BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.02.2018
DELIVERED ON : 28.06.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.18383 of 2017 and
W.M.P.(MD)Nos.14820 to 14823, 16209 &
16352 of 2017 & 1010 of 2018

1. S.Thirunavukkarasu
2. T.Seetha
3. S.S.Rani
4. P.Vasanthi
5. M.Narayanan ... Petitioners

Vs.

1. The Secretary to Government,
   Revenue Department,
   Chennai.

2. Commissioner for Revenue,
   Administration, Ezhilagam,
   Chepauk, Chennai.

3. The Secretary,
   Tamil Nadu Public Service Commission,
   Chennai.

4. A. Pream Kishore,
   S/o.T.Ammasi,
   Assistant, Civil Supply Office,
   Madurai North Taluk,
   Madurai.

5. S.Pratheeba,
   D/o.K.Soundararajan,
   Assistant, Revenue Divisional Office,
   Madurai.

6. S.Thulasi Brindha,
   D/o.Sivasamy,
   Assistant, Revenue Divisional Officer,
   Madurai.

7. C.Mughi Balan,
   S/o.S.Chandrasekaran,
   Assistant, Madurai North Taluk,
   Madurai.

8. D.M.Senthil Kumar,
S/o.D.Muthu,
Assistant, District Collectorate(G Section),
Madurai.

9. M.R.Muthulakshmi,
W/o.P.Seenivasagam,
Assistant, District Collectorate,
Madurai.

10. N.Ragu Raman,
S/o.Neethy,
Assistant, Madurai North Taluk,
Madurai.

11. K.Gopalakrishnan,
S/o.Kumaravel,
Assistant, Usilampatti Taluk Office,
Madurai.

12. M.Meenakshi Sundaram,
S/o.K.Murugan,
Assistant, Civil Supply Office,
District Collectorate, East Zone,
Madurai.

13. G.Mohan Sundar,
S/o.V.Gopal,
Assistant, District Collectorate,
Madurai.

14. K.Thirunavukkarasu,
S/o.M.Krishnan,
Assistant, Disaster Management,
District Collectorate,
Madurai.

15. V.Veera Murugan,
S/o.Veerapathiran,
Assistant, Taluk Office, Peraiyur,
Madurai District.

16. R.Damodharan,
S/o.V.Radha,
Assistant, Madurai South Taluk,
Madurai.

17. S.Rajalakshmi,
W/o.V.Chandrasekar,
Assistant, East Taluk Office, Madurai.

18. V.Sundaravel,
S/o.M.Veerasamy,
Assistant, District Collectorate,
Madurai.

19. K.Logeswari,
W/o.N.Kathiresan,
Assistant, District Collectorate,
Madurai.

20. R.Lakshmi Priya,
W/o.Kasimayan,
Assistant, East Taluk Office,
Madurai.

21. B.Esakki Muthukumar,
S/o.P.Balasubramanian,
Assistant, District Supply Office,
District Collectorate,
Madurai.

22. M.Poomayee,
W/o.Kanthasamy,
Assistant, Revenue Divisional Office,
Melur at Othakadai, Madurai District.

23. R.Manikandan,
S/o.K.Ramachandran,
Assistant, Taluk Office, Vadipatti,
Madurai District.

24. M.Gomathi,
W/o.Suresh,
Assistant, Taluk Office, Vadipatti,
Madurai District.

25. A.Malathi,
W/o.Prabu Ram,
Assistant, South Taluk Office,
Madurai.

26. J.Karthikeyan,
S/o.G.Jeyaraj,
Assistant, District Collectorate,
Election Section,
Madurai.

27. R.Manikandan,
S/o.Ramamoorthy,
Assistant, Taluk Civil Supply Office,
Central Zone, Madurai.

28. S.Sentheeswari,
W/o.T.Manikandan,
Assistant, District Supply Office,
Madurai.

29. The District Collector,
Collectorate Office,
Madurai.

(R-4 to R-28 are impleaded vide Order dated 11.10.2017 in W.M.P.(MD)Nos.15130, 15131 and 15237 of 2017)

(R-29 is impleaded vide Order dated 11.01.2018 in W.M.P.(MD)No.19806 of 2017) ... Respondents

PRAYER : Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for records in connection with G.O.Ms.No.93 dated 20.02.2015 on the file of the first respondent, quash the same and consequently follow the Annexure IX(Referred to in Rule 38(b)(ii) of the Tamilnadu Ministerial Service Rules and file the seniority list of direct recruitees and promotees from 2011 onwards before promoting any candidates to the post of Deputy Thasildar with all monetary and service benefits.

