



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)Nos.10612 of 2010 and 11073 of 2010

and

W.M.P(MD)Nos.1 and 1 of 2010

W.P. (MD) No.10612 of 2010

K.Vincent ... Petitioner in both petitions

Vs.

1.State of Tamil Nadu,
represented by its Secretary,
Health and Family Welfare Department,
Secretariat, Chennai.

2.The Director,
Public Health and Preventive Medicine,
Chennai - 600 006.

3.The Deputy Director of Health Services,
Madurai, Madurai District. ... Respondents in both petitions

W.P. (MD) No.10612 of 2010 filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified Mandamus to call for the records pertaining to the impugned order in R.No.7992/E1/2010-S2, dated 13.03.2010 on the file of the respondent No.2 and quash the same as illegal and consequently to direct the respondents to promote the petitioner to the post of Cold Chain Officer in the Tamil Nadu Public Health Service.

W.P. (MD) No.11073 of 2010 filed under Article 226 of the Constitution of India, for issuance of a writ of declaration to declare Rule 4(b)(2) of the Adhoc Rules brought out vide G.O.Ms.No.1016, Health and Family Welfare Department, dated 08.07.1991 on the file of the respondent No.1 as null and void and ultra vires the Constitution of India and consequently, to direct the respondents to appoint the petitioner in the post of Cold Chain Officer in the Tamil Nadu Public Health Service.



For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.M.Muthugeethaiyan, Spl. GP

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COMMON ORDER

While WP(MD)No.10612 of 2010 has been filed seeking to quash the impugned order and a consequential direction to the respondents to promote the petitioner to the post of Cold Chain Officer in the Tamil Nadu Public Health Service, W.P. (MD) No.11073/2010 has been filed to declare Rule 4 (b) (2) of the Adhoc Rules issued vide G.O. Ms. No.10156, Health & Family Welfare Department dated 8.7.1991 as null and void and *ultra vires* the Constitution and for a consequential direction to appoint the petitioner in the post of Cold Chain Officer in the Tamil Nadu Public Health Service.

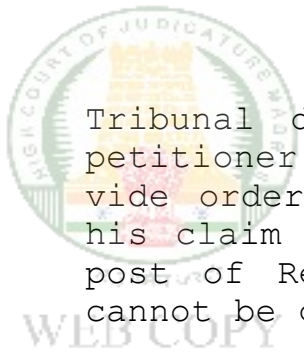
2.The brief facts of the case as could be culled out from the affidavit filed in support of the petitions is as follows:

(i) The petitioner was appointed as Walk-in Cooler Attendant on 01.07.1987 and he joined duty on 06.07.1987. Thereafter, he was transferred and posted as Refrigeration Attendant at Cold Storage Unit in the campus of Food Analysis Laboratory at Madurai on 01.12.1990 and he completed his probation on 03.04.1995.

(ii) It is the case of the petitioner that he has passed 12th standard and has also passed the National Trade Certificate Examination in the trade of Refrigeration and Air-conditioning at the Government ITI, Madurai in the year 1983. He also has two years experience in the same field and the possess the certificate issued by the Madurai Co-Operative Milk Producers' Union Limited, Madurai for the training in Refrigeration Section from 14.03.1983 to 31.03.1985 during his training period at Government ITI Madurai.

(iii) While so, many persons were appointed as Refrigeration Mechanics by direct recruitment and by recruitment by transfer from other services, however, the petitioner was not considered for the post of Refrigeration Mechanic and, therefore, he sent a representation, dated 17.01.1991 claiming promotion to the post of Refrigeration Mechanic in the Cold Storage Unit at Madurai. However, his claim was rejected.

(iv) The petitioner therefore, filed application in OA.No.2269 of 2003 before the Tamil Nadu Administrative Tribunal, for a direction to consider the petitioner for promotion, and the



Tribunal directed the respondents to consider the case of the petitioner for promotion to the post of Refrigeration Mechanic, vide order dated 04.07.2003. However, the 2nd respondent rejected his claim stating that unless the Adhoc Rules with regard to the post of Refrigeration Mechanic is amended by the Government he cannot be given promotion to the said post.

