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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.04.2022

Pronounced on : 15.06.2022

Coram

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.26569 of 2009
and W.M.P.Nos.1 and 2 of 2009

1.S.Chandrasekaran
2.A.S.Abul Kasim

...Petitioners

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Revenue Department,
Fort St.George,
Chennai-600 009.
2. The Principal Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai-600 005.
3. The District Collector,
Tirunelveli District,
Tirunelveli.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the Notification dated 30.11.2009 issued by the 3rd respondent having Ref No.A6/Pd1 30/2007-A6/57490/2009 dated 30.11.2009 containing the approved list of Deputy Tahsildar for Thirunelveli District for the year 2007 and quash the same and consequently direct the 3rd respondent to maintain the approved list of Deputy Tahsildar for the years 2005 and 2006 as originally drawn up as per the rules in force without discriminating between graduate and non graduate Promotee Assistants and make promotions based on the said list.

For Petitioner : Mr.Nalini Chidambaram Senior Counsel
for Ms.C.Uma

For Respondents: Mr.P.Anand Kumar
Government Advocate



O R D E R

This writ petition is filed challenging the Notification dated 30.11.2009 issued by the 3rd respondent having Ref No. A6/Pd1 30/2007-A6/57490/2009 dated 30.11.2009 containing the approved list of Deputy Tahsildar for Thirunelveli District for the year 2007 and quash the same and consequently direct the 3rd respondent to maintain the approved list of Deputy Tahsildar for the years 2005 and 2006 as originally drawn up as per the rules in force without discriminating between graduate and non-graduate Promotee Assistants and make promotions based on the said list.

2. This writ petition is filed by the petitioners who are Promotee Non-Graduate Assistants on the premise they have been discriminated vis-a-vis Promotee Graduate Assistants in the matter of promotion to the post of Deputy Tahsildar, despite the fact that the rules do not provide for a distinction/classification between Promotee Assistants on the basis of their educational qualification i.e., whether Graduates or Non-Graduates.

3. Brief Facts:

i) The 1st petitioner passed SSLC exam and was regularly appointed as Junior Assistant in the Revenue Department on 21.09.1983. The 2nd petitioner passed his Plus 2 exam in the year 1982. The 2nd petitioner was appointed as Junior Assistant on 05.09.1983. The Educational qualification for the post of Junior Assistant was SSLC. However, some of the candidates were graduates even at the time of initial appointment, while a few other Junior Assistants acquired graduate degree during the course of their career. Normally, the appointment to the posts of Junior Assistant is made among the successful candidates in the Tamil Nadu Public Service Commission Examination for Group IV Service. The next promotional post for Junior Assistants is that of Assistant.

ii) The petitioner passed the requisite Departmental test and underwent the Survey and Settlement Training in 1989 and 1992 respectfully and hence stood qualified to be promoted as Assistant. The 1st petitioner was included in the 1990 panel of Assistants and the 2nd petitioner was included in the 1994 panel of Assistants. Thereafter, the District Revenue Officer by his proceedings No.A5/45902/1991, dated 08.05.1991 and No.A5/30618/1995, dated 20.06.1995 promoted the 1st and 2nd petitioners from the post of Junior Assistant to the post of Assistant.

iii) The posts of Junior Assistants and Assistants in the Revenue Department are governed by the Tamil Nadu Ministerial



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Service Rules. Under the said rules, the post of Assistants is filled from two sources (a) By promotion from the feeder category of Junior Assistants and (b) By Direct Recruitment. The minimum educational qualification for being directly recruited as Assistants is a graduate Degree. The next promotional post for Assistants is Deputy Tahsildar.

iv) The posts of Deputy Tahsildar and Tahsildar are governed by Tamil Nadu Revenue Subordinate Service Rules. As per the Rules, the post of Deputy Tahsildar is filled by recruitment by transfer from the post of Assistants in Tamil Nadu Ministerial Service Rules. The minimum qualifying service for being considered for the post of Deputy Tahsildar is 8 years as Assistant as per the Revenue Subordinate service rules Annexure III. The next promotional post for Deputy Tahsildar is Tahsildar. The minimum qualifying service for being considered for the post of Tahsildar is 2 years as Deputy Tahsildar in terms of Revenue Subordinate Service Rules Annexure III.

