

(2012) 07 GAU CK 0005
In the Gauhati High Court
Case No : Writ Petition (C) No. 71 of 2009

Sri Sankar Chandra De and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Constitution of India, 1950 — Article 335

Citation : (2013) 1 GLD 386

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : A.K. Bhowmik, Mr. R. Datta and Ms. M. Choudhury in W.P. C No. 71 of 2009 and Mr. S.M. Chakraborty, Ms. S. Majumder and Ms. P. Chakraborty in W.P. C No. 210 of 2009, for the Appellant; S. Chakraborty, Addl. GA and Mr. P. Datta, for the Respondent

Judgement

S.C. Das, J.—On the prayer of learned counsel of both side, both the writ petitions were heard together since identical fact and question of law involved in both the writ petitions and the petitioners of both the cases challenged Notification No. F. 25(1)-GA (P & T)/04 dated 21.07.2008 (Annexure-3 to the writ petitions). Heard learned senior counsel, Mr. A.K. Bhowmik, assisted by learned counsel, Mr. R. Datta for the petitioners in W.P. (C) No. 71 of 2009 and also heard learned senior counsel, Mr. S.M. Chakraborty, assisted by learned counsel, Mr. S. Bhattacharjee for the petitioners in W.P. (C) No. 210 of 2009. Also heard learned Addl. G.A., Mr. S. Chakraborty for respondent Nos. 1 and 2 as well as learned counsel, Mr. P. Datta for respondent No. 3 in connection with both the writ petitions.

2. Fact may be summarized thus:

2.1 The petitioners of W.P. (C) No. 71 of 2009 stated that they all were appointed on promotion by a common order dated 21.10.1997 (Annexure-1 to the writ petition) to Tripura Civil Service Grade-II (for short, TCS Gr-II) and as per Rule 21(1), of the Tripura Civil Service Rules, 1967 (for short, Rules of 1967), they

were on probation for a period of two years and the probation period, they have completed on 02.11.1999. The petitioners of W.P. (C) No. 210 of 2009 were also appointed on promotion to TCS Gr-II by Notification dated 20.10.2001 and as per Rule 21(1) of the Rules of 1967 they were on probation for a period of two years and their probation period was expired on 21.10.2003.

2.2 It is contended by the petitioners that they were promoted in TCS Gr-II service, considering their brilliant service carrier in the feeder posts, and after promotion they were given posting in different posts meant for TCS Gr-II and they have been discharging their duties sincerely, efficiently and to the fullest satisfaction of the respondents. They have successfully completed the period of probation of two years and the authority did not consider to further extend the probation period before expiry of the probation of two years. To their utter surprise, the respondents issued the impugned Notification dated 21.07.2008 (Annexure-3 to the writ petitions), and thereby extended the period of probation of the petitioners to an uncertain period, until and unless they pass the Departmental Examination. The petitioners, therefore, challenged the Notification dated 21.07.2008 inter alia stating that the said Notification is arbitrary, unconstitutional and violative of the Rules of 1967 and also Tripura Civil Services (Training and Departmental Examination) Rules, 1975 (for short, Rules of 1975).

2.3 It is also contended by the petitioners that since they were appointed by promotion as per the provisions of Rule 5(1)(b) of the Rules of 1967, observing the procedures prescribed in Rules 14 and 15 of said Rules, they were exempted from prescribed examination in the Training Institution during the probation period by virtue of the provisions prescribed in Rule 22 of the Rules of 1967, and hence, they were entitled to be confirmed as per Rule 23 of the Rules on successful expiry of the probation period as prescribed under Rule 21 of the said Rules.

2.4 It is the definite case of the petitioners that there was no Training Institution established and examination prescribed for the promotee officers, and immediately after promotion as per Annexure-1 to the writ petitions, they have undergone training for two weeks in the State Institute of Public Administration & Rural Development (SIPARD) and they successfully completed the training so arranged. Subsequent thereto, no training was arranged for them by the Department, and therefore, there was no question for them to undergo any training and consequent appearance in any departmental examination. It should be presumed that the petitioners were not required by the Department to appear in any departmental examination or to pass such examination for the purpose of their confirmation in service. It is further contended by the petitioners that since the petitioners successfully completed the training of two weeks, as was arranged by the Department in the SIPARD, immediately after their appointments on promotion, and since no further training or departmental examination for the promotee officers was specially arranged thereafter, withholding of second increment of the petitioners on the ground that they could

