

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE R.MAHADEVAN

W.A.Nos.1634 & 1635 of 2009
and
M.P.Nos.1 and 1 of 2009

1. The Secretary to Government,
Information and Tourism (Admn.2) Department,
Fort St. George,
Chennai-600 009.
2. The Director of Information and
Public Relations Department,
Fort St. George,
Chennai-9. Appellants/Respondents in
both Appeals

Vs.

A.K.Perumal Respondent/Petitioner No.1
in W.A.1634 of 2009
K.Thangaraju Respondent No.1
in W.A.1635 of 2009
V.R.Navaneethakrishnan
I.Namasivayam
K.Annadurai
R.Suresh
T.Senthilkumar
V.Prabhukumar Respondent Nos. 2 to 7 in both
Appeals

Appeals filed under Clause 15 of Letters Patent against the
order dated 24.08.2009 in W.P.Nos.44863 and 44864 of 2006 on the
file of this Court.

W.P.Nos.44863 and 44864 of 2006 : Writ Petitions came to be numbered by transfer of O.A.Nos.251 & 252 of 2000 respectively on the file of the Tamilnadu Administrative Tribunal, praying to quash the order of the appointment of the third respondent herein to eighth respondent herein issued in G.O Ms.No.273 Information and Tourism (admn.2) dept. dated 25.12.1999 passed by the first respondent herein and the consequential order passed by the second respondent herein in his Office Proceedings order No.2608, dated 25.12.1999 passed in favour of the 3rd respondent herein to 8th respondent herein and consequently direct the respondents to appoint the petitioner as Asst. Public Relations Officer (Publicity) with effect from 25.12.1999 with all consequential monetary and service benefits.

For Appellants : Mr.R.Vijayakumar
Additional Government Pleader

For Respondents : Mr.Ravi Shanmugam for R1 in
both appeals

COMMON JUDGMENT

(Judgment of the Court was made by The Hon'ble Chief Justice)

The service dispute pertains to the claim made by the first respondents in both these appeals seeking consideration for appointment as Assistant Public Relation Officers (Publicity) in the available vacancies, while at the same time assailing the appointment of respondent Nos.2 to 7 by relaxation of the rules.

2. An order of appointment was issued appointing 8 persons as Assistant Public Relation Officers (Publicity) vide Office Order No.10. W.P.No.20591 of 1998 was filed by the said two first respondents seeking quashing of the said Office Order. But this writ petition failed vide order dated 24.06.2008.

3. The second set of appointment of six persons (respondent Nos.2 to 7) was made appointing them as Assistant Public Relation Officers (Publicity) vide G.O.Ms.No.273, dated 25.12.1999. This was sought to be assailed by the first respondent in both the appeals vide O.A.Nos.251 and 252 of 2000 filed before the Tamil Nadu Administrative Tribunal, Chennai on 08.01.2000. O.A.Nos.251 and 252 of 2000 were transferred to the High Court on the Tribunal being abolished and were re-numbered as W.P.Nos.44863 and 44864 of 2006.

4. The learned Single Judge by a common order dated 24.08.2009 opined that the process of recruitment was irregular, but since considerable time had passed, it would not be

appropriate to disturb the persons so appointed. However, simultaneously, in view of this finding, a direction was issued to the appellants before us to consider the cases of the first respondents in each of these appeals for appointment as Assistant Public Relation Officers (Publicity) in the available vacancies and if no vacancy was available, in the future vacancies. The plea based on the earlier writ petition being dismissed was negated on the ground that in the said writ petition, only challenge to the appointments was laid without any specific relief for first respondents themselves and the present matters pertain to the subsequent recruitment process, which has been carried out, ignoring the rules and regulations.

5. The learned Additional Government Pleader for the appellants contends that power was exercised under Rule 48 of Tamil Nadu General Subordinate Service Rules in Tamil Nadu Service Manual 1987, whereby Rule 10-A was relaxed for direct recruitment through employment exchange and Rule 5 regarding communal rotation and special reservation for women in temporary appointment rules for the post of Assistant Public Relation Officers (Publicity), as also Rule 6 (b) (i) (ii) regarding experience for the said post in favour of the candidates so recruited in terms of the Government Order. Thus, it is his submission that there is power under the rules for such relaxation.

6. We may note that the existence of power and exercise of power are two different aspects. There is undoubtedly provision for relaxation of the rules, but they cannot be based on any ipse dixit of the concerned parties. It must be based on appropriate reasons recorded for the same. On being asked to point out as to what part of the record pertains to the rationale for relaxation of the rules, the learned Additional Government Pleader for the appellants stated that there is nothing more than what is recorded in the Government Order - rules were being relaxed "in order to appoint them in the post". This seeks to suggest that the endeavour was to appoint the concerned persons. Somehow or the other and rules were relaxed to appoint them. There is merit in the contention of the learned counsel for the first respondents that when the first respondents met all the qualifications and could have been recruited under the rules, there was no occasion for relaxation of the rules to recruit others, while ignoring consideration of their cases. It is not as if persons eligible under the rules were not available.

7. We may also note that the learned Single Judge has been rather considerate to the private respondents so recruited in not seeking to strike down such appointments as being without

any rationale or basis only because of the appointments had been made almost 10 years ago. In view of this approach, the learned Single Judge issued directions that the same should not prejudice the first respondent in both the appeals and require their consideration.

8. Relaxation of rules is an exception to the rules and cannot be the rule itself. What the appellants are doing is in fact nullifying the rules by repeatedly exercising the power of relaxation, even though the eligible candidates on merit are available, in order to facilitate the recruitment of persons who are otherwise not eligible under the rules. This is completely impermissible.

9. The appeal grounds show that there were almost 30 posts to be filled and those posts have been filled from time to time only by relaxing the rules. This is hardly an appropriate methodology of recruitment by repeatedly relaxing the rules for direct recruitment, while the persons eligible under the rules languish. We are thus of the view that the direction contained in the impugned order for consideration of the first respondents in both the appeals and for their appointment cannot be faulted and the appeals are completely devoid of merits.

10. The appeals are dismissed with costs quantified at Rs.2,500/- (Rupees Thousand Five Hundred) each for both the appellants to be paid to the first respondents.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Information and Tourism (Admn.2) Department,
Fort St. George, Chennai-600 009.
2. The Director of Information and Public Relations Department,
Fort St. George, Chennai-9.

+2cc's to Mr.Ravi Shanmugam , Advocate, S.R.No.46955

+1cc to the Government Pleader, S.R.No.47071

W.A.Nos.1634 & 1635 of 2009

CTK(CO)
CA(07/09/2016)