



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
14.07.2023	24.07.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.16028 of 2022 and
W.M.P.Nos. 15357, 15358, 15361, 27071 & 33502 of 2022

1. S. Manikandan
2. U. Arjunan
3. M. Kaviyarasu
4. R. Kannan
5. S. Roja
6. R. Sasikala
7. G. Valanteena
8. K. Saravana Babu
9. M. Jayanthi
- 10.A.P.Poongodi
- 11.M.Saranya
- 12.C.Amutha
- 13.A. Chandra Priya
- 14.B.Malarvizhi
- 15.C.Krishnamoorthi
- 16.G.Muthusamy
- 17.M.Vijayalakshmi
- 18.S.Anusuya,

...

Petitioners

versus

1. The Secretary
Government of Tamil Nadu
Personal and Administrative Reforms (B) Department



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

Secretariat, Fort St. George,
Chennai 600009.

WEB COPY

2. The Principal Secretary to Government,
Handlooms, Handicrafts, Textiles and Khadi Departments,
Secretariat, Fort St. George,
Chennai 600009.

3. The Director
Department of Sericulture,
Nethaji Nagar, Hasthampatty,
Salem 636007.

4. The Secretary,
Tamilnadu Public Service Commission,
TNPSC Road, Broadway,
Chennai 600003.

...

Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to Notification No.03/2022, Advertisement No.605 dated 23.02.2022 passed by 4th Respondent and quash the same insofar as recruitment to 29 posts of Assistant / Accountant in Sericulture Department (Post Code No.3118) and to direct the Respondents to promote the Petitioners to the Post of Assistant/Accountant with arrears of pay and allowances and all other consequential benefits.

For Petitioners : Mrs. Y. Kavitha for
M/s. Giridhar and Sai

For Respondents : Mr.P. Baladhandayutham
Special Government Pleader
[For R1 – RR3]

Mr.R. Bharanidharan [For R4]



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

ORDER

WEB COPY

This Writ Petition is filed to quash the Notification No.03/2022, Advertisement No.605 dated 23.02.2022 passed by 4th Respondent insofar as recruitment to 29 posts of Assistant / Accountant in Sericulture Department (Post Code No.3118) and to direct the Respondents to promote the Petitioners to the Post of Assistant/Accountant with arrears of pay and allowances and all other consequential benefits.

2.(a) The Writ Petitioners were selected through Combined Civil Service Examination – Group IV in the year 2018 conducted by the Tamil Nadu Public Service Commission and appointed as Junior Assistants / Typists in various Subordinate Officers under the control of Director of Sericulture, Salem. The next avenue of promotion open to the Petitioners is to the post of Assistant/Accountant in Sericulture Department in the pay band of Rs.20600 – 75900 Level-10. Promotion to the Post of Assistant and to the posts which carry the scale of pay of Assistant, shall be filled up from qualified Junior Assistants and Typists from the combined inter-se-seniority list of the holders in these categories recruited in the same year, with



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

reference to the date of regular appointment in the respective category.

Recruitment Rules for the post of Assistant/Accountant in the Sericulture Department came to be amended vide G.O.Ms.No.39 dated 06.05.2019 issued by the Personnel and Administrative Reforms (B) Department. As per the amended rule 40% of the vacancies in the post of Assistant/Accountant was sought to be filled in by way of Direct Recruitment. The modified Conditions for filling up the Post of Assistant /Accountant in the Sericulture Department under the direct Recruitment quota is as follows:

1. Appointment to the service may be made in the category of Assistant/Accountant (Non-Technical) in the Sericulture Department by direct recruitment for employment in the State.
2. The number of vacancies in the State filled up under Rule 1 shall not exceed in any year forty percent (40%) of the total number of vacancies arising in the post of Assistant/Accountant in the State in that year
3. The Director of Sericulture shall be the appointing authority.



WEB COPY



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

4. The principle of reservation of appointments as provided in Section 27 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Tamil Nadu Act 14 of 2016) shall apply to such appointments, in the State.

5. No person shall be eligible for appointment as Assistant/Accountant by direct recruitment, if he has completed or will complete the age of 30 years on the first day of July of the year in which the vacancy is notified.

6. No persons shall be eligible for appointment as Assistant/Accountant, by direct recruitment, unless he possesses a degree from any University recognized by the University Grants Commission.

7. Every person appointed as Assistant/Accountant by direct recruitment shall be on probation for a total period of two years on duty within a continuous period of three years.