not pass the departmental examination or complete the training, was utterly illegal, arbitrary and violative of the prescribed rules. It is the further case of the petitioners that the respondents, vide order dated 16.03.2005 exempted 17 (seventeen) officers from appearing in the departmental examination and vide Order dated 07.07.2008 exempted 31 (thirty one) officers from appearing in the departmental examination in exercise of the powers, conferred under Rule 35 of Rules of 1967. The copies of those Order/Notification dated 16.03.2005 and 07.07.2008, annexed as Annexure-6 and 8 respectively to W.P. (C) No. 71 of 2009 and Annexure-4 and 5 respectively to W.P. (C) No. 210 of 2009. It is contended by the petitioners that they are also similarly situated to those, who have been exempted by the respondents, in exercise of the powers under Rule 35 of the Rules of 1967, and that as per the fundamental rule of equity, they being similarly situated are also liable to be confirmed, being exempted from appearing in the departmental training and examination, and their services also are liable to be confirmed. The petitioners, therefore, prayed for setting aside and/or quashing Notification dated 21.07.2008 (Annexure-3 to the writ petitions) and also prayed for issuing appropriate order directing the respondents to confirm them in the service, exempting them from the departmental examination, etc. and further for issuing direction to the respondents to release their second increment, which has been kept withheld for not passing the departmental examination.

2.5 Respondent Nos. 1 and 2 submitted a joint written statement, inter alia stating that the appointments and other conditions of service are to be regulated as per service rules, and according to Rules of 1967 the petitioners, on their appointments, were put in probation for a period of two years and they were supposed to complete the trainings and departmental examinations for their confirmation in service, but even after repeated chances they could not pass the departmental examinations and, as a result, they failed to earn eligibility for confirmation in service. It is further contended by the respondents that there is nothing in the rules that the period of probation should be extended within the prescribed period of two years or that they should be automatically held to be confirmed in service on expiry of probation of two years. Departmental examinations were notified from time to time and the petitioners, who appeared and passed the examination, have been confirmed in the service. The petitioners, who neither appeared in the examination, held from time to time at the instance of Tripura Public Service Commission (for short, TPSC), nor passed the said examination, have been correctly held to further continue their period of probation by the impugned Notification dated 21.07.2008, until further period they pass the departmental examination, and such departmental examinations are necessary as per Rules to maintain quality and efficiency in the public administration. It is also contended by the respondents that the exemptions allowed vide Order/Notification dated 16.03.2005 and 07.07.2008 were made pursuant to judgment of this Court dated 08.02.2002 in W.P. (C) No. 35 of 2000 and W.P. (C) No. 198 of 2000 (analogous judgment). There was no relaxation

granted by the State Government at its own under Rule 35 of the Rules of 1967, except that of the compliance of order passed by this Court dated 08.02.2002 to any member of TCS Gr-II officers of the batch of the petitioners. Under such circumstances, there is no scope for the petitioners to claim equal treatment with that of the persons in Order/Notification dated 16.03.2005 and 07.07.2008 and there was no violation of principle of natural justice in any manner. The petitioners, since failed to complete the departmental examination, cannot claim, by virtue of any right, confirmation in service on relaxation of the rules. The respondents, therefore, prayed for dismissal of the writ petitions.

2.6 Respondent No. 3 also submitted written statement stating that as per the Rules of 1967 the petitioners were required to pass departmental examination and unless they pass such examination, they cannot claim confirmation in the service and promotion, etc. and that the TPSC has been unnecessarily made a party in the cases.

3.1 Learned senior counsel, Mr. Bhowmik and learned senior counsel, Mr. Chakraborty have contended that the period of probation admittedly was for two years and there is nothing adverse against the petitioners that they could not complete the period of probation successfully. It is further contended by learned senior counsel that the petitioners were appointed, admittedly on promotion, under Rule 5(1)(b) of the Rules of 1967, having rendered qualifying service with all credentials in the feeder posts and presumed to have undergone such training and examinations, etc. while working in the feeder posts before promotion. Rules of 1967 prescribed distinct provisions for the direct recruits and the promotees, and under proviso to Sub Rule 1 of Rule 22 the promotees have been exempted from such trainings, where the Training Institute is not established/set up by the Department. They have also contended that there is no Training Institute, set up for the TCS Gr-II officers in the State, and therefore, they should be presumed to have been exempted from their appearing in such training and examinations, and so their services are liable to be confirmed on expiry of the period of probation of two years and their second increments are also liable to be released.

