IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM

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

W.P.Nos.7905 & 7906 of 2018
and
W.M.P.Nos.9858 to 9860 of 2018

1.K.J.Jaikar Prabhu,
2.A.Ravi
3.A.J.Vijay Anand ...Petitioners in both WPs

Vs

1. The State of Tamil Nadu,
Represented by its Principal
Secretary to Government,
Revenue Department,
Fort St.George, Chennai - 600 009.

2. The Commissioner for Revenue Administration,
Chepauk,
Chennai - 600 005.

3. The District Collector,
Thiruvallur District,
Thiruvallur. ... Respondents in both WPs

PRAYER in W.P.No.7905 of 2018: Petition filed Under Article 226 of the Constitution of India, to issue of Writ of Mandamus, directing the respondents to include the names of the petitioners in the 2013 panel of Revenue Inspectors/Assistants by re-fixing their seniority in the post of Assistants and consequently, direct the 1st respondent to exercise the power under Section 48 of the Tamil Nadu Revenue Subordinate Service Rules and issue a Government order relaxing Clause 5(3) of Annexure V of Rule 34 of the Tamil Nadu Ministerial Service Rules and Annexure III of Rule 7(a)of Tamil Nadu Revenue Subordinate Service Rules as it was done under identical circumstances in the case of P.Raghavan by issuing G.O.2D No.295 dated 16-06-2017 and include the names of the Petitioners in the 2017 panel of Deputy Tahsildars.

PRAYER in W.P.No.7906 of 2018: Petition filed Under Article 226 of the Constitution of India, to issue of Writ of Mandamus, directing the respondents to promote the petitioners as Deputy Tahsildars by following the orders of this Hon'ble Court in

W.P.No.12274 of 2005 (S.Devarajan Vs. The Director of Rural Development) dated 12.01.2010, W.P.No.34855 of 2014 (Satishkumar Vs. The Special Commissioner cum Secretary to Government, Rural Development and Panchayat Department) dated 30.10.2015 and W.P.No.310 of 2016 (G.Gopinath Vs. The Special Commissioner cum Secretary to Government, Rural Development and Panchayat Raj Department) dated 06.01.2016 passed in the case of other persons under identical circumstances.

For Petitioners: Mrs.Nalini Chidambaram,
Senior Counsel (in both WPs)
for M/s. C. Uma

For Respondents: Mr.V.Kadhirvelu (in both W.Ps)
Special Government Pleader

O R D E R

The relief sought for in the writ petition in W.P.No.7905 of 2018 is for a direction to direct the respondents to include the names of the petitioners in the 2013 panel of Revenue Inspectors/Assistants by re-fixing their seniority in the post of Assistants/Senior Revenue Inspector and consequently direct 1st respondent to exercise the power under Section 48 of the Tamil Nadu Revenue Subordinate Service Rules and issue a Government order relaxing Clause 5(3) of Annexure V of Rule 34 of the Tamil Nadu Ministerial Service Rules and Annexure III of Rule 7(a)of Tamil Nadu Revenue Subordinate Service Rules as it was done under identical circumstances in the case of P.Raghavan by issuing G.O.2D No.295 dated 16-06-2017 and include the names of the Petitioners in the 2017 panel of Deputy Tahsildars.

2. The very same writ petitioners have filed a separate writ petition in W.P.No.7906 of 2018 seeking a prayer to direct the respondents to promote the petitioners as Deputy Tahsildars by following the orders of this Hon'ble Court in W.P.No.12274 of 2005 (S.Devarajan Vs. The Director of Rural Development) dated 12.01.2010, W.P.No.34855 of 2014 (Satishkumar Vs. The Special Commissioner cum Secretary to Government, Rural Development and Panchayat Department) dated 30.10.2015 and W.P.No.310 of 2016 (G.Gopinath Vs. The Special Commissioner cum Secretary to Government, Rural Development and Panchayat Raj Department) dated 06.01.2016 passed in the case of other persons under identical circumstances.

3.The learned Senior counsel appearing on behalf of the writ petitioners contended that the case of the writ petitioners deserve to be considered based on the earlier decisions taken by the Government on par with the grant of relaxation to the other similarly placed persons. The petitioners cannot be discriminated from other similarly placed persons, who were granted with the benefits of relaxation of rules relating to qualification for promotion.

