(2008) 02 MAD CK 0022

In the Madras High Court

Case No : Writ Appeal No''s. 140 to 142 of 2008 and M.P. No''s. 1 and 2 of 2008

The State of Tamil Nadu APPELLANT

Vs

K. Ramaraj and Others RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:
Constitution of India, 1950 — Article 309

Citation : (2008) 02 MAD CK 0022

Hon'ble Judges : S.J. Mukhopadhaya, J;M. Venugopal, J

Bench : Division Bench

Advocate : Raja Kalifulla, Govt. Pleader, for the Appellant; S.M. Subramanian. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—As all these three Writ Appeals preferred by the common appellants, namely the State of Tamil Nadu, against the

common order passed by the learned single Judge, dated 3.10.2007 in W.P. Nos. 48855, 41145 and 49177 of 2006, and a common question of

law being involved, they were heard together and disposed of by this common judgment.

2. The respondents herein (the Writ Petitioners) who are Senior Co-operative Auditors under the services of the appellants-State, preferred the

respective Writ Petitions for a direction to the appellants-State to include their names in the panel for the year 2005-2006 for promotion to the

post of Co-operative Audit Officers. For such promotion, there is prescription of passing certain examination, including the Account Test for

Subordinate Officers-Parts I and II. The respondents/Writ Petitioners have passed the requisite examination, but admittedly they had not passed the Account Test for Subordinate Officers-Part-I. Such passing of the Account Test for Subordinate Officers-Part-I was also essential for

promotion to the post of Senior Co-operative Auditor, which they are holding. Pursuant to the relaxation granted by the appellants-State, earlier,

without passing such Account Test for Subordinate Officers-Part-I, they were promoted to the post of Senior Co-operative Auditor. Now, for the

next higher promotion, their plea is that when once the common qualification, i.e. Account Test for Subordinate Officers-Part-I, is exempted for

promotion to the feeder category of Senior Co-operative Auditor, such exemption is automatically available to them for further promotion to the

superior post of Co-operative Audit Officer.

3. The learned single Judge, vide the impugned order dated 3.10.2007, accepted the plea of the respondents-Writ Petitioners and directed the

appellants-State to include their name in the panel for the year 2005-2006 for promotion to the superior post of Co-operative Audit Officer, which

gave rise to the filing of the present Writ Appeals by the State.

4. Before this Court, learned Counsel for the parties, while relying on some rules/ guidelines/circulars/Government Orders, issued by the appellants-

State, took divulging plea. According to the appellants-State, the relaxation as was granted in favour of the respondents-Writ Petitioners, was only

for promotion to the post of Senior Co-operative Auditor and there cannot be any automatic exemption for promotion to the next superior post of

Co-operative Audit Officer.

5. On the other hand, according to the learned Counsel for the respondents-Writ Petitioners, exemption when once granted, is also available for

promotion to the next superior post, as was the plea taken before the learned single Judge.

6. The only question requires to be determined in the present Writ Appeals is as to whether when once the appellants-State have exempted the

respondents-Writ Petitioners and other similarly situated persons from passing the Account Test for Subordinate Officers-Part-I, for promotion to

the post of Senior Co-operative Auditor, such relaxation/exemption automatically stands available to them and others, for promotion to the next

superior post of Co-operative Audit Officer.

7. We have heard the learned Counsel appearing for the parties and noticed the

relevant rules/guidelines/circulars/Government Orders, issued by

the appellants-State from time to time, as discussed here under.

8. It appears that the Administrative Department was looking into the Audit of all the Co-operative Societies of the State. With a view to ensuring

audit of all the Co-operative Societies independent of the Administrative Department, the Government created a separate Department of Co-

operative Audit called the ""Department of Co-operative Audit"" with the Director of Co-operative Audit as its Head. The entire Department was

placed under the control of the Finance Department of the Secretariat and the Directorate of Co-operative Audit started functioning with effect

from 17.6.1981.

9(i). The appellants-State have framed the ad-hoc Rules in exercise of the powers conferred by the proviso to Article 309 of the Constitution of

India, for the holders of the temporary posts of Co-operative Audit Officers, Senior Co-operative Auditors and Junior Co-operative Auditors, in

the Co-operative Audit Department, vide Notification issued in G.O.Ms. No. 253, Finance (Co-operative Audit) Department, dated 31.3.1986,

giving effect to the Rules from retrospective date, namely from 17th June, 1981, i.e. the date from which the Directorate of Co-operative Audit

started functioning.

