



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A. (MD)Nos.1008 to 1010 of 2019

and

CMP (MD)Nos.9272 to 9275, 9279 & 9280 of 2019

1.A.Raman : 1st Appellant in
WA.Nos.1008 & 1009/19

2.S.Rajaram : 2nd Appellant in WA.1008/19 &
1st Appellant in W.A.1010

Vs.

1.N.Anbarasu

2.The Principal Secretary,
Tourism Culture and Religious Endowments (T2)
Department, Fort.St.George,
Chennai - 600 009.

3.The Commissioner of Tourism,
Tamilnadu Tourism Complex,
Wallajah Road,
Chennai - 2.

4.P.Vijayalakshmi

5.M.Rajan

6.T.R.Suresh

7.S.Anand

8.Manimehalai

... Respondents in
WA.1008/2019

and

1.The Secretary of Government
Tourism Culture and Religious Endowments (T2)
Department, Fort.St.George,
Chennai - 600 009.

2.The Commissioner of Tourism,
Tamilnadu Tourism Complex,
Wallajah Road,
Chennai - 2.



3.N.Anbarasu

4.L.Muthusamy

5.M.Mani

6.A.Sankar

7.E.Baskaran

8.B.Elamurugan

9.R.Karthick

: Respondents in
Was.1009 & 1010/2019

COMMON PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, against the common orders passed by this Court in W.P.(MD)No.5843 of 2018, W.P.(MD)No.11514 of 2019 and W.P.(MD)No.11516 of 2019, dated 16.08.2019.

Prayer in WP(MD). 5843/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari to call for the records pertaining to the impugned orders in G.O.(D).No. 14 dated 23/01/2016 , G.O.(D).No.126 and 127 dated 02/09/2016 and G.O.(Ms) No.224 dated 16/10/2017 of Tourism, Culture and Religious Endowments (T2) Department, on the file of Respondent No.1. and quash the same as illegal within the time stipulated by this Honourable Court.

Prayer in WP(MD). 11514/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the impugned order of the 1st respondent issued in G.O.(Ms).No.42 TC & RE (T2) Department dated 12.04.2019 and quash the same and consequently direct the 1st respondent to consider the name of the petitioner for promotion as Assistant Director of Tourism, as on 01.09.2017 the date of preparation of the panel for the year 2017-2018 which is under consideration of the 1st respondent pending disposal of the above Writ Petition.

Prayer in WP(MD). 11516/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the impugned order of the 1st respondent issued in G.O.(Ms) No. 42 TC & RE Department dated



12.04.2019 and Quash the same and consequently direct the 1st respondent to permit the petitioner to continue in the post of Tourist Officer, pending disposal of the above WP.

For Appellants : Mr.G.Prabhu Rajadurai
(in all WAs)

For R1 : Mr.T.Lajapathi Roy
(in WA.1008/18 &
For R3 in WA.
1009 & 1010/2019

For R1 & R2 : Mr.M.Murugan
(in WA. Nos. Govt.Advocate
1009 & 1010/2019
For R2 & R3
1008/2019

COMMON JUDGMENT

(Order of this Court was made by **T.S.SIVAGNANAM, J**)

We have heard Mr.G.Prabhu Rajadurai, the learned counsel appearing for the appellants, Mr.T.Lajapathi Roy, learned counsel for R1 in W.A(MD)No.1008 of 2018 and for R3 in W.A(MD)Nos.1009 & 1010 of 2019 and Mr.Murugan, learned Government Advocate for the official respondents.

2. Before we commenced hearing, Mr.M.Murugan, the learned Government Advocate appearing for the official respondents produced a letter, written by the Director of Tourism, dated 12.11.2019 stating that the Department requires eight weeks time, for preparation and filing of a counter affidavit.

3. The consistent procedure followed by this Court is that no counter affidavit is filed in a Writ Appeal and the pleadings are required to be completed, before the Writ Petition is heard, unless the Division Bench considers it necessary for a counter in a Writ Appeal. Therefore, we do not propose to adjourn the matter on this ground.

