



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.7398 of 2013

Dr.R.Sudarsana

... Petitioner

-Vs-

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai.
- 2.The Commissioner,
Directorate of Indian Medicine and Homeopathy,
Arumbakkam, Chennai.
- 3.The Principal,
Government Homeopathy Medical College,
Tirumangalam, Madurai District.

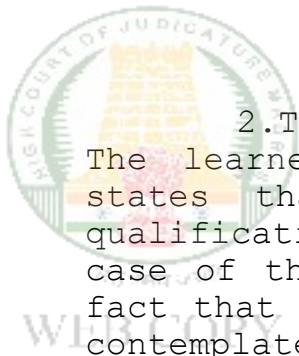
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the first respondent to consider the petitioner for promotion to the post of Professor in the 3rd respondent college by relaxing the Rule 3(a) of the Adhoc Rules as was done in respect of similarly placed person viz., Dr.S.Sembulingam under G.O.(D)No.1301, Health and Family Welfare (1M-1) Department, dated 01.12.2011 by considering the petitioner's representation dated 21.03.2013 within the period that may be stipulated by this Court.

For Petitioner	: Mr.Mohamed Rafi, For M/s.Ajmal Associates.
For Respondents	: Mr.M.Jeyakumar, Additional Government Pleader.

ORDER

The relief sought for in the present Writ Petition is to direct the first respondent to consider the writ petitioner for promotion to the post of Professor in the third respondent Medical College, by relaxing the Rule 3(a) of Adhoc Rules as was done in respect of the similarly placed person viz., Dr.S.Sembulingam under G.O.(D)No.1301, Health and Family Welfare (1M-1) Department, dated 01.12.2011 by considering the representation dated 21.03.2013 submitted by the writ petitioner.

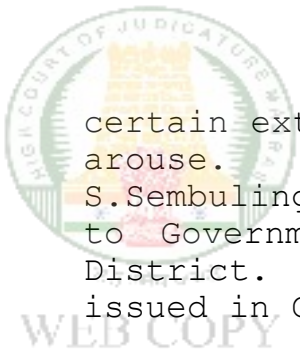


2.The writ petitioner is working as Tutor (selection grade). The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner is possessing all necessary qualification for promotion to the post of Professor. However, the case of the writ petitioner was not considered, on account of the fact that she was not having the teaching experience of 5 years as contemplated under the Adhoc Rules in force. However, in similar circumstances, the case of one S.Sembulingam was considered and the Government granted necessary relaxation in respect of Rule 3(a) of the Adhoc Rules and extended the benefit of promotion to the post of Professor. Thus, the writ petitioner also submitted a representation to grant relaxation of rules for the purpose of granting promotion to the post of Professor to the writ petitioner also. However, the said representation has not been considered. Contrarily, the representation of the said S.Sembulingam was considered and he was promoted as Professor.

3.The learned Additional Government Pleader appearing on behalf of the respondents states that as per the rules, 5 years of teaching experience is prescribed for promotion to the post of Professor. During the relevant point of time, when the panel was prepared for promotion to the post of Professor, the writ petitioner was having only 2 years of teaching experience and therefore, the writ petitioner was found disqualified for the promotion to the post of Professor. In respect of other case cited by the writ petitioner, the said S.Sembulingam, Tutor was having 14 years of teaching experience and also the extraordinary situation existed during 2011-12, when there was a dire necessity to fill up the shortage in teaching faculties for grant of recognition to Government Homeopathy Medical College, Thirumangalam, Madurai District, which warranted the issue of G.O.(D).No.1301, Health and Family Welfare (1M-1) Department, dated 01.12.2011, and it cannot be equated and also such a situation is not existing in the Medical College in the present position.

4.It is contended that on account of certain extraordinary circumstances and in order to get recognition from the Medical College, the relaxation was granted in favour of the said S.Sembulingam. Such a situation was not prevailing, when the case of the writ petitioner was under consideration. Thus, the case of the writ petitioner cannot be considered for grant of relaxation.

5.This Court is of the considered opinion that relaxation is an exception. Relaxation can never be claimed as a matter of legal right. Once relaxation is granted, the same cannot be cited as a precedent for the purpose of granting further relaxation of rules in a continuance manner. Relaxation is to be granted only on certain mitigating circumstances and not otherwise. Thus, relaxation being exception cannot be granted by citing one precedent. Further, in the present case, the case of S.Sembulingam was considered on



certain extraordinary circumstances, when an administrative exigency arouse. The Government also explained that the case of S.Sembulingam was considered for the purpose of granting recognition to Government Homeopathy Medical College, Thirumangalam, Madurai District. Under those circumstances, the Government Order was issued in G.O.Ms.No.1301, dated 01.12.2011.

6. Such circumstances cannot be cited as a precedent for the purpose of granting relaxation in all such cases, where the candidates are not possessing requisite qualification as prescribed in the rules in force. In the present case, the writ petitioner was not having the requisite teaching experience as prescribed in the Adhoc Rules. Thus, the writ petitioner was not qualified. Granting of relaxation cannot be issued by the High Court.

