

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-03-2019

CORAM

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

W.P.Nos.13520 to 13528 of 2018, 14757 to 14766, 16073 of 2018

M.Thulasilakshmi	..Petitioner in W.P.No.13520 of 2018
T.Adhiyaman	..Petitioner in W.P.No.13521 of 2018
D.Prabakaran	..Petitioner in W.P.No.13522 of 2018
P.Manimekalai	..Petitioner in W.P.No.13523 of 2018
M.Punitha	..Petitioner in W.P.No.13524 of 2018
T.Thanikachalam	..Petitioner in W.P.No.13525 of 2018
V.Loganathan	..Petitioner in W.P.No.13526 of 2018
S.Arumugam	..Petitioner in W.P.No.13527 of 2018
P.Nagarathinam	..Petitioner in W.P.No.13528 of 2018
A.Balamurugan	..Petitioner in W.P.No.14757 of 2018
S.Ganesan	..Petitioner in W.P.No.14758 of 2018
S.Muruganantham	..Petitioner in W.P.No.14759 of 2018
M.Sujatha	..Petitioner in W.P.No.14760 of 2018
R.Ravishankar	..Petitioner in W.P.No.14761 of 2018
P.Narmatha	..Petitioner in W.P.No.14762 of 2018
S.Ezhilan	..Petitioner in W.P.No.14763 of 2018
R.Suguna	..Petitioner in W.P.No.14764 of 2018
V.Ravikumar	..Petitioner in W.P.No.14765 of 2018
K.Bhavanidevi	..Petitioner in W.P.No.14766 of 2018
G.Sasikumari	..Petitioner in W.P.No.16073 of 2018

1.The Additional Chief Secretary to Government
Home(Transport IV) Department
Secretariat, Chennai - 9. Respondent in all WPs

2.The Transport Commissioner
Chepauk, Chennai - 5 .. R-1 and R-2 in W.P.Nos.13520 to
13528 of 2018 & 14757 to 14766 &
16073 of 2018

3.T.Amalraj
4.G.Gopalakrishnan
5.M.Kamaraj
6.P.Arunachalam
7.D.Thiyagarajan

8.A.Raja

(R3 to R8-impleaded as per order of Court dated
06.07.2018 in W.M.P.No.20360/2018 in
W.P.No.13520 of 2018)

.. R-3 to R-8 in W.P.No.13520 of 2018

Prayer in W.P.Nos.13520, 13522, 13523, 13524, 14761, 14762,
14763 & 16073 of 2018:

Writ Petitions are filed under Article 226 of the Constitution of India praying to issue Writs of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent herein in his Letter No.76210/Tr.IV/2015-9 dated 01.12.2017 and quash the same and consequently direct the first respondent herein to relax Rule 30 (c) of the Special Rules for Tamil Nadu Ministerial Service in so far as the petitioner is concerned and further direct the second respondent herein to include the petitioner's name in the inter-se seniority list published in R.No.24449/ R3/2016 (E.O.No.191/2018) dated 23.05.2018 in the appropriate place and promote the petitioner as Superintendent for the year 2016-2017, 2017-2018 with all consequential service and monetary benefits.

Prayer in W.P.Nos.13521, 14757, 14760 of 2018: Writ Petitions are filed under Article 226 of the Constitution of India praying to issue Writs of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent herein in his Letter No.76210/ Tr.IV/2015-9 dated 01.12.2017 and the consequential order of the second respondent herein passed in his Procdgs.R.No.62429/RA2/2014 (E.O.No.156/18) dated 16.04.2018 and quash the same and consequently direct the first respondent herein to relax Rule 30(c) of the Special Rules for Tamil Nadu Ministerial Service in so far as the petitioner is concerned and further direct the second respondent herein to include the petitioner's name in the inter-se seniority list published in R.No.24449/ R3/2016 (E.O.No.191/2018) dated 23.05.2018 in the appropriate place and promote the petitioner as Superintendent for the year 2016-2017, 2017-2018 with all consequential service and monetary benefits.

Prayer in W.P.Nos.13525, 14764, 14765, 14766 of 2018: Writ Petitions are filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent herein in his Letter No.76210/Tr.IV/2015-9 dated 01.12.2017 and quash the same and consequently direct the second respondent herein to include the petitioner's name in the

inter-se seniority list published in R.No.24449/R3/2016 (E.O.No.191/2018) dated 23.05.2018 in the appropriate place and further consequently direct the second respondent herein to promote the petitioner as Superintendent for the year 2016-2017, 2017-2018 with all consequential service and monetary benefits.

Prayer in W.P.Nos.13526, 13527, 14758, 14759 of 2018: Writ Petitions are filed under Article 226 of the Constitution of India praying to issue Writs of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent herein in his Letter No.76210/Tr.IV/2015-9 dated 01.12.2017 and the consequential order of the second respondent herein passed in his Proceedings R.No.62429/RA2/2014 (E.O.No.156/18) dated 16.04.2018 and quash the same and consequently direct the second respondent herein to include the petitioner's name in the inter-se seniority list published in R.No.24449/R3/2016(E.O.No.191/2018) dated 23.05.2018 in the appropriate place and promote the petitioner as Superintendent for the year 2017-2018 with all consequential service and monetary benefits.

