

Case relating to relaxation of Rules:

Parties : K. Durairaj & Others Versus State of Tamil Nadu represented by its Secretary, Home Department, Chennai & Others

Court : High Court of Judicature at Madras

Case No : W.P.No.6525 of 2001, W.P.No.10665 of 2001, W.P.No.12271 of 2001, W.P.No.12492 of 2001 & W.P.No.12573 of 2001 & W.P.M.P.No.9302 of 2001, W.P.M.P.No.15443 of 2001, W.P.M.P.No.17930 of 2001, W.P.M.P.No.18315 of 2001 & W.P.M.P.No.18463 of 2001

Judges: THE HONOURABLE MR. JUSTICE P. SATHASIVAM & THE HONOURABLE MR. JUSTICE S.K. KRISHNAN

Appearing Advocates : Dr.S. Padma, for Petitioners in W.P.Nos. 10665, 12271, 12492 and 12573 of 2001. A. Nister Hakeem, for Petitioner in W.P.No.6525 of 2001. R. Muthukumarasamy, Additional Advocate General, assisted by E.Sampath Kumar, Government Advocate, for Respondent Nos.1 and 2 in all W.Ps. N. Paul Vasanthakumar, for Respondent No.3 in all W.Ps.

Date of Judgment : 03-02-2005

Head Note :-

CASES REFERRED TO:

Supreme Court Employees Welfare Association v. Union of India A.I.R. 1990 S.C. 334 [Para. 9]
 K. Thimmappa v. Chairman Central Board of Directors, S. B. I. A.I.R. 2001 S.C. 467 [Para. 12]
 Inder Jit Gupta v. Union of India A.I.R. 2001 S.C. 3338 [Para. 16]
 Om Prakash Shukla v. Akhilesh Kumar A.I.R. 1986 S.C. 1043 [Paras. 16, 17]
 M. Palanisamy v. Tamil Nadu Public Service Commission [1997] 3 C.T.C. 698
 M. Sekar v. Government of Tamil Nadu 1997 Writ L.R. 782 [Para. 17]

Comparative Citation: 2005 (2) MLJ 17

Judgment :-

P. Sathasivam, J.:

1. Since the petitioners in all the above writ petitions are aggrieved by the orders passed by the Tamil Nadu Administrative Tribunal in their respective Original Applications, and the issues involved in all the petitions are one and the same, these writ petitions are being disposed of by the following common order.

2. For convenience, we shall refer the case of the petitioner in W.P.No. 10665 of 2001. At the time of filing of the Original Application before the Tribunal, the petitioner herein was working as a Fireman in the Fire Station, Tamil Nadu Fire Services, Thallakulam, Madurai Division. He had put in service for 15 years from the date of his appointment as Fireman. In 1998, the Tamil Nadu Public Service Commission, third respondent herein announced selection of 76 Station Fire Officers (thereafter increased to 113), by direct recruitment as per Advertisement No.21/98. The petitioner took part in the selection process to the post of Station Fire Officer. The qualification to the post was just a pass in the Higher Secondary/Preliminary Examination for SC/ST, MBC, denotified communities and Backward Classes, and for others - B.A., Or B.Sc, or B.Com., or B.O.L., Or B.B.A., or B.Lit. The petitioner participated in the written examination. The Tribunal, in a matter relating to selection of

Sub-Inspector of Police in O.A.No.1368 of 1994, by order dated 18.1.1995, suggested the Government to provide for reservation for graduates, who fulfilled the criteria laid down for selection by direct recruitment. The Government had also given effect to the said decision by passing G.O.Ms.No.1054, Home (Police III) Department, dated 13.7.1995. The petitioner had sought for the creation of similar provision of reservation while making direct recruitment. However, following the earlier order passed in the case of a similarly placed person, namely K.Durairaj in O.A.No.3621 of 2000 dated 8.3.2001, dismissed his application. Questioning the same, the applicant therein has filed W.P.No. 10665 of 2001. Similar averments have been made in the other writ petitions.

