



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.03.2018

Pronounced on : 04.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.17477, 17576 and 17577 of 2017

and

WMP(MD)Nos.14110 & 14111 of 2017

S.Karthick Kannan ... Petitioner in WP(MD)No.17477 of 2017
R.S.Vijayalakshmi ... Petitioner in WP(MD)No.17576 of 2017
S.Booma ... Petitioner in WP(MD)No.17577 of 2017

Vs.

- 1.The Government of Tamil Nadu,
Rep.by its Principal Secretary,
Planning, Development and Special
Initiatives Department,
Fort St.George, Secretariat, Chennai - 600 009.
- 2.The Commissioner/Principal Secretary,
Department of Economics and Statistics,
D.M.S.Compound, No.359, Anna Salai,
Chennai - 600 006.
- 3.The Joint Director of Statistics,
(Administration),
Department of Economics and Statistics,
D.M.S.Compound, No.359, Anna Salai,
Chennai - 600 006. ... Respondents 1 to 3 in
all Petitions
- 4.The Regional Joint Director of Statistics,
Madurai Region, Bharathi Ula Salai,
Race Course Road,
Madurai - 625 002. ...4th respondent
in WP(MD)No.17477 of 2017



5.The Regional Joint Director of Statistics,
Tirunelveli Region, N.G.O. 'B' Colony,
Jawahar Nagar,
Tirunelveli.

...4th respondent
in WP(MD)Nos.17576 & 17577/17

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6.Deputy Director of Statistics,
District Statistical Office,
Bharathi Ula Salai,
Race Course Road,
Madurai - 625 002.

...5th respondent
in WP(MD)No.17477 of 2017

7.Deputy Director of Statistics,
District Statistical Office,
2nd Floor, Collectorate,
Nagercoil,
Kanyakumari District.

...5th respondent
in WP(MD)No.17576 of 2017

8.Deputy Director of Statistics,
District Statistical Office,
3rd Floor, Collectorate,
Korampallam,
Thoothukudi District.

...5th respondent
in WP(MD)No.17577 of 2017

Common Prayer : Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the second respondent in Letter No.53342/D1/2016 dated 19.04.2017 quash the same and direct the respondents 2 to 5 to include the petitioners in the panel for the promotion of Assistant Statistical Investigator without insisting pass in Departmental Test on Statistics, within a time frame.

For Petitioner : Mr.R.Subramanian
in all cases

For Respondents
in all cases : Mr.J.Gunaseelan Muthaiah,
Addl., Government Pleader
for R1 to R5

COMMON ORDER

The petitioners in these writ petitions are employed in the department of Economics and Statistics. The petitioners were selected by Tamil Nadu Public Service Commission for the post of Typist as they successfully cleared the Group 4 examination



conducted in the year 2012-13. The petitioner in WP(MD)No.17477 of 2017, joined the service on 06.03.2013. The petitioner in WP (MD)No.17576 of 2017, joined the service on 25.03.2013. The petitioner in WP(MD)No.17577 of 2017, joined the service on 07.03.2013. Their next promotional post is that of Assistant Statistical Investigator. Their grievance is that their immediate senior Thiru.Y.Immanuel Mohanraj was called for promotional counselling and was promoted as Assistant Statistical Investigator on 28.08.2016. But, the petitioners were not given such promotion. Instead, the department drew nil eligible person panel for the year 2016-2017 by proceedings dated 24.02.2017. The petitioners lodged their objections. But, by order dated 19.04.2017, the said objections were rejected. Hence, these writ petitions came to be filed.

2. Heard the learned counsel on either side. On the side of the respondents, detailed counter affidavits have been filed and the typed set of papers enclosing the relevant particulars have also been annexed.

3. It is true that G.O.Ms.No.90, Planning, Development and Special Initiatives (ST.2&E) Department dated 02.07.2012 was issued by the Government to revamp the department and restructure the staff pattern. Vide G.O.Ms.No.8 dated 31.08.2013 amendment to the special rules was issued. The post of Assistant Statistical Investigator could be filled either by direct recruitment or by way of recruitment by transfer. Here, this Court is concerned with filling up the said post by "recruitment by transfer". The following amendment came to be made.

"a) Degree in Statistics;

OR

Degree in Mathematics/Computer Science/Economics/Computer Applications with Statistics as an ancillary/allied subject;

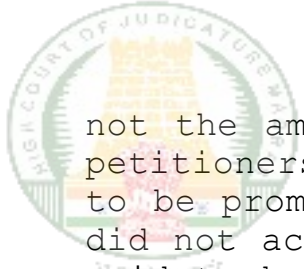
OR

Any degree with Post graduate degree in Operations Research/Econometrics/Mathematical Economics.

