
(2011) 06 MAD CK 0192
In the Madras High Court
Case No : Writ Petition No. 21118 of 2007

D. Chandrasekaran

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 06-06-2011

Acts Referred:

Constitution of India, 1950 — Article 309

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 36, 39

Citation : (2011) 06 MAD CK 0192

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : P. Jayaraman for G. Elanchezhiyan, for the Appellant; S.N. Kribanandam, Spl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The writ petition is directed against the impugned Government Order dated 01.11.2001, by which the Government, on

considering the representation of the Petitioner, has rejected his claim to include him in the list of seniority for the post of Assistant for the year

1995-96 and the subsequent order of the second Respondent dated 01.02.2007, by which the claim of the Petitioner for seniority in the post of

Assistant from the year 1995 came to be rejected under Rule 36(a) on the ground that even in respect of the post of Junior Assistant, he has not

completed his probation successfully and also for direction against the Respondents to promote the Petitioner as Assistant with effect from

22.01.1996 with all consequential and other benefits.

2. The Petitioner was initially appointed as Office Assistant on 03.06.1980 and subsequently, promoted as Junior Assistant on 30.01.1995, on

acquiring higher qualification on the basis of panel prepared for the year 1992-93 and he was ultimately posted in the District Forest Office, Trichy

Division.

a) According to the Petitioner, he has completed the requisite qualification for promotion as Assistant by passing the Departmental tests viz., (i)

District Office Manual; (b) Tamil Nadu Accounts Test for Subordinate Service Part-I; (c) Board Standing Orders; and (d) Tamil Nadu Forest

Department Code and therefore, he was qualified for the post of Assistant, in respect of which a panel was drawn in the year 1995, prepared on

22.01.1996.

b) The appointment of the Petitioner as Junior Assistant was prior to G.O. Ms. No. 43 Personnel and Administrative Reforms (PV) Department

dated 15.02.1994, under which the panel of names of Tally Clerk/Record Clerk/Office Assistants was drawn for seniority. But, in the case of the

Petitioner, the said G.O. Ms. No. 43 dated 15.02.1994, has never been followed, and therefore, he need not be deputed to Civil Service Training

Institute at Bhavanisagar.

c) However, his name was held over for the year 1995 by the Chief Conservator of Forest and the Petitioner learnt that it was because of the

reason that he has not undergone the training at Bhavanisagar, in spite of the representation, his name has not been included in the panel for the

post of Assistant, prepared for the years 1995, 1996 and 1997.

d) The third Respondent has rejected the name of the Petitioner in the said years and the Petitioner has subsequently undergone the Bhavanisagar

training and it was, thereafter, he was given promotion as Assistant in the year 2000. The Petitioner submitted a detailed representation, to fix his

seniority as Assistant from the year 1995-96, and for that the Government has passed the impugned order, rejecting the same without considering

any of the grounds, against which a review was filed, and the Government has replied in the impugned letter that, inasmuch as the Petitioner has not

completed his probation in the post of Junior Assistant, his name could not be considered for the post of Assistant in the year 1995.

3. The impugned orders are challenged on various grounds, including that the same is arbitrary and illegal and opposed to Rule 34 of the Tamil

Nadu Ministerial Service, since in spite of his passing of the tests required, he

has been held over; that G.O. Ms. No. 43 dated 15.02.1994, is not applicable to him, which alone requires the training in Bhavanisagar Training Center, and for the vacancies relating to the period from 1991-92 viz., from 15.02.1991 to 14.03.1992, G.O. Ms. No. 43 dated 15.02.1994 is not applicable.

4. In the counter affidavit it is stated that, while it is true that the Petitioner has passed various tests, including the District Office Manual, Account Test and Forest Department Code, which are required for promotion as Assistant, it is stated that the Principal Chief Conservator of Forest, in the letter dated 23.09.1992 has prepared a list of Office Assistants/Record Clerk/Tally Clerk, Drivers etc., who were qualified for appointment as Junior Assistant by way of appointment by transfer as on 01.04.1992.

a) The panel was drawn as per G.O. Ms. No. 90 Personnel and Administrative Reforms (Personal Service) Department dated 01.08.1992 read with G.O. Ms. No. 42 Personnel and Administrative Reforms Department dated 22.01.1981. It is stated that the Petitioner was selected in the state panel vide Serial No. 14 and he was appointed as Junior Assistant and he has also joined as Junior Assistant on 31.1.1995.

