendered almost four years prior to the decision of Mohan, J.; the decision of Mudaliar, J. was dt. 10-1-1973, while the decision of Mohan, J. is dt. 12-12-1977.

22. A careful reading of the decision of Mohan, J., would indicate that this decision was cited before him, but it appears that the learned Judge was more influenced by the fact that "there was no rule which enabled the authority to place the respondents before him as seniors, merely because they were so in the lower cadre". This again, in our view, would be a very wrong assumption, because the very rules dt. 6-11-1972 cover the subject for which, according to the learned Judge there were, no rules. This circumstance in our view, is enough to show that the decision of Mohan, J., as well as that of the Division Bench cannot be considered as a binding decision, and the matter has to be considered afresh.

23. While referring to the exception to the rule of stare decisis, it is observed in "Precedent in English Law" by Rupert Cross, 1961 Edition, at page 130, as follows :

"No doubt any court would decline to follow a case decided by itself or any other court (even one of superior jurisdiction), if the judgment erroneously assumed the existence or non-existence of a statute, and that assumption formed the basis of the decision. This exception to the rule of stare decisis is probably best regarded as an aspect of a broader qualification of the rule, namely, that courts are not "bound to follow decisions reached per incuriam".

The proposition that a decision per incuriam need not be followed as a binding precedent is well established. If authority is needed for this proposition, we may refer to the decision of the Court of Appeal in *Young v. Bristol Aeroplane Co. Ltd.*, (1944) 2 All ER 203, where Lord Greene, M.R. observed as follows:-

"Where the Court has construed a statute or a rule having the force of a statute, its decision stands on the same footing as any other decision on a question of law. But where the court is satisfied that an earlier decision was given in ignorance of the terms of a statute or a rule having the force of statute, the position is very different. It cannot in our opinion; be right to say that in such a case the court is entitled to disregard the statutory provision and is bound to follow a decision of its own given when that provision was not present to its mind. Cases of this description are examples of decisions given per incuriam".

24. The Supreme Court in *Jeisri v. Rajdewan*, AIR 1961 2 SC 83 has also quoted with approval the observations in Halsbury's Laws of England, Third Edition, Vol. 22, para 1687, pages 799-800, which are as follows : -

"The Court is not bound to follow a decision of its own if given per incuriam. A decision as given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords".

To the type of cases referred to in the passage from the Halsbury's Laws of England cited above, must also be added decisions which are rendered without noticing the, crucial and relevant statutory provisions or the prov of rules governing the relevant controversy.

25. After having given our anxious consideration to the question, we are of the view that we must consider the matter afresh. There are two Government Orders in this case; one is the impugned Government Order : G.O.Ms. No. 783, dt. 30-4-1981, and the other is G.O. Ms. No. 862, dt. 27-4-1968. We shall, for the moment, ignore these Government Orders, and consider the real and true effect of the relevant rules. The relevant rules, which we have already quoted above, are Rr. 35 (q) and 35(r). It will be advantageous at the outset to refer to the fact that, though the State Government had prescribed the examinations and tests by an administrative order, being G.O.Ms. No. 2155, dt. 16-10-1964, the examination was held for the first time only in Nov., 1965. Therefore, by way of concession, the Govt. directed that the passing of departmental tests should not be insisted upon as a qualification for appointment of Managers till Dec. 1969. Now, with reference to the relevant date, namely, 16th Oct. 1964, so far as Managers are concerned there were two categories of employees those who were appointed as Managers prior to 16-10-1964. The requirement of passing the departmental test came for the first time on 16-10-1964. The Government took the decision administratively in G.O.Ms. No. 1678, dt. 7-7-1966, that time should

be given to those persons who were appointed as Managers or Accountants before 16-10-1964 to pass the departmental tests within the first four chances. Passing the departmental tests has become condition for appointment to the posts of Manager or Accountant with effect from 16-10-1964. Hence, in the case of those who were appointed after 16-10-1964, and were notable to comply with this condition by Dec. 1969, which was the date fixed by the State Government, the natural consequence was, they would be reverted. The Appointing Authorities seem to be in doubt as to the implementation of the Government's decision, dt. 27th April, 1968. This doubt, on record is in the form of a query which was made by the Collector of Salem, to which a clarification was issued by the State Government in Memo dt. 24-2-1970. The query made by the Collector was as follows :

"Whether juniors appointed after 16-10-1964 will have to be reverted though they have since qualified now, and replace them by posting seniors though they have not yet passed the test in view of G.O.Ms.. No. 862 R.D. & L.A. dt. 27-4-1968".

