

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.09.2015

DATE OF DECISION : 21.09.2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

W.P.Nos.18752 to 18761 and 21465 of 2015
and
connected miscellaneous petitions

P.Sathya	..Petitioner in W.P.No.18752 of 2015
G. Senthilkumar	..Petitioner in W.P.No.18753 of 2015
J. Vijaya	..Petitioner in W.P.No.18754 of 2015
S. Sornalatha	..Petitioner in W.P.No.18755 of 2015
K. Sasikala	..Petitioner in W.P.No.18756 of 2015
E. Geethalakshmi	..Petitioner in W.P.No.18757 of 2015
Gnanasoundari	..Petitioner in W.P.No.18758 of 2015
Omswaminathan	..Petitioner in W.P.No.18759 of 2015
Thirupurasundari	..Petitioner in W.P.No.18760 of 2015
S.Gopi	..Petitioner in W.P.No.18761 of 2015
Punniarenga	..Petitioner in W.P.No.21465 of 2015

Vs

1.Tamil Nadu Public Service Commission,
represented by its Secretary,
Frazer Bridge Road,
VOC Nagar,
Chennai-600 003.

2.The Registrar General,
High Court of Madras,
Chennai-104.

(R-2 suo-motu impleaded in W.P.Nos.18752
to 18761/2015 vide order dt.26.6.2015) ..Respondents in WP.18758/15,
18760/15, and Respondents 1&2
in WP.21465/15

3.The State of Tamil Nadu
represented by its Secretary to Government,
Personnel and Administrative Reforms
Department,
Secretariat, Chennai-600 009.

(R-3 impleaded as per order dt.10.7.2015
in in M.P.Nos.2/2015 (8 cases) in
W.P.Nos.18752 to 18757, 18759 and
18761 of 2015)

4.The State of Tamil Nadu,
represented by its
Secretary to Government,
Home (Courts) Department, ..3rd Respondent in WP.21465/15
Secretariat, Chennai-600 009.
(R-4 impleaded as per order dt.21.7.2015
in M.P.Nos.3/2015 (8 cases) in
W.P.Nos.18752 to 18757, 18759 and
18761 of 2015) .. Respondents in
W.P.No.18752 of 2015 to
18757, 18759 and 18761/15

Writ petitions are preferred under Article 226 of the Constitution of India praying for a writ of mandamus to direct the respondents to include the Register No.250101068, 010102017, 150101150, 080101151, 210102098, 010101264, 270101128, 150102023, 010109089, 270101155 and 260103109 respectively, of the petitioner in the provisional list published on 16.6.2015 for counselling to the post of Typist in the Madras High Court Services scheduled to be held on 29.6.2015 by the respondent based on the rank obtained by the petitioner in the written and skill test.(W.P.Nos.18752 to 18761/15) and consequently relax the age of the petitioner in accordance with period of experience as temporary employee and higher educational qualification (W.P.21465/15)

For petitioners .. Mr.G.Ethirajulu
for Mr.Alakendran Law Asso.
in all writ petitions

For respondents.. Mr.CNG.Niraimathi for R-1 in all W.Ps.
Mr.V.Ayyadurai for R-2 in all W.Ps.
Mrs.A.Srijayanthi, Spl.G.P for RR3 and 4
in W.P.Nos.18752 to 18757, 18759 and
18761 of 2015
and for R-3 in W.P.No.21465 of 2015

COMMON ORDER

SATISH K. AGNIHOTRI, J.

Regard being had to the common question of law involved in this batch of petitions, all the petitions are being considered and disposed of by a common order.