4. These three Writ Appeals have been filed against a common order made in W.P.(MD)No.5843 of 2018, W.P.(MD)No.11514 of 2019 and W.P.(MD)No.11516 of 2019, dated 16.08.2019. The appellants before us were the Writ petitioners in W.P(MD)No.5843 of 2014, W.P.(MD) Nos.11514 of 2019 and W.P.(MD)No.11516 of 2019, by which, they challenged the Government Order in G.O.(Ms)No.42 TC & RE(T2) Department, dated 12.04.2019, reverting the appellants / petitioners from the post of Tourist Officer to the post of Superintendent.



5. The private respondents filed three Writ Petitions viz., W.P.(MD)No.19524 of 2014, challenging the Government Order in G.O (Ms)No.78, Tourism and Culture (SU2) Department, dated 07.05.2018, proposing amendment to the Special Rules for the Tamil Nadu General Service, in which an order of status-quo was granted, on 03.12.2014. We find that the order states that "There shall be an order of Status-quo, as on today". The interim application, which was filed by the writ petitioner, was to direct the respondents not to consider the Office Superintendent, for promotion, as Tourist Officer, pending disposal of the main Writ Petition. The main Writ Petition was to quash G.O(Ms)No.78 and not to consider the Office Superintendent for promotion, for filling up the existing and future vacancies in the cadre of Tourist Officers.

6. The writ petition in W.P.(MD)No.5843 of 2018, was filed challenging the G.O.(D)No.14, dated 23.01.2016, by which, the Government published a temporary panel for the post of Tourist Officer, for the year 2014-15. G.O.(D)No.126, dated 02.09.2016, the temporary panel for the posts of Tourist Officer, for the year 2016-17 and G.O.(D)No.127, dated 02.09.2016, promoting the appellant in W.A(MD)No.1010 of 2019, as Tourist Officer and G.O.(Ms)No.224, dated 16.10.2017, regularizing the temporary panel of Tourist Officers from 1988-89 to 2014-15.

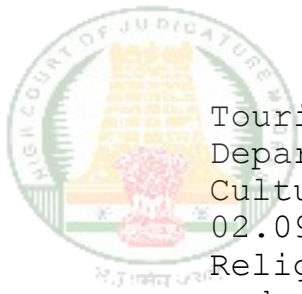
7. The 3rd Writ Petition filed by the respondent is W.P.(MD) No.676 of 2019, wherein, the respondent prayed for issuance of a direction upon the Principal Secretary, Tourism, Culture and Religious Endowments (T2) Department and the Commissioner of Tourism, Chennai, to initiate enquiry proceedings and remove the names of the appellants from the proposed seniority list of the year 2018, prepared for considering for promotion to the post of Assistant Directors and Tourist Officer respectively, on the ground that they are not qualified. The respondent has also sought for a further direction to prepare a fresh panel of seniority, for the post of Tourist Officer.

8. All the Writ Petitions were heard together and have been disposed of by a common order and we note from the impugned order that the operative portion is in paragraph 34 and for better appreciation, we quote the same:-

"34. Under these circumstances, the following orders are passed:

(i) W.P.(MD) No.19524 of 2014 stands disposed of as infructuous as the impugned Government Order was not in force on the date of filing of the writ petition and subsequent amended Rules are not challenged.

(ii) W.P.(MD) No.5843 of 2018 stands allowed and the impugned Government Orders issued in G.O.(D) No.14,



Tourism, Culture and Religious Endorsements (T2) Department, dated 23.01.2016; G.O.(D) No.126, Tourism, Culture and Religious Endowments (T2) Department, dated 02.09.2016; G.O.(D) No.127, Tourism, Culture and Religious Endowments (T2) Department, dated 02.09.2016 and G.O.(Ms) No.224, Tourism, Culture and Religious Endowments (T2) Department, dated 16.10.2017, are quashed.

(iii) In view of the orders passed in W.P.(MD) No.5843 of 2018, no further orders are required in W.P.(MD) No. 676 of 2019 and accordingly, W.P.(MD) No.676 of 2019 stands closed.

