

Case relating to Relaxation of Rules:

Parties : S.P. Shanthi Versus The Government of Tamil Nadu, Rep. by its Secretary to Govt., Chennai & Others

Court : High Court of Judicature at Madras

Case No : Writ Petition No.27437 of 2010 & M.P. No.1 of 2010

Judges: THE HONOURABLE MR. JUSTICE T. RAJA

Appearing Advocates : For the Petitioner: K.S. Viswanathan, Advocate. For the Respondents: R1 & R2 - T. Chandrasekaran, Special Govt. Pleader (HR & CE), R3 -Ms.C.N.G. Niraimathi, Advocate.

Date of Judgment : 15-02-2011

Head Note :-

Constitution of India - Article 226 – petitioner seeks for issuance of a writ of mandamus directing the respondents to consider the petitioner for selection to the post of Assistant Commissioner, pursuant to the TNPSC written examinations for Direct Recruitment to the said post - Writ Petition is dismissed as devoid of any merit.

Judgment :-

(Prayer: Petition under Article 226 of the Constitution of India for the relief as stated therein.)

1. The petitioner herein seeks for issuance of a writ of mandamus directing the respondents to consider the petitioner for selection to the post of Assistant Commissioner, Hindu Religious Charitable and Endowments Administration Department, pursuant to the TNPSC written examinations held on 30.05.2010 for Direct Recruitment to the said post. 2. The petitioner herein was appointed as Audit Inspector on 15.03.2000 in the Hindu Religious and Charitable Endowment (in short 'HR & CE") Department by way of Direct Recruitment after emerging successful in the Exam conducted by the third respondent/Tamil Nadu Public Service Commission (TNPSC / Commission) and presently, she is working in the Office of the Assistant Audit Officer, HR & CE Department – Audit Wing. The petitioner belongs to S.C. Community and having completed Law Degree in the year 2005, her next avenue of promotion is to the post of Assistant Commissioner in the Department. While so, Notification No.122, dated 01.08.2007, came to be issued governing the mode and procedure for filling up the vacancies for the post of Assistant Commissioner in the Department and, challenging such Notification, a writ petition in W.P. No.28891 of 2007 was filed for a direction to include Executive Officers possessing Law Degree and 5 years of service without any age stipulation in the eligibility criteria for appointment to the said post. By Order, dated 22.10.2009, passed in the said writ petition, this Court issued a direction to the Department to frame new guidelines for recruitment by amending the rules suitably. Consequently, G.O. Ms. No.335, Tamil Development, Religious Endowments and Information Department, dated 09.11.2009, was issued by the Government, amending the existing Rules, thereby, those employees who have put in 6 years of service in

the Executive Cadre Grade I or II or III or IV or Inspector or Head Clerk or Manager or Superintendent in the Administrative Side of the Department were also made eligible to be considered for promotion the post of Assistant Commissioner. By claiming that they also possess requisite qualification on par with the staff in Ministerial Service and Subordinate Service of the Department, the Audit Staff Association of the HR & CE Administration Department made a representation, dated 04.01.2010, to the 2nd respondent/Commissioner, HR & CE, and the said Authority, considering such representation, by proceedings in R.C. No.20935/2010/B1, dated 23.09.2010, recommended to the first respondent for amendment in the Rules. While so, to fill up 25 vacancies for the post of Assistant Commissioner in the Department by direct recruitment, Notification No.223, dated 20.12.2009, was issued inviting Applications from eligible candidates. In response to the said Notification, the petitioner applied to the Commission, wrote the examination and the results came to be published in the website on 26.11.2010. According to the petitioner, though she had secured 325 out of 400 marks in the written examination as against the cut off marks of 275/400 and 300/400 prescribed for SC category to which she belongs to and for the O.C. Category respectively, she was not selected to the post of Assistant Commissioner. 3. In the above background, learned counsel appearing for the petitioner made the following submissions. (a) The authorities have grossly erred in not selecting the petitioner by ignoring the vital aspects that she has put in about 10 years of service as Audit Inspector in the Department and that the Commission, only after scrutiny of the Application, permitted her to write the examination and that she emerged distinctly successful by securing 325 out of 400 marks as against the cut off marks prescribed for SC category to which she belongs to and the O.C. Category viz., 275/400 and 300/400 respectively. When the authorities erroneously and unjustly rejected the candidature of the petitioner on the pointless ground that the petitioner is ineligible for applying to the post of Assistant Commissioner as she was not holding the post of Inspector in the Administrative Side of the Department, this Court may, by holding that such stand is not legally sustainable, issue a positive direction to the respondents for posting the petitioner as Assistant Commissioner in the Department. (b) Advertisement No.258 of the Commission, whereby Applications have been invited for direct recruitment to various posts included in Combined Subordinate Service Examination-I, specifies the post of 'Audit Inspector' in the Audit Wing of the Department as a service under the 'Tamil Nadu Ministerial Service' and on the face of it, there may not be any justification for the respondents to say that the post of Audit Inspector is not coming under the purview of Tamil Nadu Ministerial Service and that the staff members in the Audit Wing come only under the realm of Tamil Nadu General Subordinate Service Rules. (c) It is repeated that inasmuch as the respondents have acted unjustly in denying promotion/selection of the petitioner to the post of Assistant Commissioner despite the fact that she emerged successful in the Exam by securing higher marks than what has been prescribed as cut off marks for the category to which she belongs to and the other category/O.C., if a positive direction is not issued, much prejudice would be caused to the petitioner. 4. Per contra, learned counsel appearing for the 3rd respondent/Commissioner submits that no doubt, the petitioner, who had applied to the Commission for recruitment to the post of Assistant Commissioner, was allowed to write the

