

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.6.2015

CORAM

THE HONBLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

Writ Petition Nos.10796, 14570 to 14573 of 2015

Tamilnadu Neethithurai Aluvalar Sangam
Salem Mavatta Maiyam
rep. by its President V.Tamilazhagan
No.149, Patchapatti
Salem 636 015.

.. Petitioner in
WP No.10796/15

V.Tamilalgan

.. Petitioner in
WP No.14570/15

R.Sakthivel

.. Petitioner in
WP No.14571/15

A.Neelamegam

.. Petitioner in
WP No.14572/15

S.Karthiyayini

.. Petitioner in
WP No.14573/15

Vs.

The Registrar General
High Court of Judicature at Madras
Chennai 600 104.

R1 in WP No.
.. 10796/15

The Principal District Judge
Salem.

R2 in WP No.
10796/15,
Respondent in
WP Nos.14570 to
14573/15

The State of Tamil Nadu
rep. by its Secretary
Home Department
Fort St. George
Chennai 600 009.

R3 in WP No.
.. 10796/15

Petitions under Article 226 of the Constitution of India
praying for

(i) WP No.10796 of 2015 - a writ of Certiorarified Mandamus
calling for the records relating to the notification of the second

respondent published in the Tamil Daily "Daily Thanthi" in its edition dated 20.02.2015 and quash the same insofar as it relates to the 9 posts of Junior Bailiffs and consequently, direct the respondents to fill up the 9 posts of Junior Bailiffs by way of promotion from the post of Office Assistant/Drivers; and

(ii) WP Nos.14570 to 14573 of 2015 - a writ of Certiorari calling for the records relating to the orders of the respondent dated 29.4.2015 in Roc.Nos.5467/A/2015, 5468/A/2015, 5475/A/2015 and 5468/A/2015 and quash the same.

For Petitioners : Mr.K.Selvaraj

For Respondents 1 & 2 in WP
No.10796/15 & Respondent
in WP Nos.14570-14573/15 : Mr.E.K.Kumaresan

For R3 in WP No.10796/15 : Mrs.A.Srijayanthi, Spl.G.P.

O R D E R

(Made by V.Ramasubramanian, J.)

While the first writ petition W.P.No.10796 of 2015 is filed by an association of persons working in the subordinate judiciary, challenging a notification for direct recruitment to the post of Junior Bailiffs, the other four writ petitions are by persons working in various posts in the District Court, Salem, challenging the orders of transfer.

2. Heard Mr.K.Selvaraj, learned counsel for the petitioners, Mr.E.K.Kumaresan, learned counsel for the High Court and the Principal District Judge and Mrs.A.Srijayanthi, learned Special Government Pleader for the Government.

3. In the first writ petition, the challenge is to a notification for direct recruitment. It is seen from the affidavit in respect of the writ petition that persons who are now working in various categories of posts in various Courts in the District of Salem, aspired for promotion to the post of Junior Bailiff/ Process Server. According to the petitioner, there are 75 persons working as Office Assistants and Drivers in the Salem District Court, 10 persons working in Sankari Court and 8 persons working in Attur Subordinate Court in the post of Peons/Office Assistants/Drivers.

4. By a notification issued on 20.02.2015, the Principal District Judge invited applications for recruitment to various posts, including 9 posts of Junior Bailiff.

5. Upon seeing the notification, the association of persons working in various Courts in the District of Salem, have come up with the above writ petition challenging the notification on the short

ground that when 93 qualified persons are available for promotion to the posts of Junior Bailiff/ Process Server, it was not correct on the part of the Principal District Judge to go in for direct recruitment.

6. After notice was ordered in the above writ petition on 15.4.2015, it appears that a few transfers were ordered by the Principal District Judge on 29.4.2015. Contending that these transfer orders of the office bearers of the association were a sequel to the challenge made to the direct recruitment of Junior Bailiffs, 4 office bearers of the association have come up with the next four writ petitions.

