

(2001) 09 MAD CK 0067

In the Madras High Court

Case No : Writ Petition No's. 6850 and 7129 of 1997 and W.M.P. No's. 11228 and 11654 of 1997

G. Arumugam and another

APPELLANT

Vs

State of Tamil Nadu and 2 others

RESPONDENT

Date of Decision : 18-09-2001

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Rules, 1960 — Rule 10, 2, 2(1), 2(A)

Citation : (2001) 09 MAD CK 0067

Hon'ble Judges : V.S. Sirpurkar, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Mr. R. Muthukkannu, for the Appellant; Mr. G. Sukumaran, Special Government Pleader for HR and CE, for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—The petitioners were working as Executive Officers Grade III in Hindu Religious and Charitable Endowments

Administration Department, herein after called as HR & CE Department; on 25.9.1971 and 15.5.1970 respectively. Under G.O.Ms.No.61, dated

2.3.1994, "amendment to Sub-Rules of the Tamil Nadu Hindu Religious and Charitable Endowments Administration Service was brought into

effect, by which in Sub-Rule (1) of Rule 2 of the said Sub-Rules, certain additional entries to the following effect were made:

In (he said Special Rules, in Rule 2.

(1) in sub-Rule (1), in the label, the following entries shall be added at the end in Columns (2) and (3) respectively, namely:-

(iii) By recruitment by transfer from among the (i) Must possess a B.L. Degree or any other

law graduates of the Tamil Nadu ministerial Degree equivalent to B.L. Degree;

Service and Tamil Nadu Hindu Religious an

Charitable Endowments Subordinate service in the (ii) Must have completed 15 years of regular

Hindu Religious and Administration Department in service in the Tamil Nadu Ministerial Service or in

the following order of preference:- the Tamil Nadu Hindu Religious and Charitable.

Consequent to the above said amendment for Sub-Rule (c), a new Sub-Rule came to be substituted to the following effect:-

(c) Vacancies in the category of "Assistant Commissioners both substantive and temporary shall be filled in the preparation specified below:-

(i) 60% by recruitment by transfer;

(ii) 20% by recruitment by transfer from among the members of the Tamil Nadu Ministerial Service and Tamil Nadu Hindu Religious and

Charitable Endowments Subordinate Service in the Hindu Religious and Charitable Endowments Administration Department who possesses

degree in Law and have completed 15 years of regular service in the above department;

(iii) 20% by direct recruitment

2. Both the petitioners had the necessary qualification, namely, B.L.Degree apart from the required experience as provided under the amended

Sub Rules of G.O.Ms.No.61, dated 2.3.1994. By G.O.Ms.No. (3D) No. 16 CT & RE Department, dated 10.5.1994, the first respondent herein

fixed the estimated vacancies" for the post of Assistant Commissioner, HR & CE Administration Department for the year 1994 to be filled up by

direct recruitment; recruitment by transfer from among the law graduates in service in HR & CE Administration Department; and by recruitment by

transfer from among the Superintendents/Managers and Executive Managers Gr.I of HR & CE Administration Department for the year 1994.1995

at Two, four and Thirteen respectively. The second respondent herein submitted the proposals for the drawal of temporary list of Officers fit for

appointment as Assistant Commissioners from among the Superintendents/Managers and Executive Officers Gr.I and also by recruitment of

transfer from among the law graduates in the service of HR & CE Administration Department.

3. Based on the proposal of the second respondent dated 20.4.1994 and 21.5.1994, by G.O.Ms.No.225, dated 18.7.1994, 17 persons including

the petitioners who were included in the list of temporary officers for appointment as Assistant Commissioners for the year 1994-95 in the order of

preference specified therein. The second respondent was also requested to send the necessary proposals to appoint the Officers mentioned in the

list as Assistant Commissioners as per vacancy position. Thereafter, by G.O.(D) No. 493, dated 21.12.1994 and G.O.(D) No. 280 dated

22.7.1994, the petitioners came to be temporarily promoted as Assistant Commissioners of HR & CE Department under Rule 10(a) (i) of the

general rules for the Tamil Nadu Hindu Religious and Charitable Endowments Subordinate Service. Thereafter on 28.12.1994 and 27.7.1994, the

petitioners also, assumed charge as Assistant Commissioners in their respective places.

