IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

W.P.No.29229 of 2012

1. S.Rasheeth Tariq
2. Tmt.V.R.Deivamani
3. S.Mugunthan
4. V.S rikanth
5. Tmt.Khudusia Kouser
6. M.Soundarya
7. B.Guruswamy
8. A.S.Raveendran
9. K.Deenathayalan
10. K.Murugesan
11. G.Manivel ... Petitioners

Vs.

1. The Government of Tamilnadu rep. by its Secretary, Department of Finance (Treasury and Accounts), Fort St. George, Chennai-600 009.

2. The Commissioner of Treasury and Accounts, Panagal Building, Saidapet, Chennai 600 015. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Declaration, declaring that portion of the Tamilnadu State Treasuries and Accounts Services Special Rules requiring the holders of the posts of Commercial Accountants borne on the Tamilnadu Ministerial Service to have worked the said post for a period of not less than 5 years, for the purpose of recruitment by transfer to the post of Assistant Accounts Officer under the aforesaid rules to be ultra vires as offending Articles 14 and 16 of the Constitution of India and consequently direct the respondents herein to be considered for recruitment by transfer to the post of Assistant Accounts Officer under the aforesaid rules for the year 2012-2013.

For Petitioners	..	Mr.V.Prakash, Sr.Counsel for Mr.K.Krishnamurthy
For Respondents	..	Mr.R.Ravichandran, AGP

JUDGMENT

(Judgment of the Court was made by Justice V.Ramasubramanian)

The petitioners who are working as Commercial Accountants in the Department of Industries and Commerce, have come up with the above writ petition seeking a declaration that the prescription contained in serial number (4)(a) in Column No.3 of the Table under Rule 5 of the Special Rules for Tamil Nadu State Treasuries and Accounts Services, requiring a qualifying service of 5 years for persons working in other departments for promotion to the post of Assistant Accounts Officers in the Treasuries and Accounts Service as unconstitutional.

2. Heard Mr.V.Prakash, learned Senior Counsel for the petitioners and Mr.R.Ravichandran, learned Additional Government Pleader appearing for the respondents.

3. There is no dispute about the fact that the petitioners are working as Commercial Accountants in the Department of Industries and Commerce. The Department of Industries and Commerce has its own categories of posts in the State Services, Subordinate Services and Ministerial Services of the Department. The petitioners are not part of the Department of Treasuries and Accounts Service. The Department of Treasuries and Accounts Service is a separate Department by itself.

4. The Special Rules for Tamil Nadu State Treasuries and Accounts Services, divide the posts in the Treasuries and Accounts Service into four Classes. Class-I stands deleted and we are not concerned with the same. Class-II comprises of four categories of posts namely: (1) Treasury Officer, (2) Pay and Accounts Officer, (3) Selection Grade Accounts Officers and (4) Selection Grade Treasury Officers. Similarly, Class-III comprises of three categories of posts namely: (1) Accounts Officers, (2) Assistant Pay and Accounts Officer and (3) Assistant Superintendent of Stamps. Class-IV of the Treasuries and Accounts Service comprises of only one post namely Assistant Accounts Officers.

5. The Table under Rule 3 of the Special Rules for Tamil Nadu State Treasuries and Accounts Services, prescribes two different methods for appointment to the post of Assistant Accounts Officers in Class-IV. The methods of recruitment are as follows:-

Class	Method of Appointment	
(1)	(2)	
Class IV	(i)	Recruitment by transfer from among the holders of the posts in the category of Sub Treasury Officers Grade I and Superintendents Grade I in the Treasuries and Pay and Accounts Officers. Or

Class	Method of Appointment	
	(ii)	Recruitment by transfer from among the holders of the posts of Superintendents, Accountants, Commercial Accountants or Auditors borne on the Tamil Nadu Ministerial Service in the scale of pay applicable to Superintendents as above or from among persons holding similar supervisory posts carrying scale of pay not less than that of Superintendents in any other service. (G.O.Ms.No.903 Fin (T&A) Dept., dated 13.08.90)