4. Originally, the seniority list for the category of Assistants was governed by Rule 9 of the Tamil Nadu Ministerial Service Rules and the same was prepared as under:

1. Promotee Assistant
2. Promotee Assistant
3. Directly Recruited Assistant

Any further promotion namely to the post of Deputy Tahsildar was made in terms of Rule 9 of the Ministerial Service Rules which is extracted below:

"Rule 9: The inter-se Seniority of the Direct recruited Assistants in the Districts shall be fixed in the following cyclical order irrespective of the date of their joining duty:

- | | |
|-------------------------------|--|
| a. First two vacancies | :Persons appointed by promotion |
| b. Third vacancy | :Persons appointed by direct recruitment |
| c. Fourth and fifth vacancies | :Persons appointed by promotion |
| d. Sixth Vacancy | :Persons appointed by direct recruitment |

5. The Direct Recruit Assistants in the Revenue Department submitted a representation that they be given preferential treatment in the matter of promotion to the cadre of Deputy Tahsildar without basing the seniority in terms of the Assistant list. Pursuant thereto, the Tamil Nadu Revenue Subordinate Service Rules was amended vide G.O.No.133, dated 07.02.1995 and the same reads as under:



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Notification:

"In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendments to the Special Rules for the Tamil Nadu Revenue subordinate Service Section 28 in Vol.III of the Tamil Nadu Services Manual, 1970.

2. The amendments hereby made shall be deemed to have come into force on the 04.12.1978.

Amendments:

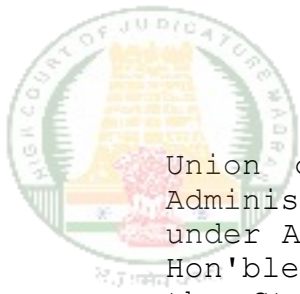
2. In Annexure III, in Item (ii), for the last proviso, the following provisions shall be substituted namely:

'Provided also that an Assistant appointed by direct recruitment in the office of the erstwhile Board of Revenue, who has completed a total service of five years, passed all the tests prescribed and undergone training as Firka Revenue Inspector for a period of two years successfully shall be eligible for inclusion of his name in the approved list of Deputy Tahsildars for Madras City, above his seniors appointed other than by direct recruitment or for re-fixation of his seniority over such seniority, if his name has already been included in the list of Deputy Tahsildars, The consideration of his claim shall be against the first vacancy that follows the carried over vacancies.'

3. After the provision so substituted, the following proviso shall be added:

'Provided also that an Assistant appointed by direct recruitment in the District Revenue Unit, who has completed a total period of five years, passed all the tests prescribed and undergone training as Firka Revenue Inspector for a period of two years successfully, shall be eligible for inclusion of his name in the approved list of Deputy Tahsildars in the District above his seniors appointed other than by direct recruitment or for re-fixation of his seniority over such seniors, if his name has already been included in the list of Deputy Tahsildars. The Consideration of his claim shall be against the first vacancy that follows the carried over vacancies.'"

6. The above was challenged by the Promotee Assistants before the Tamil Nadu Administrative Tribunal, which set aside the amendment in G.O.Nos.844 and 133, dated 12.08.1992 and 07.02.1995 respectively vide its order dated 26.02.1997. The same was challenged before the Hon'ble Supreme Court in SLPs(C) Nos.1821-23 of 1999, during its pendency, the Hon'ble Supreme Court delivered a judgment in the case of L.Chandra Kumar v.