4.The learned Senior Counsel has contended that the writ petitioners were not included in the panel of Assistant/Senior Revenue Inspector of the year 2013, despite the fact that they are eligible to be included. The names of the writ petitioners were not included on account of the fact that there was an administrative delay on the part of the competent authorities in passing an order of relaxation in favour of the writ petitioners. Consequently, there was an administrative delay in declaration of probation also. The administrative delay cannot cause deprival of opportunity to the writ petitioners from getting their right of promotion in the appropriate panel.

5.Thus, the case of the writ petitioners are also to be considered on par with the other similarly placed persons, who were granted with the benefit of relaxation of rules and promoted to the higher posts. The affidavit filed in support of the writ petition provides combined details of the petitioners and the same reads as under :

Combined details of the Petitioners

Sl.No.	Details	K.J. Jaikar Prabhu	A.Ravi	J.Vijay Anand
1)	Mode of appointment	Through Compassionate Ground	Through Compassionate Ground	Through Compassionate Ground
2)	Date of appointment as Junior Assistant (now Junior Revenue Inspector)	26.02.2007 F.N	26.03.2007 F.N	21.07.2008 A.N
3)	Date of regularisation with retrospective effect	26.02.2007 F.N	26.03.2007 F.N	21.07.2008 A.N
4)	Date of G.O Regularisation the service of the petitioner	G.O.No. 2D No. 1079, Revenue (ser-9)(1), Department, dated 12.12.2014	G.O.No. 2D No. 218, Revenue (ser-9)(1), Department, dated 26.08.2013.	G.O.No. 2D No. 482, Revenue (ser-9)(1), Department, dated 26.08.2013.

Sl.No.	Details	K.J. Jaikar Prabhu	A.Ravi	J.Vijay Anand
5)	Date of Probation with retrospective effect	25.02.2009 A.N	27.03.2009 A.N	21.07.2008 A.N
6)	Date of G.O. declaring probation of the petitioner	G.O. 2D No. 09, Revenue (Ser-6)(2), Department, dated 11.01.2016	G.O. 2D No. 602 Revenue (Ser-6)(2), Department, dated 21.12.2012	G.O. 2D No.1011, Revenue (Ser-6)(2), Department, dated 20.11.2014
7)	Date of promotion as Assistant	31.03.2016	14.10.2014	27.07.2015

Qualification of Exam and Training

SL No.	Name of the exam	K.J.Jaikar Prabhu	A.Ravi	J.Vijay Anand
1)	Revenue Test-Part-I (Paper-I)	Reg.No.027199 Dec-2010	Reg.No.027546 May-2010	031581 May-2011
2)	Revenue Test-Part-I (Paper-II)	Reg.No.316947 Dec-2008	Reg No.017262 Dec-2008	021143 Dec-2009
3)	Revenue Test-Part-II	Reg.No.030466 May-2011	Reg.No.002474 May-2009	031581 May-2011
4)	Revenue Test-Part-III	Reg.No.022121 May-2009	Reg.No.031068 May-2011	028315 Dec-2010
5)	The Criminal Judicial Test-Part-I	Reg.No.025871 May-2012	Reg.No.027500 Dec-2013	032864 May-2016
6)	The Criminal Judicial Test-Part-II	Reg.No.025871 May-2012	Reg.No.027734 May-2016	028118 May-2016
7)	The Criminal Judicial Test-Part-III	Reg.No.025871 May-2012	Reg.No.23948 Dec-2012	028118 May-2016
8)	Account Test for subordinate officer-Part-I	Reg.No.025505 May-2015	Reg.No.031269 May-2011	025328 Dec-2016
9)	Account Test for subordinate officer-Part-II	Reg.No.026990 Dec-2013	Reg.No.027812 Dec-2010	032864 May-2014

SL No.	Name of the exam	K.J.Jaikar Prabhu	A.Ravi	J.Vijay Anand
10)	Bhavani Sagar foundation Training	20.03.2015 to7.5.2015	16.11.2011 to 14.01.2012	23.12.2013 to 13.02.2014
11)	Orathanadu Survey and settlement training	26.6.2015 to 30.07.2015	5.6.2013 to 9.7.2013	26.12.2014 to 29.01.2015

6.The first writ petitioner was appointed as Junior Assistant, now Junior Revenue Inspector on 26.02.2007 on compassionate grounds. G.O.Ms.No.1079-Revenue(Ser-9(1)) Department, dated 12.12.2014 was issued relaxing the service of the first writ petitioner as Junior Assistant with retrospective effect from 26.02.2007. Relaxation was given from the date of his appointment as Junior Assistant. The writ petitioners have already underwent Bhavanisagar Foundation Course Training, which is a requisite qualification for promotion.

