



W.A.No.1565 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.06.2023

Delivered on : 19.06.2023

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHACHAKRAVARTHY**

**W.A.No.1565 of 2019
and CMP.No.10756 and 20409 of 2019
and Cont.P.No.328 of 2021**

W.A.No.1565 of 2019:-

- 1.T.Amalraj
- 2.A.Gopalakrishnan
- 3.M.Kamaraj
- 4.P.Arunachalam ..Appellants/Respondents

Vs.

- 1.M.Thulasilakshmi
- 2.The Additional Chief Secretary to Government
Home(Transport IV) department
Secretariat, Chennai-09
- 3.The Transport Commissioner
Chepauk, Chennai-5
- 4.D.Thiyagarajan
- 5.A.Raja



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6.T.Adhiyaman

7.D.Prabakaran

8.P.Manimekalai

9.M.Punitha

10.T.Thanikachalam

11.V.Loganathan

12.S.Arumugam

13.P.Nagarathinam

14.A.Balamurugan

15.S.Ganesan

16.S.Murugananantham

17.M.Sujatha

18.R.Ravishankar

19.P.Narmatha

20.S.Ezilan

21.R.Suguna

22.V.Ravikumar

23.K.Bhavanidevi

24.G.Sasikumari

..Respondents/writ petitioners

[Respondents 6 to 24 impleaded vide order of court dated
25.09.2019 made in CMP.Nos.20395, 10756, 20409/2019]



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Cont.P.No.328 of 2021:-

A.Gopalakrishnan

..Petitioner/2nd Appellant

Vs

1.S.K.Prabakar, IAS

The Additional Chief Secretary to Government

Home (Transport IV) Department

Secretariat, Chennai-9

2.Tenkasi S.Jawahar, IAS

The Transport Commissioner

Chepauk, Chennai-5

..Respondents/R1 and R2

Prayer in W.A.No.1565 of 2019 : Writ Appeal filed against the order in W.P.No.13250 of 2018 dated 13.03.2019.

Contempt Petition No.328 of 2021: Contempt Petition filed under Section 11 of Contempt of Courts Act, for wilfully disobeying the orders passed in CMP.No.10756 of 2019 in W.A.No.1565 of 2019 dated 29.04.2019.

COMMON JUDGMENT

J.NISHA BANU, J.

The Writ Appeal is filed as against the common order passed in W.P.No.13250 of 2018 etc batch dated 13.03.2019.

Contempt Petition is filed by one of the impleaded respondents in W.P.No.13250 of 2018 etc batch/2nd appellant in the present writ appeal, for disobeying the orders passed in CMP.No.10756 of 2019 in



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W.A.No.1565 of 2019 dated 29.04.2019, stating that the 2nd respondent-

Additional Chief Secretary and the 3rd respondent-Transport Commissioner, passed order of promotion in favour of M.Thulasilakshmi, petitioner in W.P.No.13520 of 2018 to the post of Superintendent in gross violation of the interim order of stay granted by this court.

2. The present writ appeal has been filed by the respondents 3 to 8 in W.P.No.13250 of 2018 etc batch. Even though this writ appeal is originally filed as against the sole writ petitioner in W.P.No.13520 of 2018, to protect the interest of other writ petitioners, they have been impleaded as respondents 6 to 24 in this Writ Appeal.

3. The appellants herein are appointed as Assistants by direct recruitment through TNPSC in December 2012. Claiming that the direct recruits selected and appointed for the previous year vacancies should be placed above promotees in the current year vacancies, the appellants were found aggrieved by the promotion given to the writ petitioners in W.P.Nos.13520 of 2018 etc batch stating that the same was in violation



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of Rule 30(c) of Tamil Nadu Ministerial Service Rules as they have not completed training as Junior Assistant for a period of one year as required under the Rules.

4.The appellants also submit that number of Steno-Typists who were given promotion for the panel year 2012-13 was in violation of Rule 9(f) of Tamil Nadu Ministerial Service Rules, which requires 5 years service in the post of Steno Typist for promotion to the post of Assistant.

