



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.Nos.641, 642, 643 and 655 of 2017
and W.P.Nos.17312 of 2011, 24807 & 25019 of 2013
and M.P.Nos.1 & 1 of 2013, M.P.Nos.2 & 2 of 2013 and M.P.No.1 of 2015
and C.M.P.Nos.8855, 8856, 8859, 8860, 8887, 8888, 9113 and 9114 of
2017 and W.M.P.No.6153 of 2016

W.A.No.641 of 2017

- 1.The Secretary to Government
Personnel & Administrative Reforms
Department, Secretariat, Fort St.George
Chennai 600 009.
- 2.The Secretary to Government
Home Department, Secretariat
Fort St.George, Chennai 600 009. ... Appellant

-Vs-

K.G.Kannan ... Respondent

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in W.P.No.25389 of 2013 dated 26.04.2017.

W.A.No.642 of 2017

- 1.The Secretary to Government
Personnel & Administrative Reforms
Department, Secretariat, Fort St.George
Chennai 600 009.



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

2.The Secretary to Government
Public Department, Secretariat
Fort St.George, Chennai 600 009.

... Appellants

-Vs-

Tmt.Rathiga Rani

... Respondent

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in
W.P.No.25796 of 2013 dated 26.04.2017.

W.A.No.643 of 2017

1.The Secretary to Government
Personnel & Administrative Reforms
Department, Secretariat, Fort St.George
Chennai 600 009.

2.The Secretary to Government
Energy Department, Secretariat
Fort St.George, Chennai 600 009.

... Appellants

-Vs-

Tmt.S.Chandra

... Respondent

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in
W.P.No.25797 of 2013 dated 26.04.2017.

W.A.No.655 of 2017

1.The Secretary to Government
Personnel & Administrative Reforms
Department, Secretariat, Fort St.George
Chennai 600 009.

2.The Secretary to Government



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

Revenue Department, Secretariat
 Fort St.George, Chennai 600 009.

... Appellants

-Vs-

Thiru.M.S.Sekar

... Respondent

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in
 W.P.No.25798 of 2013 dated 26.04.2017.

In All W.As.

For Appellants	:	Mr.S.Silambanan, Additional Advocate General-II Assisted by Mr.Murali, Government Advocate & Mr.Babu Barveez, Government Advocate
For Respondent	:	Mr.T.Ranganathan Mr.M.Gowri Shankar and Mr.A.Dakshinamoorthy

W.P.No.17312 of 2011

Tmt.G.Saraswathy

.... Petitioner

-Vs-

1.The Secretary to Government
 Finance Department, Secretariat
 Chennai 600 009.

2.The Secretary to Government
 Personnel and Administrative Reforms
 Department, Secretariat, Chennai 600 009.

Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the
 issuance of a writ of Certiorarified Mandamus Calling for the records relating to
 the impugned order of the 1st respondent issued in Letter No.25068/OP-I/2010-
 6 Finance Department dated 11.10.2010 and the consequential order Lr.No.
 15918/OP-I/2011 dated 26.04.2011 and to quash the same in so far as it fails to
 include the name of the petitioner in the panel for the post of Section Officer and



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

consequently include the name of the petitioner in the panel issued in G.O.(Ms) No.368 Finance Department dated 21.09.2010 with consequential benefits.

W.P.No.24807 of 2013

Tmt.G.Maragatham

....

Petitioner

-Vs-

1.The Secretary to Government
Personnel and Administrative Reforms
Department, Secretariat
Chennai 600 009.

2.The Secretary to Government
School Education Department
Secretariat, Fort St.George,
Chennai 600 009.

....

Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus Calling for the records relating to the impugned order of the 1st respondent issued in G.O.(4D) No.29 P & AR (H1) Department dated 28.5.2013 and quash the same and consequently direct the 1st respondent to promote the petitioner as Section Officer by considering her name in the 2010-2011 Panel of Section Officer prepared as on 1.6.2010 above Tmt.N.Devaki her immediate Junior in the Post of Assistant Section Officer with all monetary benefits.

W.P.No.25019 of 2013

Tmt.N.S.Madhana

....

Petitioner

-Vs-

1.The Secretary to Government
Personnel and Administrative Reforms
Department, Secretariat, Fort St.George
Chennai 600 009.