3.2 It is also submitted by learned senior counsel that similarly situated persons were allowed exemption vide Order/Notification dated 16.03.2005 and 07.07.2008 (Annexure-6 and 8 to W.P. (C) No. 71 of 2009 and Annexure-4 and 5 to W.P. (C) No. 210 of 2009, and so the petitioners also being similarly situated are entitled to get exemption from departmental examination and consequential confirmation in service, including release of their second increment.

3.3 On the other hand, learned Addl. G.A., Mr. Chakraborty has contended that Rules of 1967 and Rules of 1975 clearly prescribed that the officers appointed as TCS Gr-II should pass departmental examination and the petitioners failed to pass departmental examination, and therefore, they cannot claim exemption under Rule 35 as of right. Departmental examinations were arranged by TPSC from time to time and it is evident from the contention of the petitioners of W.P. (C) No. 71 of 2009 that petitioner Nos. 3 and 11 have already been promoted in

the meantime on their passing of departmental examination, and therefore, they are not taking part in contesting the writ petition as reflected by the petitioners of that writ petition in their reply affidavits. It is further contended by learned Addl. G.A. that Order/Notification dated 16.03.2005 and 07.07.2008 were issued only to comply the judgment and order dated 08.02.2002, passed by this Court in W.P. (C) No. 35 of 2000 and W.P. (C) No. 198 of 2000 (analogous judgment) and no exemption/relaxation was made by the State Government in the meantime, except that of the exemption made pursuant to that judgment and order dated 08.02.2002. No fundamental or legal right of the petitioners was violated and the writ petitions, therefore, are liable to be dismissed.

4. To have a fair appreciation of the rival contentions and for ready reference, let us now reproduce here the relevant provisions of the Rules of 1967 and the Rules of 1975.

Rule 5 of 1967 reads thus:

5. Method of Recruitment.--(1) Appointment to the service shall be made by the following methods, namely:

(a) Not more than 50 percent of the substantive vacancies which occur from time to time in the authorized permanent strength of the Service shall be filled by direct recruitment in the manner specified in part IV of these rules, and;

Note Substituted by the TCS (25th Amendment) Rules, 2005. Substituted by the TCS (3rd Amendment) Rules, 1973,

The words "Save as provided in Rule 17" omitted by the TCS (25th Amendment) Rules, 2005.

(b) The remaining such substantive vacancies shall be filled by selection in the manner specified in Part-V of these Rules from amongst the officers specified in Schedule-IV to these Rules.

Provided that 75% of the vacancies mentioned in sub-rule

(b) above shall be filled by officers holding Group-A posts of Schedule-IV and the remaining 25% of the vacancies shall be filled by officers holding Group-B posts of Schedule-IV.

Rules 21, 22 and 23 and 35 of the Rules of 1967 prescribed thus:

21. Period of Probation.--(1) Every person appointed under Rule 5 to Grade II of the Service shall be on probation for period of two years.

Provided that if he holds a post on any permanent post under the Central Government, a State Government or Government of Tripura, he shall be liable to be reverted to that post.

(2) The State Government may in the case of any person extend the period of probation in consultation with the Commission.

(3) The Government may in consultation with the Commission, discharge at any time a probationer from service without assigning any reason therefore.

Note.--Inserted by the TCS (25th Amendment) Rules, 2005.

The words "Or under rule 17" omitted by the Amendment Rules *ibid*.

Substituted by the Amendment rules *ibid*.

Provided that if he holds a lien on any permanent post under the Central Government, a State Government or Government of Tripura, he shall be liable to be reverted to that post.

(4) A person on probation who holds a lien on any permanent post under the Central or State Government may, if he so desires during the period of probation, has the option to revert back to his parent Department or Government after giving such notices as may be prescribed by the State Government.

22. Training and Departmental Examination.--[(1) A person appointed under Rule 5 to the Service shall pass the prescribed examination in the Training Institution during probation period.

Provided that, till the time the State Government make necessary arrangements for training of promoted officers in any Training Institute, the above provision shall not apply to the officers appointed under clause(b) of sub-rule (1) of Rule-5.

(2) A person appointed under Rule-5 shall pass such Departmental Examination as the Government may from time to time prescribe.].*

Note.--"Substituted by the TCS (19th Amendment) Rules, 2001."

23. Confirmation in Service.--[A person appointed under Rule-5 may be confirmed in the Service based on general assessment of his performance during the probation period and based on; his performance in the examination at the Training Institute.

