



W.A.(MD).No.1385 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 01.02.2023

Pronounced on : 15.02.2023

CORAM

**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

W.A.(MD).No.1385 of 2011

1.G.Kamalesh

2.S.Chellapandian

....Appellants/ 2nd and 3rd petitioners

Vs.

1.The State of Tamilnadu,
Represented by its Secretary of Government,
Revenue Department,
Fort St.George,
Chennai – 9.

2.Principal Secretary / Commissioner
of Revenue Administration,
Chepauk,
Chennai – 5.

3.The District Collector,
Karur,
Karur District.



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4.The District Collector,
Madurai,
Madurai District.

5.The District Collector,
Dindigul,
Dindigul District.

6.The District Collector,
Tuticorin,
Tuticorin District.

7.C.Ravichandran,
Zonal Deputy Tahsildar,
Taluk Office,
Karur – 639 001.

8.M.Mohideen Abdul Kadar

....Respondents

*(R-8 is impleaded vide Court order dated 09.12.2022 made in C.M.P.
(MD).No.11190 of 2022 in W.A.(MD).No.1385 of 2011)*

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent to call for the records relating to the order dated 11.10.2011 in W.P.(MD).No.1797 of 2011 on the file of this Court and set aside the same and allow the Writ Petition as prayed for.

For Appellants : Mr.T.Lajapathi Roy
Senior Counsel
for Mr.S.Rajasekar

For R-1 to R-6 : Mr.D.Sasikumar,
Additional Government Pleader.



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For R-7 : No appearance

For R-8 : Mr.N.Tamilmani

JUDGMENT

SUNDER MOHAN, J.

This is yet another case arising out of a perennial dispute between direct recruits and promotees. The direct recruits in the cadre of Assistants had challenged an amendment to 5(g) of Special Rules for the Tamil Nadu Revenue Sub-ordination Service. The said amendment provided for the Assistants working in the Revenue Department who have completed five years of service and passed all the tests prescribed besides undergoing training as Firka Revenue Inspector for a period of two years to be placed above their seniors appointed other than by direct recruitment, namely, the promotees. They are aggrieved by the fixation of a minimum of five years service for the promotion to the post of Deputy Tahsildar, since according to the promotees, the promotees had to have a minimum experience of only four years, which is in violation of Article 14 of the Constitution of India.

2. The appellants who had filed the Writ Petition along with three others had stated that by virtue of this amendment, the promotee Assistants



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were given preferential treatment after completion of four years. They have to complete a minimum period of two years as Assistant and two years as Revenue Inspector in order to be considered for the promotion to Deputy Tahsildar. The direct recruit Assistants and the promotee Assistants have to be treated equally and this difference provided as minimum period of experience between the direct recruits and the promotee Assistants, who formed the feeder category, is arbitrary and denies equal opportunity in public employment. The appellants claimed that this difference in prescribing the minimum period of experience had assumed significance and had affected their seniority and prospects for next promotion pursuant to the judgment of the Hon'ble Supreme Court in the case of ***M.Rathinaswami and others Vs. State of Tamil Nadu and others*** reported in **(2009) 5 SCC 625**, by which the Hon'ble Supreme Court had held that the rule shall be applicable to those promotees who are non-graduates and held that graduate promotee Assistants shall be held on par with direct recruit Assistants. By virtue of this decision, the seniority of the appellants got affected since the original rule had placed them above all promotee Assistants irrespective of their educational qualification. They claimed that the rule as read down by the the Hon'ble Supreme Court gives an unfair



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advantage to promotee graduate Assistants for whom a minimum period of four years is sufficient to be promoted to the post of Deputy Tahsildar.

3. The learned Single Judge, who heard the Writ Petition filed by the appellants along with a batch of similar Writ Petitions, held that a reading of the Hon'ble Apex Court in *M.Rathinaswami's* case (cited supra), wherein, the Hon'ble Apex Court had read down the rule, would show that the Hon'ble Supreme Court had considered the rule as a whole and had given an interpretation to ensure that it is fair. The learned Judge found that the Writ Petition was an attempt to rewrite the decision of the Hon'ble Supreme Court and hence a clear abuse of process of law. The learned Judge further found that it is for the State Government to consider the relevant experience that is required for being transferred to the higher posts in different service and hence dismissed the Writ Petition.