(v) As per the Adhoc Rules, person who is in possession of the minimum general educational qualification with Government I.T.I Certificate in Refrigeration and Air-Conditioning with one year experience shall be appointed as Refrigeration Mechanic by direct recruitment and one who has passed the minimum general educational qualification and with experience of 5 years in Maintenance and Repair of Refrigeration Equipment in any of the Government Departments is eligible to be appointed as Refrigeration Mechanic by recruitment by transfer from any other services. Therefore, the petitioner sent a representation dated 28.10.2008 to consider the post of Refrigeration Attendant held by him as identical to the post of Refrigeration Mechanic and further to include his name in the panel for the post of Cold Chain Officer.

(vi) Since the said representation of the petitioner has not been considered for a long time, he filed a petition in W.P.No.28072 of 2008, wherein this Court, by order dated 25.11.2008 directed the 2nd respondent to pass orders by considering the petitioner's representation dated 28.10.2008. However, again the request of the petitioner was negatived on the same reason stating that Adhoc Rules needs to be amended.

(vii) Though the petitioner possessed the requisite educational qualification and experience, his candidature for the post of Refrigeration Mechanic was not considered and therefore, he sent another detailed representation dated 08.10.2009 to respondent No.2 through respondent No.3 and since it was also not considered, he filed yet another writ petition in W.P.No.26480 of 2009 and this Court by order dated 21.12.2009 directed the 2nd respondent to consider the claim of the petitioner.

(viii) The 2nd respondent once again rejected the claim of the petitioner stating that as per the existing Adhoc Rules, the petitioner cannot be given promotion as Cold Chain Officer. Challenging the impugned order of rejection finally, the petitioner has filed this writ petition.

3.The learned Counsel for the petitioner submits that the petitioner entered into service as Walk-in-Cooler Attendant in the year 1987, he was posted as Refrigeration Attendant in the year 1990. The learned counsel further submits that Rule 4 (b) (2) of



the Adhoc Rules provides for recruitment by transfer from any other service to the post of Cold Chain Officer and necessary qualification required therein is ITI Certificate in the trade of Refrigeration and Air-Conditioning issued by the Government with experience for a period of not less than fifteen years in the installation and maintenance of refrigeration equipment in any Government Department.

4. It is the further submission of the learned counsel for the petitioner that the petitioner, being in possession of the necessary educational qualification, is entitled to be considered to the post of Cold Chain Officer as the Adhoc Rules does not specify any particular feeder category for promotion to the post of Cold Chain Officer and therefore, in the absence of any such specification, denying promotion as Cold Chain Officer to the petitioner, who is in possession of all the qualification and experience is unjustifiable. It is the further submission of the learned counsel that the qualification prescribed in the Adhoc Rules has no reasonable nexus with the object to achieve as none of the holders of the post of Refrigeration Mechanic in the Tamil Nadu Public Health Service gets promoted on recruitment by transfer to the post of Cold Chain Officer as per Rule 4 (2) (a) of the Adhoc Rules. It is therefore the submission of the learned counsel for the petitioner that Rule 4 (b) (2) (a) provided in the Adhoc Rules is a provision redundant and, therefore, the prescription of the said rule acts as detriment to the persons in the Tamil Nadu Public Health Service to get promotion and, therefore, the said provision deserves to be declared *ultra vires* and that the respondents should be directed to promote the petitioner to the post of Cold Chain Officer by allowing the present petitions.

5. Per contra the learned Special Government Pleader appearing for the respondents submitted that as per the existing Adhoc Rules, for the post of Mechanic (Refrigeration), the mode of appointment is either through direct recruitment or by recruitment by transfer from any other service. It is the further submission of the learned Special Government Pleader that as per the rules relating to the mode of appointment for the post of Mechanic (Refrigeration) the petitioner cannot be promoted to the post of Mechanic (Refrigeration) as the said post comes within the same service, viz., the Tamil Nadu Public Health Subordinate Service and the said service cannot be termed to be 'any other service' as provided in the rules. Further, the post held by the petitioner is not a post in the feeder category to the post of Mechanic (Refrigeration) and, therefore, the petitioner's candidature cannot be considered for promotion.