(ii) As per the said Rules, while the method of the recruitment has been prescribed, the following qualifications were prescribed for

appointment/promotion to one or other post, apart from other qualifications:

8. Qualification:

(a) Age:...

(b) Other Qualifications: No person shall be eligible for appointment to the posts specified in Column (1) of the Table below by the methods of

appointment specified in the corresponding entries in Column (2), unless he possesses the qualifications, specified in the corresponding entries in

Column (3) thereof.

The Table

Posts Methods of appointment Qualifications

--1-- --2-- --3--

1. Co-operative Audit (i) Transfer Must have served as Co-operative

Officer (ii) Promotion Sub-Registrar

(i) Must have passed the

Account Test for

Subordinate Officers

Part I and II;

(ii) Must have passed the

District Office Manual

Test; and

(iii) Must have put in service

for a period of not less

than three years as Senior

Co-operative Auditor.

2. Senior Co-operative (i) Transfer Must have served as Senior Inspector

Auditor (ii) Promotion of Co-operative Societies.

(i) Must have passed the Account

Test for Subordinate Officers

Part I;

(ii) Must have passed the District

Office Manual Test;

(iii) Must have put in service for

a period of not less than one

year as Junior Co-operative

Auditor and

(iv) Must have passed the

examination in Co-operation,

Auditing, Book-keeping

and Banking conducted by

the Central Co-operative

Institute, or the Tamil Nadu

Public Service Commission.

(iii) Direct recruitment Must possess B.B.M. Degree awarded

by the Universities and Institutions

in Tamil Nadu or B.Com., Degree or

B.A.(Corporation) Degree or B.A.

(Economics) Degree (Amended in

G.O.Ms. No. 376, Fin (CA)

Department, Dated: 9.7.2004)

Executive Orders issued treating B.A.

(Corporate Secretaryship) Degree

awarded by Universities in Tamil

Nadu as equivalent in G.O.Ms. No. 303,

Fin (CA) Department, Dated: 27.05.2004.

3. Junior Co-operative (i) ... .

Auditor

10. In the meantime, it appears that for promotion to some higher post, certain exemption was granted by the Government from passing requisite

examination, taking into consideration the experience, capacity and merits of the individuals.

11. When the question of passing similar Test for next higher post fell for consideration before this Court in Writ Appeal No. 106 of 1979, certain

observation was made in the said case and it was noticed that the authorities had taken into consideration the experience, capacity and merits of

the employees, whereinafter, exemption was granted. It is evident from G.O.Ms. No. 221, Personnel and Administrative Reforms (PER.S)

Department, dated 10.5.1990, wherein it was noticed that the Court observed that such exemption must be deemed to have been granted to

employees from passing the relevant Test for any post which required such pre-requisite qualification. In another case in O.A. No. 211 of 1986,

similar observation was made in view of the aforesaid finding. After the judgment passed in the said two cases as referred to above, the appellants-

State have issued G.O.Ms. No. 221, Personnel and Administrative Reforms (PER.S) Department, dated 10.5.1990, wherein, giving reference to the above said judgments, the following decision was communicated:

3. The Government therefore direct that the principle laid down in the above judgments be followed and it should be considered that once the

relaxation is given exempting person from possessing qualification/passing Departmental/Special Test and other obligatory tests prescribed for the

post, it should be held valid for all future promotions, where the same qualification is prescribed. The above decision should be borne in mind while

dealing with any case of relaxation of qualification rule to entry post in any service. Relaxation of qualification rules should, so far as possible, be

avoided, especially in cases where the qualification is considered absolutely necessary for manning the higher post in the same service.

12. Subsequently, another Government Order in G.O.Ms. No. 1125, dated 30.10.1990 was issued from Finance (TH & CA) Department,

granting exemption to acquire additional qualification prescribed in the ad-hoc Rules (1986 Rules) in respect of opted persons for purposes of

promotion to higher posts, and the following decision was taken therein:

5. The Government, after careful consideration, direct that all opted persons in the Co-operative Audit Department who have been permanently

absorbed in the G.O. third read above (G.O.Ms. No. 26, Finance, Dated 12.1.89) be exempted from passing the following tests prescribed as

additional qualification noted against each category.