4. When the above appeal was taken up for hearing by an earlier Bench of this Court, this Court found that the learned Single Judge had proceeded on the basis that the appellants have sought for a writ of Mandamus without making a prayer for declaring the amendment to the



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Rules as unconstitutional. The Bench found that the appellants had in fact challenged the Rules. The Bench also found that the Hon'ble Supreme Court in *M.Rathinaswami's* case had no occasion to deal with the vires of the rule qua different period of experience prescribed for directly recruited Assistants and promotee Assistants. The Division Bench also observed that the learned Single Judge had disposed of the Writ Petition even before a counter was filed by the State and hence the Division Bench set aside the order of the learned Single Judge and directed the State Government to file a counter affidavit in order to consider the prayer in the Writ Petition, namely, to declare that the rule which prescribes a minimum period of five years experience for direct recruit assistants as qualification for promotion to Deputy Tahsildar as illegal independently.

5. Pursuant to the directions of this Court, the respondents have filed a counter in which they have stated that the promotee Assistants initially joined as a Junior Assistant and they have to complete a total period of eight years in service from their entry post out of which they shall serve as an Assistant for two years and another two years as Revenue Inspector. Further, it is stated in the counter that sometimes even if a Junior Assistant



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gets promoted to the post of Assistant on completion of two years, he will not be eligible to be promoted as Deputy Tahsildar unless he completes a total service of eight years in the Department. Therefore, it is wrong to state that the promotee Assistants are eligible for promotion after putting in four years of service in the Assistant cadre. The counter further states that the direct recruits by the amended rule were placed above the promotee Assistants in seniority provided they had completed five years in service. The direct recruits had to undergo the following training:

- | | | |
|---|----------|-------------------------|
| <i>“1.Clerical Training</i> | <i>-</i> | <i>1 month</i> |
| <i>2.Foundational Training at Bhavanisagar</i> | <i>-</i> | <i>2 months</i> |
| <i>3.Working as Assistant in the Taluk Office</i> | <i>-</i> | <i>1 year</i> |
| <i>4.Training in Survey and Maintenance</i> | <i>-</i> | <i>1 month</i> |
| <i>5.Training as Firka Revenue Inspector</i> | <i>-</i> | <i>2 years</i> |
| <i>6.Serving as Assistant in any Revenue Office</i> | <i>-</i> | <i>1 year 8 months”</i> |

They further stated that from the above, it could be seen that they had to serve as Assistant only for the period of three years and eight months. This minimum period of five years is prescribed to make the directly recruited Assistant fully qualified to hold the post of Deputy Tahsildar. As regards the promotee Assistants, their service in the Department is totally



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for a period of eight years of which they have to serve a minimum of two years as Assistant and another two years as Revenue Inspector. The Government in its wisdom had provided this minimum qualification for both these direct recruits and promotee Assistants keeping in mind that the post of Deputy Tahsildar has higher responsibilities and certain basic training is required for their promotion to the next cadre. Thus, the counter states that comparison of two feeder categories, (i.e.) the graduate promotee Assistants and directly recruited Assistants is not proper in view of their different streams of recruitment and therefore, there is no arbitrariness and the State's action cannot be termed as violative of Article 14 of the Constitution of India.

6. (i) The learned Senior Counsel for the appellants reiterated the averments made in the Writ Petition and stated that the direct recruits have to undergo rigorous training and pass tests besides possessing a basic degree. The Hon'ble Supreme Court had in *M.Rathinaswami's* case (cited supra) held that the rule has to be read down to the extent of discriminating between graduate promotee Assistants and direct recruit Assistants. The Hon'ble Supreme Court therefore upheld the validity of the impugned rule



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to the extent that it gave preference to the directly recruited Assistants over the promoted Assistants, who were non-graduates. Since the graduate promoted Assistants and direct recruits were treated on par subsequent to the judgment of the Hon'ble Supreme Court, this difference in the number of qualifying years of service in the cadre of Assistant for promotion to Deputy Tahsildar will have to be treated as arbitrary.

(ii) The learned Senior Counsel further submitted that the promotee graduate Assistants, who had only completed four years as Assistants, were placed higher in the seniority list and because of this, some of the direct recruits, who had been promoted as Deputy Tahsildar, were also affected in the subsequent seniority list prepared in the cadre of Deputy Tahsildar. As a result of such re-fixation, the juniors to the petitioners/appellants got promotion to the next higher cadre, namely, as Tahsildar and the petitioners/appellants were still serving as Deputy Tahsildars. Therefore, the learned Senior Counsel contended that if the minimum qualifying service is the same for both direct recruits and promotee graduate Assistants, this anomaly could be averted.