2.The Secretary to Government
Cooperation, Food and Consumer
Protection Department,
Secretariat, Fort St.George,



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

Chennai 600 009.

....

Respondents

WEB COPY

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 1st respondent issued in G.O. (4D) No. 38 P & AR H1 Department dt 28.5.2013 and quash the same and consequently direct the 1st respondent to promote the petitioner as Section Officer by considering her name in the 2011-2012 Panel of Section Officer prepared as on 1.6.2011 above Thiru M.Murali her immediate Junior in the post of Assistant Section Officer with all monetary benefits.

In All W.Ps.

For Petitioner in W.P.Nos.24807 and 25019 of 2013	:	Mr.T.Ranganathan
For Petitioner in W.P.17312 of 2011	:	Mr.Vijay Narayan Senior Counsel for Mr.C.Vigneswaran
For Respondents in all Writ Petitions	:	Mr.S.Silambanan Additional Advocate General-II Assisted by Mr.Murali, Government Advocate and Mr.Babu Barveez Government Advocate

COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

Since the issue raised in these writ appeals as well as the connected writ petitions is one and the same, with the consent of the learned counsel appearing for both sides, these writ appeals as well as the writ petitions were heard together and



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

are disposed of by this common judgment.

WEB COPY

2. That insofar as the writ appeals are concerned, the respective contesting respondents in these writ appeals were working as Section Officers in the Tamil Nadu Secretariat Services and their next avenue of promotion is Under Secretary. Therefore, as per the Rule which was in vogue, they became eligible to be considered for promotion for the panel year 2011-12 by taking the crucial date as 01.09.2010.

3. However, there has been an amendment to the Rule called Tamil Nadu Secretariat Services Rules, which has got amended by issuance of G.O.Ms.No.92, P&AR(C) Department dated 20.06.2012, under which the method of recruitment by promotion to the post of Under Secretary has got amended. According to the pre-amended Rule, the incumbent must have rendered service for a period of not less than two years in the category of Section Officer except in the departments of Law and Finance. Insofar as the contesting respondents in these writ appeals are concerned, they rendered two years service as Section Officers in the concerned Department well prior to the crucial date ie., on 01.09.2010. Therefore, they are entitled to get promoted to the post of Under Secretary through the panel for the year 2011-12.

4. However, by virtue of the amendment that has been made the qualification



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

required for holding the post of Under Secretary has been amended, under which the qualification is to hold a degree of any University recognized by the University Grants Commission (UGC) and must have rendered service for a period of not less than two years in the category of Section Officer in the departments of Secretariat other than Law and Finance. Therefore, as per the new Rule or amended Rule, the requirement was that, apart from the experience in the Section Officer category, the incumbent must hold a degree of any University recognized by the UGC.

5. Though this amendment through the Government Order has come into effect from 20.06.2012 and till such date since the 2011-12 panel has not been finalized, the employer ie., the State Government decided to implement the amended Rule to these contesting respondents also. By thus, the promotion for the panel year 2011-12 taking into account the crucial date as 01.09.2010, was denied to these people as they did not have the degree qualification. Challenging the same, these contesting respondents approached the writ Court by filing respective writ petitions and all those writ petitions were allowed, of course by separate orders, as against which or aggrieved by the same, these intra court appeals were directed by the State Government.

6. Insofar as the writ petitions are concerned, the petitioners were working as Assistant Section Officer in the Tamil Nadu Secretariat Services and therefore, they are entitled to get further promotion to the post of Section Officer, for which the



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

crucial date was 01.06.2010 for two writ petitioners and 01.06.2011 for one writ petitioner for the panel years 2010-11 and 2011-12 respectively.

7. In their case also, since the aforesaid Tamil Nadu Secretariat Services Rules got amended by issuance of G.O.Ms.No.88, P&AR Department dated 15.06.2012, where retrospective application of the said Rule has been given with effect from 16.12.2011. The said amended Rule has been applied in respect of these petitioners also. By thus, the amended Rule made it clear that the incumbent must hold a degree of any University recognized by the UGC for the purpose of its grant and must have rendered service for a period not less than six years in the category of Assistant Section Officer in the Departments of Secretariat other than Law and Finance.

