



W.P.No.27877 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

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CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.27877 of 2022
and
W.M.P.No.27171 of 2022

- 1.C.Anand
- 2.S.Yogalakshmi
- 3.M.Kajeetha
- 4.M.Padmapriya
- 5.P.Indirani
- 6.P.Jagadeeshwaran
- 7.N.Gowtham
- 8.G.Shanmathi
- 9.R.Amirthalingam
- 10.S.Porsuriyan
- 11.S.Boopathi
- 12.G.Kannan
- 13.C.Dhanasekaran
- 14.P.Lakshmikanthan
- 15.D.Shanmugapriya
- 16.N.Mythili
- 17.V.S.Srinivasan
- 18.M.Suganya
- 19.N.Mala
- 20.S.Manikandan
- 21.R.Nirmalraju
- 22.R.Vasantha
- 23.A.Geetha
- 24.R.Shanmugavadivel



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25.P.Jagadeesan
26.K.Vidhya
27.R.Prabhakaran
28.S.Vinoth
29.K.Ramesh
30.M.Manikandan

... Petitioners

Vs.

1.The Registrar General,
High Court of Madras,
Chennai – 600 104.

2.The Principal District Judge,
Salem, Salem District- 636 007.

3.The Registrar Recruitment,
High Court of Madras,
Chennai – 600 104.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in connection with the impugned notification no.171 dated 24.07.2022, in respect of Salem District, and quash the same, consequently direct the respondents to promote the petitioners to the post of Junior Bailiff, Xerox Operator, Examiner, Reader and Senior Bailiff in Salem District according to their educational qualification, experience certificate and service seniority by considering the petitioners common representation dated 12.092022.

For Petitioners : Mr.V.Neethidurai



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For Respondents : Mr.B. Vijay

ORDER

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(Order of this Court was made by S.M.SUBRAMANIAM,J.)

The Recruitment Notification No.171 of 2022 dated 24.07.2022 published for direct recruitment to the posts of Examiner, Reader, Senior Bailif, Junior Bailiff, Xerox Operator and Lift Operator in the Sub-ordinate Judicial Service is under challenge in the present writ proceedings.

2. The writ petitioners were appointed to the post of Office Assistants on 12.02.2018. The petitioners are continuing in the Judicial Department for about 6 years. The grievances of the writ petitioners are that the impugned notification for direct recruitment is infringing the right of promotion to the post of Examiner, Reader, Senior Bailiff, Junior Bailiff, Xerox Operator, Lift Operator all are in Sub-ordinate Judicial Services. Thus, they have challenged the Recruitment Notification.

3. At the first instance, Mr.B.Vijay, learned Counsel for the respondents brought to the notice of this Court that the process of recruitment



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concluded and the selected candidates were appointed in service. However, Mr.V.Neethidurai, learned Counsel for the petitioners raised objections by stating that the appointments made pursuant to the impugned recruitment notification is subject to the result of the present writ petition. Therefore, the writ petition is to be heard on merits.

4. Learned Counsel for the petitioners would contend that the petitioners were appointed as Office Assistants in the year 2018 and they became eligible for promotion to the post of Examiner, Reader, Senior Bailiff, Junior Bailiff, Xerox Operator and Lift Operator in Sub-ordinate Judicial Service. The entire vacant posts in the above categories are sought to be filled up through direct recruitment, which is in violation of the Service Rules in force. As per the Service Rules, the respondents are bound to fill up the above posts only by way of promotion and the remaining vacancies are to be filled up through direct recruitment. However, such procedures have not be adopted, which caused deprivation of the right of the petitioners to secure promotion to the Higher posts.

4.1 In this context, the learned Counsel for the petitioners drew the attention of this Court with reference to the Government Order issued in



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G.O.Ms.No.40 Home (Courts-V) Department dated 11.01.2008. In the said

Government Order, the recommendations of Justice Shetty Commission on improvement of service conditions of Non-judicial staff of Sub Ordinate courts in Tamil Nadu were accepted by the Government. Accordingly, the post of Junior Bailiff are to be filled up by promotion/by transfer and by direct recruitment with the prescribed qualification. It is further stated that there is no ceiling in existence for appointment as Junior Bailiff by promotion. Relying on the said G.O., the petitioner would submit that they are entitled for promotion. Therefore, the recruitment notification is to be set aside and all those posts are to be filled up only through promotion/recruitment by transfer of service.

5. Mr.B.Vijay, learned Counsel for the respondents would strenuously oppose by stating that the case of the petitioners are absolutely mis-conceived. They have not projected the Service Rules in a right perspective. Therefore, the claim of the petitioners are untenable.

5.1 To substantiate, Mr.B. Vijay, relied on the Tamil Nadu Judicial Ministerial Service Rules with reference to the posts notified in the impugned



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notification. Class IV speaks about Mufassal Courts. Rule 9 (2) of the Tamil

Nadu Judicial Ministerial Service Rules, reads as under:

“9. (a)

(b)

1.

