

(2009) 06 MAD CK 0048

In the Madras High Court

Case No : Writ Petition No's. 6627 to 6633 of 2005

R. Muthukrishnan and S. Thangappan

APPELLANT

Vs

The Registrar, Tamil Nadu Administrative Tribunal and Others

RESPONDENT

Date of Decision : 29-06-2009

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 2, 6

Citation : (2009) 06 MAD CK 0048

Hon'ble Judges : T.S. Sivagnanam, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : Karthik Rajan, for the Appellant; Malarvizhi Udayakumar, Spl. Govt. Pleader for R1 and R2 in W.P. No. 6630/2005, for R2 and R3 in W.P. No. 6631/2005, for R2 to R4 in W.P. No. 6632/2005 and for R2, R3 and R5 in W.P. No. 6633/2005, A. Arul, for R4 in W.P. Nos. 6627 to 6631 and 6633 of 2005, Ravishanmugham, for R8 to R10, R11 and R13 to R15 in W.P. No. 6632/2005 and A.V. Bharathi, for R5 to R14 in W.P. No. 6633/2005, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—The petitioners have filed these writ petitions praying for the issuance of writ of certiorarified mandamus to call for

the records relating to the common order made in O.A. Nos. 4104 of 1992, 5834 of 1994, 9574 of 1997, 74 of 1999, 4284 of 1999, 6917 of

1993 and 4914 of 1999 dated 10.09.2003 on the file of the 1st respondent; quash the same and consequently direct the respondents 2 and 3 to

cancel the appointments made by direct recruitment to the post of Labour Officer.

2. The original applications have been filed by the 5th respondent Association challenging the Advertisement No. 20/99 dated 14.08.1999 issued

by the 4th respondent in ""Dinakaran"" daily and to direct the respondents to fill up the arising vacancies in the category of Labour Officers by

following Rule 6(a) of the General Rules read with Special Rule 2 of the Tamil Nadu State and Subordinate Service Rules.

3. It is submitted by the Tamil Nadu Labour Department Subordinate Officers Association before the Tribunal that Rule 6(a) of the Tamil Nadu

State and Subordinate Service Rules declares that "the proportion or order in which the Special Rules concerned may require vacancies to be filled

up by persons recruited direct and those recruited by transfer shall be applicable only to substantive vacancies in the permanent cadre" and

accordingly, as per G.O.Ms.No.740 dated 06.08.1976, in the Special Rules, the ratio for promotion and direct recruitment for substantive posts

was fixed as 3 : 1. It is further submitted that the same Special Rules were amended as per G.O.Ms. No. 2447, Labour and Employment

Department, dated 20.11.1985, refixing the ratio for direct recruitment and promotion as 1 : 2. The sanctioned strength of the Labour Officers is

26, in which, 14 are Permanent Labour Officer posts and 5 are Temporary Labour Officer posts and 7 are Permanent Inspector of Plantation

posts. Out of the 26 cadre strength, if the ratio of 1 : 2 is applied, only 9 posts can be earmarked to direct recruitment and 17 should go to the

promotees. It is alleged that by virtue of acute unemployment, there is heavy demand for Government postings and to satisfy the same, the

respondents from the year 1985 to 1999 earmarked 63 posts or vacancies of Labour Officer to direct recruitment. But procedurally such an

earmarking is in excess of the sanctioned strength of total posts, i.e., 26, and it is not legally, administratively and practically probable. It is further

stated that the respondents, by giving a go-bye to the Special Rules, are going on appointing direct recruits denying promotion to members of the

Association.

4. The 5th respondent Association have also relied on Part I Paragraph VIII of the Government Order No. 368, Personnel and Administrative

Reforms Department, dated 18.10.1993, which declares the mandatory procedure to be adopted by the respondents to estimate vacancies to be

filled up by direct recruitment in the following words:

(a) Vacancies that are expected to arise by the retirement of permanent incumbents in the panel year for which recruitment is made and

(b) Vacancies that are expected to arise by the retirement of Permanent

incumbents in the panel year previous to the date when the vacancies for direct recruitment are due to be estimated.

- i. Appointment and Confirmation of Permanent incumbent in another service.
- ii. Death of permanent incumbent $\frac{1}{2}$ and
- iii. Permanent retention of a temporary post.

5. It is further alleged that since the 4th respondent herein from the year 1985 have notified or earmarked 63 posts or vacancies, a legal

responsibility is cast upon him to identify and convince the association about the estimation of (63 x 3) 189 vacancies in the 26 cadre posts of

Labour Officers for the past 13 years. In other words, the 3rd respondent herein is legally bound to disclose the names of 189 persons who have

been issued with confirmation order in the Labour Officer Category during the above 13 years period and also either died or resigned or retired

from Labour State Service during the past 13 years. As the 4th respondent has not fulfilled his legal responsibility, the aforesaid original

applications have been filed by the Association challenging the estimation of vacancies to the selection of Labour Officers to direct recruitment

before the Tamil Nadu Administrative Tribunal.