WEB COPY



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

8. Every person appointed as Assistant/Accountant by direct recruitment shall, within the period of probation

(a) Complete the Foundation Training for a period of two months at the Cin Services Training Institute, Bhavanisagar and

(b) pass the following tests, namely:

- (i) Account Test for Subordinate Officers Part 1; and
- (ii) The Tamil Nadu Government Office Manual Test

9. The Inter-se-seniority between the directly recruited Assistants/Accountant and the Assistants/Accountants appointed by promotion shall be as per the provisions contained in sub section 2 of Section 40 of the tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Tamil Nadu Act, 14 of 2016)”

2.(b) The vacancy position prior to the amendment of the Recruitment

Rules are as follows:

Total sanctioned Post (Assistant/Accountant) : 73

Existing vacancy prior to the amendment (06.05.2019) : 34



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

WEB COPY

2.(c) The vacancies which arose after the amendment of the Recruitment Rules is as under:

<i>S.No.</i>	<i>Panel Year</i>	<i>Vacancies arose in the post of Assistant/ Accountant in view of the retirement & death</i>
1	2020-2021	Nil
2	2021-2022	5

2.(d) Vide Advertisement No.605, Notification No.03/2022 dated 23.02.2022, Applications were invited through online mode up to 23.03.2022 for direct recruitment to the post included in Combined civil Services Examination-II (Interview Posts/Non-Interview Posts) (Group-II Services/ Group-IIA Services) [Service Code No.004]

50	Assistant /Accountant in Sericulture Department (Post code No.3118)	Tamil Nadu Ministerial Service	29 Posts	Rs.20600-75900 Level - 10
----	---	--------------------------------	-----------------	---------------------------

2.(e) In the above Notification, 29 posts Assistant /Accountant in Sericulture Department have been advertised under the Direct Recruitment Quota. Hence it is the contention that the amendment to the Recruitment Rules dated 06.05.2019 can only have a prospective effect. Hence the



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

vacancies which arose prior to 06.05.2019 can be filled in only by way of promotion. Further, subsequent to the amendment, only 5 vacancies has arisen in the post of Assistant/Accountant. Therefore, the act of Respondents in advertising 29 post of Assistant / Accountant is arbitrary and unreasonable. Hence the Writ Petition.

3. Counter has been filed admitting that the Petitioners were selected by the Tamil Nadu Public Service Commission. They were allotted and posted in the Sericulture Department and their services were regularised and declared their probation as per rules. As there is no separate service rules were framed for appointment to the posts of Assistant/Accountant in Sericulture Department, the posts were filled up only by promotion from 1.4.1979 to 1.4.2019. However, the Government in G.O.Ms.No.39, Personal and Administrative Reforms (B) Department, dated 06.05.2019 issued orders incorporating the Sericulture Department in the Special Rules for the Tamil Nadu Ministerial Service and necessary amendments to the Special Rules for the Tamilnadu Ministerial Service Rules in this regard. A separate provision for appointment, Training and conditions of service of the



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

directly recruited Assistants / Accountants (Non-Technical) in Sericulture Department. As per the above rules, the number of vacancies in the State filled up under Rule 1 shall not exceed in any year forty percent (40%) of the total number of vacancies arising in the Post of Assistant / Accountant in the State in that year. After the receipt of the above Special Rules no appointments were made by the method of direct recruitment to the post of Assistant / Accountant. Based on the estimated vacancies arrived as 29 in the post of Assistant /Accountants as forty percent (40%) for direct recruitment out of the total strength of 73. Hence it is his contention that advertisement has been issued taking note of the Special Rules.

4. It is the further contention of the learned counsel for the Petitioners that even asper G.O.Ms.No.368 dated 18.10.1993 the panels should be prepared only in accordance with the existing notified rules and not in accordance with the proposed amendments which are yet to be approved by the Government. The existing vacancies for the period from 15.03.2018 to 14.03.2019 is 35. Since the vacancies arose prior to 06.05.2019, the 35 vacancies ought to be apportioned towards the promotion quota. It is only



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

the arising vacancies of 4 which has to be apportioned towards direct recruitment quota. Even for the vacancy year 15.03.2019 to 14.03.2020, the vacancies to be apportioned for direct recruitment should be only from the arising vacancies of 6. Similar procedure should be adopted in subsequent years. Hence according to them for 2018-19 only 4 vacancies arise and for the year 2019-2020 only 6 vacancies arise for the recruitment. Therefore, the notification is not valid in the eye of law.

5. Whereas the learned counsel appearing for the Respondents would submit that G.O.Ms.No.39 Personnel and Administrative Reforms (B) Department dated 06.05.2019 issued orders incorporating the Sericulture Department in the Special Rules for the Tamil Nadu Ministerial Service and necessary amendment to Special Rules for the Tamil Nadu Ministerial Service Rules in this regard. As per the above Rule 40% is earmarked for direct recruitment and 60% for promotion. Since there was no rules were in existence till the year 2019 no promotees were considered and appointed. Now, as per the existing Rules petitioners cannot claim right that existed prior to Amended Rules.