4. While so, by G.O.(3D) No.63, dated 4.10.1996, the petitioners came to be reverted as Executive Officers Gr.II on the footing that when

proposals for drawal of regular list of Assistant Commissioners, HR & CE Administration Department for the year 1994-95 were sent to Tamil

Nadu Public Service Commission, the crucial date for the drawal of panel of Assistant Commissioners for the year 1994-95 being 1.10.1993, the

rules prevailing as on 1.10.1993 should have been taken into account while drawing the panel in the said year, that as on 1.10.1993, since there

was no provision to select law graduates with 15 years of service in HR & CE Administration Department by recruitment by way of transfer to the

said post, inasmuch as, the said provision came to be incorporated in the rules only with effect from 2.3.1994, the said amended provision, could

be made applicable only for drawing up the panel for the year 1995.96 and therefore a revised list based, on the position existing as on 1.10.1993

should be drawn up. Thus" the petitioners came to be reverted from the post of Assistant Commissioner to the post of Executive Officer: Gr.II.

When the said order was communicated to the petitioners by the second respondent in the proceedings dated 29.11.1996, the petitioners

preferred O.A,Nos.6980 and 7103 of 1996 on the file of the third respondent herein. Pending disposal of the above said O.As. by virtue of

orders of interim stay, the petitioners continued to retain the post of Assistant Commissioner. Ultimately, the O.As. came to be dismissed by the

third respondent herein by a common order dated 9.4.1997. Aggrieved against the same, the petitioners have come forward with these writ petitions.

5. It will have to be stated that by virtue of interim orders granted by this Court in W.M.P.Nos.11228 and 11654 of 1997, the petitioners continue to function as Assistant Commissioners, even as on date.

6. The crucial question that arises for consideration in these Writ Petitions, is as to whether 1.10.1993 is the relevant date for the drawal of panel of

Assistant Commissioners in HR & CE Administration Department for the year 1994-95. The said date assumes significance in view of one other

G.O. namely, G.O.Ms.No.291 Commercial Taxes and Religious Endowments dated 26.3.1986, in and by which, an amendment by way of Rule

2 (A) came to be introduced in the Sub-Rules for Tamil Nadu Hindu Religious and Charitable Endowments Administration Service. The said Rule

2(A) reads as under:

2(A): The crucial date for possessing the prescribed qualification for appointment to any of the posts in the service by promotion or by recruit by

transfer shall be the first October of each year

7. A perusal of the reply affidavit filed on behalf of the respondents before the third respondent, as well as, the counter affidavits filed in the above

said writ petitions do not refer to any other provision in the sub rules or any other Government Order referring to the said date for the purpose of

preparation of the panel for promotion either by way of recruitment or transfer. Though the respondents would claim that the crucial date for the

drawal of panel of Assistant Commissioners in HR & CE Administration Department for the year 1994-95 was 1.10.1993, in support of the said

stand, reliance was placed only upon G.O.Ms.No.291 CT & RE Department dated 26.3.1986 as has been stated in paragraph 15 of the counter

affidavit filed on behalf of the respondents in these Writ Petitions which is to the following effect:-

15. The averments contained in para (j) (k) and (l) are specifically denied. The Petitioner has misconceived the fixation of crucial dates prescribed

by the Government for preparation of annual list of Approved Candidates for promotion in G.O.Ms.No.291, CT & RE Department dated

26.3.1986, which is as follows:-

II Category - III Assistant Commissioner

1. Date on which the annual list of approved candidates for 1st October of every year (on this date the

appointment by recruitment by transfer for the post of candidates should possess the prescribed

Assistant Commissioner should be prepared. qualification for consideration)

2. Date of receipt of estimate 1st November of every year

3. Date of receipt of proposals 1st December of by the 1st December of every year.

Tamil Nadu Public every year Service Commission.

4. Date by which the list 1st March of the should be 1st March of the Succeeding year

communicated succeeding year, to the concerned by the

Commissioner.