WP.NO.13528/2018:

Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the first respondent herein in his Letter No. 76210/Tr.IV/2015-9 dated 01.12.2017 and quash the same and consequently direct the second respondent herein to include the petitioners name in the inter-se seniority list published in R.No. 24449/R3/2016 (E.O.No. 191/2018) dated 23.05.2018 in the appropriate place and promote the petitioner as Superintendent for the year 2017-2018 with all consequential service and monetary benefits.

For Petitioner in all WPs : Mr.Ravi Shanmugam

For R-1&R-2 in all WPs : Mr.S.T.S.Murthi, Addl. Advocate
General assisted by Mr.V.Kathirvelu,
Special Government Pleader.

For R-3 to R-8 in WP : Mr.P.Wilson, Senior Counsel for
13520 of 2018 Mr.G.Sankaran.

C O M M O N O R D E R

The cause for the present writ petitions aroused on account of an order of rejection passed by the first respondent in proceedings dated 1.12.2017 stating that the promotion/transfer accorded to 92 Typists and 7 Steno-typists

Grade III as Assistants in the panel of the year 2012-2013 to 2014-2015 is not accordance with the Special Rules 30(c) and 9 (f) of the Tamil Nadu Ministerial Service respectively and in view of the fact that the 92 Typists and 7 Steno-typists Grade III had not served as Junior Assistants for a period of one year as contemplated under the Special Rules, they are not eligible for promotion to the post of Superintendents.

2. The facts to be considered are that the writ petitioners were selected by the Tamil Nadu Public Service Commission as Typists/Steno-typists and appointed as such. The writ petitioners had passed all the departmental examinations and their respective probations were declared on completion of satisfactory tenure of service as prescribed. The writ petitioners are maintaining clean records of service.

3. The second respondent had published a panel of eligible Junior Assistants/Steno-typists/Typists fit for promotion as Assistants and posted them as Accountants in Regional Transport Offices. The writ petitioners were promoted as Assistants/Accountants during the year 2012 and accordingly posted in Regional Transport Offices. The writ petitioners were served in the post of Assistants/Accountants for about six years from the year 2012 onwards.

4. The second respondent had issued an order of transfer and postings of Assistants to undergo two years norms in the office of the State Transport Authorities/State Transport Appellate Tribunal / Joint Transport Commissioner/ Deputy Transport Commissioner / Assistant Accounts Officer. The writ petitioners had completed their service qualifications as Assistants for two years in the State Transport Authorities from the years 2013 to 2015. Thus, the writ petitioners are fully qualified to be promoted to the post of Superintendents in the panel of the year 2016-2017.

5. The second respondent in his proceedings dated 4.8.2015, while rejecting the claim for seniority of Typists to be placed above the Junior Assistants recruited during the year 2009 at paragraph-9, had stated as follows:-

"As such, it is found that the earlier drawn panel is in order, except

(i) the Typists have not undergone the training as Junior Assistant, for a period of one year, as on the panel date, due to administrative reasons."

6. It has been admitted by the second respondent that due to administrative reasons, the Typists were not posted as Junior Assistants for one year and accordingly, a ratification

from the Government was sought for enabling the writ petitioners, who had already served as Assistants to get promotions. The second respondent on 13.5.2016 called for particulars of fully qualified Assistants fit for promotion as Superintendents for the year 2016-2017 with the crucial date as 15.3.2016. In the said list of qualified Assistants, the names of all the writ petitioners were included. The second respondent in proceedings R..No.62429/R3/2014 dated 9.11.2015 had sent a proposal to the first respondent for ratification of promotions of Typists and Steno-typists for the year 2012-2013. In paragraph 4 of the said proceedings, it is stated that on administrative reasons promotions were ordered before completion of one year clerical training for typists. In the said list also the names of the writ petitioners were included.

7. The second respondent, in proceedings dated 31.5.2017, had sent the proposal stating that Typists were promoted as Assistants without ensuring that they had acquired the technical qualification prescribed under Rule 30(c) of the Tamil Nadu Ministerial Service Rules of one year clerical training. The second respondent had pointed out in the above proceedings that the Division Bench of Madras High Court in W.A.No.2216 of 2013 dated 3.4.2014 had ordered promotion of Typists as Assistants on identical circumstances without insisting on one year clerical training.

8. The second respondent in proceedings dated 31.5.2017, had further requested the Government to ratify the promotions ordered to the writ petitioners as Assistants as they are working for more than four years in the post of Assistants and acquired all service qualifications for further promotion to the post of Superintendents. It is further stated that 90 posts of Superintendents are vacant and 56 typists alone are eligible for promotions. The proposals submitted by the second respondent, citing all these reasons by the first respondent in proceedings dated 1.12.2017 are under challenge in the present writ petitions.

9. The learned counsel, appearing on behalf of the writ petitioners, states that the writ petitioners are not at fault and they cannot be penalised for the administrative exigencies, which caused reasons for not sending them for clerical training to the post of Junior Assistants for a period of one year as per the Rules. Further, these typists/steno-typists were promoted to the post of Assistants, which is also the Ministerial Service. In the post of Assistants, they have already served about four years. Thus, their completion of one year training in Junior Assistant posts become an empty formality as far as the writ petitioners are concerned. This apart, on account of the administrative reasons admittedly, the writ petitioners were not

provided an opportunity to undergo the training of one year in the post of Junior Assistants.