The Government gave the clarification to the effect that "according to the orders issued in G.O.Ms. No. 962 RD & LA dt. 27-4-1968 the promotions made after 16-10-1964 were purely temporary and the juniors appointed as Managers after 16-10-1964 will have to be reverted even though they (Juniors) have qualified subsequently and they should be replaced by seniors though they have not yet passed the tests till Dec. 1969. The test qualification shall be a pre-requisition for future appointment to the posts of Managers/ Accountants viz.. after Dec. 1969".

26. Admittedly, the Government took an administrative decision with regard to the requirement of passing the departmental test. This administrative decision would hold the field only till such time as statutory rules under the proviso to Art. 309 of the Constitution were made. Once statutory rules came to be made by the notification dt. 28-8-1973 and it was expressly made retrospective with effect from 16-10-1964, the Government had deprived itself of its power to take any different administrative decision and hence, the rights of the concerned Government employees would have to be determined only on the basis of the relevant statutory rules. Therefore, in so far as appointments and promotions to the posts of Managers, Accountants and Assistants are concerned, if it is found that the matter is squarely dealt with by Rules made under Art. 309 of the Constitution, the first rights will have to be determined in accordance with those rules only. It is in this context that Re. 35(q) and 35(r) become very relevant. If any action had been taken pending promulgation of the rules such actions are bound to be only of a temporary character, except of course in such cases in which a person had been confirmed in his post prior to 16-10-1964. When for the posts of Manager and Accountant, there were no statutory rules issued prescribing tests.

27. We shall therefore proceed to consider the scope of, these rules. The rules

having been given. effect retrospectively from 16-10-1964., the relevant date for the purpose of R. 35(q) will be 16-10-1964. Rule 35(q) says that, "if any person holding the post of Manager or Accountant or Assistant in Panchayat Union Offices or the post of Accountant or Assistant in the Panchayat Development Branch of Collectorates, and in Panchayat Development Section of Revenue Divisional Offices as on 16th Oct. 1964, fails to pass the departmental test and Panchayat Development Account Test within the first four chances, their increments shall be postponed without cumulative effect until they pass the said tests". The language is plain and simple. The rule deals, as already stated, with persons who are holding the posts described therein as on the 16th Oct. 1964, which means that they have been appointed to the posts prior to 16th Oct. 1964, when there was no specification or requirement with regard to passing departmental tests, The rule says that, if such persons failed to pass the departmental tests within the first four chances, then their increments shall be postponed without cumulative effect until they passed the said tests. The rule therefore contemplated that the only action which can permissibly be taken in respect of those officers would be that they would not earn their increments as and when they became due, if they did not pass the necessary tests within the first four chances, and they would earn their increments only after they passed the tests. The rule says nothing about their reversion in contradistinction to the words of R. 35 (r), which specifically refers to reversion. We shall refer to sub-r. (q) a little later. Reading sub-r. (r), it deals specifically with "such of those persons who were appointed subsequent to 16th Oct. 1964, as Manager/ Accountant/ Assistant in the Panchayat Union Offices, or as Accountant/Assistant in the Panchayat ,Union Development Section in Revenue Divisional Offices and in Panchayat Development Branch in the Collectorates", and says that, "If they do not pass the tests before 31st December, 1969, they shall be reverted". This sub-rule therefore clearly provides that such of those persons who are appointed after 16-10-1964 and have failed to pass the tests before 31, st Dec. 1969, will have to be reverted. In other words, it is obligatory on their part to pass the tests before 31st Dec. 1969, if they wanted to continue to hold the posts to which they were appointed after 16-10-1964,

28. A small category of such persons who are covered by sub-r. (r) is carved out by the proviso which was added to this rule. This proviso, which we have reproduced earlier, refers to the employees selected from the Panchayat Union-Service and appointed as Assistants, who have failed to pass the test before the 31st Dec. 1969, and the proviso expressly requires that such Assistants shall not be reverted to the Panchayat Union Service, if they were selected by the Screening Committee. It may be pointed out that R. 35(r) requires all persons, who were appointed to the posts specified therein after 16-10-1964 to pass the required tests before 31st Dec. 1969. A special treatment is given only to such Assistants and not to Managers or Accountants. The treatment is that, if the Screening Committee had selected the Assistants. then notwithstanding the fact that they have not passed the required tests before 31-12-1969, they will not be

reverted, but they would only face the consequence of their increments being postponed without cumulative effect until they passed the tests. It has also to be remembered that the special R. 35 deals with the aspect of seniority. When Provision is made by adding sub-rules (q) and (r) in a rule which substantively deals with seniority, the only logical conclusion which must follow is that the provisions in sub-rules (q) and (r) of R. 35 were intended for the purpose of determination of seniority in a special way.