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(iii) The learned Senior Counsel for the appellants also relied upon

the judgment of the Hon'ble Supreme Court in the case of ***T.K.Ponnuswamy and others Vs. Government of Tamil Nadu and others*** reported in ***1994 Supp (3) SCC 376***, wherein, the Hon'ble Supreme Court had considered a similar issue and found that the difference in the number of years of experience for direct recruits and promotee Deputy Collectors for promotion to the post of District Revenue Officer was discriminatory and read down the rule by stating that for both the feeder categories, a minimum amount of six years experience was required for the promotion as District Revenue Officer.

7. The learned Additional Government Pleader reiterated the averments made in the counter and submitted that the policy decision of the Government to provide for difference in the number of years of qualifying service for the two streams of recruitment is well founded and logical. It does not suffer from arbitrariness. The contention of the appellants that the judgment of the Hon'ble Supreme Court had caused difficulty since their seniority was affected cannot be countenanced. The Hon'ble Supreme Court had dealt with this rule comprehensively and the direct recruits had all the



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opportunity to submit before the Hon'ble Supreme Court the difficulty if the direct recruits are required to serve five years in the post of Assistant. The learned Additional Government Pleader therefore submitted that if the appellants' claim is accepted, it would amount to rewriting the judgment of the Hon'ble Supreme Court.

8. Heard the learned Senior Counsel for the appellants and the learned Additional Government Pleader for the respondents 1 to 6 and the learned counsel for the eighth respondent.

9. This case has a chequered history. The rule under challenge was amended in the year 07.02.1995 by virtue of G.O.Ms.No.133 issued by the first respondent. The amended rule was brought into force pursuant to the suggestions of the Special Commissioner and Commissioner of Revenue Administration that the directly recruited Assistants be given preference in the matter of promotion as Deputy Tahsildars. The Government thereafter requested the Special Commissioner and Commissioner of Revenue Administration to send necessary draft amendment for amending the rule. Accordingly, the rule 5(g) was substituted and the new rule reads as follows:

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"In the said Special Rules:-

(1) in rule 5, For sub-rule (g) including the Note thereunder, the following sub-rule shall be substituted namely:

"(c) Appellate authority:- Where the Collector of the district is the selecting authority, the appellate authority shall be the Commissioner of Revenue Administration and where the Commissioner of Revenue Administration is the selecting authority, the appellate authority shall be the Government. Any person, who is qualified for inclusion in the list of approved candidates and who is senior in the category from which selection has been made, to any person whose name has been included in the list or who is aggrieved by the rank assigned to him by the selecting authority, shall be entitled to an appeal to the authority prescribed in this sub-rule. The appeal shall be made within two months from the date of communication regarding inclusion or non-inclusion under sub-rule (f)". and

(2) In Annexure III, in item (ii), for the last proviso, the following provisos 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 proscribed 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



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for Madras city, above his seniors appointed other than by direct recruitment or for re-fixation of his seniority 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 proviso 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 senioritis, if his name 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"."

10. By virtue of the above rule, the direct recruits, who had completed five years of qualifying service in the post of Assistant, were placed above in the approved list of the Deputy Tahsildars above the seniors appointed



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other than by direct recruitment. Aggrieved by this amendment which gave preference to the direct recruits Assistants in the matter of promotion, the promotee Assistants challenged the rule before the Tamil Nadu Administrative Tribunal which quashed the impugned rule by its order dated 26.02.1997, but that judgment was reversed by this Court by the judgment dated 10.09.2005. The promotee Assistants challenged the judgment of this Court passed in W.P.Nos.27173 of 2003 and 5022 of 2008 before the Hon'ble Supreme Court. The Hon'ble Supreme Court found that the impugned rule had to be read down to save it from being violative of Articles 14 and 16 of the Constitution. Therefore, the Hon'ble Supreme Court held that the impugned rule can be sustained only to the extent that it gives preference to the directly recruited Assistants over the promoted Assistants, who are non-graduates and held that promoted graduate Assistants have to be treated on par with directly recruited Assistants. The relevant portion of the judgment of the Hon'ble Supreme Court in the case of *M.Rathinaswami and others Vs. State of Tamil Nadu and others* reported in **(2009) 5 SCC 625** is extracted hereunder for better appreciation:

“26. Whether graduate degree is a sufficient basis for classification for promotion vis-à-vis non-graduates, and



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whether such classification has rational relation to the nature of duties of a Deputy Tahsildar, is, in our opinion for the State Government to decide, and not the Court. Hence, we uphold the validity of the impugned Rule to the extent that it gives preference to the directly recruited Assistants over the promoted Assistants who are non-graduates.