10. Citing the administrative reasons, the second respondent had sent the proposal to the first respondent for ratification. The genuinity in the claim of the writ petitioners had not been considered in its letter and spirit. Contrarily, the impugned order has been passed without even assigning the valid reasons for such rejection.

11. The learned counsel for the writ petitioners further states that in the similar facts and circumstances, the High Court passed orders, granting the benefit of relaxation on account of the fact that the promotional opportunity to the employees cannot be denied on the ground that the employee did not possess the requisite qualification of experience in a particular post due to administrative lapses.

12. This Court passed an order in W.P.No.18501 of 2006 dated 9.10.2006, in paragraph-8, which reads as under:-

"8. It is also interesting to note that though the panel was of the year 1995, and the crucial date for preparation of the panel was 1.3.1995, the panel was released only by the proceedings dated 25.2.1996, by which time the petitioners had completed more than one year and ten months of service in the cadre of Rural Welfare Officer Grade I also. Under these circumstances, the petitioners cannot be denied the benefit of inclusion in the panel, on the ground that they did not possess the service qualification. After all, the service qualification cannot be equated to the qualification of a pass in the Departmental test. While the pass in a departmental test may be in the hands of the individual, the posting of the individual to a particular post, is not within the hands of the individual. Therefore, the respondents ought to have formulated and implemented a policy providing equal opportunity to all persons to acquire the service qualifications. Since the respondents have failed to do so, the petitioners were not at fault and on that ground, they should not have been omitted to be included in the panel."

13. In the case of S.Krishnakumar vs. State of Tamil Nadu [2011 (8) MLJ 317], this Court held that when the employee had passed departmental examination and when he cannot be blamed

for not undergoing the training, the non-inclusion of his name in the panel for promotion and denial of promotion to him when his juniors were given promotion, cannot be justified.

14. In the case of S.Sasisivanandam vs. District Collector [2012 (1) MLJ 634], this High Court held in paragraph 16, which reads as under:-

"16. The learned counsel for the petitioner has rightly contended that the judgment of this Court dated 4.9.2007 in W.P. Nos. 47872 and 47885 of 2006 and 7791 of 2007 is squarely applicable to this case. The relevant portion of the above said judgment reads as follows:

"8. Under these circumstances, the petitioners cannot be denied the benefit of inclusion in the panel, on the ground that they did not possess the service qualification. After all, the service qualification cannot be equated to the qualification of a pass in the departmental test. While the pass in a departmental test may be in the hands of the individual, the posting of the individual to a particular post, is not within the hands of the individual. Therefore, the respondents ought to have formulated and implemented a policy providing equal opportunity to all persons to acquire the service qualifications. Since the respondents have failed to do so, the petitioners were not at fault and on that ground, they should not have been omitted to be included in the panel."

15. In the order passed in WP No.9354 of 2012 dated 17.4.2012, again this Court in paragraphs 6 and 7 observed as under:-

"6. The issue arises for consideration herein is as to whether the petitioner can be blamed for non-possession of required service in the post of Assistant on the clerical side.

7. The power of posting in a particular department is vested with the authority concerned. The petitioner has no control over the said aspect. It is not the case of the respondents that the petitioner was offered the posting as Assistant and he declined to work in the same. In the absence of any such

averments, the decision relied on by the learned counsel for the petitioner is squarely applicable to the facts of this case."

16. In identical circumstances in WP No.15180 of 2013 dated 14.6.2013, this Court held in paragraph-12 which reads as under:-

"12 In view of these decisions, I am of the view that the writ petitioners are entitled to succeed in the writ petition and the respondents cannot reject the petitioners for promotion to the post of Assistant on the ground that they did not have service qualification as Junior Assistant for one year."

17. The Hon'ble Division Bench of this Court in WA No.2216 of 2013 dated 3.4.2014 observed in paragraphs 10 and 11 as under:-

"10. Similar issue arose for consideration in W.P.No.28666 and 30475 of 2012 and the learned single Judge, while allowing the writ petition, which is impugned in this writ appeal, placed reliance upon the common order, dated 14.02.2013, passed in the said writ petitions and also the order, dated 13.04.2012, made in W.P.No.9351 of 2012 (A.Badhrachalam -vs- The Principal Secretary/Commissioner of revenue Administration, Chepauk, Chennai-600 005 and another) and another order, dated 28.01.2010 in W.P.No.37729 of 2006 and also the judgment rendered by the Hon'ble Supreme Court of India reported in (1996) 8 SCC 762 [State Bank of India and others -vs- Kashinath Kher and others] as well as the judgment of the Division Bench of this Court, dated 20.01.2012, made in W.A.No.123 of 2012, wherein the order dated 28.01.2010, made in W.P.No.37729 of 2006 came to be confirmed, held that the stand taken by the official respondents therein that the statutory rule obliges the petitioners therein for completion of training for a period of one year cannot be sustainable.

