

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 10.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****W.P. (MD) No.13704 of 2015**

M.Maheswaran

... Petitioner

-Vs-

1.The Principal Secretary to the Government,
Social Welfare & Nutrious Meal Program Department,
Secretariat, Chennai-600 009.

2.The Director of Social Welfare,
Chindaripet, Chennai-600 002.

3.The Child Development Project Officer,
Integrated Child Development Project Scheme,
Theni Urban Project, Theni.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pursuant to the impugned order passed by the first respondent vide proceedings Letter No.1470/Sana 1(2) / 2014-2, dated 29.05.2014 and quash the same and consequently direct the first respondent to regularize the service of the petitioner from the date of promotion as a Jeep Driver in the respondent department.

For Petitioner

: Mr.S.Louis

For Respondents

: Mr.S.Dhayalan,

Government Advocate.

ORDER

The order of rejection dated 29.05.2014, rejecting the claim of the writ petitioner for relaxing the rule for the purpose of regularising the service of the writ petitioner in the post of Driver, is under challenge in the present Writ Petition.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was recruited through District Employment Exchange and appointed to the post of Watchman in the regular time scale of pay in Taluk Project Nutrition Office, Uthamapalayam, Theni District. The writ petitioner joined duty on 28.02.1985. Subsequently, the writ petitioner was promoted as Driver in the office of Child Development Project Office, Chennai and joined duty on 27.04.1993. The first



respondent issued a notification and invited applications for appointment to the post of Jeep Driver. The writ petitioner was also applied for the post and participated in the process of interview conducted in the office of the first respondent on 13.03.1993. Consequently, the writ petitioner along with other persons working in various Group-4 services and last grade services were promoted as Drivers. However, on appointment of the writ petitioner as a Driver, he was not possessing the requisite qualification of experience of three years in driving. Therefore, a proposal was submitted to the Government for grant of relaxation of rules in favour of the writ petitioner, so as to regularise his service in the post of Driver. However, the said proposal was rejected by the Government in proceeding dated 29.05.2014 and challenging the said rejection order, the present Writ Petition has been filed.

3.The learned counsel appearing on behalf of the writ petitioner states that in number of cases, such relaxation were granted and those candidates were regularised in the post of Jeep Driver. However, benefit of relaxation is denied for the writ petitioner without any valid reason.

4.The learned Government Advocate appearing on behalf of the respondents states that the competent authorities sent a proposal for relaxation and the said proposal was rejected by the Government and therefore, services of the writ petitioner cannot be regularised in the post of Driver.

5.Relaxation can never be claimed as matter of legal right. Relaxation of rule ordinarily is impermissible. Rule is to be followed strictly. Relaxation is an exception and the power of relaxation is to be used sparingly, where there is a cross in justice to a person or clause of persons. Recruitment rules cannot be relaxed, so as to accommodate few persons and denying equal opportunity to all other eligible persons. In the event of granting relaxation in a routine manner, constitutional rights of other eligible candidates, who are aspiring to secure employment, are infringed. Therefore, though the power of relaxation is available in the rules, the Government cannot exercise the power of relaxation in a routine manner at their convenience or to favour some persons. Rule of relaxation being exception, or sometime used for extending favouritism and nepotism, there is a possibility for corrupt activities, in the event of granting relaxation in a routine manner. Therefore, there must be a justification for grant of relaxation of rules.

6.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. Relaxation 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.



7. 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.

8. 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.

9. 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."

10. 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."

11. 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.

12. 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.

13. 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.

14. 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.

15. In the present case on hand, even as per the affidavit of the writ petitioner in Paragraph No.3, on 15.11.1989, the first respondent issued the notification and called for appointment of Jeep Driver post for the respondent Department from the existing Office Assistant and Night Watchman. It is admitted by the writ petitioner that he applied for the post with the required qualification and interview was conducted at the office of the first respondent on 13.03.1993. As a result, the writ petitioner along with 14 persons, serving in the Department in various posts, were recruited as Drivers. An inference to be drawn in this regard, in view of the fact that the appointment of the writ petitioner is not a promotion and it was made pursuant to the notification issued by the first respondent on 15.11.1989 and the writ petitioner was selected based on the interview conducted on 13.03.1993. Therefore, the selection and appointment to the post of Driver was made, pursuant to the separate notification and the same cannot be construed as promotion as per the promotion rules in force.

16. On the other hand, apart, there is no provision to promote the employees working in the cadre of Office Assistant, Night Watchman as Drivers, service rules applicable for the post of Night



Watchman and Office Assistant are no way applicable to the service of Driver. The Driver is governed by separate service and therefore, the notification was issued and pursuant to the notification, persons were selected and appointed.

17. This being the factum, the very claim of the writ petitioner that he was promoted and therefore, he should be granted regularisation, is unacceptable.

18. Even at the time of selection, the authorities competent ought not to have selected the persons, who are not qualified in accordance with the rules in force. At the time of interview, it is found that the persons, who participated in the interview, are not possessing the requisite qualification as per the rules. Thus, the candidates cannot be appointed. Therefore, the appointment of the writ petitioner along with all other persons are construed as illegal and irregular appointments and therefore, the first respondent has to initiate proper action against the persons, who are responsible and accountable for making such illegal appointments.

19. Constitutional Courts time and again have reiterated that illegal appointments cannot be validated, irregular appointments are impermissible. All appointments should be made strictly in accordance with law. In the event of any illegal or irregular appointments, the authorities, who are responsible and accountable for such illegal appointments, are also to be prosecuted. In this regard, the persons, who conducted interview and issued appointment order, are also liable for such illegal and irregular appointments and there is a possibility for favouritism and nepotism and even corrupt activities.

20. Under these circumstances, a thorough enquiry in respect of the process and procedures followed for appointment to the post of Driver is to be conducted and proper actions are to be initiated against all the authorities concerned. It is needless to state that if any irregular relaxation are granted that also to be dealt with in accordance with law.

21. This being the factum of the case, following orders are passed:-

"1. The relief as such sought for in the present Writ Petition stands rejected.

2. The first respondent is directed to conduct an enquiry into the selection and appointment of the Jeep Drivers in the Department of Social Welfare. If any illegality or irregularity are identified, suitable actions are also to be initiated against the officials, all responsible and accountable for all such illegal and irregular appointments to the post of Driver. Such an enquiry is to be conducted, within a



period of twelve weeks from the date of receipt of a copy of this order.

3.All necessary actions further should be initiated against all the persons, who are responsible for such illegal appointments, in accordance with the rules and by following the procedures contemplated."

22.With these directions, this Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

Myr

To

1.The Principal Secretary to the Government,
Social Welfare & Nutrious Meal Program Department,
Secretariat, Chennai-600 009.

2.The Director of Social Welfare,
Chindaripet, Chennai-600 002.

3.The Child Development Project Officer,
Integrated Child Development Project Scheme,
Theni Urban Project, Theni.

+1cc to the Special Government Pleader in SR.74760

W.P. (MD)No.13704 of 2015
10.07.2019

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