8. According to the respondents, the process of preparation of panel starting from the 1st October of the preceding year would end on 1st March

of the succeeding year, since G.O.Ms.No.61, dated 2.3.1994 providing for 20% reservation for law graduates with 15 years experience to the in-

service candidates came into force only with effect from 2.3.1994, by virtue of mere delay in finalising the panel of approved list of names would

not enable the petitioners to claim for inclusion of their names in the panel for the year 1994-95. It was therefore contended that the petitioners

could aspire for getting their names included only in the panel year 1995-96 for which, according to the respondents, the crucial date was

1.10.1994. It was therefore contended that the reversion made under the proceedings dated 4.10.1996 was fully justified.

9. We are unable to sustain the stand of the respondents which unfortunately found favour with the third respondent Tribunal. A perusal of

G.O.Ms.No.61, dated 2.3.1994 makes it clear that the amendments which were introduced under the said G.O. came into force with effect from

2nd March, 1994. As per the said amendment, the petitioners became eligible for claiming the post of Assistant Commissioner by way of transfer

by virtue of their qualification as law graduates with the required experience of 15 years of service. It is also not in dispute that the period of panel

year for the post of Assistant Commissioner starts from 18th March of a particular year and ends with 18th March of the succeeding year.

10. On the above said basis, the panel year 1994-95 starts from 19.3.1994 to 18.3.1995. Rule 2(a) by virtue of the amendment brought out under

G.O.Ms.No.291 CT & RE dated 26.3.1986 only fixed the crucial date for possessing the prescribed qualification for appointment to any of the

posts in the service by promotion or by recruitment by transfer as 1st October of each year. The expression used in the said Sub-Rule 2(A) makes

it clear that for any one who aspire for promotion for any post, either by way of recruitment or by transfer, should possess the necessary

qualification by 1st October of that year. It will have to be stated that the introduction of sub Rule (2) under G.O.Ms.No.291 dated 26.3.1986

does not stipulate that the said date should be treated as the crucial date for the preparation of the panel for that year. To put it differently, 1st

October of, particular year even if it is to be taken as the date for preparation of the panel of the year 1994-95, by virtue of Sub Rule 2(A), the

relevant date for possession of the required qualification for that purpose would be 1.10.1993. In so far as the panel year 1994-95 is concerned,

the said date would be relevant only for the purpose of finding out as to whether as on that date, a person was having the required qualification in

order to get his name included in the panel of that year which would be valid for the period between 19.3.1994 and 18.3.1995. When once we

steer clear of the said position by applying G.O.Ms.No.291 dated 23.6.1986, the next question would be whether the petitioners were entitled to

be considered for inclusion in the panel of Assistant Commissioner to be promoted for the year 1994-95. When the panel year 1994-95

commences from 18.3.1994 and since G.O.Ms.No.61, dated 2.3.1994 came into force on 2.3.1994 itself, by applying the said G.O., what all

required to be considered was whether the petitioners did possess a B.L. Degree or any other degree equivalent to B.L. Degree with 15 years of

completed regular service in the Tamil Nadu Ministerial Service or in the Tamil Nadu Hindu Religious and Charitable Endowments Subordinate

service in the HR & CE Administration Department. It is not in dispute that as on 1.10.1993, the petitioners did possess the said qualification.

11. Admittedly, the panel came to be prepared by the Commercial Taxes and Religious Endowments Department for the year 1994-95 in

G.O.Ms.No.225 dated 18.7.1994. For preparation of the said panel, the estimated vacancies as identified for the year 1994-95 in G.O.(3D)

No.16 dated 10.5.1994 as well as the proposals of the second respondent providing for the list of qualified persons as on 1.10.1993 were

considered. In such circumstances, inasmuch as, the petitioners were rightly included by virtue of possession of their qualification as on 1.10.1993

which was well within the amended Rule 2(A) as introduced in G.O.No.291 dated 26.3.1986 and also inconsonance with the G.O.Ms.No.61,

dated 2.3.1994, there was absolutely no justification for the first and second respondents to reverse the said position by the impugned proceedings

dated 4.10.1996. The impugned proceedings dated 4.10.1996 was totally inexplicable inasmuch as, the same was not based upon any prevailing

rule or Government Order to state that the crucial date for the drawal of panel for the year 1994-95 was 1.10.1993 and therefore the rules

prevailing as on 1.10.1993 should be taken into account while drawing the panel for the said year. In such circumstances, the order of reversion

made under the said proceedings dated 4.10.1996 was liable to be set aside and the same is accordingly set aside.

Having regard to our above said conclusion, the order of the third respondent impugned in these writ petitions is also liable to be set aside.

Therefore these writ petitions succeed and the same are allowed. The first and second respondents are therefore directed to allow the petitioners

to continue in their position as Assistant Commissioner in HR & CE Department from the date of their original promotion dated 21.12.1994 and

22.7.1994 respectively. No costs. Consequently, W.M.Ps. are also closed.