
(2006) 10 MAD CK 0096

In the Madras High Court

Case No : Writ Petition No"s. 17496 to 17505 of 2006

C. Jayalakshmi

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 12-10-2006

Acts Referred:

Constitution of India, 1950 — Article 309

Tamil Nadu Agricultural Subordinate Service Rules — Rule 12, 14, 14B, 15, 9

Citation : (2006) 10 MAD CK 0096

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : V. Selvaraj, for the Appellant; V. Arun, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—All the petitioners in this batch of cases were selected by the Tamil Nadu Public Service Commission for

appointment to the post of Agricultural Officer in the Extension Wing of the Department of Agriculture during the period from 1982 to 1989.

Though the selection was actually made by the Tamil Nadu Public Service Commission for recruitment of the petitioners to the Extension Wing of

the Agriculture Department, all the petitioners were actually posted to the Chemistry Wing of the Agriculture Department, due to administrative

reasons.

2. Till the year 1981, the Extension Wing and Chemistry Wing of the Agriculture Department remained as one unit and they were governed by the

Special Rules for Tamil Nadu Agricultural Subordinate Service. With effect from 01.02.1981, the extension Wing and Chemistry Wing were

bifurcated and those coming under the Chemistry Wing were governed by the Special Rules for Tamil Nadu Agricultural Subordinate Service. On

the other hand, those appointed to the Extension Wing were governed by the Special Rules for Tamil Nadu Agricultural Extension Service.

3. Despite the fact that these two wings got bifurcated with effect from 01.02.1981 and the services of persons appointed to these services were

governed by separate set of Rules, the petitioners were posted to the Chemistry Wing, in spite of their selection to the Extension Wing. Admittedly,

such posting to the other wing was made by the Department due to administrative reasons and not on account of any request made by any of the petitioners.

4. After posting the petitioners in the Chemistry Wing, the Department invited options by the Proceedings of the Director of Agriculture

Department dated 26.08.1988 from the candidates so appointed to the Chemistry Wing. The petitioners also exercised option to be retained in the

Chemistry Wing, in pursuance of the said Circular. The relevant portion of the said Circular dated 26.08.1988 reads as follows:

2. It is now decided to call for option from all the Agricultural Officers who have been originally selected for Extension work and are working in

Chemistry Section and who have put in some years of service in Chemistry section, but presently serving in Extension wing either to be allotted in

Chemistry section or to go to Extension Section.

3. Hence, all the Joint Directors of Agriculture are requested now to call for the options from the Agricultural Officers (including those working in

Sister Departments) selected by Tamil Nadu Public Service Commission and appointed prior to 1.7.88 for permanent allotment from one section to

another section as per Rule 12(a) & (b) of Tamil Nadu Agricultural Subordinate Services (i.e.) from Extension to Chemistry & vice versa as

indicated in para 2 above.

4. The Agricultural Officers who have not given option during 1986 for permanent allotment to a section other than to which they have been

originally recruited, may also be requested to furnish fresh option if they are still willing for permanent allotment.

5. The proposals should contain the option letter (i.e.) willingness received from the Agricultural Officer, the proforma duly furnishing the details of

Agricultural Officer and the undertaking obtaining from the Agricultural Officer concerned.

5. Subsequently, by another letter issued on 17.05.1993, a fresh option was called for by the Department from the petitioners, for a second time,

for permanent absorption in the Chemistry Wing and it is stated that the petitioners exercised their option for retention and absorption in the

Chemistry Wing for a second time.

6. However, despite the exercise of options twice, once in the year 1988 and the second time in the year 1993, the Department did not pass final

orders accepting their options, forcing the petitioners to file applications in O.A. Nos. 1868 to 1877 of 1996 before the Tamil Nadu Administrative

Tribunal, praying for a direction to the respondents to permanently absorb them in the Chemistry Wing of the Agriculture Department, with all

consequential benefits. All those said applications have been transferred to this Court in W.P. Nos. 17496 to 17505 of 2006, on the abolition of

the Tribunal.

7. I have heard Mr. V. Selvaraj, the learned Counsel appearing for the petitioners and Mr. V. Arun, learned Government Advocate appearing for

the respondents in all the batch of cases.

