

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E : 30.09.2020

C O R A M

THE HON'BLE MR. A.P.SAHI, THE CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

WRIT PETITION NO.34690 OF 2019 &
W.M.P.NOS.35443 OF 2019, 3880 & 15831 OF 2020

1. A.Saravanan
2. T.Moorthi
3. P.Arulvasagam
- 4.K.Raja

...Petitioners

Vs

- 1.The Principal Secretary to Government,
Rural Development & Panchayat
Raj (V3) Department,
Fort St. George, Chennai-9.
- 2.The Secretary to Government,
Personnel & Administrative Reforms (s) Department,
Fort St. George, Chennai.
- 3.The Director of Rural Development
& Panchayat Raj Department,
'Panagal Building',
Saidapet, Chennai-15.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Declaration declaring that the amendment to the ad hoc rules, relating to the temporary post of Assistant Engineer in the Tamil Nadu Panchayat Development Engineering Service issued by the 1st Respondent in G.O.Ms.No.19, Rural Development Panchayat Raj (E3) Department dated 13.09.2019, giving effect to from 24.02.2014 as null and void and direct the Respondents to prepare the panel of Assistant Engineer by transfer of service from the post of Overseer for the panel year 2015 by following the unamended earlier Rule 5(A) of the Tamil Panchayat Development Engineering Service Rules and consider the claim of the Petitioners for promotion as Assistant Engineer (RD) by transfer of service.

For Petitioners : Mr.M.Muthappan
For Respondents : Mr.V.Jayaprakash Narayanan,
Govt. Pleader
: Mr. V. Sudhakar

O R D E R

SENTHILKUMAR RAMAMOORTHY J.,

By G.O.Ms.130, Rural Development Panchayat Raj (E3) Department dated 13.09.2019, an amendment was made to Rule 5 A of the ad hoc rules relating to the temporary post of Assistant Engineer in the Tamil Nadu Panchayat Development Engineering Service with retrospective effect from 24.02.2014 (the Impugned Amendment). The Petitioners challenge the Impugned Amendment and seek a declaration that such amendment is null and void and for a direction to the Respondents to prepare the panel of Assistant Engineers by transfer of service from the post of Overseer for the panel year 2015 by following Rule 5 A of the Tamil Nadu Panchayat Development Engineering Service Rules as it stood prior to the Impugned Amendment.

2. The Petitioners are employed as Overseers in different Panchayat Unions in the Rural Development Wing of various districts. They entered into service as directly recruited Overseers on 30.07.2010 through the Employment Exchange. The 3rd and 4th Petitioners obtained a B.E. degree before their appointment as Overseer. The 1st and 2nd Petitioners obtained a B.E. degree within two years from the date of their appointment. Admittedly, all the Petitioners obtained a B.E. degree much before the Impugned Amendment of Rule 5 A of the Tamil Nadu Panchayat Development Engineering Service Rules. The next avenue of promotion for the Petitioners is to the post of Assistant Engineer by transfer of service. In view of the fact that the Petitioners had completed four years of service and they were fully qualified and eligible for promotion, their names were included in the approved list and they were ranked as per seniority. Based on the approved list, the Respondents are required to draw-up a panel every year for purposes of promotion. The crucial date for such purpose as regards Assistant Engineers is the 1st of March. As per Rule 5 A as it stood prior to the Impugned Amendment, the approved list of candidates for appointment by recruitment by transfer was required to be prepared with reference to the seniority of the candidates based on the date of passing the B.E. degree in Civil Engineering or a pass in Sections A & B Examination of AMIE conducted by the Institution of Engineers (India).

3. Rule 5 A, as it stood before the Impugned Amendment, was introduced by amendment under G.O.(Ms) No.295 dated 14.12.2001 with retrospective effect from 25.05.1998, and had been in force for a long time. On 24.02.2019, G.O.(Ms) No.19, Rural Development Panchayat Raj [E3] Department was issued and an amendment was proposed to Rule 5 A whereby the basis of preparation of the approved list was proposed to be changed such that the list would be prepared with reference to the date of joining as Overseer/JDO in the Rural Development Department instead of preparing the same on the basis of the date of passing the B.E. degree in Civil Engineering. The said G.O.(Ms) No.19 specifies that the necessary notification in the Tamil Nadu Gazette with regard to the amendment would be issued separately. Such notification came to be issued only on 13.09.2019 by way of G.O.(Ms) No.130, which stipulated, however, that the amendment shall be deemed to have come into force with retrospective effect from 24.02.2014.