5. The learned Senior counsel appearing for the appellants would submit that as per the Service Rules, unless or otherwise a Typist complete training of Junior Assistant for a period of one year as per Rule 30(c), he is not eligible for promotion to the post of Assistant.

6. The 3rd respondent – The Transport Commissioner, has forwarded proposal to 2nd respondent – Additional Chief Secretary to Government, Home (Transport IV) Department, for ratification of Typist



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and Steno-Typist promoted to Assistant/Accountant. The 2nd respondent passed the order of rejection by proceedings dated 01.12.2017 stating that the promotion/transfer accorded to 92 Typists and 7 Steno-typists Grade III as Assistants in the panel of the year 2012-2013 to 2014-2015 is not in accordance with the Special Rules 30(c) and 9(f) of the Tamil Nadu Ministerial Service respectively and in view of the fact that the 92 typists and 7 steno-typists Grade III had not served as Junior Assistants for a period of one year as contemplated under the Special Rules, they are not eligible for promotion to the post of Superintendents.

7. It is the contention of the learned senior counsel for the appellants that as per Service Rules and Section 41(1) of Tamil Nadu Government Servants (Condition of Service) Act, 2016, an approved probationer who satisfactorily completed his probation and become full member of service alone is entitled for promotion. Since the petitioners were not eligible for promotion as they have not completed one year training in the post of Junior Assistant, relaxation cannot be granted in favour of the writ petitioners. The Government cannot grant the



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relaxation in a routine manner. If the benefit of relaxation of Rule is granted, then the very prescription of Rule itself would become defeated and therefore, such a relaxation cannot be granted enabling these writ petitioners to get promotion to the post of Superintendents.

8. The appellants herein taken a stand before the learned Single Judge that they are fully qualified for promotion to the post of Superintendents and therefore by granting the relaxation to the writ petitioners, their opportunity of promotion cannot be denied at all.

9. The appellants raised the ground that the writ petitioners were given promotion to the post of Assistant when they have not acquired the service qualification of one year training in the post of Junior Assistant as required under Rule 30(c) of Tamil Nadu Ministerial Service Rules and further the 1st respondent was promoted to the post of Assistant immediately after completion of probation in the post of Typist without service qualification in violation of Special Rules.



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10. The order of the learned Single Judge dated 13.03.019 in W.P.Nos.13520 to 13528 of 2018, 14757 to 14766, 16073 of 2018 is to the effect that the official respondents are directed to pass necessary orders, granting relaxation of Rule 30(c) of the Tamil Nadu Ministerial Service Rules in favour of the writ petitioners and also ratify the act of the competent authority in granting promotion to the post of Assistant to all the writ petitioners, without undergoing the training for a period of one year in the post of Junior Assistant. The official respondents were also directed to consider the names of all the eligible persons in the cadre of Assistant, who are all fit for promotion to the post of Superintendent, including the writ petitioners and accordingly grant promotion with reference to the inter se seniority list published in R.No.24449/R3/2016 dated 23.5.2018. The learned Single Judge, consequently, quashed the order of the first respondent dated 01.02.2017.

11. Challenging the above order passed by the writ court, this writ



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appeal is filed.

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12. The learned Senior counsel appearing for the appellants would contend that promotion granted to the writ petitioners is in violation of Special Rules; promotion to the post of Assistant without acquiring the service qualification of one year Junior Assistant Training as per Rule 30(c) of Tamil Nadu Ministerial Service Rule is mandatory and there is no administrative delay on the part of the department. There is difference between relaxation of rules and ratification of promotion. The Government issued orders rejecting the proposal for ratification of promotion on the ground that it is an illegal promotion. The relaxation of rules will arise only in the event of promotion is delayed due to administrative exigencies and any such relaxation to be made prior to promotion. Learned Senior counsel would place reliance on the following decisions in support of his contentions.

(i) (2022) 1 SCC 347 [State of Uttar Pradesh and others Vs. Vikash Kumar Singh and others.

(ii) (2020) 20 SCC 312 [Dr.Thingujam Achouba Singh and others



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(iii) (1997) 6 SCC 614 [Dr.Ami Lal Bhat Vs. State of Rajasthan and others]

(iv) (1998) 6 SCC 165 [State of M.P.and another Vs. Dharam BIR].