(iv) Since the promotion orders of the writ petitioners in W.P.(MD) Nos.11514, 11515 & 11516 of 2019 have been quashed, the consequential reversion order is to be upheld. Accordingly, the Government Order in G.O.(Ms) No.42, Tourism, Culture and Religious Endowments (T2) Department, dated 12.04.2019, stands confirmed and the writ petitions in W.P.(MD) Nos.11514, 11515 & 11516 of 2019 stand dismissed.

(v) In view of quashing of the promotion orders, the official respondents 1 and 2 are directed to scrutinize the validity of the degrees possessed by all the eligible candidates, who all are found fit for promotion to the post of Tourist Officer and after ascertaining the validity of the degrees, approved panel shall be finalized and accordingly, promotions are directed to be granted to the post of Tourist Officer by following the procedures as expeditiously as possible. In the said exercise, the name of the writ petitioners as well as the contesting respondents are also to be considered for W.P.(MD) No.11514, 11515, 11516, 676 of 2019, 19524 of 2014, 5843 of 2018 & Cont.P.(MD) No.279 of 2019 promotion strictly in accordance with the rules in force and after verifying the validity of the degrees possessed by them.

(vi) In view of the fact that the prayer sought for in W.P.(MD) No.19524 of 2014 itself deserves no merit consideration on account of the fact that the Government Order, which is under challenge in the main writ petition i.e. W.P.(MD) No.19524 of 2014, was not in force even at the time of filing of the writ petition (W.P.(MD) No.19524 of 2014), no further adjudication is required in respect of the grounds raised in Cont.P.(MD) No.279 of 2019. Accordingly, Cont.P.(MD) No. 279 of 2019 stands closed.

(vii) No costs.



(viii) Consequently, connected miscellaneous petitions are closed."

9. By virtue of the direction issued by the learned Single Bench, the appellants stood reverted to the post of Superintendent. Simultaneously, there was a direction to verify their credentials, qualifications etc.

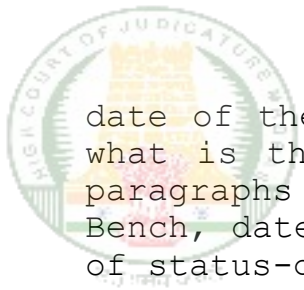
10. So far as the challenge made by the respondents to G.O. (Ms)No.78 has been rejected. In fact, W.P(MD)No.19524 of 2014 was dismissed as infructuous. We fully concur with the view taken by the learned Single Bench, for more than one reason. G.O.(Ms)No.78 was only a proposal to amend the Special Rules under the Tamil Nadu General Rules. This proposal fructified into an amendment in G.O. (Ms)No.174 Tourism and Culture (T2) Department, dated 06.08.2010 and the amendments were notified. By virtue of the amendment, a ratio was prescribed for promotion to the post of Tourist Officer. There are three modes viz., 1 from the cadre of Superintendent, 3 from the cadre of Assistant Tourist Officer and 1 by direct recruitment, for the vacancy arising during the year.

11. The respondents/writ petitioners admittedly joined the service much after G.O(Ms)No.174, came into force. In other words, they joined the services, when the amended Rule was in force and they estopped from challenging the same. Therefore, the learned Single Bench was right in its observation in paragraph 32 stating that the validity of the amendment to the Service Rules cannot be gone into nor challenged by the respondents / writ petitioners. Therefore, we confirm the decision taken by the learned Single Bench in W.P.(MD)No.19524 of 2014.

12. The Writ Petition in W.P.(MD)No.5843 of 2018 was allowed and all the temporary panels in G.O.(Ms)No.14, G.O.(Ms)No.126 and G.O.(Ms)No.224 and the promotion order of Rajaram in G.O.(Ms)No.127 were quashed. In the light of the orders passed in W.P(MD)No.4843 of 2018, the W.P(MD)No.676 of 2019 was closed, as no further orders are required. That apart, the Writ Petition filed by the appellants before us viz., W.P(MD)11514, 11515 and 11516 of 2019 were dismissed, upholding the orders of reversion.

13. We shall consider each of the cases and test as to whether the learned Writ Court was right in coming to the conclusions, as aforementioned.