7.The learned Senior Counsel states that the writ petitioners have possessed all the requisite qualification referred to except the qualification prescribed in clause 5(3) of Annexure V of Rule 34 of the Tamil Nadu Ministerial Service and Annexure III of Rule 7(a) of Tamil Nadu Revenue Subordinate Service Rules, which are extracted hereunder:

> C. Tamil Nadu Subordinate Service Rules - ANNEXURE III of Rule 7 (a) reads as follows-
>
> ANNEXURE-III
>
> DEPUTY TAHSILDAR: (A). Before the inclusion of his name in the approved candidates, the candidates.
> (i). must have passed the following tests:-
> (1). The Revenue Tests, Parts I, II and III
> (2). The Criminal Judicial Tests and
> (3). The Account Test for Subordinate Officers Part-I and II
>
> Provided that out of the persons transferred from the former Travancore Cochin State those who have been actually acted as Deputy Tahsildars for a period of 3 years continuously prior to 01.11.1958 need not pass the Criminal Judicial Test and other including those who were promoted after 01.11.1958 must pass the examinations before 29.05.1960.
>
> (ii) must have served either as Typist or as Steno-Typist or as Junior Assistant and have for a period of not less than eight years of which two years shall be

on duty as an Assistant and another two years as Revenue Inspector as prescribed in Clause (iii) below.

The relevant portion of the Tamil Nadu Ministerial Service Rules reads as follows:-

Rule 34 - Special Tests to be passed or training to be undergone or other qualification to be acquired by persons appointed to the services.

ANNEXURE V

(Referred to in rule 34)

Tests to be passed, Training to be undergone or other qualifications to be acquired by persons appointed to the service.

5. Assistants in the Department (excluding the Office of the Commissioner Of Revenue Administration and the Revenue Settlement Parties	1. Revenue Test Parts I, II and III	Within the prescribed period of probation or within two years from the date of appointment to the post as the case may be.
	2. Revenue Survey Tranining for a period of not less than four weeks.	
	3. Service as Revenue Inspector in charge of a Firka for a period of not less than two years.	

As stated above the Petitioners could not complete 2 years of service as Revenue Inspector/Assistant when the 20174 panel was drawn for the post of Deputy Tahsildar and hence lost the opportunity to get promoted as Deputy Tahsildar."

8.However, the writ petitioners have subsequently cleared all the tests and became eligible for promotion even to the post of Deputy Tahsildar. The present writ petitions are filed seeking retrospective promotion for inclusion of their names in the panel of the year 2013 from the date on which their immediate juniors were promoted. As on the date of the panel of the year 2013, the petitioners were not qualified in accordance with rules. Therefore, the present writ petitions are filed seeking relaxation of the rules in favour of the writ petitioners.

9.This court is of an opinion that the relaxation of rules cannot be granted in a routine manner. The purpose and the very object of the rule of relaxation is certainly limited. 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 employees. Rule of relaxation cannot be exercised in a routine manner and so also the regularization cannot be granted in a mechanical manner in all the cases.

10. The object of the power of relaxing the rules is obviously to neutralize 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 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.

11. 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.

12. 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."

13. 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.”

14. Thus, this Court is also of the opinion that the power to grant an 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 are far in excess of vacancies and render the chances of qualifiers illusory.

15. 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.

16. 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 it 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 Rule 48 in certain cases.

17. The consequences of exercising the power of relaxation under Rule 48 in a routine manner will affect the right of the employees who were appointed regularly in accordance with the recruitment rules in force. In other words, there are large number of employees who are working in the Departments, were fully qualified and who were appointed in accordance with the

recruitment and service rules in force. Any relaxation granted under Rule 48 should not have an impact of depriving those candidates, who were appointed regularly in accordance with the rules in force, specifically in the matter of promotions.