6. Since there are two methods of recruitment, Rule 3(g) of the Special Rules also prescribes a ratio of 2:3. Rule 3(g) reads as follows:-

Class	Method of Appointment	
(1)	(2)	
	3(g)	Out of every five vacancies in Class IV, the first two vacancies shall be reserved for recruitment by transfer from Sub Treasury Officer and Superintendents in the Treasuries and Pay and Accounts Offices and that the remaining three vacancies shall be reserved for recruitment by transfer from among persons holding the post of Superintendents, Accountants, Commercial Accountants or Auditors borne on the Tamil Nadu Ministerial Service in the scale of pay applicable to Superintendents as above or from among persons holding similar supervisory posts carrying scale of pay not less than that of Superintendents in any other services. Provided that if in any year, the aforesaid ratio cannot be followed for want of qualified persons from Sub Treasury Officer and Superintendent in the Treasuries and in the Treasuries and Accounts Department the said reserved vacancies shall be filled in by recruitment by transfer from the posts specified in item (ii) in Col.2 in the Table under this rule and vice versa. (G.O.Ms.No.903 Fin (T&A) Dept., dated 13.08.90) Provided further that to maintain equitable representation not less than one person from each department shall be chosen subject to availability. Provided also that no department shall have a representation of more than three times the combined cadre strength of posts of Assistant Accounts Officer, Accounts Officer and Chief Accounts Officer in each department. (w.e.f.15.06.02) (G.O.Ms.No.335 Fin (T&A) Dept., dated 17.06.04)

7. The qualifications for appointment to the posts in Classes II, III and IV are stipulated in the Table under sub-rule 5. The qualifications for recruitment to the post of Assistant Accounts Officer in Class IV, are stipulated as under in the Table under Rule 5:-

Class IV	(a)	Recruitment by transfer from among the Sub Treasury Officers and Superintendent in the Treasuries and Accounts Department w.e.f. 01.08.92 (G.O.Ms.No.335 Fin. (T&AI) Dept., dated 17.06.04)	(1)	Must possess the minimum General Educational qualification.
			(2)	Must have passed the Account Test for Subordinate Officers Part I and II
			(3)	Must have passed the Account Test for Subordinate Officers in the Treasuries and Accounts Department and
			(4)	Must have passed the Accountancy Lower Grade (w.e.f. 07.12.2000 vide G.O.Ms.No.474 Fin (T&AI (3) Dept., dated 03.12.01.
	(b)	Recruitment by transfer from among the holders of the posts of Superintendents, Commercial Accountants or Auditors borne on the Tamil Nadu Ministerial Service in the scale of pay applicable to Superintendents as above or from among persons holding similar supervisory posts carrying scale of pay not less than that of Superintendents in any other services.	(1)	Must posses the minimum General Educational qualification.
			(2)	Must have passed the Account Test for Subordinate Officers Part I and II
			(3)	Must have passed the Accountancy Lower Grade (w.e.f. 07.12.2000 vide G.O.Ms.No.474 Fin (T&AI(3) Dept., dated 03.12.01.
			(4) (a)	Must have worked as Superintendent, Accountant or Commercial Accountant or Auditor borne on the Tamil Nadu Ministerial Service or in any other similar supervisory posts carrying pay not less than that of the Superintendent in other services, in sections dealing under the subjects relating to Accounts, Audit, Budgeting or Control of Expenditure for a period not less than five years; and
			(b)	Must be an approved probationer in the category from which appointment is made or in any of the lower categories in that service to which he was recruited. (G.O.Ms.No.903 Fin (T&A) Dept., dated 13.08.90)