2. *Promotion as mentioned in rule 6 from among Assistant Superintendent of Copyists, Examiners, Senior Bailiffs, Readers and Copyists in the proportion of 2:2.*

(c) *Senior Bailiff, Junior Bailiffs and Process Writers-Proportion of direct recruitment and transfer-*

so far as qualified and suitable candidates are available, vacancies, substantive or otherwise amount Senior Bailiffs, Junior Bailiffs and Process Writers shall be filled or reserved to be filled-

(i) *by direct recruitment and*

(ii) *recruitment by transfer from the category of Peons and Process Servers of the Tamil Nadu Last Grade Service or Record Clerks of the Tamil Nadu General Subordinate Service, serving in the Judicial Department in the proportion of 1:1.*

(d) *Where this rule prescribes, a proportion between different methods of recruitment in the filling up of vacancies, all vacancies in a category which have to be filled up by the same method or methods of recruitment shall, for the purposes of sub-rule (a) of this rule, rules 34 and 35 be deemed to be a separate category.*



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Provided that persons appointed prior to the 9th May 1949, to posts for which a proportion between different methods of recruitment is prescribed by this rule shall not, irrespective of the method of their recruitment, be adversely affected by this sub-rule.”

5.2 Rule 6 speaks about appointment to several class and categories in respect of post of Copyists, Senior Bailiff, Examiners, Readers in Moffussil Courts. Category 6 and Class -V reads as under:

Assistant Superintendents of Copyists	} Promotion from Senior Bailiff
Examiners	} and Copyists or direct recruitment
Readers	} or for Special reasons, recruitment
	} by transfer from any other service
Senior Bailiff in Moffussil Courts	} Direct recruitment or Recruitment
Copyists	} by transfer from the category of peons
	} and Process peons of the Tamil Nadu
	} Last Grade service or of the Record
	} Clerk in class XXII of the Tamil Nadu
	} General Subordinate Service Serving
	} in the Judicial Department, or for
	} special reasons, recruitment by
	} transfer from any other service.

5.3 Relying on the above Rules, Mr.Vijay would submit that the ratio of 1:1 is fixed for direct recruitment and recruitment by transfer of service.



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Therefore, the claim of the petitioners that they should be promoted to the notified posts is not contemplated under the Rules. But they become eligible for appointment by way of transfer in respect of 50% of the vacancies. Thus, it is not a promotion but by way of transfer of service.

6. The Recruitment Notification was issued against 50% of the vacancies to be filled up through direct recruitment and after collecting necessary particulars from the respective District Judicial Administration. The Recruitment Cell of the High Court of Madras undertook the process of recruitment and completed the same. The selected candidates were appointed. Whenever the turn comes for the petitioners for appointment by way of transfer of service, the cases will be considered on merits and in accordance with the Rules in force.

7. The principles governing the promotions/appointment by way of transfer of service are that an employee appointed in a particular cadre cannot seek promotion as an absolute right. However, consideration for promotion is a right of an employee. All promotions are to be made strictly in accordance with the rules in force. Right of an employee accrues, when an administrative



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decision is taken by the Competent Authorities to fill up the higher posts by way of promotion. In the absence of any such administrative decision, the employees cannot claim promotion as a matter of right. This being the settled principles in the matter of promotion, the very claim of the petitioners that they should be promoted in vacant posts deserves no merit consideration.

8. Appointment by way of transfer of service has been given by considering the employees working in eligible cadres against the ratio as contemplated in the Service Rules.

9. In the present case, the ratio of 1:1 for direct recruitment and appointment by way of transfer of service have been provided. It is clarified that the impugned notification was issued pursuant to the posts earmarked for direct recruitment and after collecting necessary details from the District Judicial Administration. Amongst the eligible candidates working in the cadre of Office Assistant one employee was promoted against the promotional vacancy. The other employees will be considered, when ever the administrative decision is taken to fill up the posts by way of promotion or appointment by transfer of service.



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10. We are of the considered opinion that the petitioners have joined in the Judicial Service in the year 2018 as Office Assistants. They have hardly served about 6 years. The petitioners are to be considered either for promotion or for appointment by way of transfer of service to any one of the cadres only if an administrative decision is taken to fill up the posts earmarked for promotion or appointment by way of transfer of service. The petitioners cannot seek any direction from the High Court to fill up the post by way of promotion/transfer of service and such a claim is beyond the Service Rules and the Service Law Jurisprudence.

11. The nature of relationship between an employer and an employee is contractual. The service conditions are binding on the employees. Therefore, the promotion/appointment by way of transfer of service are to be granted by following the seniority of the employees and by ascertaining their eligibility and suitability in accordance with the Service Rules in force. The very claim set out in the present writ proceedings is misconceived and running counter to the Service Rules in force. As per the Service Rules, 1:1 ratio has been fixed for direct recruitment and appointment by way of transfer



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of service. The petitioners are eligible for appointment by way of transfer of service and not for promotion, since the posts of Examiner, Reader, Senior Bailiff, Junior Bailiff, Xerox Operator and Lift Operator are not promotional posts to the post of Office Assistant. In other words, the post of Office Assistant is not a feeder category for the above posts. That being the position, the petitioners cannot seek for promotion or appointment by way of transfer of service as a matter of course. But their cases are to be considered whenever administrative decision is taken to fill up any one of the posts by way of promotion or by appointment through transfer of service.

12. Even in respect of the post of Xerox Operator, the Rule contemplates the ratio of 1:1 for Direct Recruitment or recruitment from any other class or category or recruitment by transfer from any other service. Therefore, the first choice has been given to resort direct recruitment. It is the decision of the Appointing Authority to fill up the post of Xerox Operator through direct recruitment and administrative decision taken in this regard by the Competent Authorities cannot be questioned by the petitioners, who all are working in the category of Office Assistants.



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13. In view of the above facts and circumstances, we do not find any infirmity in respect of the impugned Direct Recruitment Notification issued for selection and appointment to the posts of Examiner, Reader, Senior Bailiff, Junior Bailiff, Xerox Operator and Lift Operator. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S.J.] [K.R.S.J.]
06.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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