



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:18.06.2019
CORAM

THE HON'BLE MR.JUSTICE **S.M.SUBRAMANIAM**
W.P. (MD) No.10426 of 2015

and
M.P (MD) No.2 of 2015

- 1.K.Vijayakumar
- 2.N.Mohamed Jamaludeen
- 3.K.Balamaruthu
- 4.C.Vaithiyanathan
- 5.M.Alagar

All are working as
Junior Assistant,
Tiruchirappalli City Municipal Corporation,
Cantonment,
Tiruchirappalli.

... Petitioners

-vs-

1. The Secretary to Government,
State of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Municipal Administration,
Chepauk,
Chennai - 600 005.
3. The Commissioner,
Tiruchirappalli City Municipal Corporation,
Cantonment,
Tiruchirappalli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent herein in his proceedings in Letter No.32318/MC.5/2013-7, dated 17.11.2014 and quash the same and consequently to direct the first respondent to relax the qualification of Typewriting for the Petitioners in the post of Junior Assistant cum typist in the third respondent Corporation.



For Petitioner : Mr.K.Hemakarthiskeyan

For Respondent2 : Mr.S.Dhayalan
Government Advocate

For Respondent-3 : Mr.N.S.Karthikeyan

WEB COPY

O R D E R

The order of rejection rejecting the claim of the Writ Petitioners to grant exemption and relaxation of rules enabling them to get promotion on regular basis to the post of Junior Assistant-cum-typist in proceeding dated 17.11.2014, is under challenge in the present Writ Petition.

2.The very relief sought for in the Writ Petition is to grant relaxation of the requisite qualification of typewriting for the post of Junior Assistant- cum-Typist in the third respondent/ Corporation.

3.The learned counsel appearing on behalf of the Writ Petitioners states that the Writ Petitioners were appointed as Burial Ground Registrars, Sanitary Workers and Record Clerks respectively. The promotional post is Junior Assistant-cum-typist. The Writ Petitioners state that they are not possessing the qualification of typewriting and therefore, the qualification to be relaxed in their favour enabling them to get promotion as Junior Assistant-cum-typist.

4.The proposals submitted in this regard by the Corporation was rejected by the Government by impugned letter, dated 17.11.2014.The Government has stated that the relaxation of qualification in favour of the individuals will not justifiable and therefore the benefit of relaxation cannot be granted to all these Writ Petitioners. But the learned counsel appearing for the Writ Petitioners state that the corporation has recommended the case of the Writ Petitioners. In this regard, the proposal sent also was rejected. Under these circumstances, the Writ Petitioners are constrained to move the present Writ Petition.

5.The learned counsel appearing on behalf of the respondents submitted that as per the service rules, qualifications prescribed for the post of Junior Assistant-cum-typist is extracted hereunder:



S.No.	Name of the post	Qualification prescribed
01	Junior Assistant cum Typist	1.Must have passed Higher Secondary School Examination 2.Must have passed English and Tamil Typewriting of Government Technical Examination any one in senior grade and the other in junior grade

6.Admittedly, the Writ Petitioners were not qualified and not possessing the requisite qualification of typewriting. Sufficient time was granted by the respondent/Corporation to acquire typewriting qualification in respect of them. The Petitioners could not able to acquire the qualifications of typewriting. The opportunity provided by the respondent/Corporation also had not been utilized by the Writ Petitioners and therefore, they became unqualified and cannot be promoted to the post of Junior Assistant-cum-typist on regular basis.

7.The learned counsel for the respondents further state that sufficient opportunities were given to the Writ Petitioners and inspite of that, they have not possessed the requisite qualification and the proposal sent by the respondent/Corporation for grant of relaxation of qualification was also rejected.

8.Under these circumstances, the very claim set out in the Writ Petition deserves merit consideration and liable to be rejected. The principles regarding grant of relaxation of qualification was adjudicated by the High Court of Madras in W.P.No.2762 of 2014, dated 5.10.2017 and the relevant paragraphs are extracted hereunder:

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 regularization 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 period 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.

9. This Court is of the considered opinion that the relaxation of qualification can never be claimed as a matter of right and promotions are to be made in accordance with the rules in force. In the present case on hand, the Writ Petitioners were provided with opportunity to acquire the qualification of typewriting. Even thereafter, the Writ Petitioners have not acquired the requisite qualifications and the Government had also rejected the claim of the Writ Petitioners for grant of relaxation in respect of relaxation of qualification of pass in type-writing. Under these circumstances, this Court is not inclined to grant the relief as sought for in the Writ Petition.

10. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

vsn

To

1. The Secretary to Government,
State of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Secretariat, Chennai - 600 009.



2. The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.

3. The Commissioner,
Tiruchirappalli City Municipal Corporation,
Cantonment,
Tiruchirappalli.

+1cc to M/S SPECIAL GOVERNMENT PLEADER, Sr.No.69761

+1CC TO M/S.K.HEMAKARTHIKEYAN,ADVOCATE, SR.NO.69666

+1CC TO M/S.N.S.KARTHIKEYAN,ADVOCATE, SR.NO.70076

W.P.(MD) No. 10426 of 2015

and

M.P(MD) No.2 of 2015

18.06.2019

BUC(03/07/2019) 7P/7C