

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.04.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10745 of 2018

Swamy Renugal Middle School
Rep.by its Correspondent,
Viswanathaperi - 627 763.
Sivagiri Taluk.
Tirunelveli District.

..Petitioner

Vs

- 1.The Secretary to Government,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.
- 2.The Director of Elementary Education,
College Road, Nungambakkam,
Chennai - 600 006.
- 3.The District Elementary Educational Officer,
Tirunelveli - 1.
- 4.The Additional Assistant Elementary Educational
officer,
Vasudevanallur,
Tirunelveli District.

..Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Mandamus, directing the respondents 1 and 2 to grant relaxation of five years experience to the appointment of Mrs.V.Jevitha, as the Middle School Headmaster in the petitioner's school.

For Petitioner : Mr.R.Kamaraj

For Respondents: Mr.V.Kadhirvelu, Spl GP for R1
Mr.P.Raja, GA for R2 to R4

O R D E R

The relief sought for in this writ petition is for a direction to the respondents 1 and 2 to grant relaxation of five years experience to the appointment of Mrs.V.Jevitha, as the Middle School Headmaster in the petitioner's school.

2.The petitioner is an aided School and the Correspondent of the petitioner's School filed the present writ petition, seeking relaxation in favour of one Graduate Teacher, Mrs.V.Jevitha, so as to appoint her as Headmistress in the School. The writ petitioner states that a proposal was sent for approving the appointment of the said Teacher, Mrs.V.Jevitha as Middle School Headmistress to the 3rd respondent through the 4th respondent. However, the proposal was returned by the 4th respondent on the ground that the said Teacher, Mrs.V.Jevitha has not possessed the five years teaching experience, which is required under the rules in force.

3.At the outset, a Graduate Teacher, who has served five years alone, is qualified for the purpose of appointment to the post of Headmistress. Under these circumstances, the present writ petition is filed, seeking relaxation of the requisite qualification of five years for the purpose of appointing the said Teacher, Mrs.V.Jevitha as Headmistress of the School.

4.Now, this Court has to deal with the scope of the rule of relaxation under the service rules. The learned counsel appearing on behalf of the writ petitioner states that the benefit of relaxation of requisite teaching experience was granted in favour of the similarly placed persons in respect of other Middle Schools in the State. When the respondents have already granted the benefit of relaxation in respect of other similarly placed persons, the same benefit is to be extended to the said Teacher, Mrs.V.Jevitha.

5.The power of relaxation is extended to the Government shall be exercised only on exceptional circumstances in order to redress the grievances, where there is an injustice caused to the employee. The rule of relaxation cannot be exercised in a routine manner and so also the benefit of promotion cannot be granted contrary to the rules in force.

6.The object of the power of relaxing the rules is obviously to neutralise an injustice as a result of operation of any rule. It has been described to be the reserve power to deal with the unforeseen situations or circumstances and it is to be exercised in the public interest with a view to maintain integrity and efficiency in service. It is conferred upon the Government to meet any emergent situations, where injustice might have been caused to any individual employee or class of

employees or where the working of the rule might have become impossible. Where the power of relaxation is conferred upon the Government (or the Governor), the Court cannot usurp the power and directly or indirectly effect a relaxation even by issuing a direction to consider the case of the persons in this regard.

7. In interpreting provisions for relaxation, it has been pointed out that the power of relaxation even if generally included in the Service Rules could either be for the purpose of mitigating hardship or to meet a special and deserving situation. Any arbitrary exercise of such power must be guarded against and that the rule of relaxation must get pragmatic construction, so as to achieve effective implementation of good policy.

8. The Hon'ble Supreme Court of India, in the case of Suraj Prakash Gupta and Others vs. State of J&K and Others [(2000) 7 SCC 561], reiterated the principles, in paragraph-32, as under:-

"32. On facts, the reasons given in the Cabinet note for granting relaxation are hopelessly insufficient. In fact, the letter of the Commission dated 25-11-1997, shows that the Commission was prepared to give its opinion in regard to regularisation of each promotee but the Government backed out when the Commission called for the records relevant for considering suitability for regular promotion. In our view, there can be no hardship for a person seeking appointment or promotion to go by the procedure prescribed therefor. The relevant Recruitment Rule for promotion cannot itself be treated as one producing hardship. Narender Chadha case [(1986) 2 SCC 157 : 1986 SCC (L&S) 226] must be treated as an exception and not as a rule. In fact, if such relaxation is permitted in favour of the promotees then the same yardstick may have to be applied for direct recruits. In fact the J&K Government has already started to do so and this has not been accepted by this Court in Narinder Mohan case [(1994) 2 SCC 630 : 1994 SCC (L&S) 723 : (1994) 27 ATC 56] and Dr Surinder Singh Jamwal case [(1996) 9 SCC 619 : 1996 SCC (L&S) 1296] referred to above. If it is to be held that direct recruitment can also be permitted without consulting the Service Commission (in case it is required to be consulted there will, in our opinion, be total chaos in the recruitment process and it

will lead to backdoor recruitment at the whims and fancies of the Government). Such a blanket power of relaxation of Recruitment Rules cannot be implied in favour of the Government."

