

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11-09-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.27612, 24258, 24259 of 2016,
27559 to 27561 of 2014
and 19571 to 19573 of 2015

And

W.M.P.Nos.23788, 20731, 20732, 20734
and 20735 of 2016

A.Babu ... Petitioner in WPs 27612/16&27559/14
& 19573/15

R.Bhuvaneswari ... Petitioner in WPs 24258/16&27560/14
& 19572/15

S.Kalavathi ... Petitioner in WPs 24259/16&27561/14
& 19571/15

...Vs..

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Commissioner of Municipal Administration,
Chepauk,
Chennai-600 005.

3.Coimbatore Municipal Corporation,
Represented by its Commissioner,
Coimbatore-641 001.

4.T.Gnanavel
(R-4 impleaded as per order of Court dated 11.9.2018
made in MP Nos.1, 1 and 1 of 2015 in
WPs 27559, 27560 & 27561/14) ... Respondents in all WPs

WP Nos.27612 of 2016, 24258 and 24259 of 2016 are filed Under Article 226 of the Constitution of India praying to issue Writs of Certiorarified Mandamus, calling for the entire records leading to the issue of (1) GO(2PA) No.4, Municipal Administration and Water Supply (MCIV) Department, dated 27.1.2016 relaxing Rule 3(A) of the Service Rule in favour of the fourth respondent and promoting him as Executive Engineer, Corporation of Coimbatore (2) GO(D) No.19, Municipal Administration and Water Supply (MCIV) Department, dated 18.1.2005 promoting the fourth respondent to the post of Assistant Engineer, in the Coimbatore Municipal Corporation retrospectively w.e.f. 14.4.1997 and (3) GO.Ms.No.448, Municipal Administration and Water Supply Department, dated 11.8.1995, promoting the fourth respondent as Overseer in the Coimbatore Municipal Corporation and quash the same in so far as promotion of the fourth respondent in supersession of the petitioners' seniority are concerned and consequently direct the respondents 1 to 3 to promote the petitioner to the post of Executive Engineer, Coimbatore City Municipal Corporation by applying the service rules and exemption as granted to the junior fourth respondent and place the petitioners above the fourth respondent and for other consequential reliefs.

WP Nos.27559 to 27561 of 2014 are filed under Article 226 of the Constitution of India, praying for the issuance of Writs of Mandamus, directing the respondents to consider the petitioners for recruitment/promotion to the post of Overseer on par with his junior T.Gnanavel with consequential re-designation as Junior Engineer in the New Service Rules as per G.O.Ms.No.237, Municipal Administration and Water Supply (Election) Department, dated 26.9.1996 with further promotion to the post of AEE on par with junior, with all consequential and other attendant benefits including arrears of salary by considering the representation submitted by the petitioners dated 22.4.1997 and further representation by the petitioners dated 23.6.2011.

WP Nos.19571 to 19573 of 2015 are filed under Article 226 of the Constitution of India, praying for the issuance of Writs of Mandamus, directing the respondents to consider the representation submitted by the petitioners dated 26.3.2014 and the further representation submitted by the petitioners dated 28.4.2015 for promotion to the post of Assistant Executive Engineer on par with junior T.Gnanavel with all consequential and other attendant benefits including arrears of salary.

For Petitioner in WP 27612/16 : Mr.T.Sella Pandian for
Mr.R.Neelakandan

For Petitioner in WPs 27559 to
27561/14 and WPs
19571 to 19573/2015

: Mr.T.Sella Pandian for
Mr.G.Sankaran

For Petitioner in WPs 24258 & 24259/16 : Mr.N.G.R.Prasad for
Mr.S.Ramajayam

For Respondents 1&2 in : Mrs.A.Shrijayanthi,
all WPs Special Government Pleader.

For Respondent-3 in all WPs : Mr.R.Sivakumar

For Respondent-4 in WPs 27612/16, : Mr.T.Ranganathan
24258 & 24259/16 & 27559to27561/14

C O M M O N O R D E R

The grievances of all the writ petitioners in these writ petitions are that the Government granted relaxation in favour of one Mr.T.Gnanavel, presently working as an Executive Engineer in Coimbatore City Municipal Corporation.