6. When O.A. No. 4284 of 1999 came up for admission, the Tribunal granted interim injunction on 05.08.1999. According to the 5th respondent

Association, instead of executing the order of interim injunction, the 4th respondent has further notified 3 more posts of Labour Officers for direct

recruitment, by advertisement No. 20/1999 published in "Dinakaran" daily dated 14.08.1999, as if he has got permission from the Tribunal, which

is a clear wilful contempt committed by the respondents. Aggrieved of the same, the 5th respondent Association approached the Tribunal u/s 19 of

the Administrative Tribunals Act, 1985, challenging the aforesaid notification issued by the 4th respondent.

7. In the reply affidavit filed by the respondents before the Tribunal, it is stated that the category of Labour Officer in the Labour Department in

Tamil Nadu Labour Service, comprising the posts of Labour Officers/Inspectors of Labour/Inspectors of Plantations/Administrative Officers and

Public Relations Officer, is governed by the Special Rules for the Tamil Nadu Labour Service included as Section 20-B, Volume-II of the Tamil

Nadu Service Manual. According to the respondents, the method of recruitment to the category of Labour Officers is both by direct recruitment and recruitment by transfer in the ratio of 1 : 2 as per Rule 2 of the said Special Rules and accordingly, the vacancies arising in the category of Labour Officer will be assessed every year and an estimate of vacancies will be sent to the Government and the Government in turn will notify to the Tamil Nadu Public Service Commission, the vacancies meant for direct recruitment in the ratio of 1 : 2, i.e., one for direct recruitment and two for recruitment by transfer (By promotion). The special rules provide for appointment by transfer from among the category of Deputy Inspector of Labour in the Tamil Nadu Labour Subordinate Service. It is also submitted that as per Explanation-I to the Special Rules for Tamil Nadu Labour Service, out of every 3 vacancies in the category of Labour Officer, the first vacancy shall be filled up by direct recruitment and the second and third vacancies shall be filled up by transfer from the category of Deputy Inspector of Labour. Based on the above Rule only, the vacancies have been notified to the Tamil Nadu Public Service Commission and accordingly, the Tamil Nadu Public Service Commission called for applications vide its advertisement Nos. 35/90, 37/91, 8/94, 8/97, 25/97 and 20/99 for selection of Labour Officers by direct recruitment in Tamil Nadu Labour Service.

8. The Tribunal, on consideration of the aforesaid facts and circumstances of the case, by an order dated 10.09.2003, dismissed the original applications filed by the Association and vacated the interim orders already granted, with an observation that there is nothing illegal or improper about the selection being undertaken by the Service Commission and the applicants have not substantiated their claim that excess people are being recruited by way of direct recruitment than the quota allotted to them as per the service rules and there is absolutely nothing illegal or improper in the Service Commission selecting them as Labour Officers directly. The Tribunal also held that the interest of the persons, who were selected by the Tamil Nadu Public Service Commission, will be taken care of, if they have not been given postings in view of the interim order granted by the Tribunal. Aggrieved of the same, the members of the Tamil Nadu Labour Department Subordinate Officers Association have filed the present writ

petitions with the aforesaid prayer.

9. Heard the learned Counsel appearing for the petitioners and the Special Government Pleader as well as the learned Counsel appearing for the respondents.

10. The main contention raised by the learned Counsel appearing for the petitioners is that Rule 6 of the General Rules of Tamil Nadu State and

Subordinate Service Rules contemplate the method of recruitment, which reads as follows:

Rule 6: Method of Recruitment: Where the normal method of recruitment to any service, class or category is neither solely by direct recruitment

nor solely by transfer but is both by direct recruitment and by transfer-

(a) the proportion or order in which the Special Rules concerned may require vacancies to be filled by persons recruited direct and by those

recruited by transfer shall be applicable only to substantive vacancies in the permanent cadre;

(b) a person shall be recruited direct only against substantive vacancy in such permanent cadre, and only if the vacancy is one which should be

filled by a direct recruit under the Special Rule referred to in Clause (a); and

(c) recruitment to all other vacancies shall be made by transfer.

Provided that nothing in this rule shall adversely affect any person who on the date of issue of the Special Rules referred to in clause(a) was a

probationer in such a service, class or category as the case may be.

11. According to the learned Counsel for the writ petitioners, when the aforesaid Rule fixed the proportion for filling up of persons by direct

recruitment and by transfer to substantive vacancies in the permanent cadre including temporary vacancies, while estimating the vacancies and

fixing the ratio, filling up of the vacancies by direct recruitment beyond the quota is contrary to the General Rules and the Special Rule cannot

override the General Rule.

12. On the other hand, the learned Special Government Pleader appearing for the respondents, by referring to the counter affidavit, stated that the

petitioners cannot take shelter under General Rule 6 of the Tamil Nadu State and Subordinate Service Rules as it is settled legal provision that the

Special Rule will always prevail over the General Rule. In support of the said

claim, the learned Special Government Pleader drew the attention of this Court to the decision of the Supreme Court reported in Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, , wherein it has been held as follows:

Unless the General Rule specifically repeal the effectiveness of the Special Rules, question of the latter rules becoming ineffective or inoperative would not arise. In order to be effective, an express mention is required rather than an imaginary repeal. It is now a well settled principal of law for which no dilation is further required that Law Courts are rather loath to repeal by implication.