3. Heard Dr.Padma and Mr.A.Nister Hakeem, learned counsel for the petitioners, Mr.R.Muthukumarasamy, learned Additional General for respondents 1 and 2 and Mr.Paul Vasanthakumar, learned counsel for third respondent.

4. The learned counsel for the petitioners after taking us through the relevant materials relating to the post of Station Fire Officer and order of the Tribunal, have raised the following contentions:

“(i) The respondents 2 and 3 ought to have applied G.O.No.1054, Home (Police III) Department, dated 13.7.1995, while considering the claim of the petitioners, who are Firemen in the Department of Fire Services;

(ii) Having accepted the suggestion made by the Tribunal made in O.A.No.1368 of 1994, dated 18.1.1995 and passed G.O.No.1054, Home (Police III) Department, dated 13.7.1995 in respect of police personnel, the respondents ought to have applied the same in the case of Fire Service Personnel. The action of the respondents in not placing the Fireman on par with Policeman is in violation of Art. 14 of the Constitution of India; and

(iii) Having published the mode of selection in the dailies by the Tamil Nadu Public Service Commission, it has no power to change the procedure at a later date and the same vitiates the entire selection process.”

5. On the other hand, the learned Additional Advocate General would submit that G.O.Ms.No.1054, Home (Police III) Department, dated 13.7.1995 relates to Police personnel, which is a separate Department and separate Service Rules are applicable to them, and the same cannot be applied to the petitioners, who are Firemen governed by separate Service Rules. He further contended that there is no discrimination or violation of Art. 14 of the Constitution of India, as claimed by the learned counsel for the petitioners. According to him, the procedure followed by the respondents are in accordance with the Rules applicable to them and the Tamil Nadu Public Service Commission has fully complied with the formalities and there is no error or flaw in the procedure adopted by it. Mr.Paul Vasanthakumar, learned counsel appearing for the Tamil Nadu Public Service Commission, while reiterating the details furnished in their common counter affidavit, adopted the arguments of the learned Additional Advocate General.

6. We have carefully considered the materials placed, relevant Government Orders, the order of the Tribunal, which is under challenge and the rival contentions of all the parties.

7. We have already referred to the fact that all the petitioners/Firemen have approached the Tribunal, praying for a direction to set apart 20% vacancies for serving firemen, who are graduates and have put in 5 years of experience in the Fire Service Department from among the vacancies reserved for direct recruitment and

consequently select them as Station Fire Officers. Coming to the argument based in G.O.Ms.No.1054, dated 13.7.1995, the learned counsel for the petitioners contended that since the Tribunal's directions in O.A.No.1368 of 1994 dated 18.1.1995 were given effect to by passing G.O.Ms.No.1054, Home (Police III) Department, dated 13.7.1995, similar provision of reservation may be made while making selection for the post of Station Fire Officer. It is true that pursuant to the suggestion of the Tamil Nadu Administrative Tribunal dated 18.1.1995 in O.A.No.1368 of 1994 etc., batch relating to selection to the post of Sub-Inspector of Police (direct recruitment) conducted by the Tamil Nadu Uniformed Services Recruitment Board, the Government after examining the matter in detail, in the said Government Order directed that 20% of the vacancies in the direct recruitment quota for the post of Sub-Inspector of Police be reserved for the Police Constables and Head Constables in Category I and their equivalent ranks in the Armed Reserve and Tamil Nadu Special Police Branch in Category II and III. In the said Government Order it was clarified that the direct recruitment quota of Sub-Inspector of Police would be filled 80% from open market and 20% from Serving Police Personnel in all the three categories. After taking such decision, the Government requested the Director General of Police to send necessary draft amendments to Special Rules for Tamil Nadu Police Subordinate Services and Tamil Nadu Special Police Subordinate Services.