4. According to the Petitioners, their vested right to be considered for promotion as Assistant Engineers has been adversely affected by the Impugned Amendment which has the effect of divesting them of such rights. As a result of the retrospective amendment, the Petitioners lose their seniority in the approved list in spite of having acquired the B.E. degree in Civil Engineering much before the other candidates who joined earlier as Overseers. The Petitioners also contend that a B.E. degree in Civil Engineering is a mandatory qualification for the post of Assistant Engineer. Therefore, an Overseer does not become eligible to be considered for the post until he obtains the B.E. degree. Consequently, the amendment is invalid especially because it has been introduced with retrospective effect. The next contention is that the Impugned Amendment is not reasonable and, in fact, is arbitrary inasmuch as it takes into consideration the length of service notwithstanding the fact that such persons did not have the essential educational qualification to be considered for the post in question. The present writ petition was filed in these facts and circumstances.

5. We heard Mr.Muthappan, the learned counsel for the Petitioners; Mr.Jayaprakash Narayanan, the learned Government Advocate for the Respondents; and Mr.V.Sudhakar, the learned counsel who appeared on behalf of the candidates who are supporting the Impugned Amendment.

6. Mr.Muthappan submitted that the Petitioners are aggrieved because the panel was not drawn up for the years 2015-16 and 2016-17. He further submitted that it is the undisputed position that the minimum educational qualification for the post of Assistant Engineer is a B.E. degree in Civil Engineering. By an amendment dated 14.12.2001, with effect from 25.05.1998, Rule 5

A stipulated that the seniority list would be prepared by taking into consideration the date of passing the B.E. degree in Civil Engineering. Rule 5 A as it stood then was not challenged and continued in operation for a considerable time. Meanwhile, the Petitioners had joined the service of the Respondents as Overseers on 30.07.2010. The 3rd and 4th petitioners acquired the B.E. degree prior to taking up employment as Overseers, whereas the 1st and 2nd Petitioners acquired the qualification in May 2012. Accordingly, all the Petitioners were fully qualified and had the requisite experience to be considered as of the crucial date for drawing up the panel for the year 2015-16. On this basis, he contended that they acquired the vested right to be considered for promotion on the basis of Rule 5 A as it stood then.

7. His second contention was that G.O.(Ms) No.19 dated 24.02.2014 merely proposed an amendment to Rule 5 A. In fact, the said Government Order expressly stated that the necessary notification would be issued in the Tamil Nadu Government Gazette. On account of the fact that G.O.(Ms) No.19 was an administrative order, the learned counsel contended that it could not bring about an amendment to a statutory rule framed in exercise of powers conferred by the proviso to Article 309 of the Constitution. Therefore, the learned counsel submitted that G.O.(Ms) No.295 continued to operate during the period when the panel should have been drawn up for the years 2015-16 and 2016-17. As a corollary, the Petitioners had a vested right to be considered for promotion during the said years. His next contention was that the preparation of panels for the years 2015-16 and 2016-17 should be done as per Rule 5 A, as it stood prior to the Impugned Amendment, and not as per the amended Rule 5 A. In support of this contention, he relied upon the judgment of the Hon'ble Supreme Court in Y.V.Rangiah v. J.Srinivasa Rao (1983) 3 SCC 284 (Y.V.Rangiah), wherein the Supreme Court held that vacancies which occurred prior to the amended rules would be governed by the old rules and not by the new rules.

8. The next contention of Mr.Muthappan was that the Respondents may have the power to amend rules retrospectively but such retrospective amendment cannot divest the Petitioners of their vested rights. In support of this contention, he relied upon the judgment in B.S.Yadav and Others v. State of Haryana (1980 (Supp) SCC 524. In particular, he relied upon paragraph 76 wherein the Hon'ble Supreme Court held that rules may be amended with retrospective effect but the date from which the rules are made to operate should have a reasonable nexus with the provisions contained in the rules especially when the retrospective effect extends over a period of time. On the facts of that case, the Hon'ble Supreme Court concluded that no such nexus was shown by the State Government.

9. Similarly, in the case on hand, the learned counsel contended that the Impugned Amendment was made on 13.09.2019 with retrospective effect from 24.02.2014, which is more than five years earlier in time. Therefore, the retrospective amendment cannot operate so as to divest the Petitioners of their vested rights to be considered for promotion for the years 2015-16 and 2016-17.

