



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P. (MD) No.1659 of 2013

Thiruramalingam

... Petitioner

Vs.

1. The Director of Elementary Education,
College Road,
Chennai - 600 006.

2. The District Elementary Educational Officer,
Tirunelveli District,
Tirunelveli.

3. The Assistant Elementary Educational Officer,
Alangulam Panchayat Union,
Alangulam,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, call for the records pertaining to the Impugned order of the 3rd Respondent in Na.Ka.No. Nil dated 14.07.2012 and quash the same.

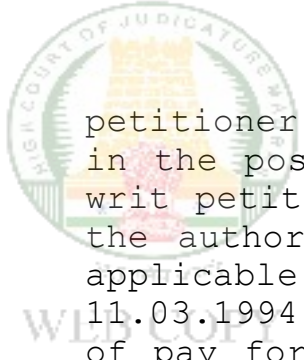
For Petitioner : Mr.S.V.Perumal

For Respondents : Mr.R.Sethuraman
Special Government Pleader

ORDER

The order of rejection dated 14.07.2012 is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was working as Headmaster at Namachivaya Mudaliar Middle School, Kidarakulam, Alangulam Panchayat Union, Tirunelveli District, which is an aided middle school receiving grant from the Government of Tamil Nadu. The writ petitioner was initially appointed as Middle School Headmaster on 11.03.1994 by way of direct recruitment. The appointment of the writ petitioner was duly approved by the District Elementary Educational Officer. The pay of the writ



petitioner was fixed in the scale of pay of Rs.1,640/- - 2,900/- in the post of Middle School Headmaster. The appointment of the writ petitioner as Middle School Headmaster was also approved by the authorities on 11.03.1994 and he was paid time scale of pay applicable to the post of Middle School Headmaster from 11.03.1994. The writ petitioner was allowed to receive the scale of pay for more than 10 years. However, the third respondent in proceedings dated 16.12.2004 has ordered to recover the pay that was given to the writ petitioner in the scale of Middle School B.T.Headmaster. The said order was challenged by the writ petitioner in W.P.(MD) No.12736 of 2009 and the same was allowed on 28.04.2011.

3.The first respondent in his proceedings dated 04.07.2011, directed the respondents 2 and 3 to take steps to implement the order passed by this Court. However, the third respondent informed in proceedings dated 22.12.2011 that he has already sent proposal for granting relaxation of requisite qualification of service experience as Teacher for 5 years. Since the relaxation has not been received from the Government, the order of rejection issued by the respondents.

4.The learned counsel for the writ petitioner states that the Government granted similar relaxation in favour of 5 candidates in G.O.(3D)No. 18, School Education Department, dated 21.01.2011. Accordingly, all these 5 middle school Headmasters received the time scale of pay. This apart, this Court also passed an order in W.P.(MD) No.3425 of 2011 on 17.04.2012 directing the authorities to grant necessary relaxation in terms of G.O.Ms.No.17 dated 20.01.2011 and G.O.(3D).No.18, dated 21.01.2011 within a period of 12 weeks. The writ petitioner is also one of the petitioners in the said order dated 17.04.2012.

5.At the out set the learned counsel for the writ petitioner states that the Court directed the Government to grant relaxation and therefore, the post of Headmaster ought to have been regulated in accordance with the scale of pay granted to the similar place persons.

6.The learned Special Government Pleader appearing on behalf of the respondents states that the 5 years of teaching experience is a requisite qualification for the purpose of holding the post of Middle School Headmaster. The persons were not possessing the requisite experience of 5 years teaching, are not eligible for appointment to the post of Middle School Headmaster. Certain orders passed in earlier circumstances, granting relaxation cannot be cited as precedent. Since the earlier Government Order was specifically in respect of 5 teachers and the same cannot be followed as a precedent and such orders, if continuously are passed, others will suffer huge financial loss. In such an event,



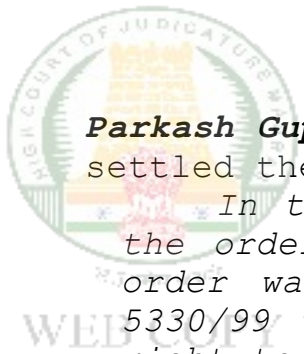
the rule itself will be diluted, therefore, in all such cases, relaxation will be claimed as a matter of right.

7. Under these circumstances, the respondents have passed an order stating that the Government has not issued any specific order of relaxation in favour of the writ petitioner. Therefore, his case cannot be considered and the scale of pay as applicable to the post of Middle School Headmaster.