8. However, prior to the amendment, the Rule was that, the incumbent must have rendered service for a period of not less than six years in the category of Assistant Section Officer in the Departments of Secretariat, other than Law and Finance. Therefore, the degree qualification since has been newly brought in by way of amendment by G.O.Ms.N.88 dated 15.06.2012, of course with effect from 16.12.2011, and applying this Rule, since these petitioners did not hold the qualification of degree, the employer State had not considered their names for the purpose of promotion to the post of Section Officer in the relevant panel years ie., 2010-11 and 2011-12. Challenging such denial of promotion, these petitioners have



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

approached this Court by filing the present writ petitions, which were tagged along with the writ appeals, as the issue raised in these cases are one and the same.

9. We have heard Mr.S.Silambanan, learned Additional Advocate General for the appellant State, Mr.T.Ranganathan, learned counsel for the contesting respondents in the writ appeals, and the writ petitioners in W.P.Nos.24807 & 25019 of 2013, and Mr.Vijay Narayan, Senior Counsel appearing for Mr.C.Vigneswaran, learned counsel for the writ petitioners in the writ petition in W.P.17312 of 2011.

10. Insofar as the promotion to the post of Section Officer to Under Secretary is concerned, the pre-amended Rule is clear and unambiguous to state that, the incumbent must have rendered service for a period of not less than two years in the category of Section Officer in the Departments of Secretariat other than Law and Finance. No other qualification has been prescribed under the unamended Rule.

11. Assuming that the amendment has come into effect by issuance of G.O.Ms.No.92, P&AR(C) Department dated 20.06.2012 the same shall be given effect to only from that date ie., 20.06.2012, whereas, the crucial date for the period 2011-12 panel is 01.09.2010 and on that date since these contesting respondents in the writ appeals have become ineligible to be considered for promotion, they should have been included in the panel for the year 2011-12 on the basis of the erstwhile Rule. Since the non-inclusion of their names in the 2011-12 panel and subsequently



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

by applying the amended Rule with effect from 20.06.2012 retrospectively from the panel year 2011-12 onwards, and by thus denying the promotion to the contesting respondents in the appeals, were considered as unlawful, therefore, the learned Judge who heard the writ petitions filed by the contesting respondents in the writ appeals allowed those writ petitions.

12. Challenging the same, though these writ appeals have been filed, the learned Additional Advocate General for the State would contend that, even though the Government Order in G.O.Ms.No.92 was issued on 20.06.2012 on that date, if any panel has not been finalized, ie., panel for the year 2011-12 or 2012-13, taking into consideration of the crucial date, certainly those panels can be prepared based on the amended Rule, since it has come into effect from 20.06.2012.

13. He would also submit that, the same position would be applicable in the case of promotion for the post of Section Officer from Assistant Section Officer, where the Rule has got amended by issuance of G.O.Ms.No.88 dated 15.06.2012, where it has been given retrospective effect from 16.12.2011. Therefore, as on 16.12.2011, whatever the panel that has not been finalized, insofar as those panels are concerned, inclusion of the names of the eligible candidates must be on the basis of the amended Rule.

14. Therefore, the learned Additional Advocate General would contend that,



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

at the time of consideration of the panel since the State Government has come out with an amendment to the Rule, the amended Rule has been applied and if amended Rule is applied, those candidates since did not possess the qualification of degree, which is a basic and essential qualification to hold the post of Under Secretary as well as Section Officer, as the case may be, they were denied promotion. He would also submit that, subsequently whoever acquired the qualification of degree, from the date of acquisition of degree in the next promotion panel, their names were included and subsequently promotions were given. Therefore, such an approach adopted by the State Government by applying the amended Rule cannot be found fault with and in this regard the approach of the learned Judge, who allowed the said writ petitions which are impugned herein, is erroneous and therefore the learned Additional Advocate General seeks the indulgence of this Court in allowing the writ appeals.

15. On the other hand, the learned counsel appearing for the employees would state that, in both the amendments, the crucial date was certainly prior to the amendment when it came into effect. Therefore, on the crucial date what has been the qualification prescribed for being considered for promotion alone shall be applicable to these employees and if the same is applied, certainly these people would have been in a position to earn the promotion either in the panel year 2010-11 or 2011-12, as the case maybe. Therefore, denial of promotion to these people by applying the Rule which has got amended only subsequently, would be an



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

injustice and also it is unlawful. Hence, the order passed by the writ Court allowing the writ petitions is justified and in the light of the same, the other writ petitions also should be allowed and consequently the writ appeals have to be dismissed.