10. In response, Mr.V.Jayaprakash Narayanan contended that the panels for the years 2015-16 and 2016-17 were admittedly not drawn-up. The Impugned Amendment came into effect prior to the preparation of panels for the years 2015-16 and 2016-17. Consequently, he contended that the amended Rule 5 A is applicable for the purpose of drawing up the panel. His next contention was that there is power to amend with retrospective effect and, in this case, such power was exercised with retrospective effect from 24.02.2014 on account of the fact that the amendment was proposed under G.O.(Ms) No.19 dated 24.02.2014. On this basis, he contended that it was eminently reasonable to give retrospective effect to Rule 5A from 24.02.2014, which was the date when the amendment was proposed.

11. Mr.Sudhakar supported the Impugned Amendment by contending that the relevant rules do not provide a time table in accordance with which the panel should be drawn up for recruitment to the post of Assistant Engineer. Therefore, he contended that the ratio in Y.V.Rangaiah will not apply to this case, instead, he relied upon the judgment in Deepak Agarwal v. State of U.P. (2011) 6 SCC 725 (Deepak Agarwal), wherein the Hon'ble Supreme Court held that it is not a universal rule that vacancies should be filled up on the basis of law existing on the date when the vacancy arises. The Hon'ble Supreme Court further clarified that the rule in Y.V.Rangaiah would apply only if a particular time frame is fixed in the statutory rules for completion of the selection process. On that basis, the Hon'ble Supreme Court held that consideration for promotion took place after the amendment came into operation and, therefore, it cannot be said that accrued or vested rights of the appellants therein were divested by the amendment. He also relied upon the judgment of the Division Bench of this Court in M.Vetriselvan v. High Court of Judicature at Madras in W.P.No.21542 of 2013 batch etc. (Vetriselvan) wherein by order dated 17.12.2014, the Division Bench of this Court, in paragraph 32 held that there is no statutory duty cast upon the respondent therein to either prepare a year wise panel of eligible candidates or of the selected candidates for promotion. On that basis, the Division Bench of this Court concluded that the ratio Y.V.Rangaiah (supra) would not apply and instead relied upon Deepak Agarwal (supra). He also relied upon the judgment in Rajasthan State Sports Council v. Smt.Uma

Dadhich (Civil Appeal No.883 of 2019, wherein by judgment dated 21.01.2019, the Hon'ble Supreme Court considered the judgments in Y.V.Rangaiah, Deepak Agarwal and other cases and concluded that the judgment in Y.V.Rangaiah applies in situations where the statutory rules mandate that the promotional exercise should be completed within the relevant year. According to Mr.Sudhakar, the relevant rules do not prescribe the time frame either for preparing the panel or completing the selection. Consequently, the ratio in Deepak Agarwal, as affirmed in Vetri Selvan, should be applied in this case. He also relied on judgments such as M.B.Joshi v. Sathish Kumar Pandey, 1993 Supp. (2) SCC 419, and D. Stephen Joseph v. Union of India (1997) 4 SCC 753 for the proposition that as long as the requisite educational qualifications have been acquired, the entire length of service in the feeder post should be reckoned.

12. We considered the submissions of the learned counsel for the respective parties and examined the materials on record.

13. The fact situation is largely undisputed inasmuch as Rule 5 A as it stood prior to the Impugned Amendment provided for reckoning of seniority on the basis of date of completion of B.E. (Civil Engineer). The Impugned Amendment to this rule whereby the date of joining as Overseer was to be the basis for reckoning seniority was proposed under G.O.(MS) No.19 dated 24.02.2014. However, this rule was not effected by making an amendment under powers conferred by the proviso to Article 309. Even before the amendment was duly notified, a panel had been drawn up. During the period when the panel for the years 2015-16 and 2016-17 had not been drawn up, W.P. No.9949 of 2018 was filed for a writ of mandamus to draw-up the panel. This writ petition was disposed of by order dated 26.09.2018, which is under challenge in W.A. Nos.1797 and 1857 of 2019. The panel prepared between 24.02.2014 and 13.09.2019 is also under challenge in W.P. Nos.34690 and 29035 of 2019 and this Court passed the following order on 03.08.2020 which is extracted hereunder:

"Heard Mr.M.Muthappan, learned counsel for the Petitioners on the challenge raised to G.O.Ms.No.19, Rural Development Panchayat Raj (E3) Department, dated 24.02.2014 and G.O.Ms.No.130, Rural Development Panchayat Raj (E3) Department, dated 13.09.2019. We have also heard Mr.V.Jayaprakash Narayanan, learned Government Pleader in W.A.No.1857 of 2019 for the State and Mr.M.Muthappan, learned counsel for the appellants in W.A.No.1797 of 2019. On the other hand, Mr.V.Sudhakar, learned counsel, has opposed the matters and he represents those candidates who have acquired the B.E. qualification and whose contention is based on the Government Orders dated 24.02.2014 and 13.09.2019. We

also find that an interim order was passed on 31.07.2019 in W.A.Nos.1857 and 1797 of 2019, whereby the panel for recruitment to the post of Assistant Engineer by way of transfer had been directed to be proceeded with, but not to given effect to except with the final orders of this Court.