9. The Hon'ble Supreme Court of India, in the case of Shri Amrik Singh and Others vs. Union of India and Others [(1980) 3 SCC 393], discussed the principles regarding the rule of relaxation, His Lordship Hon'ble Mr. Justice V.R. Krishna Iyer, speaking for the Bench, emphatically ruled the legal principles as under:-

"Government must be satisfied, not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Services causes undue hardship, then the iniquitous consequence thereof may be relieved against by relaxation of the concerned Rule or Regulation. There must be undue hardship and, further the relaxation must promote the dealing with the case "in a just and equitable manner". These are perfectly sensible guidelines. What is more, there is implicit in the Rule, the compliance with natural justice so that nobody may be adversely affected even by administrative action without a hearing. We are unable to see anything unreasonable, capricious or deprivatory of the rights of anyone in this residuary power vested in the Central Government. Indeed, the present case is an excellent illustration of the proper exercise of the power. We are, therefore, satisfied that the Central Government was right in invoking its power to relax and regularize the spell of officiation, which was impugned as irregular or illegal. The consequence inevitably follows that the officer Ahluwalia was rightly assigned 1961 as the year of allotment."

10. Thus, this Court is also of the opinion that the power to grant and exemption, cannot be exercised in a manner to destroy the general provision from which the exemption is granted. For example, where the number of exemptees is far in excess of vacancies and render the chances of qualifiers illusory.

11. This Court is of the firm opinion that if a rule of relaxation is invoked in a routine manner it will amount to neutralizing and degrading the recruitment rules in force. A striking balance in between has to be adopted while exercising the powers of relaxation by the Competent Authorities. The process of recruitment and appointment shall be made only by following the recruitment rules in force. In other words all appointments are to be made strictly by adhering the recruitment rules in force. Thus, the rule of relaxation is an exception and

such an exception is to be exercised cautiously and sparingly in order to rectify the injustice caused to a particular case. Thus, the relaxation cannot be claimed as a matter of right by the candidates, nor any such writ petition can be entertained for the purpose of issuing direction to grant relaxation or even to consider the representation for grant of relaxation.

12. Rule of relaxation is a discretion granted to the Government and such a discretionary power has to be exercised judiciously and not in a routine manner. Relaxation being a discretionary power has to be exercised by the competent authorities by applying the facts in a particular case and not in a mechanical way to grant certain service benefits to the similarly placed persons. Granting relaxation in one case by the Government cannot be cited as a precedent in other cases. In view of the fact that the relaxation is an exception and cannot be followed in a routine affair. Thus, this Court is of the firm view that all the appointments and regularizations are to be made only by following the recruitment rules in force strictly and no relaxation can be granted by citing other cases and the Government also to be cautious while exercising the powers of relaxation under the relevant rules.

13. Thus, the Court has to adopt a balancing approach in this kind of cases, where the relaxation is sought for as a prayer in the writ petition. Now let us look into the case of a regular employee in verge of promotion for a particular cadre after satisfying the regular recruitment rules in force. If a relaxation is granted to an unqualified person, then he will supersede the candidates who were otherwise qualified and it will create a discrimination amongst the employees and it is the constitutional perspective that an equal opportunity in employment as well as in the promotion to be ensured to the qualified persons. The constitutional perspective in this regard is that the equality class provided to all the citizens, who were equally placed and no person can be deprived of his right of promotion to the higher cadre. In the event of granting relaxation under Rule 48, the right of the employees, who were appointed in accordance with the rules will also get affected. Such a regularization granted in a routine manner will affect the equality clause and the constitutional directives in this issue.

14. In view of the fact that power of relaxation cannot be exercised by the Government in a mechanical manner, this Court is of an opinion that even to consider the representation submitted for claiming relaxation cannot be taken note of for the purpose of issuing any direction under Article 226 of the Constitution of India.

15.Rule of relaxation is stipulated not to extend Favouritism and Nepotism. The authorities competent under the guise of the rule of relaxation, cannot pass favourable orders by way of Favouritism and Nepotism. Such usage of power to be construed as an abuse of power.

16.Accordingly, this writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.
- 2.The Director of Elementary Education,
College Road, Nungambakkam,
Chennai - 600 006.
- 3.The District Elementary Educational Officer,
Tirunelveli - 1.
- 4.The Additional Assistant Elementary Educational
officer,
Vasudevanallur,
Tirunelveli District.

+1cc to Mr.R.Kamaraj, Advocate SR.No.31529

+1cc to Government Pleader SR.No.31741

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GN(09/05/2018)