7. Insofar as the challenge to the notification for direct recruitment is concerned, the claim of the petitioners is that the posts of Junior Bailiff and Process Server, which fall under the Tamil Nadu Judicial Ministerial Service, have to be filled up only by the method of promotion from among Peons, Drivers, Record Clerks etc.

8. But, the above contention does not appear to be borne out by the statutory rules. The Special Rules for Tamil Nadu Judicial Ministerial Service, as seen from Rule 5, divides the entire service into five classes of employees. Each class has within itself different categories of employees. The posts of Bailiff, Senior Bailiffs, Junior Bailiffs and Process Servers in all the Presidency Court of Small Causes fall under categories 1 to 4 of Class II. The post of Senior Bailiff in moffussil Courts fall under Class V.

9. Under Rule 6, the method of appointment to different classes and categories are listed out. Insofar as Junior Bailiffs and Process Servers falling under Class II are concerned, the Rules stipulate the following as the method of recruitment.

3.	Junior Bailiffs	Direct recruitment; or for special reasons, recruitment by transfer from any other service. Preference shall be given to Peons, Process Servers, Duffadars, Chobdars, Electric Lift Operators and Record Clerk serving in the Judicial Department including the Madras High Court Service and the Madras High Court Official Assignee service.
4.	Process Writers	

10. Therefore, it is clear that as per the Rules as on date, direct recruitment is the method of recruitment to posts falling in class II. It is only for special reasons that recruitment by transfer from any other service is possible. In such circumstances, the claim of the Association in W.P.No.10796 of 2015 does not appear to be founded on the basis of the statutory rules.

11. Mr.K.Selvaraj, learned counsel appearing for the petitioner

relies upon a decision of the Division Bench of this Court in W.P.Nos.5865 to 5870 and 7017 of 2009 dated 22.7.2009. In the said case, persons working as Office Assistant came to this Court seeking promotion to the post of Senior Bailiffs. A defence was taken in those batch of cases that as per the recommendations of Shetty Commission, a ratio of 50% for direct recruitment and 50% for promotion had to be followed. But, the said defence was rejected by a Division Bench holding that so long as the Service Rules are not amended, the respondents cannot act on the basis of mere recommendations. Though the said case concerned only the fixation of educational qualification, the learned counsel for the petitioners draws an analogy on the ground that the respondents were not right in allowing 50% of the vacancies for direct recruitment and 50% of the vacancies for promotion, on the basis of the said judgment.

12. But, unfortunately, even as per the said judgment, promotions to all categories of posts in the Judicial Ministerial Service, have to be only in accordance with the statutory rules. The statutory rules provide only for direct recruitment. Therefore, the petitioners cannot make a claim de hors the statutory rules.

13. As a matter of fact, the second respondent has actually invited applications for direct recruitment only to 9 out of 18 vacancies and he has actually promoted 9 persons from out of the lower categories. In other words, the Principal District Judge has done justice to the serving employees in the lower categories by allotting a quota of 50% and hence, W.P.No.10796 of 2015 has no merits. Accordingly, it is dismissed.

14. Insofar as the other writ petitions are concerned, the petitioners challenge the orders of transfer. Though the petitioners contend that the transfer of office bearers of the association was ordered as a consequence of the challenge to the recruitment notification, there is no material to support the allegation of mala fide. As a matter of fact, the officer against whom mala fide is alleged is not impleaded by name as a party. That officer has also now been shifted and a new person has taken charge. Therefore, leaving it open to the petitioners to make a representation to the new officer, these writ petitions are dismissed. No costs. Consequently, M.P.Nos.1 and 2 of 2015 are also dismissed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

kpl

To

1. The Registrar General
High Court of Judicature at Madras
Chennai 600 104.
2. The Principal District Judge
Salem.
3. The Secretary
Home Department
Fort St. George
Chennai 600 009.

2 CCS TO Mr.K.Selvaraj, Advocate, Sr. 32189
2 ccs to Government Pleader, Sr. 32351

W.P.Nos.10796, 14570 to 14573
of 2015.

NM (CO)
kk 16/7



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