2. The dispute in the present case is with regard to the drawing up of the panel on the basis of the rule of seniority that has to be considered for recruitment by way of transfer from the post of Overseers/Junior Draughting Officers. There are certain facts which are undisputed and the present dispute relates to the claim of panels that were to be drawn up in the year 2015-2016 and 2016-2017. It is also undisputed that earlier the minimum educational qualification for such recruitment to the post of Assistant Engineer by way of transfer was Diploma in Engineering as per the notification dated 25.01.2000. This qualification was altered on 14.12.2001 prescribing a higher qualification of Bachelor of Engineering. For the purpose of such recruitment, the new rule also provided for that the list for consideration of such recruitment shall be drawn up on the basis of the date of passing of the B.E. examination. Admittedly, this rule was not challenged and it continued to operate thereafter till 2013. On 24.02.2014, G.O.Ms.No.19 was issued, whereby the preparation of the list was altered to the date of joining as Overseer and Junior Draughting Officer. Thus, the date of passing of the B.E. examination was given up.

3. It may be mentioned that earlier the qualifications which were prescribed were in the rules that were framed in exercise of powers conferred under Article 309 of the Constitution of India, whereas the change brought about vide an order dated 24.02.2014 was through a Government Order and not by way of any amendment being framed in exercise of powers under Article 309 of the Constitution of India. The Government Order nowhere mentions that this has been done exercising powers under Article 309 of the Constitution of India.

4. In between, since the panel was not being drawn up, a writ petition was filed before this Court, where prayers were made for drawing up of the panels on the basis of the claim of seniority, which writ petition was disposed of on 26.09.2018 being W.P.No.9944 of 2018. The said judgment is under challenge both by an individual as well as by the State Government in W.A.Nos.1797 and 1857

of 2019 that have also been listed along with the writ petitions today.

5. After filing of the said writ appeals and passing of the interim order on 31.07.2019, the State Government, in exercise of powers under Article 309 of the Constitution of India notified the very same amendment that had been introduced by way of the Government Order dated 24.02.2014 under notification dated 13.09.2019 giving such notification retrospective effect with effect from 24.02.2014. It is this which has been challenged in the other writ petitions.

6. The question therefore is as to whether the retrospectivity with which the rule has been given effect to is sustainable on the challenge raised in the writ petitions and therefore, an answer to the said question would obviously lead to the other issues raised in the writ appeals that have been filed against the judgment dated 26.09.2018.

7. It has also been seen that during the pendency of the appeals and prior to the notification dated 13.09.2019, a panel had already been drawn up. The question is as to whether such a panel drawn on the strength of a non-notified rule can still be given effect to after the rule itself states that retrospective effect is being given to it from the year 2014. The said panel has already been challenged on this ground in two writ petitions being W.P.Nos.34690 and 29035 of 2019.

8. Learned Government Pleader appearing for the State prays that he may be granted time to finally seek his instructions and then proceed to argue the matter."

14. The position that prevails today is that the amendment to Rule 5 A has been duly notified by G.O.(Ms) No.358, dated 13.09.2019, with effect from 24.02.2014. Therefore, the questions that arise for consideration are:

- 1) Whether the amendment to Rule 5 A divests the Petitioners of their vested rights?
- 2) Whether the amended or unamended Rule 5 A should apply for purposes of preparing the panel for the years 2015-16 and 2016-17?

15. The settled legal position is that a person has a right to be considered for promotion if he is eligible as on the date of such consideration. In this case, the applicable rules do not mandate that the panel should be prepared every year as per a

specific timetable or that selection should be completed within a stipulated time limit. It is also the admitted position that panels were not prepared for the years 2015-16 and 2016-17 until much later.

16. In *Deepak Agarwal*, the Hon'ble Supreme Court held categorically that no vested right was taken away by amending the rules before the selection process was completed. Paragraph 26 is relevant, in this regard, and it was held as under:

26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "rule in force" on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in *Y.V. Rangaiah* case [(1983) 3 SCC 284 : 1983 SCC (L&S) 382] lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.

