

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.12.2020

Pronounced on : 05.02.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.24351, 24354 and 24599 of 2019

1.V.Vinaya Bharathi .. Petitioner in W.P.No.24351 of 2019
2.S.Vinothkumar .. Petitioner in W.P.No.24354 of 2019
3.P.Agilan .. Petitioner in W.P.No.24599 of 2019

-Vs-

1.The Government of Tamil Nadu,
Rep by its Secretary,
Personnel and Administrative Reforms Department,
Secretariat, Fort St.George,
Chennai 600 009.

2.Tamil Nadu Public Service Commission,
Rep by its Secretary,
Frazer Bridge Road,
Park Town,
Chennai 600 003.

3.The Chairman,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Park Town, Chennai -600 003. Respondents in all W.Ps

Prayer in all W.Ps: Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the order in Memo No.6716/PSD-D2/2016 dated 08.08.2019 on the file of the second respondent and to quash the same as illegal and without jurisdiction and for consequential orders.

In all W.Ps

For Petitioners: Mr.Sharath Chandran

For Respondents: Mr.V.Kathirvelu, SGP for R1
Mr.N.Balamurali Krishnan,
Standing Counsel for R2 & R3

O R D E R

These writ petitions have been filed challenging the order dated 08.08.2019, in cancelling the selection and appointment of these petitioners in the Tamil Nadu Secretariat Service. The reasons set forth in the impugned orders are one and the same in respect of these petitioners and the cause of action is also identical and common and therefore, all the three writ petitions are taken up together for common disposal as under.

2. The facts of the case are that these petitioners were working as Junior Assistants in Kancheepuram Municipal Office. The second respondent Commission issued a notification No.19/2017 dated 31.08.2017, inviting applications for recruitment to the post of Assistant in the Departments of Secretariat (other than Law and Finance) included in Group V(A) Services. Since these petitioners fulfilled the necessary qualifications for appointment, had responded to the notification. Thereafter, these petitioners were called for their participation in the written examination conducted by the second respondent Commission and all the petitioners were declared successful in the written examination. Subsequently, these petitioners were informed on 07.05.2018 that they were provisionally selected for appointment to the post of Assistant in the Departments of Secretariat and they were also informed that the appointing authority shall be the first respondent.

3. The petitioners on being selected, appointed to the respective departments in the Secretariat Service and they were also relieved from Kancheepuram Municipality. On joining the post of Assistant in the Secretariat Service, the petitioners had been discharging their duties from May 2018. The petitioners were also directed to attend Foundation Course to equip themselves to be a Secretariat servants and these petitioners have completed the Foundation Course successfully in 2019.

4. While matter stood thus, by proceedings dated 08.08.2019, which is impugned in these writ petitions the recruitment by transfer and appointment of the petitioners were cancelled with immediate effect as their appointment according to the second respondent, was not in consonance with Rule 3(a) of the Tamil Nadu Secretariat Service Rules, as their erstwhile service at Kancheepuram Municipality did not fall under any of the categories mentioned in the said rule. Prior to the impugned proceedings, no notice was issued and without calling for any explanation, the cancellation was effected abruptly. Challenging the order of cancellation dated 08.08.2019, these writ petitions have been filed.

5. The learned counsel for the petitioners would submit that the impugned cancellation order was premised on the basis of Rule 40 of the Tamil Nadu Municipal General Service Rules, 1970, in paragraph No.4 of the impugned order, it is mentioned as if the Commissioner of Kancheepuram Municipality by his proceedings dated 09.05.2019, appeared to have stated that the service in the Municipality was not covered under the Tamil Nadu Ministerial Service. On the basis of the statement made by the Commissioner of Kancheepuram Municipality, the impugned order had concluded that the service qualification of the petitioners was not in terms of paragraph 6(B) and (C) of the Commission's notification dated 31.08.2017.

6. According to the learned counsel for the petitioners, a copy of the letter stated to have been issued by the Commissioner, Kancheepuram Municipality dated 09.05.2019 was made available to these petitioners as they had obtained the same under the Right to Information Act and found that in fact, the Commissioner has opined in that letter that the petitioners' service in Kancheepuram Municipality ought to be treated as a Ministerial Service for all purposes. Unfortunately, by wrongly quoting the letter, the impugned cancellation order was issued. The learned counsel would draw the attention of this Court to the contents of the letter dated 09.05.2019, which read as under:

"With reference cited the commission has requested the clarifications as to whether the post of Junior Assistant in Kancheepuram Municipality is classified under Tamil Nadu Ministerial Service, if not under what basis the application of the above three candidates were recommended to the above said recruitment. In this regard, it is stated that even though they are not covered under the Tamil Nadu Ministerial Services, they are governed by the Tamil Nadu Municipal General Service Rules 1970 Rule 40 of the Tamil Nadu Municipal General Rules states that 'in the matters in respect of which no provision has been made in the rules, every member of a service shall as nearly as possible be governed by the provisions applicable to Government servants of similar status and standing'. Hence, except the mode of recruitment they are in similar status of Junior Assistant in the Municipal Service and therefore, they are governed by the Tamil Nadu Pension Rules, Fundamental Rules, General Rules, Conduct Rules etc. as in the case of Junior Assistant in the Ministerial Services. Apart from that as they acquired degree from the recognized university and completed 3 years

of service for recommending to Group VA examination which is mentioned under para 6B, they were recommended to Group VA examination. Besides the pay and other financial pecuniary benefits applicable to Junior Assistant appointed to the Ministerial Service is also applicable to the Junior Assistant of the Tamil Nadu Municipal Service."

7. The above contents would clearly show that the petitioners have been placed on par with the Government servants as Junior Assistants and therefore, they have to be treated as a part of the Ministerial Service. Very strangely misunderstanding and misreading of the letter, the impugned order was issued by the second respondent, as if the petitioners' selection was not in consonance with the rules. He would therefore submit that the impugned order is liable to be set aside only on the ground of non and misapplication of mind.

8. Even otherwise, the learned counsel would submit that the Rule 40 of the Tamil Nadu Municipal General Service Rules itself was not available at the relevant point of time and the question of placing reliance on the rule itself was fundamentally flawed and therefore, the termination of their service and cancellation of selection cannot be countenanced either in law or on facts. In any case, the impugned action appears to be a colourable exercise of power, as no valid reasons had been stated in the order, abruptly cancelling their selection.

9. In this regard, the learned counsel would draw the attention of this Court to the rule position in order to demonstrate that the said rule (Rule 40) is not in existence at all at the relevant point of time. The learned counsel however would submit that whether it is there in the rules or not, both ways the basis on which, the impugned cancellation order was issued, is invalid and liable to be set aside.

10. Upon notice, Mr.V.Kathirvelu, learned Special Government Pleader entered appearance and would oppose any relief to be granted to these petitioners. According to the learned Special Government Pleader, the notification No.19/2017 issued on 31.08.2017, has clearly stipulated that in regard to the appointment, paragraph No.6 which laid down the qualification for appointment, is extracted hereunder:

"The applicants should be an approved probationer in the post held by them in the parent department and with service for a period of not less than three years after acquiring Bachelor's Degree either in the category of

Junior Assistant or in the category of Assistant or in both the categories put together, in the Tamil Nadu Ministerial Service or in the Tamil Nadu Judicial Ministerial Service as on 01.08.2017."

11. The learned Special Government Pleader for the first respondent would also refer to the Tamil Nadu Secretariat Service Rules referring to category 3(a), which is extracted hereunder:

"3(a) Assistants in the Departments of Secretariat other than Law and Finance Departments and the Governor's Secretariat.

- (i) by direct recruitment; or
- (ii) by recruitment by transfer from among the holders of the post of Junior Assistants and Assistant in the Tamil Nadu Ministerial Service and the Tamil Nadu Judicial Ministerial Service; or
- (iii) by promotion from the category of Typists or Telephone Operator in the Tamil Nadu Secretariat Service; or
- (iv) by recruitment by transfer from the posts of Record Clerks, Drivers, Office Assistants, Motor Cycle Messengers and Van Cleaners who are graduates working in Secretariat; or
- (v) by recruitment by transfer from the posts of Record Clerk and Typist who are not graduates working in Secretariat:

Provided that fifty percent of the vacancies shall be filled up by direct recruitment and the remaining fifty percent of the vacancies shall be filled up by other methods as follows:-

- (i) Junior Assistants and Assistants in the 15% Tamil Nadu Ministerial Service and the Tamil Nadu Judicial Ministerial Service.
- (ii) Record Clerks, Typists, Telephone 25% Operators, Drivers and Motor Cycle Messengers who are graduates working in Secretariat.
- (iii) Record Clerks and Typists who are not 5% graduates working in Secretariat.
- (iv) Office Assistants and Van Cleaners who 5% are graduates working in Secretariat:

Provided further that if sufficient number of qualified and suitable persons are not available for appointment by any one of the four methods mentioned above, the

unfilled vacancies may be filled up by the remaining three methods, subject to availability from time to time."