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

WEB COPY

6. I have perused the entire materials. The grievance of the Writ Petitioners is that as per the recruitment rules amended vide G.O.Ms.No.39 Personnel and Administrative Reforms (B) Department dated 06.05.2019 vacancies for direct recruitment will only arise after the enactment of the Rules, whereas the notification issued considering the total strength, which is contrary to the existing rules. Till the rules came into force, the vacancies were filled by way of promotion. Therefore, the contention that the notification earmarking 29 posts for direct recruitment is not valid.

7. In the Counter it is stated that 29 posts are earmarked for direct recruitment, now it is stated in the reply that as per the Rules only 16 posts were earmarked for direct vacancies and 23 for the promotion. It is the contention that from 06.05.1992 to 14.03.2020 total number of vacancies are 39. As per the rules 60% to the promotees and 40% to the direct recruitment.

8. It is relevant to extract the rules in Annexure IX ZC [referred to in



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

Rule 38(b)(ii)] with regard to Appointment, training and conditions of service of directly recruited Assistants/Accountants (Non-Technical) in the

Sericulture Department:

“1. Appointment to the service may be made in the category of Assistant/Accountant (Non-Technical) in the Sericulture Department by direct recruitment for employment in the State.

2. The number of vacancies in the State filled up under Rule 1 shall not exceed in any year forty percent (40%) of the total number of vacancies arising in the post of Assistant/Accountant in the State in that year.

3. The Director of Sericulture shall be the appointing authority.

4. The principle of reservation of appointments as provided in Section 27 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Tamil Nadu Act 14 of 2016) shall apply to such appointments, in the State.

5. No person shall be eligible for appointment as Assistant/Accountant by direct recruitment, if he has



WEB COPY



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

completed or will complete the age of 30 years on the first day of July of the year in which the vacancy is notified.

6. No persons shall be eligible for appointment as Assistant/Accountant, by direct recruitment, unless he possesses a degree from any University recognized by the University Grants Commission.

7. Every person appointed as Assistant/Accountant by direct recruitment shall be on probation for a total period of two years on duty within a continuous period of three years.

8. Every person appointed as Assistant/Accountant by direct recruitment shall, within the period of probation

(a) Complete the Foundation Training for a period of two months at the Civil Services Training Institute, Bhavanisagar and

(b) pass the following tests, namely:

(i) Account Test for Subordinate Officers
Part 1; and



WEB COPY



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

(ii) The Tamil Nadu Government Office

Manual Test

9. The Inter-se-seniority between the directly recruited Assistants/Accountant and the Assistants/Accountants appointed by promotion shall be as per the provisions contained in sub section 2 of Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Tamil Nadu Act, 14 of 2016).”

9. The above rules makes it clear that direct recruitment can be filled up under Rule-1 shall not exceed 40% in any year on the total number of vacancies arising in the post of Assistant/Accountant in that year.

10. A careful perusal of the reply filed by the Director of Sericulture makes it very clear that from 06.05.2019 to 14.03.2020, total number of vacancies is 39. Though Rules state that number of vacancies filled up under Rule 1 shall not exceed in any year forty percent (40%) of the total number of vacancies arising in the post of Assistant/Accountant in the State in that year, till the Amended Rules came into force there were no rules in existence and the vacancies were filled only by way of promotion. It is also



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

relevant to note that as per the reply communication dated 13.07.2023 by the Director of Sericulture Department, at the time of arriving estimate of vacancies in the post of Assistants/Accountants, out of 35 existing vacancies upto 2018-2019 no eligible persons were available for promotions to the said post, as the Petitioners have joined in the department during Feb.2019 and only after their successful completion of probation they would be eligible for promotion after two years. After the Rule came into force, from 06.05.2019 to 14.03.2020 no promotion was made.

11. Further, it cannot be stated that only from the particular year ie., 2019 vacancies alone direct recruitees were entitled for employment. Therefore, it cannot be contended by the Petitioners till the amended Rule came into force the vacancies in the category of Assistant were filled only by way of promotion when the Government has framed Rules, on the date of notification the rules in existence would prevail over.