8. At the foremost, the learned Additional Advocate General submitted that the said Government Order relates to Police Department, particularly for selection to the post of Sub-Inspector of Police being conducted by the Tamil Nadu Uniformed Services Recruitment Board. He also contended that the selection of Police personnel to the post of Sub-Inspector of Police was conducted by the Police Department through Tamil Nadu Uniformed Services Recruitment Board and separate Service Rules are applicable to them. He further contended that at the relevant time the petitioners were working as Firemen in the Department of Fire Services., which is not only a separate Department, but they are also governed by separate Service Rules, namely Tamil Nadu Fire Subordinate Service Rules. In the light of the said claim, we have verified G.O.Ms.No. 1054, dated 13.7.1995 and the reading of the said Government Order makes it clear that the same is applicable to the recruitment to the post of Sub-Inspector of Police from Police Constables/Head constables. It is further seen that the police men are governed by Tamil Nadu Police Subordinate Service Rules and it is a separate Department, the Director General of Police is their Head and even in the said Government Order, though the Government have accepted the suggestion of the Tribunal for reservation of 20% of vacancies in the direct recruitment quota of the Sub-Inspectors for Police Constables and Head Constables in category I and those who are in equivalent ranks in the Armed Reserve and Tamil Nadu Special Police Branch in Category II and III. Undoubtedly, the said direction cannot be applied to Fire Service Department without a specific decision and follow-up action by amendment of Fire Service Rules by the Government. As a matter of fact, the said Government Order was followed by a request by Director General of Police for necessary amendment to Special Rules for Tamil Nadu Police Subordinate Services and Tamil Nadu Special Police Subordinate Services.

9. The learned Additional Advocate General has also brought to our notice that based on such request those Police Service Rules have been amended by the Government. Inasmuch as the petitioners are working in a different Department, namely Fire Service Department, they cannot claim that the above referred Government Order is applicable in respect of appointment to the post of Station Fire Officer, which is governed by different set of Rules. As rightly observed by the Tribunal, it is for the Government to take a policy decision on this aspect and the Tribunal or Court cannot issue any such direction to fix a percentage of seats for serving personnel in a Department, when direct recruitment is made for higher posts in the same Department. In this regard it is relevant

to refer to the judgment of the Supreme Court in the case of Supreme Court Employees Welfare Association v. Union of India A.I.R. 1990 S.C. 334, wherein their Worships have held,

“51. There can be no doubt that no Court can direct a legislature to enact a particular law. Similarly, when an executive authority exercise a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority.

55. On the basis of the principles of law laid down in the above decisions, it is urged by the learned Attorney General that this Court cannot be (sic.) issue a mandate to the President of India to grant approval to the rules framed by the Chief Justice of India relating to salaries, allowances, leave and pensions of the officers and servants of the Supreme Court. In other words, the President of India cannot be compelled to grant approval to the proposals of the Registrar General of the Supreme Court, as contained in his letter dated July 22, 1987. There can be no doubt that an authority exercising legislative function cannot be directed to do a particular act. Similarly the President of India cannot be directed by the Court to grant approval to the proposals made to the Registrar General of the Supreme Court, presumably on the direction of the Chief Justice of India. It is not also the contention of any of the parties that such a direction can be made by the Court.”

10. In the light of the admitted factual position that the petitioners are Firemen governed by separate Service Rules, namely, Tamil Nadu Fire Subordinate Service Rules, we hold that the G.O.Ms.No.1054, dated 13.7.1995 referred to above is not applicable to the petitioners, since the same relates to Police Department and in the light of the pronouncement of the Supreme Court, there cannot be any direction to the authority or Government to reserve certain percentages of posts and enact law for the same. We agree with the conclusion arrived at by the Tribunal and reject the contrary contention raised by the learned counsel for the petitioners.