As the petitioners' came from Municipal Service by way of transfer and their services were not equated as that of the Ministerial Services and their selection was ultimately found not in terms of the rule and hence, it was rightly cancelled. In this connection, the learned Special Government Pleader would particularly refer to Sub Rule (11) of Rule 3(a), which provide recruitment by transfer only from Tamil Nadu Ministerial Services.

12. Mr. Balamurali Krishnan, learned standing counsel for the second and third respondents would submit that the Commission had to act on the basis of the letter issued by the Commissioner, Kancheepuram Municipality, as without ascertaining the true facts, the selection was made and appointment was given to these petitioners. However, subsequently, when a clarification was sought by the Commission from the erstwhile employer, the Commission was informed about the nature of the Municipal Service and on that basis, the impugned order was issued cancelling the selection of these petitioners.

13. Considered the submissions of the learned counsel for the petitioners, the learned Special Government Pleader for the first respondent and the learned standing counsel for the second and third respondents. There appears to be a real dispute as to whether Rule 40 of the Tamil Nadu Municipal General Service Rules is available in the Statute at all at the relevant time or even if it was available, whether it could be the basis for issuance of the impugned cancellation or not. As rightly contended by the learned counsel for the petitioners, in both ways, the order impugned cannot be countenanced either in law or on facts for the following reasons.

14. Even assuming that the said rule is still very much available, the contents of the letter dated 09.05.2019, which is extracted above, would in fact support the case of the petitioners that as Junior Assistants, these petitioners had enjoyed parity with the Junior Assistants of the Tamil Nadu Ministerial Service, in which case, their appointments were in order and cannot be set at naught on the basis of the said application of the rule. Even otherwise, if the Rule 40 is not available as on the date of the selection, the reliance placed by the Commission on the said rule suffers from non application of mind. In that event, this Court has to come to an inexorable conclusion that the impugned order of cancellation, under no circumstances can held to be valid.

15. In this case, these petitioners had been appointed and allowed to work for considerable time and they were also sent for Foundation Training to equip themselves to be a part of the Secretariat Service. It is very unfortunate that without ascertaining the factual and true position with regard to the application of the rule, the Commission has taken a decision to cancel their appointment with undue haste. The Commission while issuing the impugned order did not even put the petitioners on notice and called for their objections. Such drastic action on the part of the Commission in infringing the fundamental rights of the petitioners, without even following the rudimentary principles of natural justice, appears to be high handed to say that the least. Such impromptu action of the second respondent is also the reflection of official's insensitivity and callousness in trifling with the valuable employment of the petitioners. When the rights of the Government servants are sought to be interfered with, bare and minimum requirement is to follow the due process of law before taking any adverse decision against the petitioners.

16. In this case, particularly, the very foundation of the adverse decision was an erroneous appreciation of both factual and legal position, reflecting complete lack of application of mind, this Court has no other option except to set aside the impugned orders as being patently illegal and void. In the circumstances, the appointments of the petitioners to the Secretariat Service and their subsequent cancellation need to be re-visited afresh with proper application of mind with due reference to the contents of the letter of the Commissioner of Municipal Administration dated 09.05.2019, Kancheepuram Municipality, relied on by the second respondent and also with reference to the proper rule position, governing the subject appointment. In case, these petitioners' appointment are found to be in conformity with the rule position, their appointments to the Secretariat Service shall be restored forthwith with all consequential and attendant benefits.

17. In view of the above, these writ petitions stand allowed and the impugned order in Memo No.6716/PSD-D2/2016 dated 08.08.2019, is set aside. The respondents are directed to pass orders afresh on the basis of the above observation by re-visiting the appointment of these petitioners. The respondents are directed to pass appropriate orders after due examination and appreciation of the case of the petitioners, within a period of six weeks from the date of receipt of a copy of this order.

18. In case, the petitioners are found to be satisfying the rule position, their appointments to the Secretariat Service in the respective departments must be restored forthwith with all

consequential and attendant benefits, as if they have deemed to have continued in service from the date of their original appointment in the Secretariat Service. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
The Government of Tamil Nadu,
Personnel and Administrative Reforms Department,
Secretariat, Fort St.George,
Chennai 600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Park Town,
Chennai 600 003.

3.The Chairman,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Park Town, Chennai - 600 003.

+6cc to Mr.Govind Chandrasekar, Advocate SR.6648, 6835,
6836, 6837

W.P.Nos.24351, 24354 and 24599 of 2019

RSI(CO)
CB(15/03/2021)

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