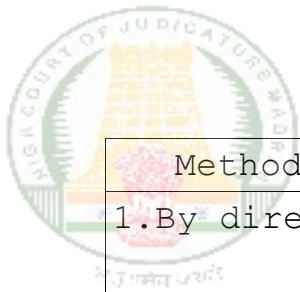
6. It is further submitted by the learned Special Government Pleader that the post of Refrigeration Attendant in the Tamil Nadu Public Health Subordinate Services falls within pay band 1A and carries a pay scale of Rs.4800 - 10000 with GP Rs.1300 whereas the post of Mechanic (Refrigeration) in Tamil Nadu Public Health Subordinate Service falls in Pay Band 1 and carries a pay scale of Rs.5200 - 20200 with GP Rs.2400, which is higher than the pay of Refrigeration Attendant and, therefore, the post of Refrigeration Attendant cannot be considered as identical to the post of Mechanic (Refrigeration) and further the duties and responsibilities prescribed for the above mentioned posts are different and, therefore, equating two unequal posts for being considered for promotion is impermissible.

7. It is the further submission of the learned Special Government Pleader that challenge has been made to Rule 4 (2) (b) (ii) by the petitioner after a period of 19 years from the date of its enactment is definitely hit by delay and laches and the petitioner not having given any reply as to the delay and laches in not challenging the rules at the earliest point of time, though he has been in service for the past 23 years, it is not open to the petitioner to seek a declaration of the rule as *ultra vires* and the petition filed in this regard by the petitioner deserves to be dismissed as hit by delay and laches. Accordingly, he prays for dismissal of the petitions.

8. This Court paid its best attention to the submissions advanced by the learned counsel on either side and perused the materials placed on record.

9. The core issue that falls for consideration in the present petition is whether Rule 4 (2) (b) (ii) of the Tamil Nadu Public Health Service is *ultra vires* the Constitution and whether the petitioner is entitled to be considered for the promotion to the post of Cold Chain Officer.

10. To answer the issue, it is but necessary to refer to Rule 4 (2) (b) (ii) of the Tamil Nadu Public Health Service Rules, which prescribes for the qualification and the methods of recruitment for the post of Cold Chain Officer. For better appreciation, the said Rule is extracted hereunder :-



Methods of recruitment	Qualification
1.By direct recruitment	i. A degree in Engineering with Refrigeration and Air Conditioning as a subject and ii. Experience for a period of not less than one year in the installation and maintenance of refrigeration equipment (or) i. A Diploma in Engineering with Refrigeration and Air conditioning as a subject ii. Experience for a period of not less than five years in the installation and maintenance of refrigeration equipment
2.a) by direct recruitment by transfer from among the holders of the post of Mechanic (Refrigeration) in the Tamil Nadu Public Health Subordinate Service	i. Should have put in service on Mechanic (Refrigeration) for a period of not less than fifteen years and ii. Should have passed the Account Test for Executive Officer.
b) By recruitment by transfer from any other service	i. A Diploma in Engineering with Refrigeration and Air Conditioning as a subject with experience for a period of not less than five years in the installation and maintenance of refrigeration equipment in any Government Department (or) ITI Certificate in the trade of Refrigeration and Air Conditioning issued by Government with experience for a period of not less than fifteen years in the installation and maintenance of refrigeration equipments in any Government Department and ii. Should have passed the Account test for executive officers

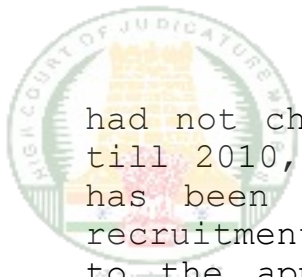


11. The above Rule 4 provides for three methods of selection/appointment to the post of Cold Chain Officer. The three modes of selection/appointment are (i) by direct recruitment; (ii) by direct recruitment by transfer from among the holders of the post of Mechanic (Refrigeration) in the Tamil Nadu Public Health Subordinate Service; and (iii) By recruitment by transfer from any other service. The issue before this Court is not falling within either method (i) or method (ii), as the petitioner is not seeking direct recruitment nor seeking direct recruitment by transfer from the Tamil Nadu Public Health Subordinate Service. The claim of the petitioner is that his case should be considered as recruitment by transfer from other service, viz., method (iii) as provided in Rule 4.