29. We may also at this stage refer to R. 39 of General Rules which deals with temporary promotions. Rule 39(a)(i) enables the State Government to promote a person from a lower category to a higher category otherwise than in accordance with rules, which would mean that an unqualified person can be, promoted, subject, of course, to the requirement that such a promotion is necessary in public interest owing to an emergency which has arisen requiring the vacancy to be filled up immediately and that there was likely to be undue delay in making a promotion in accordance with rules. What is relevant for our purpose is General Rule 39(a)(ii), which reads as follows :

"No person who does not possess the qualifications, if any, prescribed for the said service, class or category, shall ordinarily be promoted under Cl. (i). Every person who does not possess such qualifications and who has been or is promoted under Cl. (i) shall be replaced as soon as possible by promoting a person possessing such qualification".

Rule 39 (a)(ii) therefore contemplates that the promotion of any unqualified person to a post in the higher cadre must necessarily be by way of a temporary measure. Any promotion made by way of a permanent arrangement of a person who is not qualified will be clearly in breach of the relevant recruitment rules. The express provision made in R. 39(a)(ii) that every person who has been temporarily promoted has to be replaced, as soon as possible, by promoting a person possessing such qualifications, "is indicative of the fact and rightly so that there should never be a regular promotion in any clear vacancy unless the person is qualified. Now if we read special Rr. 35(q) and 35 (r) of Ministerial Service Rules in the light of General Rule 39, it is obvious that the provisions of Rules 35(q) and 35(r) were intended to prevent the consequences which would otherwise have followed, as a result of R. 39 (a)(ii). Though for the first time test qualifications for the posts of Managers and Accountants were introduced in 1964 with effect from 16-10-1964, so far as Assistants were concerned only in G.O.Ms. No. 2336, dt. 6-11-1972, it was prescribed as a statutory rule. The position therefore clearly is that, unqualified persons promoted to the posts of Managers, Accountants or Assistants after 16-10-1964 had to be reverted back, because their promotions were temporary by virtue of General Rule 39(a)(ii). When as a result of Special Rule 35 (q) all persons who were appointed as Managers or Accountants or Assistants prior to 16-10-1964 were relieved of the consequences of the effect of R. 39(a)(ii), the obvious intention was that their appointments were not treated to be of a temporary nature, but those appointments were

given a finality. The fact that they have not been reverted and were entitled to continue in the respective posts would itself indicate that the appointments were treated as substantive appointments by the framing of R.35(q). Hence those persons who were appointed prior to 16-10-1964 would necessarily become seniors to all those who were appointed after 16-10-1964.

30. When we come to the appointments to those posts made after 16-10-1964, their respective placements would have to be determined in accordance with R. 35 (r). No difficulty would be faced in the case of promotes after 16-10-1964. If they have failed to pass the necessary tests before 31-12-1969, and if they are not persons who fall under the proviso to R. 35 (r) then they would all be reverted. The categories of persons dealt with under R. 35(r) would consist of two types : (i) those who had passed their examinations at different points of time, but prior to 31st Dec.1969, and (ii) those who were selected by the Screening Committee and would be entitled to the benefit of the proviso to R. 35(r), Strictly speaking, the case before Mohan, J. was concerned with the first category of those employees, that is, those who have passed their examinations at different points of time, but before 31st Dec. 1969, all of them having been appointed after 16-10-1964. Some of the persons. who were junior to those appointed earlier, but all of them appointed after 16-10-1964, had passed their examinations earlier. Now it is in that class of. cases that it was directed that the passing of the qualifying tests would be determinative of seniority. Now one thing which has to be appreciated is that, when R. 35(r) was framed, in so far as Assis.tants were concerned, the passing of examination before 31st Dec. 1969, was only relevant for the purpose of further promotion. If juniors had passed their examinations earlier than the seniors, in the category of employees appointed between 16-10-1964 and 31-12-1969, the question is whether merely by virtue of having passed the examination they would become senior to persons who had not " passed the tests, but who were appointed after 16-10-1964. All of these are persons who were not liable to be reverted at all, because they had" passed the examinations prior to 31st Dec.. 1969; As between themselves, they were allowed to continue to be Assistants up to 31st Dec. 1969, without having passed any examination. Once this position is accepted, that is, that, in the absence of any express intention in R. 35(r)that those who had passed the examination earlier would become senior to those who passed the examination later, it would be difficult to hold that " R. 35(r) contemplated the passing of the examination as a criterion for determining seniority inter se between those who fall within R. 35(r). Mohan, J., seems to have taken the view that there is no rule to the contrary which enables those who have passed the examination later to be treated as seniors than those who have passed the examination earlier. With respect to the learned Judge, he seems to have lost sight of the fact that R. 35(r) treats alike different categories of persons, who were all permitted to continue in the posts and they have been given the facility of passing the examination up to 31st Dec. 1969. Once they satisfied that condition of passing the examination before 31st Dec. 1969, unless there is an express provision in