Provided that, till the time the State Government make necessary arrangement for training of promoted officers in any Training Institute, the above provision shall not apply to the officers appointed under clause (b) of sub-rule (1) of Rule-5.]*

Note.--"Substituted by the TCS (19th Amendment) Rules, 2001."

35. Power to Relax.--Where the State Government is of the opinion that it is necessary or expedient so to do, he may, by order, for reasons to be recorded in writing and, in consultation with Commission relax any of the provisions of these rules with respect to; any class or category of persons or posts.

Rules 15 and 20 of the Rules of 1975 prescribed thus:

15. All I.A.S. officers on probation and officers on of the Tripura Civil Service Grade II and the Tripura Junior Civil Service on appointment shall be required to

undergo training and pass the departmental examinations as hereunder:--

- (i) Training under Sub-divisional Officer and 1st Class Magistrate one calendar month
- (ii) Training in the Treasury on calendar month;
- (iii) Training in Secretariat one calendar month;
- (iv) Attending 9 cases and preparing memorandum, judgments, evidences, charge issues, etc, thereon.--

Three civil, three criminal and three sessions cases to be completed within the period of probation.

(v) Passing of departmental examination fully by the Higher standard by all Officers of the I.A.S. and of the T.C.S. Grade II and by the Lower Standard by the Officers of the T.J.C.S., as per rules and syllabus prescribed by the State Govt.

(vi) Training in Survey and Settlement six weeks, as provided in Part-IV.

20. No officers would be allowed his 2nd increment if he has not passed the departmental examination in full and completed the training prescribed in the rules within two years of his appointment:

Provided that the State Government may, in special cases, allow him to get the usual increments in cases where officers have already completed two years of service in the respective grade where no departmental examination was prescribed by the State Government prior to coming into force of this rules.

Provided further that upon filling the requirements in this rule an Officer whose increment had been withheld will draw the increment at the stage at which he would have normally been entitled to draw it, as if his increment had not been withheld, subject to the condition that no arrears of pay and allowances will be admissible for the period of which the increment had remained withheld.

Note.--The date of passing the departmental examination shall be the date following the last date on which the examination was held.

Also provided that the State Government can relax these rules in case of officer who have already completed two years service in the respective grades prior to coming into force of these rules.

By Fifth Amendment of Rules of 2001, Rule 20 of the Rules of 1975 was amended, which reads thus:

In Rule 20 of the Tripura Civil Service (Training & Departmental Examination) Rules, 1975 (hereinafter referred to as the Principal Rules), the following shall be substituted, namely:--

Rule-20:--No officer shall be allowed his 2nd increment only as also promotion/

movement to next scale. If he has not passed the Departmental Examination in full.

Note

Subsequent increment in the existing time scale may be allowed irrespective of whether the officer has passed the Departmental Examination or not. Provided that, upon fulfilling the requirements of this Rule an officer whose increment/next scale had been with-held, will draw the increment/next scale, subject to fitness for promotion, at the stage at which he would have normally been entitled to draw it, as if his increment/next scale had not been withheld, subject to the condition that no arrears of pay and allowances will be admissible for the period for which the increment had remained withheld.

Further provided that these officers who are appointed under clause (b) of Sub-rule (1) of Rule 5 of the TCS Rules, 1967 and have crossed the age of 55 years as on 14th February, 2001, shall be exempted from the requirement of passing the Departmental Examination as provided in the Rules, notwithstanding anything contrary to this provision contained in the TCS Rules 1967.

Note

The date of passing the Departmental Examination shall be the date following the last date on which the Examination was held.

5.1 Admittedly, the petitioners were appointed on promotion in TCS Gr-II from different feeder posts. Annexure-1 to the writ petitions shows that they were put on probation for a period of two years from the date of their appointments. The period of probation was not extended within the period of two years as specified in Annexure-1 to the writ petitions. Rule 21(2) prescribes that the State Government may extend the period of probation in consultation with the Commission. There is nothing prescribed in the Rule that the period of probation cannot be extended unless the order extending such probation is made within two years. It is a settled principle that confirmation is a glorious uncertainty of the service. It, however, does not mean that a person, appointed in service/post, which prescribes probation, is automatically confirmed on expiry of the period of probation.

5.2 Learned senior counsel, Mr. Bhowmik, on this point, has relied on the decision of the Hon"ble Apex Court in the case of Pushpa Aggarwala v. UPSC & Ors., reported in AIR 1999 SC 2116 and submitted that while the period of probation has not been extended and the petitioners have not been terminated from the services, they should be presumed to have been confirmed in the post.

