



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.12.2015
DELIVERED ON : 18.12.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal(MD) Nos.1234 and 1235 of 2015
and
M.P(MD)Nos.2 and 3 of 2015

- 1.The Government of Tamil Nadu,
Rep by Secretary to Government,
Public Service (B2) Department,
Secretariat, Chennai.
- 2.The Commissioner,
Rural Development and
Panchayat Raj Department,
Chennai.
- 3.The District Collector,
Dindigul District,
Dindigul. ... Appellants in both W.As
- 4.The Commissioner,
Dindigul Panchayat Union,
Dindigul. ... 4th Appellant in W.A.No.1234/2015
- 5.The Commissioner,
Kodaikanal Panchayat Union,
Kodaikanal,
Dindigul District. ... 4th Appellant in W.A.No.1235/2015

Vs.

V.Arumugam ... Respondent in W.A(MD)No.1234/2015
S.Veeraiah ... Respondent in W.A(MD)No.1235/2015

Writ Appeals filed under Clause 15 of the Letters Patent against the orders dated 09.01.2014 made in W.P.(MD)Nos.9482 and 9504 of 2009.

Common Prayer in WP(MD)No.9482 and 9504 of 2009 :

Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 3rd respondent in his proceedings in Na.Ka.No.1768/2009/~~20.01-1~~ dated 17.7.2009, quash the same and consequently direct the respondents to transfer the petitioners to the post of Junior Assistant by way of job transfer as per the letter L.No.39359 dated 20.06.1989.



For Appellants : Mr.A.K.Baskarapandian,
Special Government Pleader.
For Respondent : Mr.A.Kannan
(In both W.As)

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JUDGMENT**V. RAMASUBRAMANIAN, J**

These appeals are by the State challenging an order of the learned Judge allowing the writ petitions filed by the respondents herein seeking appointment by way of transfer from the post of driver to the post of Junior Assistant.

2. We have heard Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the appellants and Mr.A.Kannan, learned counsel for the respondents.

3. The respondents in these two writ appeals were appointed as drivers in Dindigul Panchayat Union in the year 1998. Both of them have now completed more than 17 years of service.

4. Both of them submitted applications for appointment by way of transfer to the post of Junior Assistants. Though drivers in other departments were appointed by way of transfer to the post of Junior Assistants, the appellants did not accept their request. By an order dated 17.07.2009, the District Collector rejected the claim of the respondents on the basis of G.O.Ms.No.189 dated 10.06.1997.

5. Therefore, the respondents filed writ petitions in W.P(MD) Nos. 9482 and 9504 of 2009. Both the writ petitions were allowed by a learned Judge, forcing the State to come up with the above appeals.

6. The only ground on which the learned Judge allowed the claim of the respondents was that Rule 3(g) of the Special Rules for Tamil Nadu Ministerial Services, entitles the drivers, subject to the conditions stipulated therein, for appointment by way of transfer to the post of Junior Assistants. Therefore, the learned Judge found that when similarly placed persons in other departments have been extended the benefit, the respondents herein cannot be denied the same benefit.

7. However, according to the appellants/State, Rule 3(g) has no application to the Panchayat Development Department, in view of what is prescribed in Rule 2 under category 14. The proviso under category 14 of Rule 2 prescribes a reservation of 10% of vacancies in the categories of Junior Assistants/Rural Welfare Officers Grade II/ Cashiers for Record Clerks of the Panchayat Unions and another 10% is reserved for part time Panchayat clerks. Therefore, the stand taken by the appellants is that Rule 3 (g) would have no application to the Panchayat Development Department.

8. Therefore, the only question that arises for consideration is as to whether Rule 3(g) of the Special Rules for Tamil Nadu Ministerial Service would stand eclipsed in view of what is stipulated in the proviso



to category 14 of Rule 2 of the same Rules or not.

9. In order to find an answer to the above question, it is necessary to have an understanding of the various categories of posts in various departments of the State and the various statutory rules that govern the service conditions of the holders of various posts.

10. Apart from the officers belonging to the All India Services, who man various posts in the State, the State has its own hierarchy. This hierarchy could be broadly classified as follows:

- (i) Tamil Nadu State Service and
- (ii) Tamil Nadu Subordinate Service

The Officers in the Subordinate Service of the State could be again classified into those, who are (i) in the Subordinate Service of the respective Departments (ii) in the ministerial services of various Departments and (iii) in the basic service of the various departments.