11. Now, coming to the argument relating to violation of Art.14 of the Constitution of India, first of all we are of the view that the said argument is misconceived, since we have already held that the petitioners are Fire Service Men governed by separate Service Rules. Merely because the Government have accepted the suggestion and passed an order reserving 20% vacancies in the direct recruitment quota of Sub-Inspector of Police for Police Constables and Head Constables in Category I and in the Armed Reserve as well as Tamil Nadu Special Branch Category II and III, as observed earlier, since both are different Departments and the nature of work is also different, it cannot be claimed that failure to reserve certain percentage of posts in the selection of Station Fire Officer in Fire Service Department, which is a separate Department, is violative of Art.14 of the Constitution of India. It is not in dispute that the petitioners and others were aware of the selection procedure and method of selection for the post of Station Fire Officer. In other words, it is not in dispute that all the candidates/petitioners were made aware of the procedure of selection before they sat for written test, and therefore, they cannot turn around and contend that certain reservation have to be made as prevailing in the other Department.

12. In the case of K.Thimmappa v. Chairman Central Board of Directors, S.B.I. K.Thimmappa v. Chairman Central Board of Directors, S.B.I. A.I.R. 2001 S.C. 467, their Lordships have elaborately dealt with as to what Art.14 prohibits. The following proposition of law is relevant, which is extracted hereunder:

"3....Before we deal with the respective contentions of the parties it would be appropriate for us to notice that what Art.14 prohibits is class legislation and not reasonable classification for the purpose of legislation. If the rule Making Authority takes care to reasonably classify persons for a particular purpose and if it deals equally with all persons belonging to a well defined class then it would not be open to the charge of discrimination. But to pass the test of permissible classification two conditions must be fulfilled.

(a) that the classification must be founded on an intelligible differential which distinguishes persons for things which are grouped together from others left out of the group; and

(b) that the differential must have a rational relation to the object sought to be achieved by the statute in question.

The classification may be founded on different basis and what is necessary is that there must be a nexus between the basis of classification and the object under consideration. Art. 14 of the Constitution does not insist that the classification should be scientifically perfect and a Court would not interfere unless the alleged classification results in apparent inequality. When a law is challenged to be discriminatory essentially on the ground that it denies equal treatment or protection, the question for determination by Court is not whether it have resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislature has, in view. If a law deals with members of well defined class than it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. It is for the Rule Making Authority to determine what categories of persons would embrace within the scope of the rule and merely because some categories which would stand on the same footing as those which are covered by the rule are left out would not render the Rule or the Law enacted in any manner discriminatory and violative of Art. 14. It is not possible to exhaust the circumstances or criteria which may afford a reasonable basis for classification in all cases. It depends on the object of the legislation and what it really seeks to achieve."

13. In the light of the above, it is clear that Art.14 -equality clause does not prohibit reasonable classification. Inasmuch as the post and required qualification are governed by two different sets of Service Rules, in the absence of specific provision for reservation for persons working in the category of Firemen, when similar provision is available in the other Department, namely Police Department, it cannot be claimed that it is violative of Art. 14 of the Constitution of India. As observed by the Supreme Court, it is for the Rule Making Authority to determine what category of people will embrace within the scope of rule and merely because some categories are left out would not render the Rule or the Law enacted in any manner discriminatory and violative of Art. 14 of the Constitution of India. In this regard it is also relevant to note that even according to the petitioners they made a representation to the Government seeking an order providing reservation for the persons working in the post of Fireman in the matter of selection to the post of Station Fire Officer, similar to the order passed by the Government in respect of Police Department and according to the respondents the said representation is under consideration. If that is so, it is for the petitioners and their men and Association to pursue the same with the Government through

their Department. As said earlier, it is not for either the Tribunal or Court to issue direction to the Department to enact law or frame Rule under the delegated legislative authority. In other words, it is the wisdom of the authority/Government to take a decision accordingly and no direction can be issued by the Tribunal or Court. In the light of our conclusion the second contention relating to equality under Art. 14 is also liable to be rejected.