11. In the considered opinion of the Court, the facts of the case would disclose that the respondents/writ petitioners are similarly placed like that of the writ

petitioners in the above said orders and the learned Judge by placing reliance upon the judgment reported in (2012) 1 M.L.J. 634 [S.Sasisivanandam -vs- District Collector, Thoothukudi District, Thoothukudi and another] and the order of this Court, dated 14.02.2013, made in W.P.Nos.28666 and 30475 of 2012 and also the judgment rendered by the Hon'ble Supreme Court of India reported in (1996) 8 SCC 762 paragraph No.10 [State Bank of India and others -vs- Kashinath Kher and others] and having considered the facts of the case, has rightly allowed the writ petition. This Court is of the considered view that there is no infirmity in the order passed by the learned single Judge, which is also covered by the judgment dated 20.01.2012 made in W.A.No.123 of 2012, and no grounds have been made out for interference. Therefore, the writ appeal is dismissed, confirming the order, dated 14.06.2013, made in W.P.No.15180 of 2013. No costs. The appellants are directed to comply with the above said order passed in the writ petition confirmed in this Appeal, within a period of eight weeks from the date of receipt of copy of this order. Connected Miscellaneous Petition is closed."

18. Citing all the above judgments, the learned counsel for the writ petitioners states that the case of the writ petitioners are also to be considered for relaxation of the training, which is contemplated under the Rules and the writ petitioners cannot be penalised for not undergoing the training since they had not declined to undergo such training. Contrarily on administrative grounds no such opportunity was provided to these writ petitioners. सत्यमेव जयते

19. The learned counsel for the respondents disputed the contentions of the learned counsel appearing on behalf of the writ petitioners by stating that based on the representation of the Assistants of the Transport Departments, promoted from the typist category corresponding to the panel of the year 2012-2013 and also in pursuance of the directions of this Hon'ble Court in WP No.34359 of 2014 dated 22.12.2014, the seniority issue of the typists was taken for consideration and an order was passed in proceedings dated 4.8.2015. While processing the issue, it was noticed that 92 typists and 7 steno-typists were promoted as Assistants for the years 2012-2013 to 2014-2015, who have not acquired the service qualifications prescribed in Rule

30(c) of the Special Rules for the Tamil Nadu Ministerial Service Rules as on the date of their promotion.

20. Hence, the second respondent had submitted the proposal to the first respondent for ratification of his action in having promoted typists/steno-typists as Assistants, who have not acquired service qualifications as per the above Rules. The typists promoted as Assistants had submitted their representations to the first respondent and subsequently, filed WP No.22154 of 2017 to consider the representation dated 27.12.2016 for relaxation of Rule 30(c) on Special Rules in the Ministerial Service Rules and this Court passed an order, directing the first respondent to consider the representation. The first respondent considered the proposals and rejected the claim of the writ petitioners by stating that it is not feasible for compliance since the writ petitioners had not acquired the service qualifications prescribed under Rule 30(c) of the Special Rules for Tamil Nadu Ministerial Service Rules.

21. It is mainly contended that the case of the writ petitioners were not considered for promotion to the post of Superintendents because they have not possessed the requisite qualification of one year training in the post of Junior Assistant as contemplated under Rule 30(c) of the Special Rules for Tamil Nadu Ministerial Service Rules.

22. The learned Senior Counsel, appearing on behalf of the impleaded respondents also contended that relaxation cannot be granted in favour of the writ petitioners. The Government cannot grant the relaxation in a routine manner. If the benefit of relaxation of Rule is granted, then the very prescription of Rule itself would become defeated and therefore, such a relaxation cannot be granted enabling these writ petitioners to get promotion to the post of Superintendents. The impleaded contesting respondents are fully qualified for promotion to the post of Superintendents and therefore by granting the relaxation to these writ petitioners, their opportunity of promotion cannot be denied at all.

23. The learned Senior Counsel reiterated the Rule 30 (c) of the Special Rules for Tamil Nadu Ministerial Service Rules, by stating that "no Typist shall be eligible for promotion as Assistants or to the posts which carry the scale of pay of Assistants in any department unless he has undergone training as Junior Assistant for a period of one year without detrimental to his Typist work".

24. Relying on the said Rule of 30(c) of the Tamil Nadu Ministerial Service Rules, the learned Senior Counsel state that the very purpose of the Rule cannot be defeated. The training

period of one year in the post of Junior Assistant is prescribed, enabling these typists to understand the office procedures. When the typists had not undergone the requisite training period of one year in the post of Junior Assistant, then, they cannot be made eligible for promotion to the post of Superintendents. The spirit of the Rule cannot be diluted by granting relaxation unnecessarily to all these writ petitioners, who all are otherwise unqualified for the post of Superintendents.

25. The learned Senior Counsel contended that the writ petitioners were promoted to the post of Assistant during the year 2012. However, the writ petitioners had completed their probation in the post of Typist only during the year 2011. Even before completion of one year period after the declaration of probation, the writ petitioners were promoted from the post of Typist to the post of Assistant. Thus, the administrative fault committed during the relevant point of time cannot be condoned by relaxing the relevant Service Rules, which is to be followed otherwise strictly.

26. As far as the promotion to the post of Assistant is concerned, the writ petitioners were promoted to the post of Assistant in the year 2012 and the said promotion itself is irregular. Without undergoing the period of one year training in the post of Junior Assistant, the case of the writ petitioners ought not to have considered for promotion to the post of Assistant. This apart, the inter se seniority list fixed is also contrary to the Rules in force. The writ petitioners are placed above the contesting respondents, despite the fact that the contesting respondents were appointed directly to the post of Assistant through Tamil Nadu Public Service Commission. Even as per the Rules, the direct recruitees selected through Tamil Nadu Public Service Commission should be placed above the promotees. Thus, even the inter se seniority list is contrary to the Rules in force.