For Petitioners	: Mr.R.Singaravelan, Senior counsel, for Mr.D.Selvanayagam.
For R-1 & R-2	: Mrs.S.Srimathy, Special Government Pleader.
For R-3	: Mr.D.Sivaraman
For R-4 to R-20	: Mr.Veerakathiravan, Senior Counsel, for Mr.R.R.Kannan
For R-21 to R-28	: Mr.V.Panneer Selvam

O R D E R

The Writ petitioners are promotee Assistants working in Madurai Revenue District. The post of Assistant is filled up both by way of direct recruitment as well as by way of promotion. 1/3rd of the vacancies are reserved for the direct recruits while 2/3rd of the vacancies are earmarked for the promotees. It is the case of the petitioners that this quota rule was breached and that the direct recruits are occupying posts far in excess of their quota. The petitioners are aggrieved by the amendment made to paragraph 8 (v) of Annexure IX of Tamil Nadu Ministerial Service Rules vide G.O.Ms.No.93 Revenue Department dated 20.02.2015 and want it to be quashed. The Writ petitioners also seek issuance of a Writ of Mandamus directing the first respondent to follow Annexure IX as it is and issue interse seniority list of the direct recruits and promotees from 2011 onwards, before promoting any candidate to the post of Deputy Tahsildar.

2. The learned senior counsel appearing for the Writ petitioners referred to the various decisions of the Hon'ble Supreme Court as well as this Court. He placed particular reliance on the decisions reported in (2009) 5 SCC 625 (M.Rathinaswami V. State of Tamil Nadu), (2013) 2 SCC 516 (Bhupendra Nath Hazarika V. State of Assam) and (2014) 6 SCC 514 (M.S.Sandhu V. State of Punjab).

3. The learned senior counsel appearing for the Writ petitioners would argue that the directly recruited Assistants who were appointed in excess of their quota cannot claim any right over the post till their turn reaches as per the rules. His grievance is that without drawing the yearwise panel as per the quota reserved for the two categories of candidates, namely, direct recruits and promotees, the promotion process for the post of Deputy Tahsildar is sought to be finalized. He made a specific allegation that the decision rendered by the Hon'ble Supreme Court in Rathinaswami's case has not been implemented.

4. In the grounds set out in the affidavit filed in support of the Writ petition, it has been contended that the mandatory condition set out in paragraph No.8 (v) of Annexure IX of Tamil Nadu Ministerial Service Rules providing for imparting of training in a certain manner is sought to be breached only to help all unqualified persons. When qualified persons are available, such relaxation is unconstitutional and hit by Articles 14 and 16 of the Constitution of India. It would also tell upon the entire administrative efficiency and adversely impact public interest. When a procedure has been prescribed in the statutory rules, it has to be followed and it is not open to the administration to bypass the same. In any event, relaxation proposed in the impugned Government Order is patently arbitrary and unreasonable and violates the quota rota rule. The Writ petitioners therefore prayed for quashing the impugned Government Order and further sought issuance of the consequential Mandamus as prayed for.

5. The official respondents as well as the private respondents have filed their respective counter affidavits. This Court heard the learned Special Government Pleader appearing for the official respondents and the learned Senior counsel and the learned counsel appearing for the private respondents.

6. Though the Writ petitioners have sought to paint on a larger canvas, the issue lies in a very narrow campus. The Writ petitioners challenge the validity of G.O.Ms.No.93 Revenue Department dated 20.02.2015. The other reliefs are only consequential in nature. As per Rule 38(b)(ii) of Tamil Nadu Ministerial Service Rules, the rules in Annexure IX shall govern the direct recruitment of Assistants in the Revenue Department. Paragraph 8 of Annexure IX states that every person appointed as Assistant by direct recruitment shall be imparted the training as prescribed below:-

Period (1)	Items of Training (2)
i. First three months	1.With Firka Revenue Inspector : One week 2.Revenue, Divisional Officer's Office : One Week 3.Collector's Office : Two Weeks 4.Foundation Training at the Civil Service Training Institute, Bhavanisagar : Two months
ii. Next one year	In Taluk Office as Assistant dealing with Revenue subjects.
iii.Next four weeks	In Training in Revenue Survey and maintenance of land records.
iv.Next two years	Firka Revenue Inspectors.
v.Next one year and eight months	In Collector's Office as Assistant.