7. In this regard, this Court has already elaborately considered the scope of granting relaxation in W.P.No.2762 of 2014, dated 05.10.2017 and the relevant paragraphs are extracted hereunder:-

"7. In this context, the legal principles in the matter of regularization of service is to be considered by this Court in the light of the Judgments of the Hon'ble Supreme Court of India. Rule 48 of the Tamil Nadu State and Subordinate Service Rules states that Notwithstanding anything contained in the Special Rules for various State and Subordinate Services, where the normal method of recruitment to any service, class or category is neither solely by direct recruitment nor solely by recruitment by transfer but is both by direct recruitment and by recruitment by transfer,

(a) the proportion or order in which the special rules concerned may require vacancies to be filled by direct recruitment and by recruitment by transfer shall be applicable only to vacancies in the permanent cadre;

(b) a person shall be recruited direct only against vacancy in such permanent cadre, and only if the vacancy is one which should be filled by a direct recruit under the special rules referred to in clause (a); and

(c) recruitment to all other vacancies shall be made by recruitment by transfer. Provided that any temporary post, which is in existence for more than five years, shall be treated as a permanent post for the purpose of this section.

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.

10. In interpreting provisions for relaxation, it has been pointed out that the power of relaxation even if generally included in the Service Rules could either be for the purpose of mitigating hardship or to meet a special and deserving situation. Any arbitrary exercise of such power must be guarded against and that the rule of relaxation must get pragmatic construction, so as to achieve effective implementation of good policy.

11. The Hon'ble Supreme Court of India, in the case of Suraj Prakash Gupta and Others vs. State of J&K and Others [(2000) 7 SCC 561], reiterated the principles, in paragraph-32, as under:-

"32. On facts, the reasons given in the Cabinet note for granting relaxation are hopelessly insufficient. In fact, the letter of the Commission dated 25-11-1997, shows that the Commission was prepared to give its opinion in regard to regularisation of each promotee but the Government backed out when the Commission called for the records relevant for considering suitability for regular promotion. In our view, there can be no hardship for a person seeking appointment or promotion to go by the procedure prescribed therefor. The relevant Recruitment Rule for promotion cannot itself be treated as one producing hardship. Narender Chadha case [(1986) 2 SCC 157 : 1986 SCC (L&S) 226] must be treated as an exception and not as a rule. In fact, if such relaxation is permitted in favour of the promotees then the same yardstick may have to be applied for direct recruits. In fact the J&K Government has already started to do so and this has



not been accepted by this Court in Narinder Mohan case [(1994) 2 SCC 630 : 1994 SCC (L&S) 723 : (1994) 27 ATC 56] and Dr Surinder Singh Jamwal case [(1996) 9 SCC 619 : 1996 SCC (L&S) 1296] referred to above. If it is to be held that direct recruitment can also be permitted without consulting the Service Commission (in case it is required to be consulted there will, in our opinion, be total chaos in the recruitment process and it will lead to backdoor recruitment at the whims and fancies of the Government). Such a blanket power of relaxation of Recruitment Rules cannot be implied in favour of the Government."

12.The Hon'ble Supreme Court of India, in the case of Shri Amrik Singh and Others vs. Union of India and Others [(1980) 3 SCC 393], discussed the principles regarding the rule of relaxation, His Lordship Hon'ble Mr. Justice V.R.Krishna Iyer, speaking for the Bench, emphatically ruled the legal principles as under:-

"Government must be satisfied, not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Services causes undue hardship, then the iniquitous consequence thereof may be relieved against by relaxation of the concerned Rule or Regulation. There must be undue hardship and, further the relaxation must promote the dealing with the case in a just and equitable manner. These are perfectly sensible guidelines. What is more, there is implicit in the Rule, the compliance with natural justice so that nobody may be adversely affected even by administrative action without a hearing. We are unable to see anything unreasonable, capricious or deprivatory of the rights of anyone in this residuary power vested in the Central Government. Indeed, the present case is an excellent illustration of the proper exercise of the power. We are, therefore, satisfied that the Central Government was right in invoking its power to relax and regularize the spell of officiation, which was impugned as irregular or illegal. The consequence inevitably follows that the officer Ahluwalia was rightly assigned 1961 as the year of allotment."

13.Thus, this Court is also of the opinion that the power to grant and exemption, cannot be exercised in a manner to destroy the general provision from which the exemption is granted. For example, where the number of exemptees is far in excess of vacancies and render the chances of qualifiers illusory.

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.

17. Thus, the Court has to adopt a balancing approach in this kind of cases, where the relaxation is sought for as a prayer in the writ petition. Now let us look into the case of a regular employee in verge of promotion for a particular cadre after satisfying the regular recruitment rules in force. If a relaxation is granted to an unqualified person, then



he will supersede the candidates who were otherwise qualified and it will create a discrimination amongst the employees and it is the constitutional perspective that an equal opportunity in employment as well as in the promotion to be ensured to the qualified persons. The constitutional perspective in this regard is that the equality class provided to all the citizens, who were equally placed and no person can be deprived of his right of promotion to the higher cadre. In the event of granting relaxation under Rule 48, the right of the employees, who were appointed in accordance with the rules will also get affected. Such a regularization granted in a routine manner will affect the equality clause and the constitutional directives in this issue."

8. In view of the fact that during the relevant point of time, when the approved panel was prepared, the writ petitioner was not possessed the requisite experience of 5 years, there is no infirmity in respect of the decision taken by the authorities for not considering the case of the writ petitioner for promotion to the post of Professor. However, as of now, the writ petitioner is fully qualified and if a panel for promotion is prepared by taking administrative decision to fill up the post, then the case of the writ petitioner is also to be considered along with all other eligible candidates, who are all aspiring to secure promotion to the post of Professor.

9. Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Chennai.

2. The Commissioner,
Directorate of Indian Medicine and Homeopathy,
Arumbakkam, Chennai.



3.The Principal,
Government Homeopathy Medical College,
Tirumangalam, Madurai District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-83912[F] dated
28/08/2019)

W.P. (MD)No.7398 of 2013

27/08/2019

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