27. This Court is of the considered opinion that promotion granted to the writ petitioners to the post of Assistant during the year 2012 is not under challenge in the present writ petitions. Even the inter se seniority list is not questioned, the writ petitions are filed only for the purpose of grant of relaxation of Rule 30(c) of the Special Rules, which contemplates undergoing of training for a period of one year in the post of Junior Assistant as far as the Typists, who all are eligible to be promoted to the post of Assistant.

28. Thus, the issue now raised by the contesting respondents that the promotion granted to the writ petitioners during the year 2012 has no relevance and this apart, the date

of appointment/promotion in the post of Assistant alone is to be the criteria for the purpose of fixation of seniority. It is stated by the learned counsel for the writ petitioners that the writ petitioners were appointed prior to the appointment of the contesting respondents and therefore, they are placed above the names of the contesting respondents. In other words, the seniority list was prepared based on the date of appointment/promotion and there is no irregularity or infirmity as such.

29. The learned Senior Counsel further stated that the writ petitioners have sought for ratification of the promotion granted to the post of Assistant without undergoing the training for a period of one year in the post of Junior Assistant as contemplated under Rule 30(c) of the Special Rules for Tamil Nadu Ministerial Service Rules. The ratification is rejected by the Government. Therefore, this Court cannot grant any relief to the writ petitioners as the question of ratification does not arise at all and the promotion of the writ petitioners to the post of Assistant itself was irregular.

30. In this regard, it is relevant to note that the writ petitioners were promoted to the post of Assistant. Admittedly, without providing an opportunity to undergo the training in the post of Junior Assistant as contemplated under Rule 30(c) of the Special Rules. However, the second respondent himself admitted in the proposal submitted to the Government that "the connected promotion files were perused and ascertained that no intentional acts were involved, for these noted violations. Moreover, all these acts were on administrative reasons and the individuals also have benefited, by such Promotions/ Transfers. Further the existence of connected Government Orders were also not known, at the panel drawing time".

31. Repeatedly, it is admitted by the second respondent that the writ petitioners were promoted to the post of Assistant on administrative grounds and the individuals were not at fault. This being the factum, now at the time of grant of promotion to the post of Superintendent, the case of the writ petitioners cannot be negated on the ground that they had not undergone the training for a period of one year in the post of Junior Assistant as contemplated under the Rules.

32. In fact, these writ petitioners have already served as Assistants/Accountants for about four years and the very purpose and the object of the Special Rules sought to be achieved had already been achieved and under these circumstances, the denial of promotion will certainly would

prejudice the interest of the writ petitioners in respect of their right of consideration for promotion.

33. It is relevant to note that relaxation of Rule 30 (c) of the Special Rules for Tamil Nadu Ministerial Service Rules as well as the ratification of the Act of promotion granted by the authorities are inter connected. The fact remains that the writ petitioners were promoted to the post of Assistant without undergoing the training in the post of Junior Assistant. In respect of Rule 30(c) of the Special Rules, relaxation is required and in respect of the Act, promotion already granted without undergoing the training, the ratification is required.

34. This being the procedures to be followed, the contentions raised on behalf of the contesting respondents that ratification alone is sought for deserves no consideration and both are interconnected. Once the ratification is considered, it involves relaxation also and both is to be done by way of a common order to be passed by the Government.

35. Considering the facts and circumstances and the arguments advanced by the respective learned counsels for the parties, this Court is of an opinion that undoubtedly, the Rule contemplates that a Typist should undergo a training for a period of one year in the post of Junior Assistant for promotion to the post of Assistant or to the posts which carry the scale of pay of the Assistant in any Department. Thus, it is clear that a Typist is eligible for promotion to the post of Assistant. However, the Typist should undergo the training for a period of one year in the post of Junior Assistant.

36. The fact remains that these writ petitioners had not undergone the training in the post of Junior Assistant for one year, while they are working as Typists. However, these writ petitioners had already been promoted to the post of Assistants without undergoing the training in the post of Junior Assistant. The very Rule 30(c) of the Special Rules for Tamil Nadu Ministerial Service Rules states that "no Typist shall be eligible for promotion as Assistants or to the posts which carry the scale of pay of Assistants in any department unless he has undergone training as Junior Assistant for a period of one year without detrimental to his Typist work". However, without undergoing such training contemplated under the Rules, all these writ petitioners were already promoted to the post of Assistants during the years 2012-2013 and 2013-2015.

37. All the writ petitioners are now serving in the post of Assistants/Accountants and it is an admitted fact that they have not undergone the Junior Assistant training, while they were holding the post of Typist. Now the question arises

whether they are eligible for promotion to the post of Superintendents. The feeder category for promotion to the post of Superintendent is Assistant. All the writ petitioners are now working as Assistants. The Rule can be applied for promotion to the post of Assistants and not for promotion to the post of Superintendents. The respondents state that when the writ petitioners are not even eligible for promotion to the post of Assistant, they cannot be further promoted to the post of Superintendent.

38. The respondents 1 and 2 had not granted relaxation or ratification in the present case. Contrarily, relaxation may not be required in view of the fact that the writ petitioners were already promoted to the post of Assistants and they were served in the said post for the period of about four years. Thus, ratification is to be issued by granting relaxation of the Rules.