8. The grievance of the writ petitioners, in simple terms is that while for recruitment by transfer from among Sub Treasury Officers

and Superintendents in the Treasuries and Accounts Department, no qualifying service of five years is prescribed, the above table prescribes a qualifying period of service of five years for persons from the other departments, under serial number (4)(a) in column No.3 of the table under Rule 5. In other words, persons who are already working as Superintendents in the Treasuries and Accounts Department, are not required to complete five years of service before they are considered for recruitment by transfer to the post of Assistant Accounts Officers. But Superintendents, Accountants, Commercial Accountants or Auditors working in any other department (other than Treasuries and Accounts Department) are required to put in a qualifying service of five years, to be eligible for recruitment by transfer by the second method, to the post of Assistant Accounts Officer. This according to the petitioners is discriminatory and violative of Articles 14 and 16 of the Constitution.

9. But we are afraid that the claim of the petitioners is fundamentally flawed. The question of discrimination would arise only when two persons who are identically placed, are sought to be differentiated. The prescription of five years of qualifying service for persons working in the Ministerial Services of the other departments cannot be taken to be an unequal bargain vis-a-vis those working in the Treasuries and Accounts Department.

10. Persons like the petitioners who are already working in the Department of Industries and Commerce, have their own avenue of promotion, within the Department of Industries and Commerce. Persons like the petitioners, are provided by the Special Rules in question, an extra avenue of promotion in a totally different department namely the Treasuries and Accounts Department. Since persons like the petitioners are outsiders, working in other departments, they cannot compare themselves with those working in the Treasuries and Accounts Service Department. The cases of insiders and outsiders are not comparable for the purpose of application of the rule of equality enshrined in Articles 14 and 16 of the Constitution.

11. It must be borne in mind that all the departments of the Government have posts borne on their own cadre, namely: (1) those in the State Services (2) those in the Subordinate Services and (3) those in the Ministerial Services. If we take for instance, the department of Revenue, the posts of Revenue Divisional Officer and District Revenue Officer would come under the State Services. The posts of Tahsildar and Deputy Tahsildar would come under the Subordinate Services in the Department of Revenue. The posts of Revenue Inspectors, Village Administrative Officers, Assistants, Junior Assistants etc., will come within the Ministerial Services of the Department of Revenue. Other departments have their own hierarchy and a ladder for promotion from the Ministerial Services to the Subordinate Services and from the Subordinate Services to the State Services. The petitioners also have their own avenue of promotion to the Subordinate Services in the Department of Industries and Commerce. To the posts included in the Subordinate Services of the Department of Industries and Commerce, persons from the Treasuries

and Accounts Services cannot compete. Similarly, the persons in other services would not normally be entitled to aspire for promotion in a different service.

12. As an exception to the General Rule that promotion is normally from a lower post to a higher post within the same services, the Special Rules for Tamil Nadu State Treasuries and Accounts Service prescribed recruitment by transfer from the holders of the posts in the Tamil Nadu Ministerial Services in the other departments. Since in those other departments they would not have the requisite experience as is expected in the Treasuries and Accounts Service, a qualifying service of five years in their own departments is stipulated by the Special Rules. This cannot be taken to be violative of Article 14.

13. A classification based upon intelligible differentia is always permissible. The intelligible differentia in the case on hand is that one set of persons are working in the same department and hence they do not require five years of experience as Sub Treasury Officer and Superintendent, to be eligible for being appointed as Assistant Accounts Officers. Persons like the petitioners are aliens to the Department of Treasuries and Accounts and hence a different yardstick is prescribed. We do not know how this would tantamount to a discrimination.

14. The petitioners have filed a rejoinder to the counter affidavit of the State Government. In the rejoinder, the petitioners have taken a very peculiar and factually wrong plea that out of 216 of Assistant Accounts Officers, only 3 posts exist in the Treasuries and Accounts Department and that all the remaining 213 posts exist only in the other Government Departments. This averment stems out of a complete lack of understanding on the part of the petitioners about the role of the Treasuries and Accounts Department.