By Promotion

From

To

Additional Qualification

Junior Co-op. Auditor

Senior Co-op. Auditor

Account Test for Subordinate Officers Part-I

Senior Co-op. Auditor

Co-operative Audit Officer

Account Test for Subordinate Officers Part-II

Co-operative Audit Officer

Assistant Director of Co-op. Audit

Account Test for Executive Officers

By Transfer

Junior Assistant/ Steno-Typist / Typist

Junior Co-operative Auditor

Account Test for Subordinate Officers-Part-I

6. The exemption ordered in para 5 above shall be applicable only to those who have given option for permanent absorption in the Co-operative

Audit Department as on the crucial date for exercising the option viz 22.9.87 and not to the new entrants to the Co-operative Department

thereafter.

7. These orders taken effect from 17.6.81 the date on which the Adhoc Rules in the G.Os. first and second read above (First: G.O.Ms. No. 253,

Finance (CA) Department, Dated 31.03.1986, Second: G.O.Ms. No. 561, Finance (CA) Department, Dated 26.6.1987) came into effect.

13. Generally, the persons are appointed through the Public Service Commission (for short, ''PSC''). Certain Officers were appointed through

some other source by way of ad-hoc arrangement, but later on, their services were also regularised pursuant to the recommendation of the PSC.

Those who were appointed as Junior Co-operative Auditors, but could not get the advantage of exemption earlier granted from time to time,

including the exemption granted-vide G.O.Ms. No. 221, dated 10.5.1990 (cited above) or permanent exemption granted by G.O.Ms. No. 1125,

dated 30.10.1990 (cited above) issued from two Departments of the State, in regard to them, the Government issued order of exemption in the

years 1995 and 1997. Pursuant to G.O.Ms. No. 626, dated 26.7.1995 issued from Finance (Co-operative Audit) Department, the Junior Co-

operative Auditors selected through Special Qualifying Examination, conducted by the TNPSC, were granted the exemption from passing the

Account Test for Subordinate Officers-Part-I and exemption for three years from passing the District Office Manual Test, as is evident from

paragraph 5 of the aforesaid G.O.Ms. No. 626, and quoted hereunder:

5. Government have examined the proposal of the Director of Co-operative Audit contained in the aforesaid paragraph in detail and have decided

to accept it. Accordingly Government direct that the Junior Co-operative Auditors who have passed the Special Qualifying Examination conducted

by the Tamil Nadu Public Service Commission shall be exempted permanently from passing Account Test for Subordinate Officers Part I so as to

enable them to commence and satisfactorily get their probation declared and to get promotion as Senior Co-operative Auditors. Government also

direct that the Junior Co-operative Auditors who have passed the Special Qualifying Examination shall also be exempted from passing District

Office Manual Test for commencement and declaration of their probation and for promotion as Senior Co-operative Auditors, subject to the

condition that they shall pass the above Test within a period of three years from the date of their promotion as Senior Co-operative Auditors,

failing which their subsequent increments shall be stopped unless they pass the District Office Manual Test.

14. The respondents-Writ Petitioners claim to have been granted the exemption from passing the Account Test for Subordinate Officers-Part-I,

whereinafter they were promoted as Senior Co-operative Auditors. Similar relaxation was also granted in favour of other Junior Co-operative

Auditors, vide G.O.Ms. No. 597, dated 27.11.1997 issued from Finance (Co-operative Audit) Department, of which, we are not concerned in

the present Writ Appeals.

15. It is informed by learned Counsel for the respondents-Writ Petitioners that the respondents have passed the other requisite examination, such

as the District Office Manual Test and the Account Test for Subordinate Officers-Part-II. Admittedly, they have not passed the Account Test for

Subordinate Officers-Part-I. On the basis of G.O.Ms. No. 626, dated 26.7.1995 issued from Finance (Co-operative Audit) Department, they

claim that their exemption from passing the Account Test for Subordinate Officers-Part-I amounts to granting the exemption from passing the

relevant test, i.e. The Account Test for Subordinate Officers-Part-I, for any post which requires such pre-requisite qualification including the post

of Co-operative Audit Officer. In this connection, they have placed reliance on the principles laid down by the Division Bench of this Court in Writ

Appeal No. 106 of 1979 and accepted by the State, vide G.O.Ms. No. 221, dated 10.5.1990 issued from Personnel and Administrative Reforms

(PER.S) Department.