8. The respondents have filed a reply affidavit. The sum and substance of the contention of the respondents in the reply affidavit is that though the

petitioners were actually selected for appointment in the Extension Wing, they were posted to the Chemistry Wing due to administrative reasons

for want of vacancies in the Extension Wing. Admittedly, the petitioners have continued in the Chemistry Wing right from the date of their

appointments for the past over 20 years. In paragraph 2 of the reply affidavit, the respondents have provided a chart giving details of the dates of

joining of each of these petitioners. Thus, the petitioners, though selected for appointment to the Extension Wing, were posted only to the

Chemistry Wing right from the date of their appointments and they have continued in the same Wing for the past over 20 years. Options were also

called for twice from the petitioners and they have exercised their options and it is submitted that they have even foregone their seniority by

exercising the option to remain in the Chemistry Wing of the Agriculture Department.

9. Under such circumstances, the only contention of the respondents is that there is no provision in the Service Rules for interchanging an officer

posted in one wing to another wing. In other words, the Government has actually pleaded inability and the lack of provisions in the Rules for

interchangeability of the officers from one wing to another wing within the same department.

10. In my view, such a plea on the part of the Government, is actually without reference to the provisions contained in the statutory Rules. The

Fundamental Rules of the Government of Tamil Nadu itself contained a provision relating to the transfer of persons from one service to another.

Fundamental Rule 14-B reads as follows:

Subject to the provisions of Rule 15, Government may transfer to another permanent post in the same cadre the lien of a Government servant who

is not performing the duties of the post to which the lien relates, even if that lien has been suspended.

Fundamental Rule 15(a) reads as follows:

15(a) Government may transfer a Government servant from one post to another provided that, except-

(1) on account of inefficiency or misbehaviour; or

(2) on his written request a Government servant shall not be transferred substantively to or appointed to officiate in a post carrying less pay than

the pay of the permanent post on which he holds a lien or would hold a lien had his lien not been suspended under Rule 14.

11. Rule 9 of the General Rules for Tamil Nadu State and Subordinate Services deals with the rights of members absent from duty. To begin with,

the said Rule lists out the rights of persons, who are absent from duty, on account of leave, deputation, foreign service or for any other reason. The

proviso to the said Rule, reads as follows:

Provided that a member of a service who has been appointed to another service outside his regular line shall not be permitted to hold membership

in the second service beyond five years, if he is to be considered for promotion or for appointment by recruitment by transfer to a higher post in his

regular line even though he is otherwise qualified under the rules for such promotion or appointment, unless he puts in a fresh service for a minimum

period of one year in his post in the former service on reversion from the second

service.

The above proviso thus recognises that a member of a service can be appointed to another service outside his regular line, but prescribes a period

of 5 years beyond which such appointment cannot continue, if the person seeks promotion in his regular line. In other words, if a person

relinquishes his service rights in the regular line, his appointment to another service outside his regular line becomes validated. In this case, the

petitioners have already exercised options waiving their rights in Extension Wing.

12. Thus, the Statutory Rules issued in exercise of the powers conferred by the proviso to Article 309 of Constitution of India, specifically

recognises the power of the Government as well as that of the Head of the Department to order the transfer of a person from one department to

another and from one wing to another of the same department. While so, the plea of inability on the part of the respondents, is wholly unjustified

and made without reference to these statutory Rules. Interestingly, the qualification prescribed for appointment to the Chemistry Wing as well as

the Extension Wing are one and the same and both Wings have the same Director of Agriculture as the Head of the Department.

13. Since the respondents have not stated any other reason with regard to the non-absorption of the petitioners and their only plea is with regard to

the absence of a provision in the Service Rules, I am unable to find any justification for the inaction on the part of the respondents in not ordering

the permanent absorption of the petitioners.

14. Therefore, all the writ petitions are allowed and the respondents are directed to absorb the petitioners into the Chemistry Wing of the

Agriculture Department, as prayed for, in exercise of the powers conferred under the Fundamental Rules and the General Rules for Tamil Nadu

State and Subordinate Services. The respondents are directed to complete the exercise of absorption within a period of three months from the

date of receipt of a copy of this order. No costs.