Union of India whereby it was held that the orders of the Administrative Tribunal would be subject to judicial review under Article 226 of the Constitution of India. In view thereof, Hon'ble Supreme Court disposed of the appeal granting liberty to the State of Tamil Nadu to approach the High Court. Pursuant thereto, the State filed writ petition in W.P.Nos.27173 and 27174 of 2003, challenging the order of the tribunal dated 23.06.1997. The High Court set aside the order of the tribunal and upheld G.O.Ms.Nos.884 and 133, dated 12.08.1992 and 07.12.1995 respectively. Aggrieved by the above orders, the Promotee Assistants preferred an appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court affirmed the orders of the High Court and upheld G.O.Ms.Nos.884 and 133, dated 12.08.1992 and 07.12.1995 respectively vide order dated 08.04.2009, in the case of M. Rathinaswami v. State of T.N. reported in (2009) 5 SCC 625 M. Rathinaswami v. State of T.N., The Supreme Court upheld the validity of the amendment to Rule 5 (g) and Annexure III, Item (ii) of the TNRSS Rules to the extent that it gives preference to the Direct recruit Assistants over the Promotee non-graduate Assistants observing that the very basis for the distinction sought to be drawn is that direct recruits are graduates and hence, intellectually superior to non-graduates. However, the Supreme Court read down the Rule to save it from becoming violative of Articles 14 and 16 of the Constitution and held that once a promotee becomes a graduate, there cannot be any rational basis for making a distinction vis-à-vis direct recruits and held that the rule is inapplicable to the promotees who are graduates. The relevant portion of the judgment is extracted below:

"19. In our opinion, by the very same logic given by the respondent and the High Court [S. Jacob v. State of T.N., 2005 SCC OnLine Mad 675 : (2005) 4 LLN 238] , a promotee Assistant who is also a graduate has to be placed on a par with the direct recruits because he has also got a degree. In our opinion, we have to hence read down the impugned amendment and interpret it as inapplicable to those promotee Assistants who are also graduates/postgraduates. In other words, the impugned amendment will only enable the direct recruits to be placed above those promotee Assistants who are non-graduates for the purpose of promotion as Deputy Tahsildar.

22. In the present case, both the directly recruited Assistants and promoted Assistants have been integrated into one cadre of Assistants. No doubt, even after this integration for further classification for promotion higher educational qualifications can possibly be a rational basis, but in our opinion there can certainly be no further



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classification between direct recruits and those promotee Assistants who have acquired the graduation qualification whether before joining as Junior Assistant or thereafter. Once a promotee becomes a graduate we cannot see any rational basis for discrimination against him vis-à-vis direct recruits.

32. For the reasons given above, these appeals are partly allowed and the impugned judgment is partly set aside, and it is held that the impugned rule so far as it places directly recruited Assistants above the promotees for promotion as Deputy Tahsildar shall only apply to those promotees who are non-graduates, but it is inapplicable to those promotees who are graduates."

(emphasis supplied)

7. It is thus evident that the Hon'ble Supreme Court in the case of M. Rathinaswami v. State of Tamil Nadu has made it clear that while impugned amendment cannot discriminate between graduates whether direct recruit or promotee. It however, held that there was rational basis for classification or giving preference to graduates vis-a-vis non-graduates be it Promotee or Direct Recruits. In other words the dividing line or the basis of the classification/ distinction appears to be the educational qualification, Graduates were given preference whether Promotees or Direct Recruits vis-a-vis Non-Graduates.

8. However, controversy did not rest there. The government issued instructions to implement the order of the Hon'ble Supreme Court and seniority list was drawn treating Direct Recruit Assistants on par with Promotee Graduate Assistants. This in turn affected a number of Direct Recruit Assistants. In the meanwhile, the promotee non-graduate Assistants challenged the orders of the District Collectors implementing the order of the Hon'ble Supreme Court in a batch of writ petitions praying to stay the orders of re-drawal of the seniority list. The Direct Recruit Assistants also filed a batch of writ petitions against the revision of the list of Deputy Tahsildar by the District Collectors of Tiruchirappalli, Sivaganga and Tirunelveli which resulted in revision of their ranking. The writ petition came to be dismissed stating that the order of the Hon'ble Supreme Court ought to be implemented.