39. It is important to consider the fact that the very purpose and the object of the Rule 30(c) is to ensure that a person, who was appointed in the post of Typist should acquire the knowledge in office procedures, so as to get promotion to the post of Assistant. The very idea of the framers of the Rule is that the post of Typist and Junior Assistant are equivalent, carrying the same scale of pay. Thus, a typist, who is aspiring to get promotion to the post of Assistant must undergo the training for a period of one year in the post of Junior Assistant and learn the office procedures, so that on promotion to the post of Assistant, he can perform the duties and responsibilities attached to the post of Assistant without any hurdles. Thus, it is clear that the Rule contemplates period of one year training in the post of Junior Assistant and it is only for acquiring experience in the office procedures.

40. Let us now consider whether the writ petitioners have acquired knowledge regarding the office procedures for promotion to the post of Superintendents. Undoubtedly, the writ petitioners had not undergone the period of one year training in the post of Junior Assistants. However, they were promoted to the post of Assistants and served in the post for about four years. Thus, as of now all the writ petitioners have acquired the knowledge in office procedures and therefore they are in a position to handle the office procedures even in case of their promotion to the post of Superintendents.

41. The next question aroused whether the Government can grant ratification and relaxation of Rule at this point of time. The learned Senior Counsel, appearing on behalf of the impleaded respondents, contends that relaxation cannot be granted as the Rule itself contemplates the requisite

qualification for promotion to the post of Assistant. The writ petitioners are not even eligible for promotion to the post of Assistants. Thus, they are ineligible for further promotion to the post of Superintendents.

42. This Court is of an opinion that a pragmatic approach and a constructive interpretation of the Rules are certainly warranted in order to provide complete justice to the parties. Rules are made for certain purposes. The objects sought to be achieved through the Rules are also to be considered by the Courts. In this regard, the constructive interpretation is to be adopted for the purpose of neutralising any injustice, if caused to a person or to the group of people. In other words, if any injustice is caused without any fault on the side of the employees, then the Court has to adopt the pragmatic approach by interpreting the Rule in a practical manner.

43. Undoubtedly, relaxation cannot be granted in a routine manner. Even in the case of N.Srinivasan vs. Principal Secretary to Government, Environment and Forest Department [decided on 5.10.2017 in WP 2762 of 2014], this Court (S.M.Subramaniam., J.) ruled in paragraphs 8, 9, 14, 15 and 16 of the judgment, as follows :

"8. 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.

9. 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.

14. 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.

15. 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 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.

16. 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."

44. There is no ambiguity in respect of the principle that relaxation can never be claimed as a matter of right nor relaxation can be granted in a routine manner. However, it is repeatedly emphasized by the Courts that in the event of any injustice caused on account of certain administrative exigencies or on administrative grounds, the employees cannot be made to suffer nor deprived of their opportunities for further promotions on account of non-acquisition of such experience or training, which was not accorded to them on certain administrative grounds.

45. In the present case on hand, the writ petitioners are not on fault and they had not committed any default. The writ petitioners were willing and ready to serve as Junior Assistants. No writ petitioner had declined to undergo training for one year in the post of Junior Assistant. However, the administration has taken a decision to promote them to the post of Assistants and accordingly, all the writ petitioners were promoted to the post of Assistants/ Accountants and they are serving for about 4 years in the said post. The post of Assistant is the feeder category for promotion to the post of Superintendent. Now the writ petitioners are serving in the feeder category, and thus, they are eligible for promotion to the post of Superintendents. They have acquired the training now in the post of Assistants.

46. The writ petitioners have admittedly served as Assistants for about 4 years and therefore, it is to be construed that for the purpose of Rule 30(c) of the Special Rules, they had already acquired experience now in the post of Assistant, which is also coming under the Tamil Nadu Ministerial Service Rules. The experience acquired by the writ petitioners in the post of Assistants/Accountants can certainly be compared and equated with one year training contemplated in the post of Junior Assistant as per Special Rules. Ultimately, the purpose for prescribing the Rule is that they should learn the office procedures before their promotion to the post of Assistant. The writ petitioners had already served four years in the post of Assistants. Thus they have acquired requisite knowledge in the office procedures and therefore, the non-compliance of Rule 30 (c) as far as the writ petitioners are concerned now became unnecessary and considering the fact that the writ petitioners were not at fault and they were promoted to the post of

Assistants on administrative reasons/exigencies and now they cannot be penalised by denying their further promotion to the post of Office Superintendents.

47. Thus, this Court has to arrive at a conclusion that the denial of an opportunity to undergo the training in the post of Junior Assistant cannot cause any injustice to the writ petitioners for getting further promotion to the post of Office Superintendents. This Court of an undoubted opinion that the writ petitioners have not committed any fault. They were appointed as Typists/Steno-typists and they were promoted to the post of Assistants/Accountants and they served in that capacity for about 4 years and the post of Assistant is the feeder category for promotion to the post of Office Superintendents.

48. This being the factum, the administration committed a fault in not sending these typists to undergo the training for a period of one year in the post of Junior Assistants. However, the administration promoted them to the post of Assistants and other writ petitioners, who all are already served for about 4 years in the Ministerial Service.

49. Thus, the purpose and the objects of the Rule had already been fulfilled and under these circumstances, the purpose and the object of the Rule should be constructively interpreted enabling the writ petitioners to get further promotion to the post of Office Superintendents. In the event of not having such an approach, the writ petitioners are denied of their promotion without any fault on their part.

