

(2003) 07 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No. 13700 of 1997 and W.M.P. No's. 22006 to 22008 of 1997

P. Murugan

APPELLANT

Vs

The Govt. of Tamil Nadu

RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Basic Service Rules — Rule 3

Citation : (2003) 07 MAD CK 0008

Hon'ble Judges : P.K. Misra, J; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : V. Raghavachari, for the Appellant; S.T.S. Murthy, Spl. G.P., for the Respondent

Judgement

P.K. Misra, J.—Heard the learned counsel for the parties. The petitioner has prayed for quashing G.O. Ms. No. 215, P & AR (F)

Department dated 27.6.95. The relevant facts are as follows:

2. The petitioner is working as an Office Assistant under the 2nd respondent. He had joined the service of the 2nd respondent as a Masalchis on

22.9.1993. Thereafter, he was promoted to the post of Office Assistant on 1.11.1994. The aforesaid post is governed by the Special rules for

Tamil Nadu Basic Service and comes under Category No.5. Before the impugned G.O. was issued, an Office Assistant or an Attender could be

promoted to the next higher category, i.e., to the category of Process Server. As per the present G.O. issued by the Government, amending the

rules, in sub-rule (a) as subtitled, for the entry in column (1) against the entry ""all categories under class III in column (I), the following entries are

substituted, namely:-

Direct recruitment or recruitment by transfer from any other service or transfer from class IV.

(iii) Sub-rule (b) shall be omitted.

(2) rule 4 sub-rules (b) (c) and (c) shall be omitted

(3) in rule 5, in sub-rule (2)-

3. The net result of this amendment is that persons in the Lower Category i.e., in class IV will be eligible to be promoted as Process Servers while

persons in class III like Office Assistants, would not be eligible for promotion. This has the effect of not only denying the opportunity of promotion

to those belonging to class III and others, but also has the effect of giving additional benefits to class IV, who are ordinarily considered in a lower

scale. In other words, the rule, as amended, is arbitrary to the extent that when a person in class IV carrying a lower scale of pay would be eligible

to be considered for promotion to the post of Process Server, those belonging to class III like Office Assistants would not be eligible for the same.

4. A counter affidavit has been filed by the first respondent and no justification has been made for treating the said persons differently. As per the

rules, all qualified Office Assistants, who were eligible were considered whereas after the amendment, such Office Assistants were deprived of

such an opportunity.

5. In the counter affidavit filed by the second respondent, the difference in scales of pay both pre-existing, as well as, revised in respect of the

posts of Masalchi, Office Assistant and Process Server has been stated which is as under:

S.No Name of the Post Pre-existing Scale of pay Revised Scale of Pay

1. Masalchi 750-12-870-15-945 2500-55-2660-60-3200

2 Office Assistant 750-12-870-15-945 2500-55-2660-60-3200

3 Process Server 800-15-1010-20-1150 2650-65-3300-70-4000

6. From the above, it was pointed out that having regard to the scales of pay of the posts of `Masalchi" and `Office Assistant" and that of `Process

Server", it can be easily seen that the post of Process Server is higher in rank and status, though the said post as well as that of Office Assistant are

in one and the same class, namely, in Class-III of the Tamil Nadu Basic Service

Rules. Whereas, the post of `Masalchi" comes under Class-IV

even though the scale of pay of the post of `Masalchi" and `Office Assistant" is one and the same. One other distinctive feature is that while the

education qualification for the post of Office Assistant either for direct recruitment or by promotion from Masalchi is "pass in 8th standard", the

same is not the case in the case of post of `Masalchi".

7. In the above stated circumstances, the grievance of the petitioner is that while by virtue of the amendment, a lesser qualified person could aspire

to become a Process Server in a Class-III post, the same does not appear to be the case when it comes to the question of aspirations of an Office

Assistant who holds another post with better qualification in the very same Class-III. It was on the above basis, the challenge has been made.