14. W.P(MD)No.5843 of 2018 was filed challenging the promotion granted in the year 2016, on the ground that it is in violation of the order of status-quo granted in W.P(MD)No.19424 of 2014. The Writ Court dismissed the said Writ Petition, as become infructuous. Therefore, the interim order stood terminated on the



date of the final order. Be that as it may, we need to note as to what is the effect of the order of status-quo. In the preceding paragraphs we have noted the order passed by the learned Single Bench, dated 03.12.2014, which states that, 'There shall be an order of status-quo.'

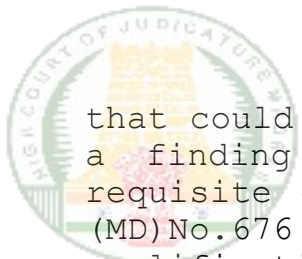
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15. To understand the effect of the order, we necessarily will have to examine what was the interim prayer in the Writ Petition in which the order of status-quo was granted ie., in M.P (MD)No.2 of 2014. The said Miscellaneous Petition was filed to direct the respondents not to consider the Office Superintendent for promotion as Tourist Officer. In fact, this is one of the prayer in the main Writ Petition itself. The substantive portion of the prayer sought for in the Writ Petition is challenging G.O.(Ms)No.78. The learned Single Bench accepted the fact that G.O.(Ms)No.78 was no longer in force in the year 2014, when the Writ Petition was filed because, the amendment was notified on 06.08.2010 in G.O.(Ms)No.174. Therefore, even assuming that the order has to be interpreted as because, even a wrong order has to be obeyed, until it is vacated or modified, it can at best be understood that status-quo of situation prevailing, when G.O.(Ms)No.78 was issued.

16. Admittedly, G.O.(Ms)No.78 worked itself out because the amendment has come into force in the year 2010, more than 3 years prior to filing of the Writ Petition. Therefore, the order of status quo had no effect on any of the service benefits, which accrued to the appellants and based on the order of status-quo, which appears to be the only ground of challenge in W.P.(MD)No.5843 of 2018, the temporary panel and the promotion granted to Rajaram in G.O.(Ms)No.127, dated 02.07.2014, could not have been quashed. Therefore, we are inclined to interfere with the order passed by the learned Single Bench in that regard.

17. So far as W.P(MD)No.676 of 2019 is concerned, the learned Single Bench opined that because of the order passed in W.P(MD) No.5843 of 2018, no orders are required to be passed in W.P(MD) No.676 of 2019. In the said Writ Petition, the respondents seek for an enquiry to be conducted and remove the names of respondents 5 and 6, who are the appellants before us, from the seniority list. Admittedly, the official respondents did not file any counter affidavit in W.P.(MD)No.676 of 2019. The basic principles, which has to be complied with before seeking for a Writ of Mandamus is, to make a request or a representation to the authority, upon refusal or upon non-consideration, the aggrieved person can move the Court. No such step was taken by the respondents and straightway they filed W.P(MD)No.676 of 2019. Therefore, the writ petition was liable to be dismissed on that ground.

18. We further note that the learned Single Bench has directed the authority to scrutinize the validity of the educational ~~qualifications~~ ^{qualifications} possessed by the appellants. In our considered view,



that could have been done only if the Court *prima facie* has recorded a finding that the appellants before us did not possess the requisite qualifications. In fact, in the affidavit filed in W.P (MD)No.676 of 2019, the respondents have stated about the qualifications of the appellants. Since no counter affidavit was filed and there was no adjudication on the validity of the qualification of the appellant, the order directing the verification of the educational qualifications could not have been issued.

19. With regard to W.P(MD)Nos.11514 to 11516 of 2019, which are the Writ Petitions filed by the appellants before us, challenging the order of reversion, there was no adjudication on merits. The counter affidavit filed by the respondents is of no assistance. Admittedly, those reversion orders were passed under the threat of Contempt and the Contempt was filed stating that the order of status quo was not complied with. We have interpreted as to what will be the effect of the order of status quo. Therefore, the learned Single Bench could not have dismissed W.P(MD)Nos.11514, 11515 and 11516 of 2019, without rendering a finding that the order of reversion satisfied the principles of natural justice and the challenge to the said order was without basis. Without rendering any such findings, the Writ Petition could not have been dismissed. Therefore, we are constrained to partly allow the appeals and modify the order and direction issued in the writ petitions.