50. This apart, the promotion to the post of Assistants granted to the writ petitioners were not challenged. They served in the post of Assistants for about 4 years. Under these circumstances, this Court has no hesitation in coming to the conclusion that the writ petitioners suffered an administrative lapse on the hands of the respondents and therefore, the exceptional circumstances now portrayed before this Court in the present writ petitions, warranted that, the writ petitioners must be considered for the purpose of grant of relaxation of Rule 30(c) of the Special Rules for Tamil Nadu Ministerial Service Rules and by way of ratification in respect of promotion as Assistant enabling the writ petitioners to get promotion to the post of Office Superintendents in the panel of the year 2016-2017.

51. Even this Court, while interpreting the scope of the Rule of relaxation categorically enumerated that the Rule of relaxation is to be exercised only on exceptional circumstances in order to redress the grievances, if there is any injustice caused to the employees without any fault on their part. The

case of the writ petitioners on hand squarely falls under the category, where without any fault on their part, they are now penalised by not granting promotion to the post of Superintendents. Thus, the lis on hand is an exceptional one, wherein rule relating to relaxation is to be invoked.

52. Finally, this Court would like to refer to the judgment of 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]. While discussing the principles regarding the rule of relaxation, Hon'ble Mr. Justice V.R.Krishna Iyer, speaking for the Bench, in paragraph-9 of the judgment, emphatically ruled the legal principles as under:-

"9. Let us assume for a moment that the State Government had not reported to the Central Government and that the consultation with the Union Public Service Commission had not been made by the Central Government. Let us further assume that, in a strict view, that was needed. Even so, the Union Territories of Himachal Pradesh and Delhi should have formally told the Home Ministry about the officiation beyond three months by Ahluwalia in a cadre post. This was not done. The real line of distinction between a State and the Union of India might well be blurred a little when it is a Union Territory. Moreover, there is the circumstance that the entire Service was in the melting pot for a few years because the All-India Services were being switched from Himachal Pradesh and Delhi into all the Union Territories. Even more; since uncertainty prevailed while the question of a part of Punjab being tacked on to Himachal Pradesh came to engage the Administration. Amidst these fluctuating factors, the solecism committed by the Union Territory of Himachal Pradesh in not having reported to the Central Government about continuing Ahluwalia, beyond 3 months, in a cadre post, was a venial sin for which the candidate was free from blame. Secondly, the argument, based on Sahney, a senior to Ahluwalia, being in an ex-cadre post and therefore, Ahluwalia's service during that period not being regular, also cannot be exaggerated out of proportion. Technically, the CBI, posts are ex-cadre posts, but it is a Central Government Department and nothing is suggested that there was something suspicious in Sahney being kept in the CBI, to facilitate

Ahluwalia's continuance in a Cadre post. Everything in this case is straightforward and, therefore, if there was any administrative lapse, Ahluwalia could not be victimised. Indeed, an unwitting hardship inflicted on a member of the Service under such circumstances can be relieved against by exercise of the residuary power of Central Government under Rule 3 extracted above. They passed the order (Annexure 'X') which we reproduce:

"Annexure 'X'.

No. 24/16/71-Pers. II (IPS) Government of India/Bharat Sarkar Ministry of Home Affairs/Grih Mantralaya.

MEMORANDUM.

S/Shri P.C. Sahney, K.S. Dhaliwal and V.K. Ahluwalia were appointed from the Indian Police Service by promotion from the State Police Service on January 30, 1971 and allocated to the Himachal Pradesh Cadre of Service.

2. Prior to their appointment to the Indian Police Service, these officers were holding the following posts.

* * *

In accordance with Regulation 8 of IPS (Appointment by Promotion) Regulations, 1955 the Select List officers are to be appointed to the cadre post in the order in which their names appear in the Select List. As such in cases where a senior select list officer was not holding a cadre post, the officiation in a cadre post of a junior officer in the Select List was not approved by the Central Government because the appointment of Junior Select List officer to a cadre post was violative of the provisions of Regulation 8 of the Promotion Regulations.

* * *

Accordingly, it was decided that the rules may be relaxed to count the period of officiation against ex-cadre posts so as to give benefit of the service rendered by the junior officers in the cadre post for the purpose of seniority. Applying the ratio of

the case of U.T. Cadre, the Government of India has come to the conclusion that the appointment of Shri P.C. Sahney in the CBI on deputation basis from December 7, 1964 to October 6, 1969 was made by the Central Government in public interest since Shri Sahney belonged to the U.T. Cadre which was managed by the Central Government. It can, therefore, be said that the question of misuse of provisions of rules and regulations by the State Government in this case does not arise. The certificates that but for his appointment to ex-cadre post in the CBI, Shri Sahney would have continued against a cadre post, was to be issued by the Ministry of Home Affairs and the fault, if any, lies with the Central Government and not with any State Government. It has, therefore, been tentatively decided to count the ex-cadre officiations of Shri P.C. Sahney from December 7, 1964 to October 6, 1969 for the purpose of seniority in relaxation of the provisions of the IPS (Regulation of Seniority) Rules, 1954.