16. We have considered the submissions made by the learned counsel for both sides and have perused the materials placed on record.

17. As has been rightly pointed out by the learned counsels for the employees, both the Rules ie., G.O.Ms.No.92 dated 20.06.2012 and G.O.Ms.No.88 dated 15.06.2012 have been issued well after the crucial date for the panel year 2010-11 and 2011-12, for which these people have become eligible to be considered for promotion in the respective category.

18. Assuming that G.O.Ms.No.88 dated 15.06.2012 is given effect retrospectively from 16.12.2011, even prior to that date, these people become eligible and qualified for being considered for promotion to the post of Section Officer from Assistant Section Officer, as the crucial date for panel year 2010-11 was 01.06.2010 and for the panel year 2011-12 was 01.06.2011. For these two years alone these people were eligible to be considered and the retrospective effect has come only later ie., 16.12.2011. The said application of the amended Rule on these employees is not supported by the Rule itself. Therefore, such a wrong application would not entail the State Government or the employer to deny promotion to these



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

employees with effect from 2010-11 and 2011-12 as the case may be.

WEB COPY

19. As far as the promotion from Section Officer to Under Secretary category, it is undoubtedly an amendment that has been with effect from 20.06.2012 and no retrospective effect has been given in the said amendment. Therefore, well prior to 20.06.2012 the crucial date ie., 01.06.2011 falls and on that date, if all these contesting respondents in the writ appeals have become eligible to be considered for promotion to the post of Under Secretary, their promotion for the panel year 2011-12 also ought not to have been denied. This has been pointed out by the learned Judge in the orders impugned and accordingly allowed the said writ petitions. The said approach of the learned Judge cannot be found fault with and therefore we do not find anything erroneous in the approach of the learned Judge, who allowed these writ petitions.

20. It is a settled proposition of law in service jurisprudence that, whatever accrued benefits on the employee prior to the changing of the Rule, such service benefits cannot be denied or cannot be taken away. Umpteen number of judgments have come on these lines. Therefore, such a denial that has now been made, denying such promotion by applying the Rule which has come into effect later on, is a wrong application of the Rule itself and because of such wrong application, the right accrued on the employees cannot be denied.



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

21. Moreover, it is to be noted that, even prior to the amendment came into effect, the Department Promotion Committee had a meeting and they decided to defer the consideration of the candidature of these employees for the promotion, anticipating that there will be an amendment that may come later and after the amendment comes into force, their promotions will be considered and until such time it may be deferred.

22. The Department Promotion Committee ought not to have deferred the promotion in anticipation of any Rule. It is a settled proposition that whenever such an action of promotion is to be taken by any authority including the Department Promotion Committee, they should consider what was the Rule ie., the prevailing Rule as on the crucial date and that alone shall be taken into account and not anticipating that the Rule may get amended. The said approach on the part of the respondents ie., the State is also not appreciable.

23. Therefore, for all these reasons we feel that the orders passed by the writ Court which are impugned in these writ appeals are to be sustained. Accordingly, the writ appeals in W.A.Nos.641, 642, 643 and 655 of 2017 are dismissed. Since the other writ petitions are filed in the same lines, those writ petitions ie., W.P.Nos.17213 of 2011, 24807 and 25019 of 2013 are allowed. No costs.



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

WEB COPY

24. The needful action shall be undertaken by the respondents in giving promotions to the working incumbents from the date of their original eligibility as discussed above, as well as notional promotion to those, who have already retired from service, within a period of twelve (12) weeks from the date of receipt of a copy of this order. Insofar as the retired employees are concerned, by virtue of this notional promotions, they are not entitled to back wages or difference of pay, but their service would be calculated for the purpose of pensionary benefits and accordingly their pension as well as arrears of pension shall be calculated and be paid.

25. With the above directions, the writ appeals are dismissed and the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K.,J..) (K.B.,J.)

31.07.2023

Index : Yes
Internet : Yes
Neutral Citation : Yes
KST



WEB COPY



W.A.Nos.641, 642, 643, 655 of 2017
and W.P.Nos.17312/2011, 24807 & 25019 of 2013

R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

KST

W.A.Nos.641, 642, 643
and 655 of 2017 and
W.P.Nos.17312 of 2011,
24807 & 25019 of 2013.

31.07.2023