18. Thus, the Court has to adopt a balancing approach in these kind of cases, where the relaxation is sought for as a prayer in 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.

19.In view of the legal principles settled by the Apex court in respect of the grant of relaxation of rules to the employees, this court is of the opinion that the claim of the writ petitioners though recommended by the authorities had rejected by the District Collector vide proceedings dated 17.05.2017, the said order of rejection issued pursuant to the orders passed by this court on 08.02.2017 in W.P.No.3130 of 2017 has not been challenged.

20.The earlier writ petition was filed by the first writ petitioner Mr.K.J.Jaikar Prabhu in W.P.No.3120 of 2017, the relief sought for in the earlier writ petition was to direct the respondents to consider the representation of the writ petitioner therein dated 05.04.2016, 20.01.2017 by re-fixing the seniority of the petitioner in the post of Assistant with effect from 24.05.2013 when the petitioner's immediate junior was promoted to the post of Assistant by taking into consideration of G.O.Ms.1079 dated 12.12.2014 and G.O.2D. No.9, dated 11.01.2016 and consequently direct the respondents to promote the petitioner to the post of Deputy Tahsildar when the petitioner's juniors are promoted to the post of Deputy Tahildar without insisting upon the experience for the post of Assistant/Revenue Inspector in the light of the judgments in W.P.No.16697 of 2007 dated 18.10.2017 reported in 2012 l M.L.J. -P.No-.634 and W.P.No.34855 of 2015 dated 30.10.2015.

21.Though the prayer sought for by the first writ petitioner was akin to that of the relief sought for in the present writ petition, this court earlier directed the authority to consider the representation, wherein the District Collector, Thiruvallur passed an order dated 17.05.2017 and rejected the claim of the writ petitioner. However, the reason stated for rejection is that the junior one Selvi.Vijayarani, cited supra, was not promoted as Deputy Tahsildar.

22.Under these circumstances, the learned senior counsel is of the opinion that since the order of rejection was issued on the ground that the junior to the writ petitioner had not been promoted to the post of Deputy Tahsildar and there is no necessity to challenge the said order of rejection. This court is of the opinion that if the junior of the writ petitioner had not been promoted, then the question of promoting the writ petitioner has not arisen at all.

23.May that it be, this court is of the opinion that even if the juniors were promoted, the relaxation of rule cannot be granted in a routine manner. If such a practice is adopted then the right of other qualified employees would be affected. By compromising the right of the qualified persons no relaxation to be granted to an unqualified persons.

24.The very purport and object of the recruitment rules cannot be neutralized or diluted and the rules for promotion are to be followed scruplously and only on exceptional circumstances more specifically to neutralize the injustice the power of relaxation can be exercised.

25.Under these circumstances this court is of the opinion that it is for the respondents to take into consideration all these aspects. However, the order of rejection dated 17.05.2017, which was passed by the District Collector on the ground that the junior to the first writ petitioner Selvi.Vijayarani had not been promoted as Deputy Tahsildar.

26.The learned Senior Counsel now brought to the notice of this court that Selvi.Vijayarani was promoted to the post of Deputy Tahsildar. However, in para 2 of the said rejection order the District Collector has stated that a proposal was already sent to the Principal Secretary /Commissioner of Revenue Administration Department to grant relaxation of rules by getting an appropriate Government order. The proposal is pending before the Government for consideration.

27.The facts and circumstances lead to denial of promotion to the writ petitioners are to be considered in the light of the legal principles discussed in aforementioned paragraphs of this judgment.

28.With these observations, the writ petition stands disposed of. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

maya/ggi

To

1. The Principal Secretary to Government,
   Revenue Department,
   Fort St.George, Chennai - 600 009.

2. The Commissioner for Revenue Administration,
   Chepauk,
   Chennai - 600 005.

3. The District Collector,
   Thiruvallur District,
   Thiruvallur.

+ 1 cc to M/s.C.Uma, Advocate SR.25102
+ 1 cc to Mr.Government Pleader Sr.25926

W.P.Nos.7905 & 7906 of 2018

NRL(CO)
EU(25/04/2018)