5.3 The fact of that case is completely on a different context. In that reported case, the petitioner was declared as quasi-permanent though the period of probation was not extended and she claimed restoration of seniority, etc. in service. But in the present case, Service Rules prescribes departmental training and departmental examination, etc. and confirmation of service depends on

success of such departmental training and examination, etc. So the ratio of that decision cannot be applied in the present case.

5.4 I would like to further refer here the case of Satya Narayan Athya Vs. High Court of M.P. and another, , wherein the Apex Court has held that in the absence of any order extending the period of probation unless one is declared confirmed shall be deemed to be continued as probationer. Such probation period for a further period up to the specified limit or to confirm him subject to fitness may be extended.

5.5 In the case of High Court of Madhya Pradesh thru. Registrar and Others Vs. Satya Narayan Jhavar, the Apex Court has held-There are three lines of cases decided by Supreme Court on the question of deemed confirmation. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case, before its expiry, the order of termination has not been passed. The last line of cases is where, though under the rules a maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite tests, he cannot be deemed to have been confirmed merely because the said period has expired.

5.6 In the case at hand, Rules 21(2) of the Rules of 1967 prescribed that the period of probation may be extended by the State Government in consultation with the Commission.

6. It is submitted by learned senior counsel, Mr. Bhowmik and Mr. Chakraborty that Annexure-3 to the writ petitions does not reflect that the Commission was consulted. But learned Addl. G.A., Mr. Chakraborty has submitted that while the Notification is issued, it is to be presumed that the Commission was consulted. It is not necessary to mention in the Notification itself. Under such circumstances, it is presumed that the Notification, since has been issued in the name of the Governor, has been issued according to the procedure prescribed by law.

7.1 Now the crucial question is whether the petitioners are entitled to be confirmed though they did not pass the departmental examination.

7.2 We have to very carefully go through the provisions prescribed in the Rules.

Rule 22(1) prescribed training of the officers appointed under Rule 5 in the Training Institute and examination after such completion of training.

Sub-Rule (2) of Rule 22 prescribed departmental examination, which is separate and identical than that of the training in the institute, followed by examination.

7.3 A joint reading of Rules 22 and 23 makes it clear that for the promotee officers, training, followed by examination, has been dispensed with if arrangement for such training is not made. Admittedly, arrangement for training for the promotee officers has not been made. Therefore, they are presumed to have dispensed with from such training and examination followed by training. Sub-Rule (2) of Rule 22 prescribed departmental examination, which is completely different than that of training followed by examination. The departmental examination is compulsory for all officers appointed under Rule 5 irrespective of whether direct recruits or promotees.

7.4 A conspicuous reading of Rule 23 makes it abundantly clear that for confirmation in the service, general assessment of performance during the period of probation, and performance in the examination at the Training Institute, are to be considered provided that for the promotee officers, where arrangement for training is not made, the provision shall not apply, meaning thereby that in respect of promotee officers only general assessment of performance during the period of probation shall be taken to consideration for confirmation in service and not the training followed by departmental examination in the Training Institute. There is nothing in Rule 23 that one has to pass departmental examination for confirmation in service, meaning thereby that passing of departmental examination is necessary for promotion, up-gradation, etc. and not for confirmation in service.

7.5 Annexure-3 to the writ petitions shows that the period of probation of the petitioners has been extended for the reason that they did not pass the departmental examination and the probation period was extended until and unless they pass the departmental examination. The condition stated in Annexure-3 is beyond the purview of Rule 23 of the Rules of 1967. Confirmation cannot be withheld for not passing the departmental examination since it has not been stipulated in Rule 23 of the Rules of 1967. Therefore, Annexure-3 to the writ petitions are found to be contrary to the provisions prescribed in the Rules, and therefore, the same are liable to be interfered.

8.1 Training is meant for acquisition of knowledge, skills and competence as a result of the teaching of vocational or practical skills and knowledge that relate to specific useful competencies. Training has specific goals of improving one's capability, capacity, and performance. It forms the core of apprenticeships and provides the backbone of content in the service institutions.

8.2 The Rule makers, perhaps, considering that promotee officers have served in the feeder posts for a long period of time and therefore dispensed with the training and after training examination, etc. for the promotee officers but it was

made compulsory for the direct recruits officers.