11. The holders of various posts in various Departments of the State are normally governed by two sets of Rules namely (i) Special Rules that are applicable only to the particular Department concerned and (ii) General Rules which apply to the holders of all posts in all the Departments.

12. The Rules such as (i) Fundamental Rules (ii) General Rules for Tamil nadu State and Subordinate Service (iii) The Tamil Nadu Pension Rules (iv) The Tamil Nadu Government Servants Conduct Rules (v) Tamil Nadu Civil Services (Discipline and Appeal) Rules and (vi) Tamil Nadu Leave Rules etc., are all General Rules that apply to the holders of various posts in the State, irrespective of the hierarchy or the service in which they hold a post.

13. Certain Rules such as (i) The Tamil Nadu Revenue Service Rules, (ii) Tamil Nadu Police Service Rules etc., are Special Rules that govern the posts included in the State services of the respective Departments. Similarly, the posts included in the subordinate services in each department, are also governed by separate set of Special Rules for the Subordinate Service of that particular Department. For instance, the posts of Deputy Tahsildar and Tahsildar are in the "Revenue Subordinate Service" and hence, these posts will be governed by a separate set of Special Rules known as 'Special Rules for Tamil Nadu Revenue Subordinate Service'.

14. Though all statutory rules governing the service conditions of the holders of various posts in all the Departments of the State are normally classified into (i) Special Rules and (ii) General Rules, there are also a third category of Rules. These Rules, though general in nature for certain services, are not strictly speaking, general. Though they are called Special Rules, they are not even special in the strict sense of the term.

15. For instance, the Special Rules for Tamil Nadu Ministerial Service and the Special Rules for Tamil Nadu Basic Service are actually Rules that govern the general service conditions of those working in the ministerial service of various departments or in the basis service of various departments. Since these Rules are not department-specific, but



have universal application to the holders of the posts included in the ministerial service or in the basic service of all departments, they are actually general in nature. But since they are also posts-specific in contrast to Rules such as Fundamental Rules (which are neither department-specific nor posts-specific) they are actually called Special Rules.

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16. The posts of Office Managers/Superintendents, Head Accountants, Head Clerks, Cashiers, Assistants, Junior Assistants etc., are all posts which are available in almost all the Departments of the State. But they constitute the ministerial service of the entire State. This is why, recruitments are made to these posts in common through the Tamil Nadu Public Service Commission. The service conditions of the holders of these posts are governed by the Special Rules for Tamil Nadu Ministerial Service. These Rules are special, in the sense that their application is confined to the categories of posts listed in Rule 2, but these Rules have general application, cutting across the department wise segregation.

17. Once this is understood, the conflict that has arisen in the case on hand, could be resolved. The post of driver in almost all the Departments of the State are included in the basic service. As we have pointed out earlier, the post of Junior Assistant is in the ministerial service. A lateral movement from a post included in one service to a post included in another service, is what is called "appointment by transfer".

18. Rule 3(g) of the Special Rules for Tamil Nadu Ministerial Service prescribes that persons in services other than the Tamil Nadu Ministerial Service, who have no promotional opportunities or who have one promotional opportunity, but the same is to a post which carries lower scale of pay than that of Junior Assistant may be recruited by transfer to the post of Junior Assistant. Rule 3(g) reads as follows:-

(g) Besides direct recruitment as provided in rule 2, appointment to the categories of Junior Assistant, Junior Assistant-cum-Typist and Typist shall be made by recruitment by transfer from other services, subject to the following conditions, namely:-

(i) Persons in services, other than the Tamil Nadu Ministerial Service, who are in categories having no promotional opportunities or even after more than one promotion in the respective service would still be in a category carrying scale of pay lower than that of Junior Assistant or Junior Assistant cum-Typist or Typist alone shall be considered for appointment by recruitment by transfer as Junior Assistant or Junior Assistant-cum-Typist or Typist in the Tamil Nadu Ministerial Service, subject to the possession of the prescribed qualifications for direct recruitment.

(ii) The sphere of appointment by recruitment by transfer shall be limited to the persons in the lower categories in other services within the purview or control of the Unit or Officer concerned;

(iii) Appointment to the posts of Junior Assistants, Junior-Assistant-cum-Typists or Typists from the lower categories shall not exceed twenty percent of the vacancies in each of the categories;



(iv) A person to be eligible for appointment as Junior Assistant, Junior Assistant-cum-Typist or Typist should have rendered not less than seven years of service in the lower categories;

(v) Those who are in possession of the required educational qualification belongs to the Tamil Nadu Basic Service shall be given training in clerical work for a period of Six months, out of which for the first three months the training shall be with the Record Clerk and on its completion, the second three months shall be with the Junior Assistant. The above training shall be for two hours a day without detriment to their normal work;

Provided that the vacancies reserved for recruitment by transfer to the posts of Junior Assistant or Junior Assistant-cum-Typist or Typist, the person in lower categories shall be appointed without undergoing the training subject to other requirements being fulfilled in 1994.