14. Coming to the last contention that the Tamil Nadu Police Service Commission/third respondent herein has no power to change the mode of selection or modify the scheme of selection, it is the claim of the petitioners that the Commission did not have the powers to make even a slightest modification and it was duty bound to carry out the selection process only by following the rules framed by the Government regarding recruitment. According to them, the Service Commission put the cart before the horse by conducting written examination even before the basic by pre-requisite physical efficiency test and it did away with preliminary test which was to be followed by written test. They further contended that the unilateral modification of the mode of selection by the Commission would render the entire selection void and the present selection is liable to be quashed.

15. With regard to the said complaint/grievance of the petitioners it is relevant to point out the information furnished by the Secretary, Tamil Nadu Public Service Commission in its common counter affidavit dated 16.11.2001. The Tamil Nadu Public Service Commission is a body created with reference to Art.320 of the Constitution of India and it is an independent expert body so far as in the matter relating to the recruitment, selection to the post within its purview. Rule 4 of the Tamil Nadu Public Service Commission Rules and Procedure vests the Commission with the authority to conduct examinations and make selections in the manner as it may deem fit. A policy decision was taken by the Commission on 5.10.1998, that there would hence forth be a single written examinations with a view to streamline the existing scheme of written examination. Wherever such a change in the scheme or syllabus is necessitated, it is the usual practice of the Commission to inform the Government for issue of necessary amendments, if necessary, to the relevant Government Orders and the Commission would go ahead with the changes decided, pending issue of necessary amendments. The Commission had already addressed the Government suggesting amendment to the relevant Government Orders to effect the above said challenges in the Scheme of examination and ultimately the Government accepted their modification of the Scheme and necessary amendments were made. Due to the policy decision taken by the commission to conduct a single written examination only, the commission dispensed with the conduct of preliminary examination for CASE II examination, even though the conduct of preliminary examination was notified by it in the scheme of examination, in its notification dated 30.7.1998. The Commission gave wide publicity about this change in the scheme of examination. An advertisement in this regard was given in the dailies, "Dhina Thanthi", "Dhinakaran" and in "Indian Express" on 26.12.1998. It was also announced in that advertisement that the candidates who had applied for the post of Station Fire Officer would have to undergo the Physical Efficiency Test after the completion of the single written examination, but before they were admitted to the Oral Test. Each and every candidate was also individually informed about this change by means of a communication dated 21.12.1998. The writ petitioners were individually communicated of the same, they have also responded and intimated their optional subject. The candidates were given sufficient time to prepare for the main examination, which ultimately was held in May, 1999 for four days, namely, 8th, 9th, 15th and 16th of May, 1999. The candidates did not raise any objection to the revision in the scheme of examination and all of them including the petitioners wrote the examination without raising any objection. Further, the interest of the petitioners was not affected and no prejudice was caused to them.

16. Admittedly, though above particulars find a place in the common counter affidavit filed by the third respondent, which was duly served on the counsel for the petitioners as early as on 26.11.2001, the fact remains that the petitioners have not filed reply affidavit controverting these factual details. We have already observed that in spite of change of procedure, etc. the petitioners participated in the selection process without protest or objection. As observed in the case of *Inder Jit Gupta v. Union of India* A.I.R. 2001 S.C. 3338, inasmuch as the said objection was not raised earlier, after the entire process of selection is completed, the point cannot now be considered or examined as the petitioners had acquiesced the action taken by the respondents. Even otherwise, as elaborated in the counter affidavit, the third respondent Commission has ample power to modify the selection scheme and only thing to be followed is that the same has to be approved the Department. The same view has been taken by the Supreme Court in the case of *Om Prakash Shukla v. Akhilesh Kumar* A.I.R. 1986 S.C. 1043.