8.3 Departmental examination completely stands on different context. A public servant is required to have the requisite knowledge on the subjects, he is supposed to deal with, while discharging his duties as such public servant. The rule makers with a definite intention prescribed departmental examination on different subjects including law and other subjects. State Civil Service is the premier State service, and therefore, a State Civil Servant is required to have requisite knowledge, quality and efficiency to effectively discharge his duties. It is expected that a Civil Service Officer must be efficient, potential, diligent, effective, qualitative and amenable to public services. Quality and efficiency should be maintained and should not be compromised at any cost. Even in respective claims of SC/ST to services and posts, the Constitution, in Article 335, has observed that the claims should be considered consistently with the maintenance of efficiency of administration. If incompetent persons are appointed and allowed to continue in service it will destroy the public administration and consequently the democratic norms of public administration shall frustrate.

8.4 Rule 15 of the Rules of 1975 prescribes certain training, which is subject to the provision of Rule 23 of the Rules of 1967.

8.5 Rule 20 as prescribed in the Rules of 1975 and as amended under Fifth Amendment Rules of 2001, prescribes that no officers shall be allowed second increment or promotion or movement to the next scale if the officer has not passed the departmental examination in full. This Rule is applicable in respect of the petitioners irrespective of their date of appointments. The argument of learned senior counsel, Mr. Bhowmik that the provisions of amended Rule 20 cannot be applied to the writ petitioners of W.P. (C) No. 71 of 2009 has no logic at all. Since they are in service the provision of the Rules is applicable to them also equally with other similarly situated persons. If an officer appointed under Rule 5 fails to pass the departmental examination, the second increment shall remain withheld, and there shall not be any promotion or movement to the next scale and that provision is applicable to all, whether direct recruits or promotees.

9. The contentions of learned counsel that since under Order/Notification dated 16.03.2005 and 07.07.2008 some other Gr-II officers were exempted from departmental examination, the petitioners also should be equally treated, can in no way be accepted as a good ground. No such principle can be adopted as a general rule. Service rules specifically prescribed departmental examinations to pass by the officers of TCS Grade-II and unless they pass the examination, they cannot be allowed second increment and also promotion/movement to the next scale.

The relaxations under the impugned Order/Memo. were pursuant to order dated 08.02.2002 passed by this Court in W.P. (C) No. 35 of 2000 and W.P. (C) No. 198 of 2000. On going through the copy of the judgment dated 08.02.2002 it

appears that this Court taking into consideration of certain exemptions allowed by the State Government vide Notifications dated 21.01.1985, 08.01.1986 and 12.01.1986 on the principle of equity directed the respondents to treat the petitioners of those cases equally. In the present cases, no such pleading is made.

Rule 35 of the Rules of 1967, authorizes the State Government to relax any of the provisions of the rules but certainly for reason to be recorded in writing. This Court by judgment dated 08.02.2002, considering the exemptions made in the year 1985 and 1986, by the State Government directed the respondent to similarly treat the writ petitioners of those writ cases. As per the Court's order, Order/Notification dated 16.03.2005 and 07.07.2008 were issued directing relaxation from departmental examination for the officers mentioned in those order/notification. The petitioners of the present writ cases, in the absence of any such direction of the Court in their cases cannot claim as of right that they are also entitled to be treated similarly to that of the persons mentioned in those order/notification dated 16.03.2005 and 07.07.2008. Relaxation, once allowed, at a certain point of time, cannot be universally applied for relaxation/exemption from departmental examination for all future time to come. There is no logic at all for giving such a direction to the State respondents to exempt the petitioners from such departmental examination. The authorities are lawfully entitled to insist for departmental examination of all the promotee officers as per the provisions prescribed in the rules so long the rules are in force. Therefore, the argument of learned counsel, in my considered opinion, is devoid of any merit. Rule 20 is equally applicable to all the TCS Gr-II officers whether direct recruits or promotees. The claim of the petitioners to the second increment and relaxation from departmental examination cannot be entertained and is liable to be rejected.

10. In view of the discussions made above, the impugned Notification dated 21.07.2008 (Annexure-3 to the writ petitions) is set aside and quashed. The petitioners are entitled to be confirmed in TCS Gr-II under Rule 23 of the Rules of 1967. The claim of the petitioners for the second increment and exemption from departmental examination stands rejected.

11. The respondents are directed to make an assessment of the performance of the writ petitioners during the period of probation and to pass appropriate orders in conformity with the provisions of Rule 23 towards confirmation of their services in TCS Gr-II. With the above observation, the writ petitions stand disposed of. Parties to bear their own costs.