7. On account of certain administrative difficulties, all the directly recruited Assistants could not be imparted the training for a period of 1 year and 8 months in the Collector's Office as Assistant. This was on account of lack of adequate number of posts in the Collector's Office. Therefore, even though the directly recruited Assistants were eligible to be promoted to the post of Deputy Tahsildar after completion of 5 years, they could not get such a promotion. Unless the Department gives posting, the directly recruited Assistants cannot acquire the necessary service qualification. Unless they acquire the qualification, they will not be eligible for the post of Deputy Tahsildar. Therefore, proposals were given to the Government for modifying this requirement. Finding merit in the said request, the Government also issued the impugned G.O.Ms.No.93 Revenue Department dated 20.02.2015 amending paragraph No.8 (v) of Annexure IX as "1 year and 8 months training in Collector's Office or any one of the offices in the District Revenue Unit". This amendment that is challenged by the Writ petitioners.

8. As rightly contended by the learned Special Government Pleader as well as the learned senior counsel appearing for the respondents, in fact no relaxation has been given by the Government. A mere modification in the place of training alone has been made. Such a modification became necessary on account of practical administrative difficulties experienced by the Department in giving posting orders to the directly recruited candidates in the Collector's Office as Assistant. The Government has not reduced the number of years of training. The duration of training remains the same. What has been modified is only the place of training. In addition to the Collector's Office, any of the offices under the control of the District Revenue Unit have also been added in the alternative.

9. The power of amending the recruitment rules is definitely vested with the Government. The power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with the power to amend or alter the rules with retrospective effect. This position has been reiterated in the decision of the Hon'ble Supreme Court reported in (2015) 11 SCC 440 (M.I.Kunjukunju Vs. State of Kerala). Of course when effecting the said amendments, the benefits acquired under the existing rules cannot be taken away. In other words, the power of amendment cannot be exercised as to effect or impair the vested rights.

10. In this case, the Writ petitioners were promoted to the post of Assistants much after the private respondents who were directly recruited and posted as Assistants. The impugned Government Order has nothing to do with the fixation of seniority between the promotees and the direct recruits. In fact the Writ petitioners cannot be said to have suffered any legal injury at all. What the Government Order does is only to provide for an alternative place for imparting training. The offices in District Revenue Unit are added as additional and alternative places to the Collector's office. The Writ petitioners have not shown as to how the impugned Government Order is illegal or violative of any provision of law. The power and jurisdiction of the Government to make amendments in the recruitment rules cannot be questioned. It has not been shown that this power has been arbitrarily exercised in this case. In fact substantial and convincing reasons have been assigned as to why the impugned Government Order came to be issued. The impugned amendment is in respect of a statutory rule and its validity cannot be impugned with reference to a fact situation prevailing in a particular revenue District.

11. It is also to be noted that the Government Order in question was passed as early as on 20.02.2015. This Writ petition came to be filed only on 25.09.2017. This Court has no hesitation to repel the challenge to the impugned Government Order. The Government Order is upheld as legal and constitutional. Since the challenge to the Government Order has been negatived, the consequential reliefs cannot be granted.

12. Therefore, the Writ petition stands dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To
1. The Secretary to Government,
Revenue Department,
Chennai.

2. Commissioner for Revenue,
   Administration, Ezhilagam,
   Chepauk, Chennai.

3. The Secretary,
   Tamil Nadu Public Service Commission,
   Chennai.

4. The District Collector,
   Collectorate Office,
   Madurai.

+5cc to M/S.R.R.Kannan, Advocate SR.No. 70382
+1cc to M/S.D.Selvanayagam, Advocate SR.No. 70324

ORDER
MADE IN
W.P.(MD).No.18383 of 2017 and
W.M.P.(MD)Nos.14820 to 14823, 16209 &
16352 of 2017 & 1010 of 2018
28.06.2018

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JM/SKN RSK/SAR 3/28.06.2018/8P/11C