8. It is an admitted fact that the 5 years of teaching is the requisite qualification for the purpose of holding the post of Middle School Headmaster. Thus, the question arises, whether the relaxation can be granted as a matter of routine for the purpose of fixation in the scale of pay as applicable in the post of Middle School Headmaster. In other words, the teachers who were appointed in violation of the qualification prescribed under the recruitment rules can be granted relaxation of such rules in a routine manner. If such relaxation are extended to one or two persons then the wrong precedent will be created and all such ineligible persons will claim relaxation as a matter of routine. Under these circumstances, this Court is bound to consider the scope of power of relaxation granted to the Government under the rules and scope of such relaxation powers.

9. Rules are provided and meant for implementation when the recruitment rules are formulated, it is for the competent authorities to implement the rule in its letter and spirit. When the rules are formulated and thereafter, the relaxation are given in a routine manner to such rule, then it would amount to dilute the rules itself. Such mechanical dilution or non implementation of rules are certainly unconstitutional and in fact it is to be construed that it amounts to individualization of the implementation of the Government Orders and violation of such Government Orders cannot be encouraged by the Courts. The rule of relaxation has got a specific purpose and object. The rule of relaxation cannot be exercised in a routine manner.

10. The power of relaxation extended to the Government by way of rules should be exercised only on exceptional circumstances nor to mitigate the injustice if any caused to a particular employee. The rule of relaxation cannot be exercised in a routine manner so as to provide some benefit to the individuals. If such relaxation are stipulated then it would amount to disagreeing the very rule itself framed under the constitution. The rule framed cannot be diluted or tinkered with by granting relaxation to the case in a routine manner. Subsequently, the rules are meant for implementation and dilution or relaxation should only be done on exceptional cases.



Parkash Gupta and others Vs. State of Jammu and Kashmir and others settled the legal principles, which is extracted here under:

In this Court notice in SLPs was issued on 7.4.1999 and the order of the High Court was stayed. But then a further order was passed on 12.5.99 in IAs. 3 & 4 in SLPs 5329-5330/99 that the stay order dated 7.4.99 did not imply any right to effect promotion during the pendency of the SLPs. It was directed that status quo be maintained.

During the course of hearing of the case, at one stage counsel made some efforts to narrow down the disputes between the two groups by discussion but ultimately all the points arising between the parties were argued elaborately and thoroughly.

The written submissions by both parties covered as many as sixty rulings of this Court. Having regard to the vehement argument before us and also in order to explain the various decisions, - which may appear to be apparently conflicting - we have thought it necessary to refer to most of the relevant rulings. This has no doubt added to the volume of this judgment but it could not be helped.

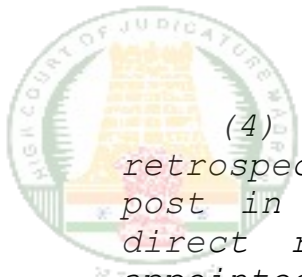
On the basis of the various submission, the following points arise for consideration :

The Points :

(1) Can the promotees, for recruitment to the gazetted service, avoid the Service Commission? Can the Government order that the entire ad hoc/ stop gap service of Assistant Engineers and Assistant Executive Engineers is to be counted for seniority and can the order of regularisation dated 2.1.98 passed by Government (in respect of the Electrical Wing) be treated as amounting to an implied relaxation of the rules of recruitment requiring consultation with the Service Commission? Whether relaxation of recruitment rule is permissible?

(2) Whether the quota rule had broken down? Whether excess promotees are to be pushed down? Whether there is a quota-rota rule?

(3) Whether the ad hoc/stop gap promotion of Assistant Engineers (and Assistant Executive Engineers) could be made beyond six months and till regularisation, by Government without consulting the Public Service Commission? Whether Government could have regularised the ad hoc service by executive order dated 2.1.98? Whether, the point raised in para DC of written submissions by the direct recruits that retrospective regularisation cannot be made in respect of the ad hoc stop gap service and could be made only if the initial appointment as Assistant Engineers or Assistant Executive Engineers was "in accordance with rules", is correct?



(4) Whether the direct recruits could claim a retrospective date of recruitment from the date on which the post in direct recruitment was available, even though the direct recruit was not appointed by that date and was appointed long thereafter?

WEB COPY (5) To what relief? Point 1 :

This point deals with the question whether the promotees can avoid going through the Service Commission for recruitment to the gazetted cadre? This raises the question of the validity of the order dated 2.1.98 of retrospective regularisation of entire ad hoc service of promotees as Assistant Engineers and Assistant Executive Engineers passed by the Government, (in relation to the Electrical Wing) without the approval of the Public Service Commission and whether relaxation can be implied. Question arises whether it is permissible to relax recruitment rules?