b) The Principal Chief Conservator of Forest, in the proceedings dated 30.01.1995 has created a list of Junior Assistant/Typists eligible for promotion as Assistant as on 15.03.1995 and a panel was drawn on 22.01.1996, by following the Government Order in G.O. Ms. No. 707

Personnel and Administrative Reforms Department dated 3.7.1981 and G.O. Ms. No. 417 Personnel and Administrative Reforms Department

dated 01.12.1993 and Rule 39(a)(1) of the Tamil Nadu State Subordinate Service Rules, pending amendments to the special rules for the Tamil

Nadu Ministerial Service as ordered by the Government in G.O. Ms. No. 417 Personnel and Administrative Reforms Department dated

1.12.1993. The name of the Petitioner was considered and held over.

c) It is stated that the Government in G.O. Ms. No. 43 Personnel and Administrative Reforms Department dated 15.02.1994, issued revised guidelines for appointment to the post of Junior Assistant by recruitment by transfer from other services. As per the said guidelines, the persons

appointed as Junior Assistant by recruitment by transfer from the post of Record Clerk, etc., shall undergo training in the Civil Service Training

Center at Bhavanisagar for the period that may be prescribed by the Government from time to time.

d) The Principal Chief Conservator of Forest in the proceedings dated 17.01.1995, has sent the proposal to the Government to clarify, whether

the persons selected upto 01.04.1992 should also go through the Bhavanisagar training. That proposal was subsequently withdrawn and the

Petitioner was informed that he will be considered for promotion only after Bhavanisagar training. The Petitioner has filed an appeal to the

Government on 05.08.1998, against his non-selection in the panel prepared for the year 1996 on the ground that he was qualified for promotion to

the post of Assistant and the Government, after detailed examination, has issued orders, concluding that no person junior to him has been selected

as Assistant in the panel during 1995-1996 and hence his request to incorporate his name in the selection panel was rejected.

e) In the meantime, the Petitioner has undergone the training at Bhavanisagar from 1.09.1999 to 15.10.1999 and therefore, he was promoted as

Assistant in the panel drawn for the year 2000 and he joined as Assistant. The Petitioner has filed a petition to the Government on 12.05.1995, to

consider his request and to fix his seniority in the Assistant panel drawn for the year 1995. The Government, in the impugned letter dated

01.02.1997, has examined the case of the Petitioner in detail and found that the Petitioner had not even completed the probation in the post of

Junior Assistant, and he has completed the same only on 15.10.1999 and therefore held that he was not entitled for incorporation in the panel for

1995 as per Rule 36(a) of the Tamil Nadu General Service Rules.

f) Normally, the period of probation is uniformly for a period of two years on duty within a continuous period of 3 years. The amendment has been

issued to the statutory rules by G.O. Ms. No. 15 Personnel and Administrative Reforms Department dated 21.02.2002, pursuant to the

Government Order in G.O. Ms. No. 43 Personnel and Administrative Reforms Department dated 15.02.1994, stating that the amendment shall

come into force from 15.02.1994 and therefore, by way of the statutory amendment also the Petitioner is bound by that.

5. It is relevant to point out at the outset that the Government in G.O. Ms. No. 15 dated 21.02.2002, has brought an amendment to the special

rules for the Tamil Nadu Ministerial Service in respect of appointment to the categories of Junior Assistant or Junior Assistant cum Typist or Typist

by recruitment by transfer from other services and by such amendment, the revised procedure has been contemplated. The said amendment has

been conferred by virtue of the powers under Article 309 of the Constitution of India and the same has come into effect retrospectively from

15.02.1994 by way of Government Order passed on 21.02.2002, as it is seen in Clause 2 of the amendment, which is as follows:

2. The amendments hereby made shall be deemed to have come into force on the 15h February, 1994.

6. In the amendment, apart from retaining the other requirement of passing of various tests, in respect of all Departments, for the post of Junior

Assistant, the undergoing of foundational training for two months within one year from the date of appointment to the post is made mandatory, but

as on 15.10.1999, the Junior Assistant appointed by recruitment by transfer, after completion of 53 years need not undergo the above foundational

training. The relevant provision, which has been effected by way of amendment is as follows:

8(A). Junior Assistant or Junior Assistant-cum-Typist appointed by recruitment by transfer Foundational training for a period of two months within

one year from the date of appointment to the post:

Provided that on and from the 15th October, 1999, the Junior Assistant appointed by recruitment by transfer, after completion of 53 years need

not undergo the above foundational training.

