IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:12.06.2023	Delivered on: 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.3742 of 2019
&
W.M.P.Nos.4141 of 2019 and 3358 of 2020

1.G.P.Thirumalai

2.V.Panneer Selvam

3.M.Navaneetham

4.K.Rajkumar

5.R.Balachandar

6.S.Sudhagar

7.C.Jagadeesan

8.C.Revathy

9.R.Rajalaxmi

10.P.A.Arulselvam

11.E.Venkatesan

12.S.Sangeetha

13.D.Muralidaran

14.K.Devaraju

15.M.Renuka ..Petitioners

Vs

1.The State of Tamil Nadu
Rep by its Secretary To Govt.
Revenue Department
Secretariat, Chennai-9

2.The Additional Chief Secretary
Commissioner Of Revenue Administration
Chepauk, Chennai-05

3.The District Collector
Vellore Dt, Vellore

4.The District Revenue Officer
Vellore Dt, Vellore

5.C.Kumar

6.C.Nirmala

7.P.Jeyaprakash

8.S.Suresh

9.S.Priya

10.K.Chitra ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent in G.O.(ID) No.03 Revenue and Disaster Management Department Services Wing (Ser.3(2)) Section dated 04.01.2019 and quash the same.

For Petitioner : Mrs.Dakshyani Reddy, Senior Counsel
for
Mr.Adithya Reddy

For Respondents : Mr.D.Gopal, Govt.Advocate for R1 to 4

Mrs.AL.Gandhimathi, Senior Counsel
for
Mrs.SA.Kanmani for R5 to 10

ORDER

The petitioners seek issuance of a Writ of Certiorari to quash G.O.(ID) No.03 Revenue and Disaster Management Department Services Wing (Ser.3(2)) Section dated 04.01.2019.

2. The petitioners' case as set out in the affidavit in support of the Writ Petition is that the petitioners joined services as directly recruited Assistants through TNPSC (Group-II) and they are currently working as Deputy Thasildars. The respondents 5 to 10 are promoted as Assistants from the cadre of Typists in 2014 and they are much juniors to the petitioners. According to the R.7 of the Tamil Nadu Revenue Sub-Ordinate Service Rules an Assistant was eligible for promotion to the post of Deputy Thasildar provided he fulfills the qualification mentioned in Annexure-III of the Rules. The qualification contemplated was two years as a Firka Revenue Inspector followed by clearing the examination in the maintenance of Revenue Records and Registration.

3. According to the petitioners, a promotee Assistant shall first complete two years as Assistant and another two years as Revenue Inspector. The petitioners being seniors, were posted as Revenue Inspectors even in 2015 on completion of two years training and they were promoted as Deputy Thasildars in the panel year 2018. The respondents 5 to 10 were posted for

Firka Revenue Inspector training only in the year 2017, much after the petitioners. However, the 1st respondent passed the impugned G.O.Ms.No.295 dated 06.10.2017 relaxing the requirement of R.30(c) on the basis that there was administrative delay in granting training. The petitioners challenged the same by a Revision petition which was disposed of by the 1st respondent vide G.O.(1D)No.42 dated 06.02.2018 assuring them that the petitioners' interest would not be harmed as the private respondents would not complete the mandatory period of training as Firka Revenue Inspectors by the time the petitioners would become eligible for promotion as Deputy Thasildars. The petitioners were promoted in July 2018. However, to their utter shock, in total violation of the assurance given by the 1st respondent, the impugned G.O came to be passed relaxing the requirement of completing the two years training as Revenue Inspectors for the private respondents and consequently granting them retrospective promotion, which in effect placed them senior to the petitioners. It is the petitioners' case that the 1st respondent passed the impugned G.O citing another batch of promotee Assistants who were promoted irregularly. According to the petitioners, both batches of promotee Assistants were juniors to them and their promotion ahead of the petitioners was clearly illegal.

4. The respondents 1 to 4 have filed their counter stating that the respondents sought for including their names in the list of Deputy Thasildars for the year 2017 by relaxing relevant rules for non completion of two years Revenue Inspectors service and in appeal proceedings the Commissioner of Revenue Administration recommended for including their names in the appropriate place in the list of Deputy Thasildar for the year 2017. The Government in exercise of powers U/s. 58 of the Tamil Nadu Government Servants (Conditions of Service) Act 2016 relaxed Rule 7A to Annexure 3A I and R.34 Annexure IV item 5 (3) of Tamil Nadu Ministerial Service Rules in favour of the private respondents 5 to 10. The interse seniority list of Assistants based on revised list was not published and therefore the respondents 5 to 10 were denied a chance of Revenue Inspector post and consequently their juniors had the benefit of becoming Revenue Inspectors. Therefore, the impugned order was justified. There was non drawal of interse

seniority list by the District Administration considering all these factors the Rule was relaxed to the deprived persons who were deserving of such relaxation.

5. Heard Mrs.Dakshayani Reddy, Senior Counsel for Mr.Adithya Reddy, learned counsel appearing for the petitioner and Mr.D.Gopal, learned Government Advocate appearing for the respondents 1 to 4 as well as Mrs.Al.Gandhimathi, learned Senior Counsel for Mrs.Sa.Kanmani appearing for the respondents 5 to 10.

6. The only contention in the Writ Petition is regarding relaxation of mandatory condition to discharge duty as Firk Revenue Inspector for two years before becoming entitled to promotion as Deputy Thasildar. In so far as Typists it is mandatory for them to discharge service as Junior Assistants for one year, to be eligible to the post of Assistant as per the mandate of R.30(F) of the Tamil Nadu Ministerial Service Rules. The grievance of the learned Senior Counsel for the petitioner is that a power U/s. 58 of the Act to relax

any rule should be exercised sparingly and not in a manner resulting in injustice. Moreover, she also contended that in the case of respondents 5 to 10 power has been exercised more than once viz., once when they were in the cadre of typist and once again when they were in the cadre of Assistants. The reasons given by the Government that persons who are junior to the respondents 5 to 10 were given an opportunity to fulfill service qualifications before the respondents 5 to 10 cannot be sustained since both categories of persons were admittedly junior to the petitioners.