9. The above order of the Single Judge was carried in appeal before the Division Bench and the Division Bench vide order dated 09.03.2012 set aside the order of the Single Judge and directed the State of Tamil Nadu to draw Seniority List taking Direct Recruit Assistants, Graduate Promotees as well as Non-Graduate Promotees as constituting one group and directed



the State to draw a panel as on 04.12.1978 and reconsider the promotion subject to the candidates satisfying the criteria required under the rules within a period of two months. The Division Bench was prompted to pass the above direction in view of letter (MS) No.392 dated 30.12.2011 in and by which the Government accepted the proposal of the Principal Secretary, Revenue to dispense with the degree or graduation as minimum educational qualification for the post of Deputy Tahsildar and directed all the three categories viz., Direct Recruited Assistants, Non-Graduate Promotees and Graduate Promotees to be treated as one group and seniority as on 04.12.1978 for the post of Deputy Tahsildar was to be drawn. The Division Bench also directed not to disturb the candidate who had been promoted but not in service either on account of retirement or superannuation or by reason of death. A Review petition was filed which was dismissed by the Division Bench.

10. Aggrieved by the same, the matter was carried in appeal to the Hon'ble Supreme Court. The Hon'ble Supreme Court in A.Rajagopal's case reported in (2019) 5 SCC 560 on considering the question relating to the implementation of the amendment to Rule 5(g) of the TNRSS Rules and Annexure III, Item (ii), in the light of the Judgment of the Hon'ble Supreme Court in Rathinaswami in and by which the Hon'ble Supreme Court upheld the amendment to the Rule qua Promotee non-graduate Assistants by holding that no classification should be made between Graduates whether Promotee or Direct Recruit as any such attempts would result in discrimination falling foul of Article 14 of the Constitution of India held that the Division Bench of the Madras High Court had misdirected itself in placing reliance upon a letter viz., No.392 dated 30.12.2011 without a consequential amendment to the relevant Rule to proceed to treat all three categories viz Direct Recruit Assistants, Promotee Graduate Assistants and Promotee Non-Graduate Assistants on par while considering for promotion to the post of Deputy Tashildar. The Hon'ble Supreme Court held it would amount to indirect reversal of the Judgment of the Hon'ble Supreme Court in M.Rathinaswami's case through an executive order which is shocking and arbitrary.

11. Tracing the judicial history an attempt was made by the learned senior counsel to submit that all along the dispute was only with reference to the preferential treatment extended to Direct Recruits vis-a-vis Promotee Graduate Assistants and Hon'ble Supreme Court has resolved it by holding that Direct Recruits and Promotee Graduate Assistants ought to be treated on par inasmuch as the entire classification was made on the basis of superior educational qualification namely the Direct Recruits possessing a Graduate Degree. That being the basis there cannot be any reason to discriminate between Direct



Recruit and a Promotee if the Promotee Assistant is also a graduate. It was thus submitted that the question that is now sought to be raised viz., that Promotee Assistants constitute a class and there cannot be any further classification on the basis of their educational qualification i.e., graduate or non-graduate and the said question was never decided earlier and thus needs to be resolved.

12. Though this Court is conscious of the position that a decision is a precedent for what it decides and not for what logically flows therefrom. The submission of the learned Senior counsel cannot be countenanced since once effect is given to the above judgment of the Hon'ble Supreme Court in the case of N.Rathinaswami whereby, Direct Recruits and Promotee Graduate Assistants are treated on par insofar as their right to be considered for promotion to the post of Deputy Tahsildar as a sequitur / logical corollary, the right of the Promotee Non-Graduate Assistants to be considered for promotion would arise only after the candidates belonging to Direct Recruits Assistants and Promotee Graduate Assistants have been exhausted.

13. Thus, we find that there is no merit in the submission of the petitioner and thus the Writ Petition is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Psa

To :

1. The Secretary to Government, The State of Tamil Nadu, Revenue Department, Fort St.George, Chennai-600 009.
2. The Principal Secretary/Commissioner of Revenue Administration, Chepauk, Chennai-600 005.
3. The District Collector, Tirunelveli District, Tirunelveli.

+1cc to Ms.C.Uma, Advocate SR. No. 36549

+1cc to Government Pleader SR. No. 36942

W.P. No.26569 of 2009

AJS (CO)

PR (30/06/2022)