7. The statutory amendment having come into effect from 15.02.1994, is certainly applicable to the case of the Petitioner. Consequently, the

Petitioner has to undergo the foundational training, which is a mandatory requirement, except if he has crossed the age of 53 years. Admittedly, at

the time of filing of the writ petition, the Petitioner was 53 years and therefore, the statutory amendment is binding on him.

8. In the light of the above said facts, it is clear that the Petitioner having not undergone the foundational training during the relevant period in 1995,

1996 and 1997 when the panels for promotion to the post of Assistant were prepared, cannot be considered to have fulfilled the requirement,

which is statutorily made mandatory, as per the rules framed. On this simple

point, the Petitioner's claim for including his name in the panel for promotion in the list of Assistant for the year 1995, 1996 and 1997 has to be rejected and the same has been correctly rejected under the impugned Government Order.

9. The Petitioner has completed the foundational training at Bhavanisagar between 1.09.1999 to 15.10.1999 and admittedly, thereafter, his name was included in the panel for promotion to the post of Assistant in the year 2000 and that is the reason given in the impugned Government Order

also. Further, absolutely, there is nothing on record to show that the Petitioner has completed the period of probation successfully from the date of

his appointment as Junior Assistant. As per the statutory rules, the probation has to be completed for 2 years within the service period of three

years, as it is seen in G.O. Ms. No. 335 Personnel and Administrative Reforms Department dated 13.09.2004, wherein by virtue of the

amendment, the Government has stated as follows:

Provided also that a person appointed to the post of Junior Assistant by recruitment by transfer shall from the date on which he joins duty be on

probation for a total period of two years on duty within a continuous period of three years.

10. In such circumstances, no exception can be taken against the impugned order of the Secretary to Government dated 01.02.2007, and the

Petitioner himself has joined the post of Junior Assistant by recruitment by transfer only on 30.01.1995 and on the crucial date of preparation of

list, viz., on 15.03.1995, he has not even completed the probation in the post of Junior Assistant. While so, it is not known, as to how he can claim

as a matter of right that his name should be included in the panels in the year 1995, 1996 and 1997, for promotion to the post of Assistant.

11. The vacancy for the post of Junior Assistant by transfer arose in the year 1992, for which a list was prepared from the category of Office

Assistant/Tally Clerk/Record Clerk, Drivers etc., in which the Petitioner's name also found a place. But, on fact, it is clear that the Petitioner was

appointed as Junior Assistant on transfer on 30.01.1995. When that is the case, the reliance placed by the learned senior counsel for the Petitioner

on the judgment of the Supreme Court in P. Murugesan and Others Vs. State of Tamil Nadu and Others, to substantiate his contention that in

respect of vacancies which were to be filled up prior to the amendment, the amended rule shall not be made applicable, has no meaning. In the

present case, the amendment has been given effect to statutorily from 15.02.1994 and the Petitioner himself was appointed as Junior Assistant only

from 30.01.1995, and for the next promotion to the post of Assistant, he has to necessarily undergo the foundational training at Bhavanisagar.

12. The reliance placed by the learned senior counsel for the Petitioner on the judgment in Paluru Ramkrishnaiah and Others Vs. Union of India

(UOI) and Another, , has also no relevance to the case of the Petitioner, for the reason that, there is no administrative instruction which has

superseded the statutory rules framed under the proviso to Article 309 of the Constitution of India. As per G.O. Ms. No. 15 Personnel and

Administrative Reforms Department dated 21.02.2002, the amendment has been given effect to from 15.02.1994 and that has not been

superseded by any administrative instructions under proviso to Article 309 of the Constitution of India, especially on the facts of the present case.

In such circumstances, I do not see any reason to interfere with the impugned order; accordingly, the writ petition fails and the same is dismissed.

No costs.