* * *

In view of the counting of ex-cadre officiation of Shri P.C. Sahney for the period December 7, 1964 to October 6, 1969, the cadre officiation of S/Shri K.S. Dhaliwal and V.K. Ahluwalia prior to October 13, 1969 will not be violative of the provisions of Regulation 8 of IPS (Appointment by Promotions) Regulations, 1955. It is, therefore, prepared to count the entire cadre officiation of S/Shri K.S. Dhaliwal and V.K. Ahluwalia for the purpose of their seniority. Accordingly, the crucial date in respect of S/Shri K.S. Dhaliwal and V.K. Ahluwalia shall be March 28, 1965 and, November 11, 1965, respectively.

* * *

sd/-

A. JAYARAMAN

Under-Secretary to the Government
of India"

After full and second consideration, the Central Government passed Annexure 'Y' dated December 1, 1978, whereby Ahluwalia was given

the benefit of 1961 as the year of the allotment. The period of officiation of Ahluwalia between August 1, 1968 and October 19, 1969 was approved by the Central Government after consultation with the UPSC. This retrospectively cured the infirmity that existed in Ahluwalia's officiation, beyond 3 months or 6 months, in a cadre post without consultation with the UPSC. The contravention of Regulation 8 was, thus, relieved against."

53. As reiterated earlier, grant of relaxation or ratification is an exception and cannot be granted in a routine manner. The lis on hand are considered based on certain facts and circumstances. Thus, the same cannot be followed as the precedent.

54. Accordingly, the following orders are passed:-

(1) The order impugned passed by the first respondent in letter No.76210/Tr.IV/2015-9 dated 1.12.2017 is quashed.

(2) The respondents are directed to pass necessary orders, granting relaxation of Rule 30(c) of the Tamil Nadu Ministerial Service Rules in favour of the writ petitioners and also ratify the act of the competent authority in granting promotions to the post of Assistant to all these writ petitioners, without undergoing the training for a period

of one year in the post of Junior Assistant. Such an exercise of passing an order shall be done by the respondents, within a period of four weeks from the date of receipt of a copy of this order.

(3) After complying with the directions given above, the respondents are directed to consider the names of all the eligible persons in the cadre of Assistant, who all are fit for promotion to the post of Superintendent, including the writ petitioners and accordingly, grant promotion with reference to the inter se seniority list published in R.No.24449/R3/2016 (E.O.No.191/2018) dated 23.5.2018.

55. With the above directions, all the writ petitions stand allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

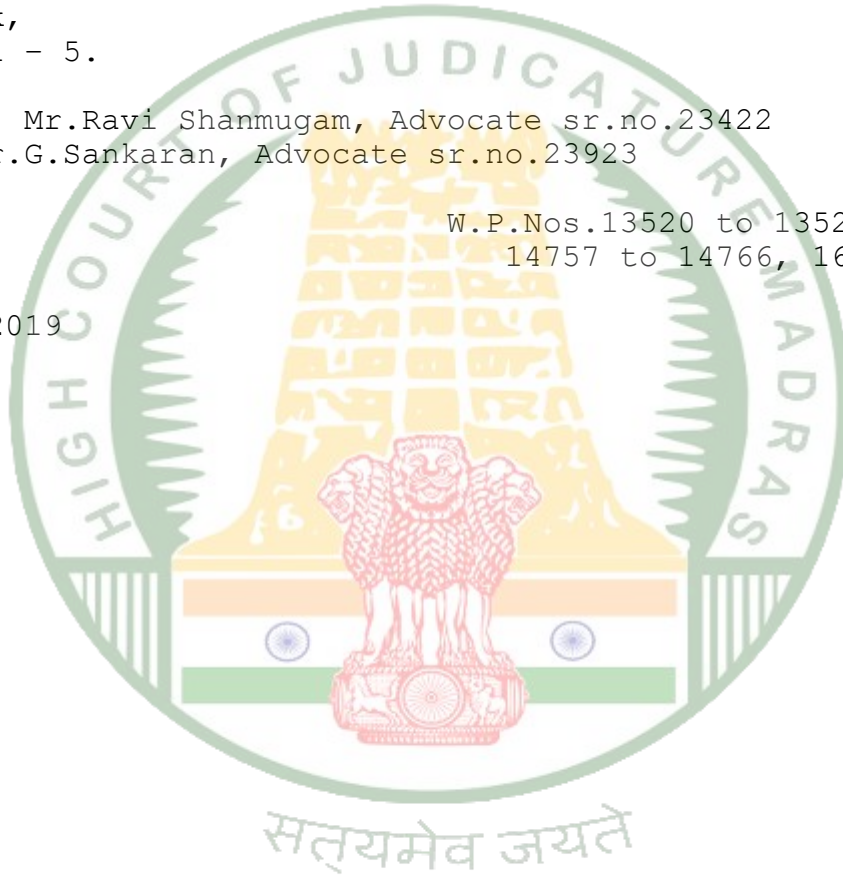
1.The Additional Chief Secretary to Government
Home (Transport IV) Department,
Secretariat,
Chennai - 9.

2.The Transport Commissioner,
Chepauk,
Chennai - 5.

+20ccs to Mr.Ravi Shanmugam, Advocate sr.no.23422
+1cc to Mr.G.Sankaran, Advocate sr.no.23923

W.P.Nos.13520 to 13528 of 2018,
14757 to 14766, 16073 of 2018

nr 23/04/2019



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