15. The post of Assistant Accounts Officers is in the Treasuries and Accounts Department of the State. These Assistant Accounts Officers work on behalf of the Department of Treasuries and Accounts, in various other departments, for the purpose of checking the accounts in those departments. But they do not become part of the other Departments such as Revenue, Home, Public Works, Industries and Commerce etc. If they become part of the other Departments, these Assistant Accounts Officers would also be eligible for promotion to higher posts in those Departments. But they are not. Therefore, the very basis on which the petitioners have complained of discrimination, is shallow.

16. The fact that persons like the petitioners are outsiders, who are also provided a small leverage, subject to their completion of five years of service, was highlighted in a decision rendered by a learned Judge in W.P.No.8407 of 2007 dated 9.6.2009. It was pointed out by the learned Judge that the appointment of persons from other Departments, is a recruitment outside the regular line. The promotion of persons within the Department, are in the routine channel.

17. Perhaps the expression "recruitment by transfer", used in the Special Rules, has lead to the confusion. The expression "recruitment

by transfer" is defined in Rule 2(15) of the General Rules for Tamil Nadu State Subordinate Services. The expression "promotion" is defined in Rule 2(13) of the same Rules. A careful look at both the definitions would show that if a person is moved from a lower category or grade of post to higher category or grade within the same service, it is promotion. If it is a movement from one category in a service to another category in a different service, it is recruitment by transfer. This recruitment by transfer can either happen within the same department or between different departments. If a person working in the Ministerial Services of the Department of Industries and Commerce moves to a post in the Subordinate Services of the very same Department, it is considered as a movement from one service to another service (though within the same department) and hence it is termed as recruitment by transfer. Similarly, a recruitment from the Ministerial Service of one Department (such as the Department of Industries and Commerce) to the Subordinate Services in another Department (such as the Treasuries and Accounts Department), is also a recruitment by transfer. But the movement of a person from one service to another service in the same Department cannot be equated to the movement of a person from one Department to another Department. This is why they are not equalized and they need not be treated equally.

18. The moment we find that the petitioners are comparing themselves with persons belonging to another Department and the moment we find that both are not equals, the petitioners are not entitled to pitch their claim on the ground of hostile discrimination.

19. Mr.V.Prakash, learned Senior Counsel for the petitioners contended in the alternative that if different eligibility criteria is prescribed for persons coming from different Departments, the same would tantamount to a discrimination based upon source.

20. But the aforesaid contention is completely devoid of merits. The bar of discrimination on the basis of source of appointment would apply only in cases where two persons have joined a particular service from two different sources and they are sought to be discriminated after such appointment on the basis of the source from which they were recruited. In other wards if the petitioners, upon completion of five years in their own Department, got appointed as Assistant Accounts Officers in the Department of Treasuries and Accounts, they become equals with the insiders of the Department who got appointment as Assistant Accounts Officers. After such appointment if discrimination is sought to be made, such discrimination will be hit by the theory of discrimination based upon the source of recruitment. That stage has not come. Therefore, the said argument is also to be rejected.

21. A careful look at the counter affidavit filed by the respondents would show that persons working in the Department of Treasuries and Accounts, are in a different league than persons working in the Ministerial Services of the other Departments. Therefore, prescription of a qualifying service of five years for

those from the other Departments, is based upon sound reasoning. In such circumstances, the attack to the Rule on the ground of violation of Articles 14 and 16 has no basis.

22. In view of the above, we have no hesitation in dismissing the writ petition. Accordingly, it is dismissed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Secretary, Department of Finance (Treasury and Accounts), Government of Tamilnadu Fort St. George, Chennai-600 009.

2. The Commissioner of Treasury and Accounts, Panagal Building, Saidapet, Chennai 600 015.

+1 cc to Mr.K.Sudalaikannu, Advocate,SR.6198

+1 cc to Government Pleader,SR.6128.

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