2. The respective learned counsels, appearing on behalf of the writ petitioners, emphatically contended that the said Mr.T.Gnanavel, Executive Engineer granted with the relaxation of rules on extraneous considerations. The application, seeking relaxation, was submitted by all the employees, who were initially appointed as Fitters in Coimbatore City Municipal Corporation. When the applications seeking relaxations were submitted uniformly by a set of employees, the benefit of relaxation was extended only in favour of the said Mr.T.Gnanavel, Executive Engineer on extraneous considerations.

3. It is contended on behalf of the writ petitioners that in the event of granting relaxation of rules in favour of the employees, the same should be considered uniformly and equally to all the employees without any discrimination. However, contrary to the settled legal principles, the rule of relaxation was extended in favour of the said Mr.T.Gnanavel alone. By virtue of the rule of relaxation granted by the Government, the said Mr.T.Gnanavel is now promoted to the higher post of Executive Engineer. Aggrieved from and out of such promotions, the other employees, who were appointed as Fitters in Coimbatore City Municipal Corporation, filed the present writ

petitions citing the similar benefit of relaxation is to be extended to all such similarly placed persons.

4. The learned counsel, appearing on behalf of Mr.T.Gnanavel, Executive Engineer, opposed the said contention of the learned counsels appearing on behalf of the writ petitioners, by stating that no doubt the relaxation was granted in favour of Mr.T.Gnanavel by the Government in respect of the Service Rules for grant of appointment, more specifically, by relaxing the method of appointment.

5. However, such benefit of relaxations were extended to the writ petitioners also. Thus, the writ petitioners cannot make any complaint in respect of grant of relaxation in favour of Mr.T.Gnanavel alone. When the writ petitioners were also enjoyed the benefit of relaxation in the cadre of Assistant Engineer, then they may not have any grievance against the said Mr.T.Gnanavel. Thus, the writ petitions are liable to be rejected.

6. This apart, it is contended that the writ petitioners were not pursued their remedy within the reasonable period of time and there is a huge delay on the part of the writ petitioners in pursuing their remedies. Thus, the writ petitions are liable to be rejected on the ground of laches also. At the outset, the learned counsel, appearing on behalf of Mr.T.Gnanavel, represents that it is not as if the benefit of relaxation was granted to his client alone. However, the benefit of relaxation was granted to all other persons enabling them to get promotions.

7. The learned counsel, appearing on behalf of the writ petitioner in WP No.27559 to 27661 of 2014, opposed the said contentions by stating that the relaxation was granted specifically in favour of the said Mr.T.Gnanavel in G.O.(D). No.448, dated 11.8.1995. However, the relaxations granted is not related to the cadre of Fitters. Thus, the very contention raised in this regard deserves no merit consideration.

8. The question arises before this Court whether the power of relaxation can be exercised by the Government, so as to grant the appointment/promotion to few individuals in the particular cadre and denying the same to all other similarly placed persons.

9. The next question arises before this Court is whether the power of relaxation under the Rules can be exercised in a routine manner without considering the cases of the similarly placed persons. The next question would be that what is the scope of the exercise of power of relaxation under the

Rules by the Government.

10. As per Rule 37 in Part II of the Tamil Nadu Municipal Service Rules, 1970, provides the power to the Government to grant relaxation. Invoking the said power of relaxation, the Government issued orders, granting relaxation in respect of the method of appointment to provide appointment to the said Mr.T.Gnanavel. Accordingly, Mr.T.Gnanavel was appointed as Assistant Overseer. By virtue of his seniority in the cadre of overseers, he was promoted upto the level of Executive Engineer. Thus, it was contended that the very relaxation of rules in respect of method of appointment itself is irregular on the ground that the post of Overseer is to be filled up by way of direct recruitments by following the procedures contemplated.

11. This Court is of an opinion that if a particular post as per the Rules is to be filled up only by way of direct recruitment, then the procedures contemplated are to be followed scrupulously. There cannot be any compromise in respect of following the recruitment rules in force, while undertaking the process of appointments. In respect of the post of Overseer, the method of recruitment was direct recruitment.

12. This being the factum of the case, equal opportunity for appointments to the said post to be provided to all the eligible candidates. Any public post is to be filled up only in accordance with the recruitment rules and by providing equal opportunity to all the eligible candidates. In the event of relaxing the rules and enabling the authorities to promote a particular individual, they are not only depriving the right of all other eligible candidates, but violating the very principle of equality enunciated under the Constitution.