Provided further that from 1995 onwards, the posts shall be filled up only after giving training to the persons in the lower categories;

(vi) For those who are holding posts the post of like Record Clerk having clerical duties, there shall be no fresh training for them in clerical work;

(vii) Such training in clerical duties is not necessary for appointment to the post of Typist;

(viii) While selecting persons in lower categories for training in clerical work, strict seniority should be adhered to;

(ix) Number of persons to be given training each year shall not exceed twenty percent of the estimated vacancies in the category of Junior Assistants or Junior Assistant-cum-Typist or Typists. Number of persons to be given training shall be decided in the previous year.

19. A careful look at sub clause (v) of clause (g) of Rule 3 of the Special Rules for Tamil Nadu Ministerial Service would show that persons working in the Tamil Nadu Basic Service are also entitled to the benefit of Rule 3(g). Therefore, *prima facie*, the respondents who were working as drivers, which post is included in the Tamil Nadu Basic Service, are entitled to seek the benefit of the Rule 3(g).

20. But Rule 2 of the Special Rules for the Tamil Nadu Ministerial Service lists out various categories, grades and posts to which direct recruitment may be made. Junior Assistants in certain specified Departments are included in category 14 under Rule 2.

21. The proviso under category 14 specifically deals with the post of Junior Assistants, Rural Welfare Officer, Grade II and Cashiers.

22. Let us see what is stipulated in category 14 under Rule 2 of the Special Rules for Tamil Nadu Ministerial Service which reads as follows:

"Category-14.

<https://hcservices.ecourts.gov.in/hcservices/>

Rural Welfare Officers Grade-II and Cashiers in Panchayat Union Offices.



Provided also that in the case of Junior Assistants, Rural Welfare Officers, Grade-II and Cashiers in each unit of the Panchayat Development Department, ten percent of the vacancies to be filled up by direct recruitment shall be reserved to be filled up from among the Record Clerks of the Panchayat Unions and another ten percent shall be reserved to be filled up from among the part-time Clerks in the Village Panchayats if the Record clerk of the Panchayat Union and the part time clerk of the village Panchayats has put in a regular service for a period of not less than five years in the post held by him and possess the Minimum General Educational Qualification as prescribed in the Schedule to the General Rules to the Tamil Nadu State and Subordinate Services irrespective of age and the remaining eighty percent shall be reserved to be filled up by open competition in the cycle indicated below:

- (1) Record Clerk
- (2) Open Competition
- (3) Open Competition
- (4) Open Competition
- (5) Open Competition
- (6) Part-time Clerk
- (7) Open Competition
- (8) Open Competition
- (9) Open Competition
- (10) Open Competition

Explanation.- The rotation referred to above is only to reserve the vacancies for such candidates and their seniority in the post will however be in the order fixed by the Commission while drawing the list of approved candidates on the results of competitive examination following the rule of reservation of appointments.

Revenue Inspectors and Bill Collectors (Grade-I) in Town Panchayats including Panchayat Townships.

Junior Assistant-cum-Typist in the Tamil Nadu Forensic Science Laboratory".

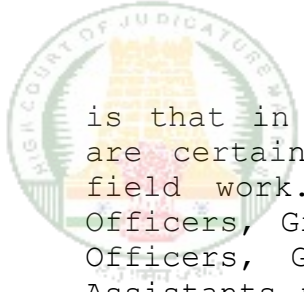
23. The scheme of Rules 1, 2 and 3 can be best understood in the following manner:-

(i) Rule 1 indicates the Constitution of the entire Tamil Nadu Ministerial Service by listing out the categories of posts which form the ministerial service

(ii) Rule 2 carves out from Rule 1, the categories of posts to which direct recruitment can be made

(iii) Rule 3 indicates the method of recruitment to various posts. Once we understand the above scheme, it will be clear (i) that the post of Junior Assistant in all the Departments, is a post to which direct recruitment is the normal method of recruitment and (ii) that Rule 2 itself indicates the extent to which direct recruitment could be resorted to in respect of certain categories included in Rule 2 by virtue of the peculiar nature of the Department concerned.