17. In the case of *M.Palanisamy v. Tamil Nadu Public Service Commission* *M.Palanisamy v. Tamil Nadu Public Service Commission* (1997)3 C.T.C. 698, a Division Bench of this Court has expressed a similar view, *Shivaraj Patil, J.* (as His Lordship then was) speaking for the Bench, after quoting the judgment of the Supreme Court in the case of *Om Prakash Shukla v. Akhilesh Kumar* A.I.R. 1986S.C. 1043, has observed that, "19. The petitioner knowing fully well the procedure of selection, appeared for the written examination and he was aware that the candidates will be called for viva voce examination in the ratio of 1:3. If the petitioner was really serious about it, i.e., the procedure according to him was illegal or contrary to the rules, he could have challenged the procedure contained in paragraph 8 of the memorandum above stated, and could have urged all the contentions that are sought to be urged in this writ petition."

Similar view has also been expressed in the case of *M.Sekar v. Government of Tamil Nadu and others* *M.Sekar v. Government of Tamil Nadu and others* 1997 Writ L.R. 782.

18. Inasmuch as the said objection was not raised earlier but raised after the entire process of selection was completed, the point cannot now be considered or examined as the petitioners and acquiesced the action taken by the respondents. Even otherwise, as elaborated in the common counter affidavit, the third respondent Commission has ample (sic.) power to modify the selection scheme and only thing to be followed is that the same has to be approved by the Government. In our case, the modification scheme had been accepted and approved by the Government by issue of necessary amendments. Further, as rightly pointed out, each and every candidate was individually informed about the change by means of communication and without any demur or objection, participated in the selection process, accepting the change in the scheme of examination. Further, by taking a policy decision, the commission has dispensed with the conduct of preliminary examination and it is not in dispute that after conduct of single written examination by the Commission, the eligible candidates have to undergo Physical Efficiency Test. It is also brought to our notice that no marks are awarded for Physical Efficiency Test, however, only if the candidates are found to be fully qualified in the Physical Efficiency Test conducted by the Director of Fire Services, they will be admitted to the Oral Test on the basis of their merit in the main examination and after perusal of documents evidencing date of birth, community, qualification, etc., The materials furnished and intimated to all the candidates clearly show that getting qualified in the Physical Efficiency Test is not a sole criterion for eligibility for admission to Oral Test and that the merit obtained in the Main

examination shall be the yardstick for admission to Oral Test apart from clearing the Physical Efficiency Test. The third respondent has also furnished the marks secured by the petitioners' in the written examination and as per the conditions prescribed, they were not eligible to be admitted to the Oral Test. In other words, even if the petitioners had been subjected to Physical Efficiency Test, the marks obtained by them in the written examination were not sufficient enough to admit them to Oral Test.

Their contention relating to change of procedure by the Commission is liable to be rejected.

19. We have already referred to the information furnished in the common counter affidavit that the petitioners were not qualified to Oral Test, since they did not secure the required marks in the written examination. The following information furnished in the counter affidavit is also relevant. The total number of vacancy for the post of Station Fire Officer was 115; the total number of candidates applied for the recruitment was 45,535; the total number of persons admitted to the written examination was 26,649; the total number of persons who wrote the written examination was 17,663; the remaining candidates were absent; the number of persons who were subjected to the Physical Efficiency Test was 1,150. The last of selected persons were communicated by the Director of Fire Service in three spells. First list contained the names of 109 selected persons; the second list contained the name of 4 persons and the third list contained the name of one selected candidate. The last list of selected person was communicated on 1.11.2001. It is the claim of the third respondent that all the seats were filled up and training was commenced even on 1.6.2001 itself for the selected persons. It is also stated that the theoretical aspect of the training was already over and the selected persons were now attached to the respective Divisions for further training in practical aspect.

In the light of what is stated above, we conclude that there is no merit in any one of the contentions raised by the petitioners and we are in agreement with the conclusion arrived at by the Tribunal. Consequently, the writ petitions fail and the same are dismissed. No costs.