13. Equal opportunity in public employment is a constitutional mandate. Thus, the very relaxation granted to a particular person alone can never be upheld under the law. Even in case where an exigency arises for grant of appointment to a particular post, then all eligible in-service candidates must be considered for grant of relaxation in accordance with law. In other words, the persons, who were appointed in a particular cadre of Fitter, must be treated as homogeneous class and there cannot be any discrimination amongst the persons working in that particular category. The officials cannot pick and chose one person and grant relaxation without considering the cases of all other similarly placed persons. Thus, the very procedure adopted for grant of relaxation itself is objectionable.

14. 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 can never be exercised in a routine manner and so also the relaxation or permanent absorption cannot be granted in a mechanical manner without reference to the provisions of law and the Rules.

15. 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.

16. 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.

17. 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."

18. 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."

19. Thus, this Court is also of the opinion that the power to grant an exemption, cannot be exercised in the manner to destroy the general provisions 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.

20. This Court is of the firm opinion that if the power 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 employees.

21. 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 persons who are working in particular cadre. 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 are to be made only by following the Recruitment Rules in force strictly and scrupulously and no relaxation can be granted by citing other cases which will lead to complications and conflict of interest between the employees in respect of all further and future promotions. Thus, the Government also must be cautious while exercising the powers of relaxation under the relevant Rules.

22. The consequences of exercising the power of relaxation under Rule 37 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 the Rule will be prejudiced in the event of grant of relaxation without following the legal principles settled by the Courts in this regard.

23. 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 37, 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.

24. In this view of the matter, this Court is of an opinion that the grant of relaxation in respect of all these persons are to be reviewed by the government with reference to the legal principles settled in the matter of grant of relaxation. The Constitutional Courts across the country as well as the Apex Court, time and again reiterated that the rules for appointment and promotions are to be followed scrupulously. Granting relaxation in favour of one person or group of persons shall not cause injustice or prejudice in respect of other employees who are all working in the same cadre. In the event of granting such relaxation in favour of few persons, the same will demoralise the administration and further will create issues in respect of all further and future promotions to the eligible persons, who are all otherwise eligible for promotions or appointments.

25. Thus, the Government must be cautious while exercising the discretionary powers of relaxation in the appointment of few individuals. Such an exercise should not cause any injustice or prejudice in respect of all other similarly placed persons, who are all parties before this Court for the relief of grant of relaxation on par with the persons, who are already granted relaxation.

26. Courts would not normally grant relaxation directly. In the event of injustice, the Court can direct the authorities to consider the cases. However, in the present cases, the grant of relaxation in favour of one person, namely, Mr.T.Gnanavel, was a heart burning issue amongst all other similarly placed employees, who were already appointed in the same cadre of Fitter. Mr.T.Gnanavel, who was appointed as a Fitter, is now working as an Executive Engineer and all other colleagues, who were appointed as Fitters, are unable to get promotions or relaxations on par with him. Such being the factum of the case, the Government has to review all such cases and take appropriate decision by reviewing the facts and circumstances.

27. In this regard, the Secretary to Government, Municipal Administration and Water Supply Department, has to look into the issues in relation to the grant of relaxation to the writ petitioners as well as the said Mr.T.Gnanavel and review the cases in the light of the legal principles settled and observed in the aforementioned paragraphs and pass revised orders. In the event of granting relaxation, it must be granted uniformly considering the facts and circumstances and the rules in force. In the event of not granting relaxation, then also appropriate orders are to be passed settling the issues in this regard amongst the employees and at the outset, the equality and uniformity are the basic principles to be implemented by the Government, while granting relaxation to all other similarly placed persons and working on par with the cadre.

28. It is brought to the notice of this Court that the writ petitioners as well as the said Mr.T.Gnanavel, had acquired B.E. Engineering Degrees from various Universities across the country. It is pertinent to note that the in-service candidates intending to pursue the higher education, certain procedures are to be followed under the Rules. This apart, now various Universities are offering Courses and sometimes those Degrees or Universities are not approved or recognised by the University Grants Commission. These aspects are also to be verified before considering the issues on hand. Thus, the respondents are bound to verify the genuinity of the Degrees obtained by all these writ petitioners.