20. At this juncture, we have to note that the appellants along with 19 others were promoted as Tourist Officers and except the appellants, none have been reverted. We are informed that though order of reversion has been passed, posting orders have not been issued. It appears that the direction issued in Writ Petition have virtually set at naught the seniority and promotion in the Tourism Department in the level of Assistant Tourist Officer, Superintendent and Tourist Officer.

21. However, Mr.Murugan, the learned Government Advocate appearing for the official respondents, at this juncture, submitted that the submissions of the learned counsel for the appellants is factually incorrect because, posting orders were issued, vide proceedings in Proc.No.8131/HRD-1/2014-4, dated 12.04.2019 and the appellants did not join. In the light of the findings rendered by us above, there is no necessity to adjudicate on this issue.

22. In the result, the Writ Appeals are allowed on the following conditions:

(i). The Writ Petition in W.P.No.19524 of 2014 is dismissed, on the ground that G.O.Ms.No.78 had outlived its purpose and worked itself out and on the date of challenge, the said Government Order did not survive, because, G.O.174, dated 06.08.2010 was issued and



little avail and based on that, the private respondents cannot claim any advantage. Further, the private respondents are estopped from challenging the ratio of 1: 3 : 1, as admittedly, they have joined the service much after the amended rules, which came into force on 06.08.2018.

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(ii). The Writ Petition in W.P.(MD)No.5843 of 2018 has filed challenging the promotion and the temporary panels and the sole ground of challenge was based on the order of status-quo, which we have held as it would not enure to the benefit of the private respondents. That apart, there is no findings rendered as to how the promotion are incorrect or the panels are erroneous. Therefore, the order allowing the writ petition in W.P.(MD)No.5843 of 2018 calls for interference. Hence, the order passed in the said writ petition is set aside and consequently, W.P.(MD)No.5843 of 2016 is dismissed.

(iii). W.P.(MD)No.676 of 2017 has been filed without even giving a representation to the authorities pointing out as to how the appellants lack the requisite qualification. There was no adjudication of the correctness of the stand taken by the private respondents. No counter affidavit was filed by the officials respondents. None were heard on the contentions raised. Therefore, the court could not have ordered for re-verification of the qualifications of the appellants. For the above reasons, W.P(MD). 676 of 2019 is dismissed. However, it is open to the private respondents to give a comprehensive representation, if they so desire, pointing out how in their opinion, the appellants do not possess the requisite qualifications. The representation, if any submitted, be considered in accordance with law.

(iv) The Writ Petitions in W.P.(MD)Nos.11514, 11515 and 11516 of 2016 have been filed, challenging the orders of reversion. The learned Single Bench has not recorded any independent reasons as to why those writ petitions are liable to be dismissed and the only reason being the promotion orders have been quashed by allowing W.P. (MD)No.5843 of 2018. We have set aside the order passed in W.P.(MD) No.5843 of 2018, Accordingly, the order passed in the W.P.(MD) Nos.11514 to 11516 of 2016 is set aside and the writ petitions are allowed and the orders of reversion are quashed. The official respondents are directed to re-post the appellants, as Tourist Officers and in the event, any representation is received, as observed earlier, it is open to the official respondents to consider the same in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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To

1.The Secretary of Government
Tourism Culture and Religious Endowments (T2)
Department, Fort.St.George,
Chennai - 600 009.

2.The Principal Secretary,
Tourism Culture and Religious Endowments (T2)
Department, Fort.St.George,
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3.The Commissioner of Tourism,
Tamilnadu Tourism Complex,
Wallajah Road,
Chennai - 2.

+3 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-98183 to 98185[F]
dated 14/11/2019)

+3 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-98234[F] dated
14/11/2019)

W.A. (MD)Nos.1008 to 1010 of 2019
13.11.2019

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