13. Moreover, Explanation 1(a) to Rule 2 of the Special Rules for Tamil Nadu Labour Service starts with a non obstante clause, that is, notwithstanding anything contained in Rule 6 of the General Rules for the Tamil Nadu State and Subordinate Service Rules, out of every three vacancies in the category of Labour Officer including the Inspector of Plantations, the first vacancy shall be filled up by Direct Recruitment and the next two vacancies are to be filled up by recruitment by transfer from the category of Deputy Inspector of Labour.

14. According to the learned Special Government Pleader, though the General Rules mentioned about the substantive vacancy, whereas, the Special Rules mentioned only out of every three vacancies in the category of Labour Officer including the Inspector of Plantations and hence, the General Rule is not applicable to the recruitment to the Labour Officer Rules. It is further submitted that the Special Rules mentioned only every three vacancies, whether it is substantive or temporary vacancies and the Special Rules are made only for the recruitment to the post of Labour Officer from the Labour Department.

15. We have perused the entire materials placed on record. It is not the case of the writ petitioners that by virtue of including the temporary posts arising due to deputation among officers, at the time of estimation of the vacancy for recruitment, more direct recruitments were made and the ratio is not followed due to which the members of the petitioner Association are affected. Moreover, the members of the petitioner Association, without any reason or basis, apprehend that their promotion may be affected and they may be reverted due to the estimation of vacancies for direct

recruitment to the post of Labour Officer in Tamil Nadu Labour Service by including the temporary posts arising due to deputation among officers.

In this case, the Tribunal is of the opinion that by virtue of including the temporary vacancy, arising due to deputation among officers, in the

estimation of the recruitment to the post of Labour Officer following the ratio 1 : 2, the writ petitioners are very much benefited. It is only at the

time of the persons or officers, who are working on deputation, coming back to their parent department, the question of vacancy will arise and then

only, they have to be reverted, but not at the stage of recruitment to the above said post of Labour Officers.

16. Moreover, nowhere in the original application or in the affidavit filed in support of these writ petitions, the petitioner Association have stated

that by virtue of including the temporary posts arising due to the deputation of officers, at the time of estimation of vacancies for recruitment, the

respondents have failed to implement the ratio of 1 : 2 due to which the petitioner Association have been suffered or affected. On the other hand,

we find that they are benefited by the inclusion of temporary vacancy arising at the time of estimation of the vacancy for recruitment to the post of

Labour Officer, especially when the General Rule contemplates about the substantive vacancy and that Clause is absent in the Special Rule.

17. No doubt, it is a settled legal proposition that the Special Rules will always prevail over the General Rules since the Special Rules will be

framed/enacted to meet the special circumstances and taking into consideration the absence or lacunae of such a provision in the General Rules.

Further, as has already been stated supra, Explanation 1(a) to Rule 2 of the Special Rules for Tamil Nadu Labour Service, which are the rules

applicable for the case on hand, starts with a non obstante clause. This situation has very well been explained by the Honourable Apex Court in

Raghunath R.S. v. State of Karnataka AIR 1992 SC 81 as follows:

Sometimes the later law provides a "non-obstante clause" to avoid conflict with the earlier law; but even then complication arises as to the

interpretation of the non-obstante Clause and the extent of its operation.

The non-obstante Clause is appended to provision with a view to give the enacting part of the provision an overriding effect in case of a conflict.

But the non-obstante Clause need not necessarily and always be co-extensive

with the operative part as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante Clause cannot cut down the construction and restrict the scope of its operation. In such cases, the non-obstante Clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules.

It has also been held in the above judgment as follows:

The special law is not abrogated unless the general law repeals the special law expressly; or the general law contains provisions which are wholly inconsistent with the provisions of the special law, but it is not abrogated by mere implication.

A prior special law would yield to a later general law, if either of the two following conditions is satisfied:

- (i) The two are inconsistent with each other; and
- (ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail.

18. By applying the principles laid down in the above judgment of the Honourable Apex Court, since the general Rules in the case on hand have not repealed the Special Rules expressly and the above two conditions are not satisfied to yield the special law by the general law, and further giving effect to the non-obstante Clause in Explanation 1(a) to Rule 2 of the Special Rules for Tamil Nadu Labour Service also, we can safely conclude that the above said Special Rules prevail over the General Rules. Further, so long as the Rule is in existence, the respondents have to implement it and hence, without assailing the correctness of Explanation 1(a) to Rule 2 of the Special Rules for Tamil Nadu Labour Service Rules, the petitioner Association cannot assail the correctness of the estimation of vacancies including the temporary vacancy as per the Rule.

19. In view of the above, we are satisfied with the reasons stated by the Tribunal while dismissing the original applications, which require no interference. Accordingly, these writ petitions are dismissed. However, there will

be no order as to costs.