the rule which, as between themselves, requires them to be treated differently for the purpose of promotion all those persons covered by R. 35(r) will have to be treated in the same manner. The same reasoning would apply to those who were entitled to the benefit of the proviso, because the effect of the proviso is that such persons cannot also be reverted. Their seniority will not become material, because for the purpose of further promotion, they will still have to pass the qualifying examinations, and their cases will have to be considered on the same footing as of those who have qualified after -31st Dec. 1969. Therefore, notwithstanding the fact that they will retain their placement in that post with reference to the date of their appointment, when it comes to their promotion and consideration of their chances of further promotion, they will have to be considered on the footing that they have passed the examinations after 31-12-1969, and while doing so, their case will have to be considered only by reference to the dates on which they have qualified themselves and their seniority fixed on such dates.

31. We may therefore proceed on the basis that R. 35(r) positively permits the continuance of persons specified therein in their respective posts up to 31-12-1969 and they were not liable to be disturbed in their placement of seniority merely on account of the fact thk some of the junio~s have passed their examination earlier and some of theseniors have passed later.

32. In so far as junior Assistants are concerned. sub-rr. (q) and (r) do not apply to them at all, and their promotions will be dependent upou their qualifyng for the post of Assistants. Rules 35 (q) 35 (r) are special rules and they must prevail over the general rules, in so far as preference to qualified persons in the matter of appointment is concerned. Once we appreciate the correct scope of sub-rr. (r) and (q) , then the principle which is applicable for determining seniority will be that seniority in cases covered by subrr. (q) and (r) will be dependent upon their continuous length of service, and that will be the seniority which will have to be considered, when the question of, promotion arises.

33. There are further sub-rr. (s), (t), (u), (v) and (w) in R. 35, but those rules do not relate to seniority directly, but they provide for certain exemptions. Sub-rr. (s) and (t),are not relevant for our purpose. They deal with certain tests which need not be passed by certain categories of persons.

34. Sub-rule (u) provides that nothing contained in the Special Rules will apply to persons who held the posts of Managers/ Accountants/Assistants in Block Development Offices or in the posts of Assistant/ Accountant in the Offices of the Collectorate in Panchayat Development Branch or in Panchayat De elopment Section in Revenue: Divisional Offices, on 16th Oct. 1964, or in the post of Superintendents/Assistants in the Administrative Branch of the Office of the Director of Rural Development on 12th Jan. 1970, so far as the posts which they held on those dates. This is a rule again by way of exception with which we are not concerned. Sub-r. (v) applies to the appointment to the posts of Assistant or Superintendent after 12th Jan., 1970, in the Office of the Director of Rural

Development; and this rule provides that, if a person fails to pass the departmental tests and Panchayat Development Account Test within the first four chances commencing from the examination held in May, 1970, he shall be reverted. These rules are not relevant for our purpose. They will have to be taken into account in such of those instances wherein such concessions are applicable.

35. The working of these rules can best be illustrated by taking a few instances from the petitions which have been argued before us. In the writ appeal itself as we have already pointed out, the appellant Syed Mohideen was placed at Serial No. 25, because, though he had been appointed as Assistant on 2-10-1961, he passed the examination only in Nov. 1968. Now that placement is sought to be disturbed, because other persons who were appointed later to him as Assistants had passed the examinations much earlier and they were sought to be promoted. Irrespective of whether he passed the examination or not, he could not have been reverted, having regard to R. 35(q). Consequently any fresh appointees to the cadre of Assistants after 2-10-1961 must necessarily be placed lower in the list of seniority to the appellant Syed Mohideen.