27. However, we cannot find any rational basis for giving preference to the direct recruits over those promotee Assistants who are graduates, since the very basis for the distinction sought to be drawn by the respondents is that the direct recruits are graduates and hence intellectually superior to non-graduates. Hence we have to read down the impugned rule in order to save it from becoming violative of Articles 14 and 16 of the Constitution.”

11. The State sought to refix the seniority list based on the said judgment of the Hon'ble Supreme Court. The Principal Secretary and Commissioner of Revenue Administration passed an order dated 26.08.2009 to implement the orders of the Hon'ble Supreme Court and to redraw the seniority list by treating direct recruit Assistants on par with promotee graduate Assistants. The District Collectors therefore passed orders redrawing the list. Aggrieved by the orders of the District Collectors, the



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promotee non-graduate Assistants filed Writ Petitions challenging the list.

The direct recruit Assistants also filed Writ Petitions stating that the revised list contains the names of promotee Assistants, who are non-graduates, as well. The learned Single Judge of this Court dismissed the Writ Petitions. Writ Appeals were filed before this Court and the Division Bench of this Court directed the State to draw a seniority list taking direct recruit Assistants, graduate promotees as well as non-graduate promotees forming as one group and directed the State to draw a panel as on 04.12.1978 and reconsider the promotion. This order of the Division Bench of this Court was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of ***A.Rajagopalan and others Vs. District Collector, Thiruchirapalli District and others*** reported in ***(2019) 5 SCC 560*** set aside the judgment of this Court with the following observations:

“19. In the result, the impugned judgement [A. Rajagopalan v. District Collector, 2012 SCC OnLine Mad 5398] of the High Court is set aside and these appeals are allowed with the following observations and directions:

19.1. Promotions of the Direct recruit Assistants effected between 7-2-1995 and 8-4-2009 and their seniority in their respective positions as on date, shall not be disturbed.



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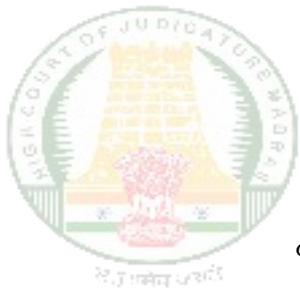
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19.2. *The benefit extended to the graduate promotee Assistants by placing them on a par with Direct recruit Assistants is to be given effect to prospectively from the date of judgment of this Court dated 8-4-2009 rendered in M. Rathinaswami v. State of T.N. [M. Rathinaswami v. State of T.N., (2009) 5 SCC 625 : (2009) 2 SCC (L&S) 101]*

19.3. *After 8-4-2009, the promotion to the post of Deputy Tahsildar from its feeder category i.e. Direct recruit Assistants and Promotee graduate Assistants, shall be strictly in accordance with the judgment of this Court referred to above i.e. treating Promotee graduate Assistants on a par with Direct recruit Assistants. Such promotion shall be given effect to, without reference to any interim order(s) passed by the High Court.*

19.4. *If any panels are prepared, and promotions are given, after 8-4-2009 for promoting the Assistants to the post of Deputy Tahsildars in Tamil Nadu Revenue Subordinate Service contrary to the judgment of this Court dated 8-4-2009 [M. Rathinaswami v. State of T.N., (2009) 5 SCC 625 : (2009) 2 SCC (L&S) 101] , such panels and promotions have to be revised so as to bring in conformity with the judgment of this Court referred above.*

19.5. *By virtue of the judgment of this Court dated*



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8-4-2009 [M. Rathinaswami v. State of T.N., (2009) 5 SCC 625 : (2009) 2 SCC (L&S) 101] , referred above, Promotee graduate Assistants are placed on a par with Direct recruit Assistants. So far as Promotee non-graduate Assistants are concerned, the amended rule holds the field, which gives preferential treatment to Direct recruit Assistants, over Promotee non-graduate Assistants.