Implied relaxation of recruitment rule relating to promotion - plea as to Learned senior counsel appearing for the promotee Assistant Engineers contended that the order dated 2.1.98 regularising the ad hoc/stop gap service passed by Government, even if it be without the concurrence of the Commission, could be treated as one passed by the Government by impliedly "relaxing" the Service Commission Regulation requiring consultation with the Commission. Provisions or Article 320 requiring consultation with the Commission (here Section 1-33 of the J & K Constitution), were not mandatory. When promotees had put in long years of services, it was permissible for the State to relax the recruitment rule and regularise the service outside the PSC Regulations. It was to be deemed there was relaxation. This contention was contested by the learned senior counsel for the respondents.

The Rules :

For the purpose of the above argument, the promotees relied on the following rules :

Rule 13 of the 1978 Recruitment Rules states that in respect of residuary matters, (i.e. 'matters not specifically covered by the said Rules), the members of the service shall be governed by the rules, regulations and orders applicable to the State/Civil Services in general. Therefore, Rules 5 of the J & K Civil Service (CCA) Rules, 1956 is attracted. It permits relaxation of the Rules. It reads :

"Rule 5 : Any of these rules or rules made under them, may or reasons to be recorded in writing, be relaxed by the government in individual cases, if Government is satisfied that a strict application of the rule would cause hardship to the individuals concerned or confer undue benefit on him".

Further, Rule 5(4) of the Recruitment Rules, 1978 states

that : In case suitable candidates are not available for promotion, the posts shall be filled up by direct recruitment and vice versa'. In view of the words 'vice versa', the promotees contend that if suitable direct recruits are "not available", the direct recruit quota can be filled up by promotees. Direct recruitment was not made for several years and hence it was clear that suitable direct recruits were "not available" as required by proviso to Rule 5(4) of the Recruitment Rules, 1978.

The quota between direct recruits and promotees is governed by Rule 5(2) of the 1978 Rules which states that appointment to a service shall be made by

(a) direct recruitment (b) by promotion/selection and (c) partly by direct recruitment and partly by promotees, in the manner and ratio as indicated against each post in the Schedule. The quota of 20% for direct recruits Assistant Engineers and 60% for graduate Junior Engineers and 20% for non-graduate in the lower category is provided in the Schedule. Further, Rule 11(1) of the above said Rules of 1978 states that seniority will be regulated under the provisions of the J & K Civil Service (Classification, Control and Appeal), Rules 1956. The proviso to Rule 11(3) states that the seniority in a particular year is to be determined as per ratio. It says : "Provided further that the seniority of Assistant Engineers by direct recruitment and by promotion shall, in a particular year be determined, in the ratio fixed for direct recruitment and promotion.

The relaxation Rule, namely, Rule 5 of the 1956 J & K CCA Rules, 1956 referred to earlier, enables the power of relaxation to be exercised on the ground of "hardship" in "individual cases". Reasons have to be recorded in writing.

Reasons for so called relaxation of recruitment rules - Cabinet decision of 19.12.97 :

As to the reasons for relaxation of recruitment rule of promotion requiring consultation with the Commission, counsel for promotees referred us to the Cabinet decision preceding the issuance of the blanket regularisation Order dated 2.1.98. It is dated 19.12.97. We have to examine the reasons stated in the Cabinet decision and find out if adequate reasons have been given. It was stated there that in view of Court litigation, there used to be delay in finalising seniority lists and that this had resulted in officers retiring at lower levels and getting financial/promotional benefit only after retirement. The finalisation of seniority lists and the reference of the promotees' cases to the P.S.C./D.P.C. would take fairly long time to be completed. It was for this reason that it would definitely be preferable if the confusion, was cleared once and for all. At the level of



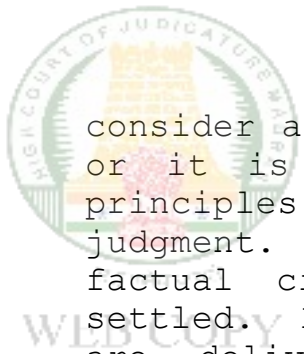
Assistant Engineers, 574 were on ad hoc promotion and at the level of Assistant Executive Engineers there were 401, requiring regularisation. This view was supported by the Law Department and it said that undue delay had adversely affected the promotees and the only remedy was to regularise their promotion in relaxation of rules from the date they were promoted on ad hoc basis against substantive vacancies without prejudice to seniority to be fixed in accordance with the "rota and quota" rules. It opined that all those who had held the post uninterruptedly for 6 months (originally Law Department said 2 years) or more and had rendered "satisfactory service" could be regularised in relaxation of rules. But the General Administration Department was however of the view that this relaxation proposal should be placed before the PSC/DPC and clearance obtained. The matter was therefore referred to PSC which instead of considering the proposal, requested by its letter dated 25.11.97 for various documents (1) final seniority lists; (2) eligibility list on prescribed form, (3) APRs of all Engineers for the relevant period, (4) integrity certificate and (5) information regarding Court orders and (6) Copy of Rules, for the purpose of considering regularisation under the Rules. But rejecting the said letter of the PSC, the Cabinet straightaway directed relaxation as a one time exception', stating that :

"due to the reasons that the finalisation of seniority list, collect-ing APRs of all engineers for the relevant period, obtaining date of eligibility/date of vacancy, one is expected to take a very long time and may even be impossible in very old cases. When this Department places these engineers in charge of higher posts, there must have been clear vacancies.