36. Two Assistants, P. Krishnaraj and H. M. Ali Baig, are represented before us, having been ordered to be impleaded at their instance in the writ appeal. It will be advantageous to tabulate "the dates of appointments with the number in the seniority list of 1974, and as now contemplated, as follows :

No.in the 1974 Name Date of Appointment Date of passing the

Seniority list Appointment Examination _____

1 2 3 4 _____

25 Syed Mohideen 2-10-1961 November, 1968

94 H.M.Ali Baig 19-10-1966 May, 1968

122 P.Krishnaraj 26-08-1967 November, 1966 _____

37. Now the proposed -seniority list as a result of implementing G.O. Ms. No. 783 dt. 30-4-1981 has resulted in Syed Mohideen going down from serial Nos. 25 to 54 in the new-List, H. M. Ali Baig going up from 94 to 48: and P. Krishnaraj; going, up from 122 to 17. If G.O. Ms. No. 783 is implemented there is no doubt that this will be the result, because Krishnaraj has passed the examination as early as in Nov. 1966; H. M. Ali Baig has passed the examination in May, 1968, and Syed Mohideen has passed the examination in Nov. 1968. However, having regard to the specific and special provision in R. 35 (1), Syed Mohideen being already an Assistant on 16-10-1964 and not liable to be reverted at all, his placement could not have been disturbed, notwithstanding the fact

that he passed the examination only in Nov. 1968. Syed Mohideen's passing the examination in Nov. 1968, would become material for the limited purpose of considering as to when he should be treated as qualified for promotion to the higher post, if his name had to be considered under the normal rule. Undoubtedly P. Krishnaraj and H. M. Ali Baig were appointed after 16-10-1964 and prior to 31-12-1969. Between themselves, Baig is senior with reference to the date of appointment and Krishnaraj is junior. Both of them have passed the qualifying examination prior to 31-12-1969. There is therefore no question of any disturbance of their inter se seniority : Baig would always be senior to Krishnaraj in the category of Assistants, he having passed the examination prior to 31-12-1969.

38. In W.P.M. 6403 of 1982, in which Mr. Chidambararn appears, the first eight of the petitioners were appointed as Managers in the Panchayat Union Offices on several dates between 8-9-1965 and 26-12-1969. As between themselves, they would fall under R. 35 (r), and, if they have passed the examination before 31-12-1969, then they would be entitled to placement with reference to their date of appointment as contemplated by R. 35 (r).

39. When we come to W.P. Nos. 20, 21, 22, 23 and 24 of 1982 and 10995 and 10996 of 1982, which were argued by Mr. Sukantharaj, it appears that the petitioners have come up merely to quash G.O.Ms. No. 783, which, according to them, was going to affect them adversely. However, as rightly argued by the learned Government Pleader, on the basis of the dates of their appointment, it appears to us that they would neither be covered by R. 35 (q) nor by R. 35(r). These petitioners were undoubtedly appointed as Assistants on 16-11-1966, 22-8-1966, 22-8-1966, 7-6-1966, 20-8-1966 and 13-10-1966 respectively. If this fact alone is to be considered, undoubtedly they belong to the category contemplated by R. 35(r). But the second requirement of passing the examination before 31-12-1969 has not been satisfied in the case of these petitioners, because it is not disputed that they have passed the tests only after that date, namely, 9-11-1972, 16-11-1973, 8-11-1973, 6-5-1970, 14-5-1971 and 11-11-1971 respectively. Having regard to these dates, and it not having been shown that these persons fall within the proviso to R. 35(r), they were all liable to be reverted, and their seniority, if at all, in the cadre of Assistant, would have to depend upon when they are promoted & subsequently by way of regular promotion after passing the necessary tests.