19.6. Promotee non-graduate Assistants, who are impleaded as party respondents in these appeals, are not entitled to any directions in their favour, as much as, all these appeals are preferred by Direct recruit Assistants.

19.7. While implementing the above directions, if the seniority and promotion, of the persons who are already retired or dead, is affected in any manner, payments made on account of such seniority and promotion earlier granted to them during the interregnum period i.e. from 8-4-2009 till this date shall not be recovered.

19.8. So far as Promotee non-graduate Assistants are concerned, it is open for them to pursue with the Government for appropriate amendment to the Rules, in which event we keep it open to the Government to consider such request on its own merits.”



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12. In the meanwhile, the appellants had filed the Writ Petition which is under consideration challenging the minimum qualifying service of five years as being arbitrary.

13. We find that even before the amendment in the year 1995, rule 5(g) provided for minimum of five years service in the cadre of Assistant for direct recruits as a condition for promotion to the post of Deputy Tahsildar. By virtue of this amendment, the only change that was brought about was with regard to placing them above the promotee Assistants in the list for promotion as Deputy Tahsildar. Therefore, this rule prescribing five years period as qualifying service is not by virtue of the 1995 amendment. There has been no challenge to the previous rule which provided for the same qualifying number of years. Be that as it may. We find that the direct recruits are required to complete total period of five years and the same has a logical basis. As stated earlier, they have to complete one month of clerical training, 2 months of foundational training at Bhavanisagar, 1 year of working as Assistant in the Taluk Office, 1 month of training in survey and maintenance, 2 years of training as Firka Revenue Inspector and 1 year



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8 months as Assistant in any revenue office. Therefore, the minimum

requirement of five years cannot be said to be arbitrary.

14. The direct recruits also cannot claim that they have been treated unequally as promotee Assistants are required to have only a minimum qualifying experience of four years in the Assistant category. The rule does not state that it is sufficient to have only four years qualifying service for promotee Assistants. The rule prescribes a minimum period of eight years service in the Department right from the date of joining as Junior Assistants. All that the rule says is that out of the eight years minimum service, a minimum of two years service has to be in the Assistant category and another two years as Revenue Inspector. Illustratively, if a promotee Assistant had served as a Junior Assistant for two years and got promoted as an Assistant after two years, he would not become eligible to be promoted to Deputy Tahsildar on completion of four years as Assistant. He has to necessarily serve six years as Assistant in order to fulfill the requirement of eight years service. The two streams cannot be equated and therefore, the rule applicable to promotee Assistants cannot be interpreted to say that four years service is sufficient in the cadre of Assistant. The promotee



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Assistants have to otherwise serve in the Department for a period of another four years either in the cadre of Junior Assistant or Assistant. Therefore, in our view, this difference in the number of qualifying years is not arbitrary and it is based on the necessity to make the distinction in view of the nature of entry of these two streams of recruitment. The clarification is reasonable in our view.

15. We find that this rule of prescribing five years minimum qualifying service for the appellants/direct recruits had not affected them even from their own averments in the Writ Petition. The Writ Petition proceeds on the basis that since the Hon'ble Supreme Court had treated the promotee graduate Assistants on par with direct recruits, their seniority was affected and therefore, this difference in the qualifying service had caused reduction in their seniority. The relevant portion of the affidavit filed by the appellants in the Writ Petition is extracted below:

“12. I respectfully submit that if preferential treatment given only to Group-II Directly recruited Assistant, then 5 years of total qualifying service is admissible. If Promotee Graduate Assistant also given preferential treatment along with the direct recruit then direct recruit also given preferential



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treatment after completion of four years i.e. two year Assistant period two years Revenue Inspector Period as in the case of Promotee Assistant.”

We cannot countenance this argument. The prescription of five years qualifying service is not by this amended rule alone. Even prior to that, the rule provided for five years minimum qualifying service as stated earlier. The rule prior to amendment and the amended rule has been compared by the Hon'ble Supreme Court in *M.Rathinaswami's* case, which is again extracted hereunder for better appreciation:

“8. Annexure III, Item (ii) in the Tamil Nadu Revenue Subordinate Service Rules, prior and after the amendment reads as under:

<i>Prior to amendment by G.O. dated 7-2-1995</i>	<i>After amendment by G.O. dated 7-2-1995</i>
<i>Provided also that an Assistant appointed by direct recruitment in the office of the Board of Revenue shall be eligible for inclusion of his name in the approved list of Deputy Tahsildars for Madras city on competitive basis, after completion of a total service of five years, if he has passed all the prescribed tests and undergone training as Firka Revenue Inspector for two</i>	<i>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</i>



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years successfully and is
otherwise qualified.

city above his seniors
appointed other than by direct
recruitment or for refixation 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.