12.The learned counsel appearing on behalf of the writ petitioner cited the order passed in W.P.(MD) No.3425 of 2011 dated 17.04.2012. On a perusal of the order, the Hon'ble Judge has not dealt with the legal principles in relation to the rule of relaxation and its scope and exercise by the competent authorities. Contrarily, the learned Judge, had proceeded on the pretext that has given relaxation in favour of the petitioner and therefore, the writ petitioner therein also to be extended with the same benefit. Such precedent exemption granted by the Courts would also create certain inconsistency in implementing the service rules in force. Since the learned Judge has not dealt with the legal principles in the matter of rule of relaxation, the same cannot be considered as a binding precedent. Contrarily, the scope of the power of relaxation has been well enumerated by the Hon'ble Supreme Court of India. Thus, this Court is bound by the legal principles settled by the Hon'ble Supreme Court of India.

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13.Whenever the respective counsels appearing for both parties to the lies submits orders of similar nature, the Courts have to



consider as to whether it is an order passed based on the facts or it is a judgment passed on the basis of certain legal principles. There is a difference between the order and the judgment. The order is one, which is passed based on certain factual circumstances in which the legal principles are not settled. However, the judgment is not so, the judgments which all are delivered settling the legal principles alone can be considered as a legal precedents

14. Thus, this Court is of an opinion that certain orders passed by the Court cannot be considered as binding precedents and such orders are to be treated as if the same was passed on the particular facts and circumstances of the case. If the Courts subsequently found that if such orders are creating certain general reactions then it is the duty of the Court to prevent or stop the same at the relevant point of time. Contrarily, if the Courts start passing such order in that manner then this Court is afraid of where the financial implication will take place. Thus, over all aspects of the reflections while passing such order to be considered by the Courts. By referring one Government Order there will be 1000 litigants and ultimately, taxpayers money will be paid without any guidance in this regard, the authorities competent also must be vigilant. It is the duty of the competent authorities to bring the notice of the Court in respect of the Government Order passed and the rules implemented in this regard. In the absence of any such representation on the side of the Government then the Courts the Courts will also be handicapped in respect of considering all these vital explanations /restrictions.

15. In any event, this Court is of an opinion that certain orders passed based on the facts can never be followed as a binding precedent. Such orders passed on individual facts and circumstances cannot be treated as precedent. The judgment delivered only settling the legal principles alone to be considered as binding precedent. In the case of **National Insurance Company Limited Vs. Pranay Sethi and others**, the Constitution Bench headed by the **present Chief Justice of India DIPAK MISRA**, had delivered the judgment on 31.10.2017. The Hon'ble CJI observed as follows:

....

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families.



been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that (2012) 6 SCC 421 salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

.....

16.Thus, the Constitution Bench of the Supreme Court of India in the case cited supra has categorically, held that what are all the binding precedents to be followed by the Courts while deciding the cases.

17.The present writ petition is a classic example where the relaxation was granted by the Government in respect of 5% persons and in some other Government Order in respect of few other persons. By challenging such Government Orders number of writ petitions are filed and certain orders were also passed by this Court to the extent in a routine manner. Further, such orders are running contrary to the recruitment rules where 5 years of experience is requisite qualification for the purpose of granting scale of pay for the post of Middle School Headmaster.

18.Therefore, this Court is of an opinion that such exercise of power of relaxation is certainly unconstitutional and the Courts cannot passed such orders directing the Government to grant relaxation of the requisite qualification prescribed under the rules in a routine manner. The judicial review in this regard shall be exercised only on exceptional circumstances and this factum of the legal principles to be followed, this Court is of an opinion that the writ petitioner has not made out any claim, the relief as such sought for in this writ petition cannot be granted.

19.Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

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1. The Director of Elementary Education,
College Road, Chennai - 600 006.



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Alangulam,
Tirunelveli District.

+ 1 cc TO Mr.V.Perumal , Advocate in SR No. 52458

+ 1 cc TO The Special Government Pleader in SR No. 52490

ia/mm

AE/JC/SAR2/25.04.2018/10P/6C

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