2 The petitioners were appointed as Steno-Typist/Typist through District Employment Office in various judicial districts under the provisions of Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services Rules (for short "service rules"). In the meantime, the first respondent Tamil Nadu Public

Service Commission (for short "TNPSC") initiated selection for regular appointment. Similarly situated persons, including some of the present petitioners, filed a batch of writ petitions in Tmt.S.Sornalatha and others Vs. The State of Tamil Nadu and others [W.P.No.3498 of 2013, etc. batch cases], for the relief that they should not be terminated from service and instead, their services in the Tamil Nadu Judicial Subordinate Service should be regularised. All writ petitions were dismissed, vide order dated 27th November, 2014, observing as under :

"5.We have examined the said submission. We are of the considered view that such a direction cannot be granted for more than one reason. Firstly, the petitioners, while working in the post on temporary basis, had an opportunity to participate in the examination conducted by the Public Service Commission for appointment in the said post. Some of the candidates had appeared for the examination and also come out successfully. The petitioners, it appears, have not participated in the selection process. Secondly, the petitioners, while accepting the appointment on temporary basis, were conscious of the fact that their appointment was only till regularly appointed incumbents are available. Thirdly, the petitioners' appointment was not in accordance with the Constitutional scheme of employment. Thus, it cannot be directed to conduct a separate examination for regularisation of the present employees."

3 Following the said decision, the other coordinate Bench of the Madurai Bench in a petition by other similarly-situated petitioners in W.P.(MD)No.4059 of 2015, disposed of the same on similar terms, vide order dated 17th April, 2015.

4 The instant petitions are filed by the petitioners seeking a writ of mandamus to direct the TNPSC to include their names in the provisional list of counselling to the post of Typist, based on the rank obtained in the written and skill test and to grant further order for appointment.

5 The facts in brief germane to the dispute involved herein are that indisputably, the petitioners were appointed as temporary Steno-typist/Typist, as aforestated. Pursuant to the notification No.19/2013, the petitioners applied for appointment on the post of Typist. The age of the petitioners were beyond the maximum age limit and as such, after conduct of the written and skill test, their candidature was rejected, compelling them to file the instant petitions.

6 A coordinate Division Bench, while admitting the writ petitions, directed the TNPSC by way of an interim order to permit the writ petitioners, subject to their having been qualified and the rank obtained by them, in the counselling to be held on 29th June 2015, making it clear that no claim of equity on the basis of the said interim order be made by the writ petitioners.

7 The question which arises for consideration in this batch of matters is whether the petitioners working in various subordinate courts in the State as temporary employees under the provision of Rule 10(a)(i) of the service rules, are entitled to be considered as service candidates for the purpose of reckoning the maximum age limit.

8 The learned counsel appearing for the petitioners submits that indisputably the petitioners were appointed as temporary employees, however, the petitioners have been continuing in service and as such, they may be treated as members in the judicial service for the purpose of maximum age limit. While the maximum age limit for the service candidates is 45 years, for general candidates, it is 30 years and for reserved categories, it is 35 years.

9 On the other hand, the learned counsel appearing for the respondents would submit that the petitioners being not service candidates, as they were not appointed in accordance with law as regular recruits and also they were never probationers nor full member of the service, as such, their candidature was rightly rejected being beyond the age limit.

10 We have heard the learned counsel for the parties, perused the pleadings and documents appended thereto.

11 Rule 2(10) of the Preliminary for the Tamil Nadu State and Subordinate Services Rules defines "Member of a service" as under :

"(10) "Member of a service" means a person who has been appointed to that service and who has not retired or resigned, been removed or dismissed, been substantively transferred or reduced to another service or been discharged otherwise than for want of a vacancy. He may be a probationer, an approved probationer or a full member of that service; "

12 Rule 2(12) defines "Probationer" as under :

"(12) "Probationer" in service means a member of that service who has not completed his probation;"

13 Rule 10(a)(i) of the service rules provides for temporary appointments, as under :

"10. Temporary appointments:- a(i) (1) where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with the said rules.

Provided that no appointment by direct recruitment under this clause shall be made of any person other than the one sponsored by the Tamil Nadu Public Service Commission from its regular or reserve list of successful candidates to any of the posts within the purview of the Tamil Nadu Public Service Commission.