16. Learned Counsel appearing for the appellants-State submitted that Writ Appeal No. 106 of 1979 was preferred prior to the 1986 Rules. Any

observation made in regard to the respondent-Writ Petitioner of the said Writ Appeal, was based on earlier circulars and on the merits of the case

of that respondent/Writ Petitioner, of which, no advantage can be taken by the respondents-Writ Petitioners, in the present cases. Further,

according to the learned Counsel for the appellants-State, the respondents-Writ Petitioners are guided by G.O.Ms. No. 626, dated 26.7.1995

issued from Finance (Co-operative Audit) Department, which talks of one time relaxation from passing the Account Test for Subordinate Officers-

Part-I for promotion to the higher post of Senior Co-operative Auditor and not for any other higher post.

17. From the records including G.O.Ms. No. 221, dated 10.5.1990 issued from Personnel and Administrative Reforms (PER.S) Department, it

will be evident that even prior to the 1986 Rules, there are prescription to pass the requisite Account Test for Subordinate Officers and exemptions

were granted by the State from time to time by G.O.Ms. No. 1125, dated 30.10.1990 issued from Finance (TH & CA) Department. Such

exemption was granted from passing examination as was prescribed under the ad-hoc Rules of 1986 to those who opted for permanent absorption

in the Co-operative Audit Department exercising option by 22.9.1987. Such exemption was not granted to the new entrants of the Co-operative

Department entered subsequently.

18. From the Government Order in G.O.Ms. No. 626, Finance (Co-operative Department), dated 26.7.1995, it appears that 330 temporary

Junior Inspectors working in the Co-operative Department, selected by the TNPSC in the Special Qualifying Examination to the Co-operative

Audit Department, were made permanent from the date of regularisation of their services, i.e. with effect from 16.10.1989. In the Government

Order in G.O.Ms. No. 115, dated 17.5.1995 issued from Co-operation, Food and Consumer Protection Department, the Government have

relaxed Rules 9 and 10 of ad-hoc Rules for the post of Junior Co-operative Auditors in favour of 107 Junior Temporary Co-operative Auditors so

as to exempt them from undergoing training prescribed in Rule 10 of the ad-hoc Rules. From G.O.Ms. No. 626, stated above, it further appears that the intention of the orders issued in G.O.Ms. No. 115, in relaxation of Rules 9 and 10 of the ad-hoc Rules, was to promote all Junior

Inspectors/Junior Co-operative Auditors to the cadre of Senior Inspectors/Senior Co-operative Auditors, in the vacancies pending for a long time.

The hurdle to achieve the above intention in the case of Junior Co-operative Auditors was that they would have to pass also the District Office

Manual Test and the Account Test for Subordinate Officers-Part-I, since passing of those Tests is a pre-requisite for the Junior Co-operative

Auditors for declaration of probation and their promotion as Senior Co-operative Auditors.

19. It is in the aforesaid background, the Directorate of Co-operative Audit proposed to give certain permanent exemption which was examined

by the State Government, and decided to accept the same, as is evident from paragraph 5 of G.O.Ms. No. 626, dated 26.7.1995, quoted above,

thereby, it will be evident that those who are covered by G.O.Ms. No. 626, dated 26.7.1995, have been exempted permanently by the State from

passing the Account Test for Subordinate Officers-Part-I and for promotion to the superior post of Senior Co-operative Auditor, including the

respondents-Writ Petitioners, in the present appeals. Such permanent unconditional exemption having been granted by the Government in their

favour, they are also covered by the ratio laid down by this Court in Writ Appeal No. 106 of 1979, wherein, this Court held that such exemption

must be deemed to have been given by the authorities from passing the relevant test for any post which requires such pre-requisite qualification.

20. In view of our findings as recorded above, we are not inclined to interfere with the findings of the learned single Judge and uphold the

impugned common order, dated 3.10.2007 passed in W.P. Nos. 48855, 41145 and 49177 of 2006. There being no merits, the Writ Appeals are

dismissed. No costs. The Miscellaneous Petitions are closed.