24. In other words, Rule 2 contains the categories of posts to which direct recruitment could be made to the extent indicated in Rule 2 itself, insofar as certain departments are concerned. The reason for this



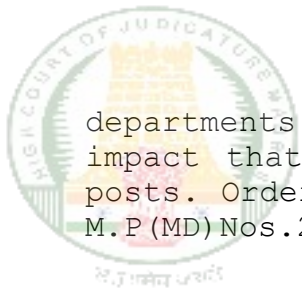
is that in Departments like the Panchayat Development Department, there are certain posts such as the post of Panchayat Clerks which warrant field work. Since the posts of Junior Assistants and Rural Welfare Officers, Grade II, as well as the posts of Assistants and Rural Welfare Officers, Grade I are made interchangeable, all the posts of Junior Assistants may not be available for direct recruitment in the Panchayat Development Department. This is why category 14 of Rule 2 contains not only a mention of the post of Junior Assistant as a post to which direct recruitment is to be made but also includes the exception to the Rule by pointing out that Record clerks and part time clerks of Panchayats are entitled to lay a claim up to a particular percentage, on the posts of Junior Assistants and Rural Welfare Officers Grade II, which are filled up by direct recruitment.

25. The creation of certain field level posts, such as Rural Welfare Officers Grade II, Grade I etc., in the Panchayat Development Department and the integration of those posts with the other posts in the ministerial service and the subordinate service of the same department, plunged the entire department into a series of litigation before the Tamil Nadu Administrative Tribunal and the Supreme Court ever since 1984.

26. Therefore, if we hold that Rule 3(g) has application to the Department of the Panchayat Development, the consequence would be that the integration of cadres made in the Department which itself became the subject matter of serious controversy would again get into a crisis. There is no doubt about the fact that the Rule 3 (g) is a beneficial piece of subordinate legislation, intended to benefit the drivers. But the extent to which the proviso under category 14 or Rule 2 makes a dent into Rule 3 (g) cannot be known unless the single service rules in the department by which the integration of cadres took place is taken into account. If there had been no single service rules issued by the Panchayat Development Department, under G.O.Ms.No.585 RD & LA Department, dated 12.04.1984, our answer to the question on hand would have been that Rule 3(g) is capable of having independent existence and that the proviso to category 14 under Rule 2 will not eclipse Rule 3(g). But we are unable to come to the said conclusion in view of the integration of cadres of the Department that made the post of Junior Assistant not merely ministerial but also interchangeable with other posts under the single service rules.

27. Unfortunately, the appellants have not examined the issue with reference to the single service rules under G.O.Ms.No.585, RD & LA Department, dated 12.04.1984. Therefore, we are of the considered view that the entitlement of the drivers of the Panchayat Development Department under Rule 3(g) of the Special Rules for Tamil Nadu Ministerial Service has to be examined by the Government both with reference to the Rule 2 and with reference to the single service rules.

28. Accordingly, the writ appeals are allowed, setting aside the orders of the learned Judge but directing the first appellant to examine the claim of the drivers of the Department under Rule 3(g) of the Special Rules for Tamil Nadu Ministerial Service both with reference to the proviso to category 14 of Rule 2 and with reference to the single service rules. The Government may examine the issue and pass appropriate orders (i) taking note of the plight of the drivers whose counterparts in other



departments are entitled to the benefit and (ii) also taking note of the impact that the grant of this concession may have upon the field level posts. Orders may be passed within three months. No costs. Consequently, M.P(MD)Nos.2 and 3 of 2015 are closed.

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Sd/-
Assistant Registrar (AE)

Sub Assistant Registrar

sms
To

- 1.The Secretary to Government, Government of Tamil Nadu,
Public Service (B2) Department, Secretariat, Chennai.
- 2.The Commissioner, Rural Development and
Panchayat Raj Department, Chennai.
- 3.The District Collector, Dindigul District,
Dindigul.
- 4.The Commissioner, Dindigul Panchayat Union,
Dindigul.
- 5.The Commissioner, Kodaikanal Panchayat Union,
Kodaikanal, Dindigul District.

+1CC to Spl.Government Pleader Sr.NMo.75887
+2CC to Mr.A.Kannan Advocate Sr.No.75729
+1CC to Mr.D.Senthil Kumar Advocate Sr.No.76069

GJM/NGM/SS/4.1.16-8P-10C

Judgment made in
Writ Appeal(MD) Nos.1234
and 1235 of 2015
and
M.P(MD)Nos.2 and 3 of 2015
Dated:18.12.2015