40. When we indicated to the learned Government Pleader that this was how Rr. 35(q) and 35(r) should work., the learned Government Pleader contended that those who fell under the two categories specified in Rr. 35(q) and 35(r) were not entitled to have their seniority over those who were promoted on the basis of their qualifications. The learned Government Pleader contended that the limited effect of Rr. 35(q) and 35(r) was that reversion was being prevented and that this was in the nature of a protection to employees who were already promoted. Apart from this, according to the learned Government Pleader, there was no

other purpose in making Rr. 35(q) and 35(r). We have already indicated earlier that R. 35(q) was intended not merely for the purpose of avoiding the effect of R. N(a)(ii), but the further consequence of that sub-rule was that the employees who fell within that sub-rule have acquired a right to continue in their respective posts, without earning increments, up to their date of superannuation, and they could be treated as validly holding the posts with reference to their respective dates of appointment. This would necessarily enure for their benefit in so far as the determination of their placement in the seniority list was concerned.

41. An argument was advanced before us, while attacking G.O.Ms. No.783, by Mr. Sukantharaj. that the said Government Order violated the statutory provisions in regard to conditions of service in the General Rules, Rr. 19, 27 and 36, and that the Government Order was being implemented without giving an opportunity to the petitioners to show why they should not, be reverted. The first contention, in our view, has no substance. We have taken the view that R-r. 35(q) and 35(r) are Special Rules and Special Rules must prevail over General Rules. With regard to the contention that the Government Order was being implemented without giving an opportunity to the petitioners to show cause why they should not be reverted, it is obvious that the step which the State proposed to take after G.O.Ms. No. 783 was issued was to make a provisional list in accordance with G.O.Ms. No. 783 and invite objections. The provision for inviting objections would afford sufficient opportunity, though we have already indicated that, on facts placed before us, it does not appear that G.O. Ms. No. 783 was of any consequence to the petitioners.

42. Mr. Desappan has referred us to the decision in *Vijayadevaraj v. G. V. Rao*, (1983) 1 SLR 292. This is a decision of the Karnataka High Court in which it has been held that the term "seniority" in public service is length of service in the very same grade or cadre. On principle there can be no dispute over this proposition.

43. Seniority is one of the important matters relating to the conditions of service, because it has a direct bearing on the question of promotion to the next higher grade. Where promotion to the next higher grade is based on the principles of seniority and merit, the seniority of an official becomes important, because where a senior official is suitable for promotion, he is entitled to get promotion on the basis of his seniority in preference to juniors. Even in cases where promotion is based on selection, seniority is also important, because where persons are selected to the next higher post on the basis of merit and suitability from among persons of equal merit, a senior is entitled to be preferred for appointment. See *Sant Ram Sharma Vs. State of Rajasthan and Another*, .

44. The general principles in our view, for fixing seniority are now well established. Seniority is always counted from amongst persons holding similar posts with similar status. Persons holding permanent or substantive posts are always treated as seniors to persons holding appointments on temporary or officiating posts. On this basis, those who were already covered by R. 35(q)

would be seniors to those appointed to their respective posts after 16-10-1964.

45. Mr. Desappan has also referred us to the decision of this Court in *Venkataranian v. Director of Postal Services*, (1970) 2 Mad 49. In that case the Division Bench was concerned with a circular issued by the Post and Telegraph Department, which provided that in the matter of confirmation for the purpose of seniority of persons, who had passed the examination, whether officiating or not, it would be refixed in accordance with the date of their passing the examination. The Division Bench, while laying down the law, held that though it would be open to the authorities to fix the seniority before persons were promoted to the accountants grade on the date of their qualifying by the examination, once a number of people had been promoted and had begun to officiate in the higher grade, all of them being qualified at the time of their promotion to officiate by having passed the examination. It would be discriminatory to ignore the seniority by the length of service and revert to the date of passing the qualifying examination for that purpose. The Division Bench took the view that to introduce a distinction in the matter of confirmation and seniority on the basis of the date of passing the examination would be introducing a totally irrelevant consideration for the purpose of confirmation. We respectfully agree with the view taken by the Division Bench.

46. We need to consider separately only one contention which was advanced by Mr. Ramamdrthy, who appears in W. P.No. 10617 of 1982. His contention that the judgment of Mohan, J., was not correct and was per incuriam has already been accepted by us. His second contention is that the Government was competent to file an appeal, which was held to be incompetent by the Division Bench. This contention must be accepted. With great respect to the learned Judges of the Division Bench, it appears to us difficult to appreciate how, when a particular power of the State Government for making a seniority list has been struck down by the High Court, the State Government cannot be said to be an aggrieved party entitled to challenge the correctness of that decision before the appellate Court on the ground that the Government's policy decision was a right decision. The only forum where the State Government, whose policy decision has been struck down by a single Judge can challenge that decision is the Division Bench where the State Government must come by way of appeal. The State Government was expressly made a party to the writ petition, and, apart from two other officers of the State Government, who were respondents 1 and 2, the State Government was respondent 3. The case of the State Government was that the list was prepared in accordance with G.O. Ms. No. 862, the principles of which later on were incorporated in statutory rules, reflected the correct principle on which the seniority list would have to be framed. If this contention was rejected, the State Government was competent to canvass before the Appeal Bench that under Rr. 35(q) and 35(r) the State Government had laid down the correct principle for the purpose of preparing the seniority list. We must therefore respectfully differ from the view taken by the Division Bench that the State Government was not an aggrieved party. Undoubtedly, if the decision went