Another judgment of relevance on this issue is *N.S. Murali v. Union of India*, (2017) 13 SCC 575 (*N.S. Murali*), where it was held as under in paragraph 17:

17. In view of the law laid down in the abovementioned cases, it is clear that unless there is specific rule entitling the applicants to receive promotion from the date of occurrence of vacancy, the right of promotion does not crystallise on the date of occurrence of vacancy and the promotion is to be extended on the date when it is actually effected.

17. By applying the aforesaid binding precedents, we conclude that the Petitioners did not have vested rights and, therefore, vested rights were not divested by the Impugned Amendment. The next question to be considered is whether the pre-amended Rule 5 A or amended Rule 5 A should be applied while drawing- up the panel and making the selection. The learned

counsel for the Petitioners relied upon Y.V.Rangaiah and contended that the pre-amended Rule 5 A should be applied because it pertains to the year 2015-16 when the amended Rule 5 A was admittedly not in force.

18. On the contrary, the learned Government Pleader and Mr.Sudhakar contended that the amendment was made with retrospective effect from 24.02.2014 and, therefore, the amended Rule 5 A is applicable. As regards Y.V.Rangiah, Mr.Sudhakar pointed out that it is a case that would apply only where the statutory rules specify the time frame for completion of the selection process. For this purpose, he relied upon Deepak Agarwal, Vetriselvan and Rajasthan State Sports Council. Paragraph 24 and 25 of Deepak Agarwal throw considerable light on the issue and read as under:

24. We are of the considered opinion that the judgment in Y.V. Rangaiah case [(1983) 3 SCC 284 : 1983 SCC (L&S) 382] would not be applicable in the facts and circumstances of this case. The aforesaid judgment was rendered on the interpretation of Rule 4(a)(1)(i) of the Andhra Pradesh Registration and Subordinate Service Rules, 1976. The aforesaid Rule provided for preparation of a panel for the eligible candidates every year in the month of September. This was a statutory duty cast upon the State. The exercise was required to be conducted each year. Thereafter, only promotion orders were to be issued. However, no panel had been prepared for the year 1976. Subsequently, the Rule was amended, which rendered the petitioners therein ineligible to be considered for promotion. In these circumstances, it was observed by this Court that the amendment would not be applicable to the vacancies which had arisen prior to the amendment. The vacancies which occurred prior to the amended Rules would be governed by the old Rules and not the amended Rules.

25. In the present case, there is no statutory duty cast upon the respondents to either prepare a yearwise panel of the eligible candidates or of the selected candidates for promotion. In fact, the proviso to Rule 2 enables the State to keep any post unfilled. Therefore, clearly there is no statutory duty which the State could be mandated to perform under the applicable Rules. The requirement to identify the vacancies in a year or to take a decision as to

how many posts are to be filled under Rule 7 cannot be equated with not issuing promotion orders to the candidates duly selected for promotion. In our opinion, the appellants had not acquired any right to be considered for promotion. Therefore, it is difficult to accept the submissions of Dr. Rajeev Dhavan that the vacancies, which had arisen before 17-5-1999 had to be filled under the unamended Rules.

19. On examining the aforesaid judgments in the context of the applicable rules in this case, we find that the rules do not mandate that a panel should be drawn up every year and no timetable has been prescribed for completion of the selection process. Therefore, we accept the contention of the learned Government Pleader and Mr. Sudhakar that the principles laid down in Y.V. Rangiah would not apply to this case and that, instead, the ratio in Deepak Agarwal, N.S. Murali and Vetriselvan would apply.

20. Therefore, we conclude that the amended Rule 5 A is not null and void and would apply for the preparation of panels for the years 2015-16 and 2016-17. The learned counsel for the Petitioners also contended that the amendment should not be applied with effect from 24.02.2014, especially when it had the effect of divesting the Petitioners of their vested rights. We concluded that the Petitioners did not have vested rights with regard to the reckoning of their seniority on the basis of the pre-amended Rule 5 A. Therefore, it cannot be contended that a vested right is being taken away by the amendment. Thus, we find that the Petitioners have failed to make out a case to declare the amendment as null and void.

21. In the result, the writ petition fails and the same is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Rural Development & Panchayat
Raj (V3) Department,
Fort St. George, Chennai-9.

2.The Secretary to Government,
Personnel & Administrative Reforms (s) Department,
Fort St. George, Chennai.

3.The Director of Rural Development
& Panchayat Raj Department,
'Panagal Building',
Saidapet, Chennai-15.

+lcc to Mr.M.Muthappan, Advocate, SR.NO.32316

W.P. No.34690 of 2019 &
W.M.P.Nos.35443 of 2019, 3880 & 15831 of 2020

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