7. Learned Senior Counsel would also invite the attention of this Court to G.O.MS.No.42 dated 06.02.2018, where the petitioners interest have apparently been safeguarded by clearly indicating that any relaxation of R.30(c) would not affect the seniority of the petitioners. Learned Senior counsel would rely on the judgment of this Court in W.P.Nos.7905 and 7906 of 2018, ***K.J.Jaikar Prabhu and Ors Vs. The State of Tamil Nadu and Ors***, reported in ***MANU/TN/1955/2018***, where the learned Single Judge of this Court following the ratio laid down by the Hon'ble Supreme Court held that

the power to grant exemption cannot be exercised in a manner to destroy the general provision for which the exemption is granted and the rule of relaxation should not be invoked in a routine manner as it would neutralise and degrade the recruitment rules in force. The Court further held that the rule of relaxation is only a discretion granted to the Government and such discretionary power has to be exercised judiciously and not in a mechanical manner, to grant certain service benefits to some persons. This Court also ultimately held that recruitment rules have to be strictly followed while making appointments and regularizations. Learned Senior counsel also would rely on the Division Bench Judgment in W.A.(MD)No.1385 of 2011, ***Kamalesh and Ors Vs. The State of Tamilnadu and Ors***, reported in ***MANU/TN/0855/2023*** wherein the Division Bench of this Court held that the rule prescribing minimum qualifying service was not arbitrary but reasonable and the classification cannot be faulted because two sources of recruitment cannot be compared. The Division Bench also held that the Court cannot substitute its wisdom to that of the State in prescribing minimum qualification and it is for the executive to determine basic qualifying service for persons appointed to the post of Deputy Thasildars from different sources. Learned Senior counsel would also rely on judgment of this Court in W.P.No.23342 of 2019, ***N.Mahanlingam and Ors Vs. The Government of Tamil Nadu and Ors***, reported in ***MANU/TN/1409/2022***, where this Court held that where relaxation was granted to the private respondents in that Writ Petition, the retrospective promotion can never be considered as regular appointment for the purposes of granting them higher seniority over and above the petitioners therein, as it would amount to nullifying the date of appointment of direct recruits through selection by the Public Service Commission. This Court also further held that when the direct recruits have been appointed in 2013 and the seniority list was notified in 2018, the private respondents being shown as senior to the petitioners by advancing the date of their regular appointment was not valid as it would create a clash of interest between direct recruits and promotees.

8. Per contra, learned Senior Counsel would contend that when the Court, in its wisdom had decided to exercise power available to them and

relax the rule in favour of the respondents 5 to 10, it is not open to the petitioner, to challenge the same.

9. In the present case, admittedly, the petitioners were all appointed prior to the private respondents 5 to 10 and only because of the retrospective regularization they have claimed seniority. The ratio laid down by this Court in ***N.Mahalingam's*** case is squarely applicable to the present case as well. Any retrospective regularization and consequent promotion can at best hold good only towards personal service benefits like counting of service for the purposes of earning increments, acquiring eligibility for promotion to higher grades, calculation of pension etc and not in respect of seniority between such candidates and direct recruits. Moreso, in the present case when the Government has passed G.O.Ms.No.42 of 2018 clearly indicating that the relaxation of rule in favour of the respondents 5 to 10 would not affect the seniority of the petitioners. The statutory respondents are estopped thereafter from denying seniority to the petitioners. In W.P.Nos. 24117 of 2013 and 1895 of 2019 dated 20.12.2019, ***N.Vadivel and Ors Vs. K.Manigandan and***

Ors, this Court held that promotion to the post of Assistants should be strictly in accordance with the eligibility of candidates at the stage of being considered for the post of appointments and strictly in accordance with the rules as the interse seniority of direct recruits who were employed prior to the petitioners should not be jeopardized.

10. Further, even in G.O.Ms.No.42 dated 06.02.2018 also despite being conscious of the fact that rule was being relaxed in respect of the respondents 5 to 10, the Government has consciously held that the seniority of the petitioners will not be affected in any manner. The said G.O is still in force and therefore in the light of the said G.O as well as the various discussion herein above, the impugned G.O is liable to be quashed.

11. Even though the Government has a power to relax the rules, the same cannot be in a manner that prejudices certain class of persons like the petitioners in the instant case. Annexure III providing for a minimum mandatory period to be served on duty cannot be lightly brushed aside by

granting relaxation. The purpose of the rule itself would be watered down if such relaxations are granted repeatedly, as done in the instant case to the benefit of respondents 5 to 10. Even assuming the relaxation accorded by the statutory respondents in favour of respondents 5 to 10 can be justified, still at the same time, it cannot in anyway prejudice the interests of the petitioners when it comes to the question of seniority.

For all the above reasons, this Court is inclined to allow the Writ Petition and consequently G.O.(1D) No.03 Revenue and Disaster Management Department, Services Wing (Ser.3(2) Section dated 04.01.2019 is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

14.07.2023.

Internet:Yes
Index:Yes/No
Neutral Citation:Yes/No
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To

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State of Tamil Nadu
Revenue Department
Secretariat, Chennai-9

2.The Additional Chief Secretary
Commissioner Of Revenue Administration
Chepauk, Chennai-05

3.The District Collector
Vellore Dt, Vellore

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P.B.BALAJI, J.,
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Pre-delivery order in W.P.No.3742 of 2019

14.07.2023