against the respondents who were parties to the proceedings, they would be entitled to appeal, because, whether it was the right of the petitioners or the right of respondent⁶, how those rights have to be determined by the State Government is a matter of policy decision and the State Government is entitled to cavass that the view taken by it while laying down the policy decision was correct.

47. Having regard to what we have stated earlier, the propositions which follow may now be laid down :

(1) As a result of making R. 35(q), any person who was already promoted to the post of Manager, Accountant, or Assistant in the Panchayat Union Offices or the Post of Accountant or Assistant in the Panchayat Development Branch of Collectorates and the Panchayat Development Section of Revenue Divisional Offices as on 16-10-1964 could not be reverted, notwithstanding the fact that he had failed to pass the qualifying tests.

(2) The consequence of such failure to pass the qualifying test was simply that his increments are postponed without cumulative effect until he passed the said tests. His further promotions and seniority would be dependent upon passing the tests.

(3) All those persons who were appointed subsequent to 16-10-1964 to the posts mentioned above, were given the facility of passing the examination before 31-12-1969, failing which they would all be reverted.

(4) Only such persons who were selected from the Panchayat Union Service by the Screening Committee and appointed as Assistants would not be reverted to the Panchayat Union Service, but their increments would be postponed without cumulative effect, until they passed the tests. Their further promotions and seniority therein would be dependent upon the passing of the tests.

(5) In the category of employees who fell within R. 35(q), their seniority would be determined with reference to their date of appointment.

(6) In the category of persons referred to in R. 35(r) and who were promoted before 31-12-1969, including persons who had the benefit of the proviso to that rule, their seniority would be determined inter se with reference to the respective dates of their appointment.

(7) Persons who were promoted to the posts mentioned in R. 35(r) after 31st December, 1969 would be junior to the persons who were already covered by R. 35(r), and their seniority inter se would be determined with reference to the respective dates of their promotion.

48. When we heard these cases, it was expressly made clear that it would not be possible to deal with the individual cases of the petitioners, but, since in all these cases the main challenge was to the validity of G.O. Ms. No. 783 dt. 30-4-1981. the individual rights of the petitioners, consequent upon the quashing of the said

Government Order, would have to be determined afresh. Accordingly, having regard to the view which we have taken, we must overrule the decision of Mohan, J. in W. P. Nos. 401, 402 and 418 of 1975, and the confirming Judgment of the Division Bench in W. A. Nos. 394 to 396 of 1979. We must also quash G.O. Ms. No. 783 dt. 30-4-1981, which is violative of Rr. 35(q) and 35(r).

49. It has also been brought to our notice that in G. O. Ms. No. 1581 dt. 20-10-1982 guidelines have been given as to how G.O. Ms. No. 783 dt. 30-4-1981 is to be implemented. Since they are merely guidelines, it is not necessary to quash them, but it is obvious that, since we have quashed G.O. Ms. No. 783 dt. 30-4-1981, these guidelines will now be no longer effective and operative.

50. In the result, the writ appeal, and the writ petitions which have been filed for quashing G.O. Ms. No. 783 dt. 30-4-1981 are allowed.

51. W. P. Nos. 6401 of 1981, 10427, 1,0497 and 105~ of 1982, 1653, 3892 and 5320 of 1983 which have been filed by the respective petitioners for the issue of a writ of mandamus directing the Government to implement G.O. Ms. No. 783 dt. 30-4-1981 must stand rejected in the view we have taken.

52. Since G.O. Ms. No. 783dt.,30-4-1981 has been quashed by us, the consequence is that any list made on the basis of that Government Order will also automatically become ineffective. The appointing authorities are now directed to make fresh lists of seniority in the respective cadres in the light of the above decision.

53. There will be no order as to costs.

54. Order accordingly.