29. Such being the principles to be followed, the following orders are passed:-

(i) The Secretary to Government, Municipal Administration and Water Supply Department, Fort Saint George, Chennai-9, is directed to review the grant of relaxation in respect of all employees appointed in the cadre of Fitter and got further promotions/appointments by virtue of relaxations;

(ii) Such an exercise is to be done with reference to the cases of the writ petitioners as well as the case of

Mr.T.Gnanavel in particular;

(iii) In the event of exercising the power of discretion, then the same must be exercised uniformly in the interest of public administration and by following the Rules in force;

(iv) In the event of taking decisions otherwise, then the same also to be implemented in respect of all the employees without any discrimination;

(v) The Secretary to Government, Municipal Administration and Water Supply Department, Fort Saint George, Chennai-9 is directed to conduct an enquiry in this regard in respect of grant of relaxation and if any malpractice or corrupt activities or influences are identified, then all suitable prosecutions and actions are to be initiated against the officials concerned, including the initiation of the disciplinary proceedings against them;

(vi) The Secretary to Government, Municipal Administration and Water Supply Department, Fort Saint George, Chennai-9, is directed to verify the genuinity of the Degrees obtained by all these writ petitioners at the time of reviewing their cases;

(vii) The said exercise shall be done by the Secretary to Government, Municipal Administration and Water Supply Department, Fort Saint George, Chennai-9, within a period of twelve weeks from the date of receipt of a copy of this order;

(viii) The orders passed in this regard shall be communicated to all the employees concerned.

30. With the above directions, all the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Secretary to Government,
State of Tamil Nadu,
Municipal Administration and Water Supply
Department,
Secretariat, Fort St. George,
Chennai-600 009.

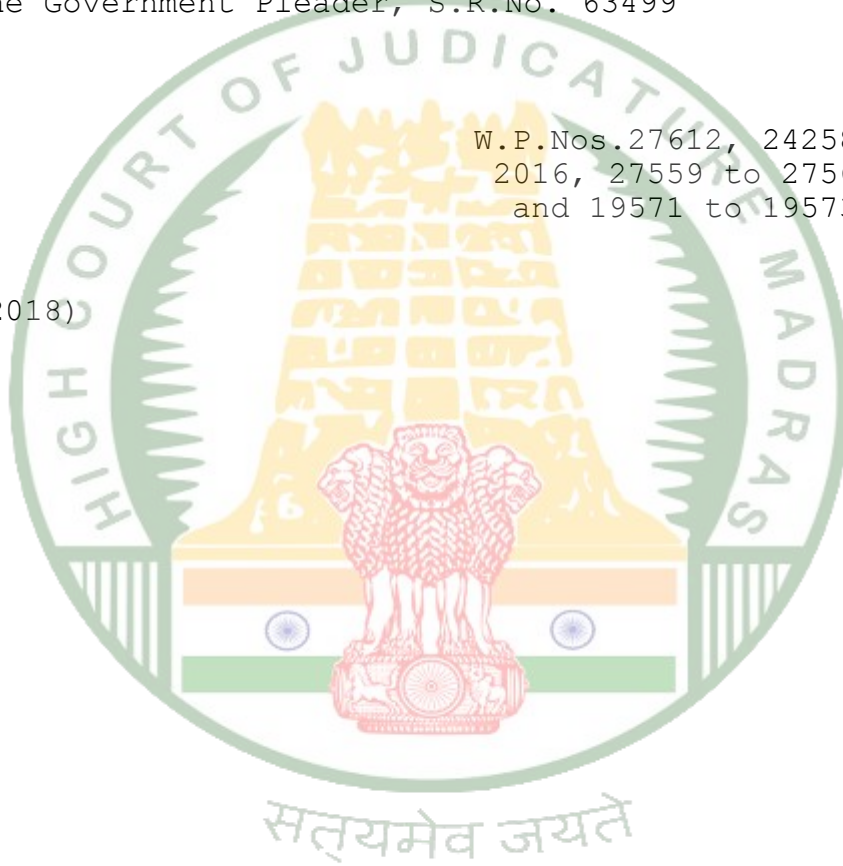
2.The Commissioner of Municipal Administration,
Chepauk,
Chennai-600 005.

3.Coimbatore Municipal Corporation,
Represented by its Commissioner,
Coimbatore-641 001.

+lcc to Mr. T.Ranganathan, Advocate, S.R.No. 63275
+lcc to Mr. R.Neelakandan, Advocate, S.R.No. 63630
+lcc to Mr. R.Sivakumar, Advocate, S.R.No. 63600
+lcc to the Government Pleader, S.R.No. 63499

W.P.Nos.27612, 24258, 24259 of
2016, 27559 to 27561 of 2014
and 19571 to 19573 of 2015

KAN(CO)
GN(03/10/2018)



WEB COPY