8. Having considered the claims as well as the stand of the respondent and on going through the Special Rules for Tamil Nadu Basic Service, we

are of the considered opinion that the amendment brought out under the impugned Government Order, namely, G.O.Ms.No.215 P&AR(F)

Department, dated 27-6-1995 does not in any way affect the rights of the persons like that of the petitioner who are holding the post of Office

Assistant in clamoring to become a Process Server as per the un-amended rule which existed prior to the issuance of the impugned G.O. As stated

earlier, the amended rule in respect of Class-III reads as under:

Class - III

All categories Direct recruitment; or

Recruitment by transfer

from any other Service.

Or Transfer from Class IV

It is also necessary to refer to Classes IV and V of the Special Rules which is as under:-

Class-IV and V

All categories Direct recruitment; or

Recruitment by transfer

from any other service;

or Transfer from any other

category in Class IV and V

9. When we see the constitution of all services under the Tamil Nadu Service which consists of Class-I to V, the post of Process Server and

Office Assistant which are classified as Category 3 and 5 respectively in Class-III service, the post of Masalchi is the last category, viz., category

44 in Class-IV of the Tamil Nadu Basic Service. Under Class-V of the Special Rules for Tamil Nadu Basic Service, it has been stated as under:-

Class- V: Any other person who is in basic service as defined in subsidiary definition (iii) under Fundamental Rule 9 and who has not been

included in any other service. F.R. 9 (ii) reads as follows:

Basic Service includes all services in the following appointments unless declared by Government to be superior:-

a) Service as Office Assistant, Head Office Assistant, Chobdar or Duffadar;

b) Service in Posts the pay of which does not exceed Rs.750/- All other service is superior.

10. A conjoint reading of the above stated Classifications of different classes and Categories, makes it clear that while all the categories mentioned

in different classes would fall under the primary Heading of "Basic Service", it would be a distinctive one from a superior service. In fact, while

specifically dealing with Class-V, it is mentioned that those persons who are in the basic service as defined under F.R.9(iii) would come under the

said Class. F.R.9(iii) refers to the posts of Office Assistant, Head Office Assistant, Chobdar or Duffadar. Thus the status of either an Office

Assistant or Head Office Assistant is nonetheless a basic service. Though the post of the Office Assistant has been independently categorised

under Class-III, the fact remains that it is one of the categories, which forms part of the service under Special Rules for Tamil Nadu Basic Service.

11. In the above background, if the amended rule falling under Rule 3 relating to "Appointment" to several Classes and Categories is analysed in

respect of Class-III, the method of appointment has now been prescribed under the impugned Government Order by direct recruitment or

recruitment by transfer from any other service or transfer from Class-IV. If the said expressions "recruitment by transfer" from any other `service"

is independently examined, we are of the considered view that the `service" mentioned in that part of the Rules is comprehensive enough to include

all those who could be recognized as in the service covered by the Special Rules for the Tamil Nadu Basic Service. It is relevant to note and state that while using the above set of expressions, it has not been specified to the effect that the term "service" mentioned therein, would apply only to a particular Class or Category. Therefore, if on a construction of the rules, which have been specifically referred to by us in the earlier part of our order defining different Classes and Categories, we can safely conclude that the post of "Office Assistant" falling under Category 5 of Class-III would nevertheless be a "service" governed by the Special Rules for Tamil Nadu Basic Service. When such a conclusion can be safely arrived at while interpreting the amended Rules relating to "Appointment" of Class-III Service, there can be no two opinion as to the manner in which the above said interpretation is made. If that is the conclusion we draw on a detailed analysis of the various relevant rules referred to above, we are of the view that even going by the amended Rules relating to "Appointment" in Class-III Service, the petitioner who is an Office Assistant and any such Office Assistants holding the post in Tamil Nadu State Judicial Ministerial Service, could validly claim and apply for the post of "Process Server" as and when the contingency arises for filling up of any such posts for being considered to be appointed for the said post of "Process Server" on fulfilling the other criteria such as, qualification, etc. We, therefore, hold that the amended rule under the impugned Government Order does not in any way affect the right of the petitioner to claim for the post of "Process Server" and therefore, there is no necessity to set aside the said amendment. We accordingly hold that in the event of the petitioner satisfying the other stipulations for being considered for the post of the Process Server, the second respondent shall consider the same and pass appropriate orders dealing with the claim of the petitioner.

12. In the result, the Writ Petition is ordered on the above terms. No costs. Consequently, connected W.M.P. is closed.