(b) Must have put in a service of not less than three years in the category of Junior Assistant or Typist as the case may be.

c) Must have passed the Departmental Test on Statistics."

4. The contention of the petitioners is that the amendment rules will not apply to them. According to the petitioners, they were all appointed by order dated 01.03.2013. The amendment rules came into effect on 13.03.2013. In as much as the petitioners were appointed prior to the coming into force of the amendment rules, they were governed only by the earlier rules and

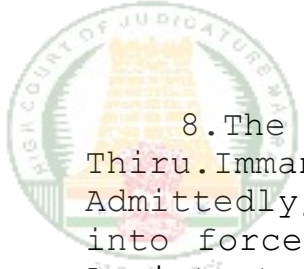


not the amended rules. This submission has no substance. The petitioners were appointed only in the post of Typist. The right to be promoted or appointed as Assistant Statistical Investigator did not accrue at that moment. Therefore, no vested right can be said to have accrued in favour of the petitioners. The vacancies that are the subject matter of these writ petitions pertain to the year 2016-2017.

5. Therefore, by no stretch of imagination can the petitioners be heard to contend that they will not be governed by the amended rules. This Court holds that the amended rules will certainly apply. Merely because the petitioners were appointed prior to the 13.03.2013, they cannot contend that they will be governed only by the un-amended rules. But, the petitioners cannot be denied relief on this ground. As seen already, the amended rules contemplate three elements. Clause V(a) refers to Educational Qualification. The second requirement is service experience of three years as Junior Assistant or Typist. The third requirement is passing departmental test in statistics. In this case, the petitioners had completed three years as Typists by March 2016 itself. They also possessed the requisite educational qualifications.

6. What was lacking was only a pass in the departmental test in statistics. Passing the test will arise only if the test is conducted. It is the department that must hold the test and call upon the candidates to participate. If the department had conducted the departmental test and the petitioners did not participate in the same or failed even after participation, they can be said to have not acquired the requisite eligibility qualifications. The department in this case had conducted the said test only in December 2017. Without conducting the departmental test, it was not open to draw the nil eligibility panel.

7. As already pointed out, such an endorsement was made on 24.02.2017. The petitioners cannot be faulted for not passing the departmental test by March 2016. When a requirement is stipulated in the relevant recruitment rules, appropriate arrangements must have been made to enable the the candidates to acquire the eligibility. Without creating an opportunity to acquire the eligibility qualification, the department cannot contend that the candidates are not qualified. That would be a wooden and mechanical application of the statutory rule. Even according to the department, the amendments were made as early as on 31.03.2013. Almost for close to five years, the department test was not conducted. In fact, such a test should have been conducted twice every year right from 2013 onwards. For the omission on the part of the authorities, the petitioners cannot be blamed.



8.The petitioners have pointed out that their immediate senior Thiru.Immanuel Mohanraj was called for counselling on 28.08.2016. Admittedly, even on 28.08.2016, the amended rules had already come into force. If the said Immanuel Mohanraj could be promoted as Assistant Statistical Investigator even though he did not pass the departmental test, there cannot be any impediment for granting a similar treatment to the petitioners also.

9.This Court holds that by not conducting the departmental test and by terming the petitioners as not eligible for being appointed as Assistant Statistical Investigator for not having the pass in the departmental test, the respondents have exhibited gross arbitrariness. This is violative of the mandate set out in Article 14 of the Constitution of India. In this view of the matter, the orders impugned in these writ petitions are quashed. The respondents 2 to 5 in the respective writ petitions are directed to include the petitioners in the panel for being appointed as Assistant Statistical Investigator without insisting on a pass in departmental test on statistics and place them below the said Immanuel Mohanraj. Such orders shall be passed within a period of eight weeks from the date of receipt of a copy of this order.

10.These writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

TO

1.The Principal Secretary,
Planning, Development and Special
Initiatives Department,
Fort St.George, Secretariat, Chennai - 600 009.

2.The Commissioner/Principal Secretary,
Department of Economics and Statistics,
D.M.S.Compound, No.359, Anna Salai,
Chennai - 600 006.

3.The Joint Director of Statistics,
(Administration),
Department of Economics and Statistics,
D.M.S.Compound, No.359, Anna Salai,



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8.Deputy Director of Statistics,
District Statistical Office,
3rd Floor, Collectorate,
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+3cc to M/S.R.Subramanian, Advocate SR.No. 66686

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RAM/SKN RSK-SAR 2-05.06.2018/6P-12C/