12. In this regard Full Bench Decision of the Supreme Court reported in *State of Himachal Pradesh and Others vs. Raj Kumar and Others*



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

[(2023) 3 Supreme Court Cases 773] wherein it is held that the right to be considered for promotion occurs on the date of consideration of eligible candidates and applicable rules would be the rules existing then i.e., rule in force. In the above case the Honourable Supreme Court in paras 81 to 85.2 has held as follows:

*“82. A review of the fifteen cases that have distinguished **Rangaiah's** case would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in **Rangaiah**. The findings in these judgments, that have a direct bearing on the proposition formulated by **Y.V.Rangaiah vs. J.Sreenivasa Rao, (1983) 3 SCC 284** are as under:*

*82.1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, **Rangaiah's** case must be understood in the context of the rules involved therein.*

82.2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

82.3. *The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the [Deepak Agarwal v. State of U.P.](#), (2011) 6 SCC 725, Para 26; [Union of India v. Krishna Kumar](#), (2019) 4 SCC 319, Para 10. [Deepak Agarwal v. State of U.P.](#), (2011) 6 SCC 725, Para 26; [Union of India v. Krishna Kumar](#), (2019) 4 SCC 319, Para 10. policy decision taken by the Government. There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit.⁶¹ The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of [Article 14](#).*

82.4. *The principle in **Rangaiah** need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.*

82.5. *When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior*



WEB COPY



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

to the amendment, the State cannot be directed to consider the cases.

83. *The above-referred observations made in the fifteen decisions that have distinguished **Rangaiah's case** demonstrate that the wide principle enunciated therein is substantially watered-down. Almost all the decisions that distinguished **Rangaiah** hold that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of law that existed on the date when they arose. This only implies that decision in **Rangaiah** is confined to the facts of that case.*

84. *The decision in Deepak Agarwal (supra) is a complete departure from the principle in **Rangaiah**, in as much as the Court has held that a candidate has a right to be considered in the light of the existing rule. That is the rule in force on the date the consideration takes place. This enunciation is followed in many subsequent decisions including that of *Union of India v. Krishna Kumar* (supra). In fact, in Krishna Kumar Court held that there is only a "right to be considered for promotion in accordance with rules which prevail on the date on which consideration for promotion take place."*

85. *The consistent findings in these fifteen decisions that **Rangaiah's case** must be seen in the context of its own facts,*



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

WEB COPY

*coupled with the declarations therein that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of rules which existed on the date which they arose, compels us to conclude that the decision in **Rangaiah** is impliedly overruled. However, as there is no declaration of law to this effect, it continues to be cited as a precedent and this Court has been distinguishing it on some ground or the other, as we have indicated hereinabove. For clarity and certainty, it is, therefore, necessary for us to hold:*

*85.1 The statement in **Y.V. Rangaiah v. J. Sreenivasa Rao** that, “the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules”, does not reflect the correct proposition of law governing services under the Union and the States under part XIV of the Constitution. It is hereby overruled.*

85.2 The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services.”

13. From the above dictum of the Apex Court, merely because promotees were given promotion when there was no existing rule to the post of Assistant as a matter of right the Petitioner cannot claim promotion. The



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

Petitioners right for promotion has to be considered only in the light of the existing rules in force on the date of consideration to the next level of promotion. Admittedly, in this case the Amended Rule came into force on 06.05.2019 thereafter the notification was issued. On the date of consideration for promotion, rule had already come into existence and notification was issued. Therefore, now the Petitioners cannot contend that only the vacancy that arose after the rule came into force would enable the direct recruitment to promotion cannot be countenanced. Accordingly, the contention of the learned counsel for the Writ Petitioner has no leg to stand.

14. In view of the same the Writ Petition is dismissed. No costs. In such a view of the matter, it is for the Respondents to issue necessary errata of notification or to issue fresh notification for exact number of direct recruitees to be filled up. Connected Writ Miscellaneous Petitions are closed.

24.07.2023

Index : yes
Internet : yes
Neutral Citation : yes/no
ggs

copy to:

1. The Secretary
Government of Tamil Nadu

20/22



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

Personal and Administrative Reforms (B) Department
Secretariat, Fort St. George,
Chennai 600009.

2. The Principal Secretary to Government,
Handlooms, Handicrafts, Textiles and Khadi Departments,
Secretariat, Fort St. George,
Chennai 600009.
3. The Director
Department of Sericulture,
Nethaji Nagar, Hasthampatty,
Salem 636007.
4. The Secretary,
Tamilnadu Public Service Commission,
TNPSC Road, Broadway,
Chennai 600003.

N.SATHISH KUMAR, J.,

ggs



WEB COPY



W.P.No.16028 of 2022 and W.M.P.Nos.15357, 15358, 15361 of 2022

Order in:
W.P.No.16028 of 2022 and
W.M.P.Nos. 15357, 15358, 15361, 27071 & 33502 of 2022

24.07.2023