*A similar proviso has also been
added in respect of an
Assistant appointed by direct
recruitment in the District
Revenue Unit."*

16. The learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court in the case of ***T.K.Ponnuswamy and others Vs. Government of Tamil Nadu and others*** reported in ***1994 Supp (3) SCC 376***, wherein, the Hon'ble Supreme Court had held that a rule which prescribed for six years experience in the Revenue Department for considering a Deputy Collector eligible for promotion as District Revenue Officer led to an anomalous situation where direct recruit Deputy Collectors had to serve six years, whereas the promotee Deputy Collectors by virtue of their earlier service in the Department would be considered even without



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any experience as Deputy Collector. Therefore, in order to avoid the anomalous situation, the Hon'ble Supreme Court read down the rule holding that six years experience as Deputy Collectors was required for officers to be promoted as District Revenue Officers whether they were appointed by direct recruitment or on account of promotion in the cadre of District Revenue Officers. This judgment in our view does not help the case of the appellants. In that case, the promotee Deputy Collectors could be eligible for promotion to District Revenue Officers without any experience as Deputy Collector by virtue of the rule which prescribed a minimum period of six years in the Revenue Department. In view of their earlier service in the Revenue Department, they could be qualified to be promoted as District Revenue Officers even without much experience as Deputy Collector. The instant case cannot be compared to the situation in *T.K.Ponnuswamy's* case. In order to better appreciate the judgment of the Hon'ble Supreme Court, the relevant paragraphs are extracted hereunder:

“10. We have already extracted the relevant rules. It cannot be denied that those serving in the lower cadre of Revenue Department are eligible for promotion as Deputy Collectors. These persons, undoubtedly, have gained knowledge and experience in that Department. The question is whether that



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service in the lower cadre would qualify within the framework of six years' service for promotion as District Revenue Officer. The rule is not specific as to whether six years' service as Deputy Collector or six years' service in the Revenue Department. It merely says:

“Provided that no member of the Tamil Nadu Civil Service (Executive Branch) shall be considered for inclusion in the panel of officers fit for promotion as District Revenue Officer unless he had been on duty for not less than 6 years in the Revenue Department.”

(emphasis supplied)

The direct recruits, after being appointed as Deputy Collectors, are obliged to put in six years' service to qualify within this Rule. In contradistinction, the promotees staked their claims for empanelling as District Revenue Officer on the basis of earlier experience in the Revenue Department. If the contention of the State of Tamil Nadu is to be accepted, as rightly urged by the appellants, with hardly any service worth the name as Deputy Collectors on the basis of earlier service in Revenue Department, they become eligible for promotion as Deputy Collectors. This, undoubtedly, brings about an anomalous situation. Once there are two sources of recruitment to the post of Deputy Collector, namely—

- (i) direct recruitment,*
- (ii) promotion,*



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both of them have constituted one single cadre. The post of Deputy Collector is the feeder category for District Revenue Officer. Therefore, to insist six years' experience as Deputy Collector in the case of direct recruit and little experience as Deputy Collectors in the case of promotees brings about an anomalous situation leading to undue frustration among the officers. In our considered view instead of going into the larger question whether the rule is discriminatory and, therefore, is opposed to Article 14, the matter could be resolved by so interpreting the ruling to avoid the above stated anomalous situation. Therefore, we read down the rule holding when it says "six years' experience", it should be only "six years' experience as Deputy Collector" irrespective of the fact whether the officer is a Deputy Collector by reason of

- (i) direct recruitment or*
- (ii) on account of promotion."*

Therefore, in our view, the above judgment which is based on a totally different set of facts cannot be applied to the facts of the instant case.