12. It is seen from records that the petitioner had joined duty on 06.07.1987 as Walk-in Cooler Attendant, which, falls under the Tamil Nadu Public Health Subordinate Services. It is the admitted case that the petitioner is holding the position of Refrigeration Attendant in the Tamil Nadu Public Health Subordinate Service. If at all the petitioner claims the said promotion, it could only be by way of recruitment by transfer from among the holders of the post of Mechanic (Refrigeration) in the Tamil Nadu Public Health Subordinate Service. Definitely, the petitioner cannot be treated to be a person to be holding a post in any other service as his service is in the subordinate wing of the Tamil Nadu Public Health. For invoking the provision under method (iii) prescribed in Rule 4, the petitioner should be in the service of any other Department under the Government and not under the Tamil Nadu Public Health. However, in the case on hand, it is the undisputed position that the petitioner is a member of the Tamil Nadu Public Health Subordinate Service and, therefore, invocation of method (iii) provided u/r 4 would not arise and it is impermissible. Therefore, the rejection of the petitioner's claim for promotion considering his case to be under 'any other service' cannot be found fault with.

13. Further, it is not disputed by the petitioner that the scales of pay of Refrigeration Attendant and Refrigeration Mechanic in the Tamil Nadu Public Health Subordinate Services are different and the two posts cannot be said to be identical in all aspects including duties and responsibilities and that being the admitted position, the claim of the petitioner for promotion to the post of Cold Chain Officer even under Rule 4 (2) (a) also cannot be countenanced.

14. On the issue of vires of Rule 4 (b) (ii) is concerned, it is to be pointed out that the said Rules have been enacted in the year 1991. Though the petitioner had joined the services of the Public Health Services in the year 1987, yet the petitioner



had not challenged the said Rule 4 (b) (ii) at any point of time till 2010, i.e., for about a period of two decades, when the rule has been in existence and based on which many promotions and recruitments have happened and there was no quarrel with respect to the application of the rule. If the petitioner was really concerned that the rule was *ultra vires* the Constitution, the petitioner ought to have made a challenge to the said rule immediately or in close proximity to the date of its enactment. However, the petitioner had allowed the rule to remain in the books for over two decades and only when the turn of the petitioner for an opportunity to climb up the ladder has arisen, the petitioner not able to satisfy the requirements in the said rule, has thought it fit to claim that the rule is *ultra vires* the Constitution. The petitioner has not whispered anything about the delay that had occasioned in approaching this Court at this belated point of time and the said delay is grossly fatal to the case of the petitioner. Unless the petitioner is able to substantiate the delay in approaching this court, which he has miserably failed, the case of the petitioner is really hit on the ground of delay and laches.

15. The Hon'ble Supreme in the case of **(AIR 1974 SC 2271)** has held as under :-

"2. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But, it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

16. From the proposition of law laid down by the Hon'ble Apex Court above, it is categorically clear that the Courts shall not exercise its discretionary jurisdiction under Article 226 in case of persons, who approach the Courts belatedly to put forward stale claims. In the case on hand, the petitioner having entered



into service in the year 1987 had kept silent for about two decades from the date of enactment of the rule and, thereafter, has questioned the vires of the said rule, which cannot be allowed. The filing of the present petition for declaring the abovesaid rule as *ultra vires* is not but making a mockery of the judicial system, which cannot be allowed at any cost. Accordingly, this petition questioning the vires of the enactment, deserves to be dismissed *in limine*.

17. For the reasons aforesaid, both the writ petitions are devoid of merits and are liable to be dismissed. Accordingly, both the writ petitions are dismissed. Consequently, connected miscellaneous petitions are also dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

Dsk

To:-

- 1.The Secretary,
Health and Family Welfare Department,
Secretariat, Chennai.
- 2.The Director,
Public Health and Preventive Medicine,
Chennai - 600 006.
- 3.The Deputy Director of Health Services,
Madurai,
Madurai District.

+2 CC to MR.T.LAJAPATHI ROY, Advocate (SR-3673, 3674[F] dated 08/02/2021)

W.P(MD) Nos.10612 of 2010
and 11073 of 2010
05.02.2021

KM (19.03.2021) 9P 6C