13. On the other hand, the learned counsel appearing for the writ petitioners would submit that the writ petitioners passed all the departmental tests and their probation was declared to have been satisfactorily completed in the year 2011 and their services were regularized with effect from the date of joining in service. Respondent Nos.1, 6 to 9, 14, 17 to 20 and 24 and Respondents 10, 11, 12, 13, 15, 16, 21 to 23 would submit that they were appointed as Typist in the year 2009 and passed all the departmental tests including Bhavani Sagar Training and were fully qualified to be promoted as Assistant for the year 2012-2013. Their probation was declared to have been satisfactorily completed and they have been regularly promoted as Assistants after probation and had acquired the service qualification as per Rule 30(c) of



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the Tamil Nadu Ministerial Service.

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14. Heard both sides and perused the records carefully.

15. The records placed before this court would go to show that the Transport Commissioner, Chennai, in his proceedings dated 04.08.2015 and 31.05.2017 had pointed out that the writ petitioners were not given one year training as Junior Assistant due to administrative reasons. Therefore, the learned Single Judge has rightly directed the Government to ratify the promotion as Assistant by relaxing Rule 30(c).

16. Secondly, the writ petitioners were promoted as Assistants on 20.03.2012 and the appellants not challenged the order of promotion as Assistant, but only questioned the further promotion for the post of Superintendent for which the writ petitioners are fully qualified in accordance with the Rules. The indisputable fact is that the writ petitioners were not given an opportunity to complete the training as Junior Assistant for one year at that point of time and it is not their fault



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and therefore, the contention raised by the appellants that the writ petitioners are not eligible for promotion as Assistant on the crucial date cannot be accepted.

17. The writ petitioners who have worked for 7 years as Assistant from 2012 cannot be denied further promotion as Superintendent on the ground that they have not undergone training for one year in the post of Junior Assistant for the main reason that they have passed departmental tests which is the essential criteria for the promotion to the post of Assistant and Superintendent. In such view of the matter, the ratio laid down by the Supreme Court that grant of relaxation is at discretion of competent authority and cannot be claimed as matter of right, does not apply to the facts of this case. The decisions of the Supreme Court referred above was in respect of relaxation of age limit for recruitment and process of selection and therefore, the said principle is not applicable to the case on hand.

18. It is a matter of record that at the time of admission of this writ



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appeal on 24.04.2019, interim stay of the order of the learned Single Judge dated 13.03.2019 in W.P.No.13520 of 2019 was granted by a Division Bench of this Court. However, the appellants after obtaining interim order of stay, for nearly nine months not even filed batta with petition for service on the respondents/writ petitioners. Only after the order dated 25.09.2019 passed by another Division Bench, service was effected and the contesting respondents were served.

19. We also find that even though the prayer sought for in the writ petitions is for quashing the order of the first respondent dated 01.12.2017 and to direct the second respondent to include the petitioner's name in the inter se seniority list, taking note of the facts and circumstances of the case on hand, the learned Single Judge pointed out that Rule of relaxation is to be exercised only on exceptional circumstances in order to redress the grievances, if there is any injustice caused to the employees without any fault on their part; the case of the writ petitioners on hand squarely falls under the category, where without any fault on their part, they are now penalised by not granting promotion



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to the post of Superintendents; thus the lis on hand is an exceptional one, wherein, rule relating to relaxation is to be invoked. In such circumstances, in our considered opinion, the order of the Writ Court has only done justice to the writ petitioners and any interference will cause injustice. Hence, the writ appeal fails and it is accordingly, dismissed. No costs. Connected miscellaneous petitions are also closed.

20. Since the Contempt Petition is filed alleging violation of the interim order granted in the Writ Appeal and today, since the main writ appeal itself is disposed of, the Contempt Petition is closed as the parties has to work out their rights as per the order passed in the main Writ Appeal.

(J.N.B,J.)

(D.B.C, J.)

Index : Yes / No

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Internet : Yes

nvsri

To

1.The Additional Chief Secretary to Government

Home(Transport IV) department, Secretariat, Chennai-09

2.The Transport Commissioner, Chepauk, Chennai-5.



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