Provided further that appointment by direct recruitment under this clause (1) in respect of posts within the purview of Tamil Nadu Public Service Commission shall be made, only where new posts with new qualifications are created temporarily and where the Tamil Nadu Public Service Commission does not have a regular or reserve list of successful candidates for sponsoring.

(ii) Where it is necessary to fill a short vacancy in a post borne on the cadre of service, class or category and the appointment of the person who is entitled to such appointment under these rules and the Special Rules, would involve excessive expenditure on travelling allowance or exceptional administrative inconvenience, the appointing authority may appoint any other person who possess the qualifications, if any prescribed for the said service, class or category.

(iii) A person appointed under clause (i) shall be replaced as soon as possible by a member of a service or an approved candidate qualified to hold the post under the rules, and in any case, he shall not be continued for a period of more than one year from the date of his temporary appointment;

(iv) where it is necessary to appoint an officer against whom an enquiry into allegations of corruption or misconduct is pending, the appointing authority may appoint him temporarily, pending enquiry into the charges against him. The competent

authority shall have discretion to make regular appointment in suitable cases.

(v) A Person appointed under clause (i), (ii) or (iv) shall not be regarded as a probationer in such service, class or category or be entitled by reason only of such 35 appointment to any preferential claim to future appointment to such service, class or category. The services of a person appointed under clause (i), (ii) or (iv) shall be liable to be terminated by the appointing authority at any time without notice and without any reason, being assigned.

(b) and (bb) Omitted

(c) A person appointed to any part-time post created in lieu of a whole time post borne on the cadre of a service, class or category shall not be regarded as a probationer in such service nor shall be entitled by reason only of such appointment to any preferential claim to future appointment to such service, class or category.

(d) Notwithstanding anything contained in these rules, if and when a temporary post is created as addition to the cadre of any service, class or category and the holder thereof is required by the State Government to possess any special qualifications, knowledge or experience, any person who possess such qualifications, knowledge or experience and is considered to be best fitted to discharge the duties of such post may, irrespective of other considerations, be appointed to that post by the appointing authority, but the person so appointed shall not, by reason only of such appointment, be regarded as a probationer in such appointment, be regarded as probationer in such service, class or category nor shall he acquired hereby any preferential right to future appointment to such service, class or category.

14 On combined perusal of the aforestated relevant provisions of the service rules, it is luculent that the petitioners were not members of the service on being appointed under Rule 10(a)(i) of the service rules, as clearly prescribed in the appointment order itself. Further, it was made clear that their appointment was made, till regular recruited incumbents join the post. The aforestated fact was examined in Tmt.S.Sornalatha and others (supra), wherein this court, after examining all aspects of the matter, vide order dated 27th November, 2014, dismissed the writ petitions holding that the petitioners therein, appointed temporarily with a condition to be replaced by regular incumbents, have no right to continue in the post and also to be regularised in their respective posts.

15 As a sequitur, there is no dispute on the fact that the petitioners were appointed temporarily and as such, they were not members of judicial service to have the benefit of maximum age limit, as in clause 4 of the notification, the maximum age limit for the service candidates was notified as 45 years.

16 For the reasons mentioned herein-above, we have no hesitation in holding that the petitioners are not entitled to relaxation in the maximum age limit on the basis of their performance in the written and skill test.

17 Resultantly, all the writ petitions are dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vvk

To

- 1.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar,
Chennai-600 003.
- 2.The Registrar General,
High Court of Madras,
Chennai-104.
- 3.The Secretary to Government,
The State of Tamil Nadu
Personnel and Administrative Reforms
Department,
Secretariat, Chennai-600 009.
- 4.The Secretary to Government,
The State of Tamil Nadu,
Home (Courts) Department,
Secretariat, Chennai-600 009.

+ 1 cc to the Government Pleader SWr.51559
+ 9 ccs to M/s. Alakendran Law Associates,
Advocate Sr.51147, 51148, 51149, 51150, 51151, 51152,
51153, 51154, & 51155

W.P.Nos.18752 to 18761
and 21465 of 2015

PA(CO)
Eu 12.10.15