17. In the instant case, we find that the rule prescribing eight years service for promotee Assistants right from their original appointment as Junior Assistants of which two years they shall serve as Assistant and



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another two years as Revenue Inspector for consideration to the post of Deputy Tahsildar is based on a policy decision of the Government which is backed by logic and reason. Similarly, prescription of five years experience is not by virtue of the 1995 amendment. Even prior to that, the rule prescribed five years minimum qualifying service for consideration to the post of Deputy Tahsildar. That apart, we find that the very basis of the appellants' claim that the difference in qualifying service is four years and five years is misconceived. The promotee Assistants have to put in a minimum period of eight years which includes training. For instance, a Junior Assistant who has put in six years of service before being promoted as Assistant has to necessarily serve in the cadre of Assistant for four years (two years as Assistant and two years as Revenue Inspector). Therefore, he would have put in 10 years of service before being considered for the promotion to the post of Deputy Tahsildar. Similarly, a person who gets promoted for the post of Junior Assistant within a period of one or two years has to necessarily serve for eight years, i.e., he has to serve for six or seven years in the cadre of Assistant before being considered for promotion as Deputy Tahsildar. This classification is reasonable and cannot be faulted because these two sources of recruitment to the post of Deputy Tahsildar



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cannot be compared at all. The direct recruits have to complete a minimum service of five years training, which as stated earlier, has got a clear schedule as to how this five years minimum period has to be spent. It is not without any logic that this five years period has been prescribed. At the same time, the promotees also have to serve eight years from their original appointment as Junior Assistants and as stated earlier, this cannot be called as discriminatory. In this regard, we also rely upon the judgment of the Hon'ble Supreme Court in the case of ***S.G. Jaisinghani v. Union of India and others*** reported in ***(1967) 2 SCR 703 : AIR 1967 SC 1427***. The relevant portion is extracted hereunder:

“9. The relevant law on the subject is well-settled. Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential



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treatment of one source in relation to the other is based on the differences between the said two sources, and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification.”

18. In any event, this Court cannot substitute its wisdom to that of the State's in prescribing the minimum qualification. The Court cannot step into the shoes of the executive to prescribe minimum rules. It is for the executive to determine as to what is the basic qualifying service for persons appointed to the post of Deputy Collector from different sources. Further the direct recruits who were placed in an advantageous position and got preferential treatment by this amended rule cannot complain about only a part of the rule prescribing minimum qualifying service especially when the earlier rule also had the same qualifying service without the preferential treatment.

19. That apart, the direct recruits had opportunity to raise all these contentions before the Hon'ble Supreme Court in *M.Rathinaswami's* case, where the challenge to this rule was made. Though the Hon'ble Supreme Court had not specifically considered this issue, the Hon'ble Supreme Court



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had also made a reference about this five years experience of minimum qualification so far as direct recruits are concerned. That apart, the Hon'ble Supreme Court in *A.Rajagopalan's* case (cited supra) had clearly given final guidelines as to how the list has to be drawn and as to how the judgment of *M.Rathinaswami's* case has to be applied prospectively. This judgment hopefully would put an end to the issue between the direct recruits and promotee graduate Assistants and promotee non-graduate Assistants. The ground raised by the appellants that the judgment in *M.Rathinaswami's* case, has brought them in a position of disadvantage cannot be countenanced at all. For the above reasons, we find no reason to hold that the impugned rule is ultra vires of the Constitution.

20. The alternative prayer made by the appellants is to read down the rule and prescribe a minimum qualification of four years for both direct recruit Assistants and promotee Assistants. We cannot read down the rule as such because the Courts cannot usurp the executive function especially when it is not pointed out as to how the orders or the rule framed by the executive is arbitrary or otherwise unconstitutional. Therefore, in view of the fact that the classification adopted by the respondents is reasonable and



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based on logic and reasons, this Court is not inclined to allow the Writ Petition and hence, the Writ Petition has to be dismissed and hence dismissed. There shall be no order as to costs.

[G.J.,J.] [S.M.,J]
15.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

- 1.The Secretary of Government,
The State of Tamilnadu,
Revenue Department,
Fort St.George,
Chennai – 9.
- 2.Principal Secretary / Commissioner
of Revenue Administration,
Chepauk,
Chennai – 5.
- 3.The District Collector,
Karur,
Karur District.
- 4.The District Collector,
Madurai,
Madurai District.



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5.The District Collector,
Dindigul,
Dindigul District.

6.The District Collector,
Tuticorin,
Tuticorin District.

7.The Zonal Deputy Tahsildar,
Taluk Office,
Karur – 639 001.



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DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

Lm

Judgment made in
W.A.(MD).No.1385 of 2011

15.02.2023