examination held on 30.05.2010 based on the claim made by her in the Application. Subsequently, when her Application was subjected to thorough scrutiny in terms of her eligibility to the post, it was found that she is a serving member of the Department in the Audit Wing holding the post of Audit Inspector and that she is not an 'Inspector' in the Administrative Side of the Department as mentioned in Para No.5(B)(ii)(b) of the Commission's Notification, dated 20.12.2009. Since the said Notification did not mention Audit Inspectors as eligible candidates for being considered to the post of Assistant Commissioner, vide Commission's letter No.1593/APD F2/2010, dated 14.09.2010, a clarification was sought for from the HR & CE Department regarding the petitioner's eligibility for the recruitment in question and, the Commissioner of the HR & CE, by letter dated 02.10.2010, made it clear that the petitioner was not eligible even to apply for the post of Assistant Commissioner and only based on such clarification by the Department, the case of the petitioner was rejected. Even otherwise, mere permission to sit in the written examination or emerging successful does not confer upon the petitioner any right to the selection, for, it has been clearly stated in para (iv) of the Commission's instructions that the candidature is provisional at all stages and that the Commission reserves the right to reject any candidature at any stage even after selection has been made. At any rate, since the petitioner was not eligible even to apply for the post in terms of the Rules as they stand now, it may not be appropriate for the petitioner to contend that she was unjustly deprived of selection to the post in question and her entire case is liable to be discarded in the given facts and circumstances as adverted to above. 5. In the same lines, learned Special Government Pleader appearing for respondents-1 and 2/HR & CE Department, forcibly contends that inasmuch as the petitioner is not an Inspector in the Department's Administrative Wing and she is an 'Audit Inspector' attached to the Audit Wing, as per the rules governing the selection process at the relevant time, legally, the petitioner could not be considered for selection/promotion to the post in question when the scrutiny revealed that she should not have been allowed even to sit for the examination. In that regard, he submits that the nature of work and responsibilities attached to the post of Inspectors, Executive Officers and Audit Inspectors are totally different. Similarly, the scale of pay for the post of Inspectors/Executive Officers are also quite different. While Inspectors and Executive Officers are directly involved in the day-to-day administration of the temples, the Audit Inspectors were never assigned with duties pertaining to temple administration rather their job is restricted to auditing of the temple accounts and find out the lapses, commission and omission therein. Further, the post of Audit Inspector came to be re-designated by virtue of G.O.Ms. No.69, C.T. & R.E. Department, dated 24.01.1979, and prior to such re-designation, the name of the post was 'Audit Assistant' which was equivalent to the post of 'Assistant' in the Ministerial Service. Under such circumstances, as on the date of Notification, the petitioner was ineligible to write the examination and such aspect surfaced only during the scrutiny prior to selection, the authorities rightly rejected her case despite the fact that she secured higher marks; thus, there is no scope for interference by this Court. 6. Considered the rival submissions made on either side. The petitioner herein, at the time of applying for the post of Assistant Commissioner in the Department, was holding the post of Audit Inspector in the Office of the Assistant Audit

Officer, Madurai. As pointed out already, before re-designation, the post of Audit Inspector was termed to be 'Audit Assistant' which was equivalent to the post of Assistant in the Ministerial Service. Further, the scale of pay for Audit Inspectors in the Audit Wing of the Department and for the Inspectors specified in para 5(B) (ii) (b) of the Commissions Notification dated 20.12.2009 is totally different since the latter category draws higher scale of pay. Therefore, both the categories cannot be treated to be one and the same. In fact, at the relevant time of issuance of the Notification by the TNPSC on 20.12.2009, the petitioner did not fall in any of the categories mentioned in the Rules so as to sit in the examination. In other words, as on the date of Notification, the post of Audit Inspectors was not included as eligible category to apply and compete in the Group-IB Examination conducted by the Commission. When the Audit Staff Association made a request to treat Audit Inspectors on par with Inspectors in the Administrative Wing of the Department enabling them to compete for the post of Assistant Commissioner, such representation was sent to the Government by the 2nd respondent recommending suitable amendments to be made in the Rules. The Government declined to consider the request to amend the rules on the ground that the duties and responsibilities of Audit Inspectors are altogether different from that of Inspectors working in the Administrative wing. In fact, one of the Audit Inspectors by name S.S.Seethavasan filed a writ petition in W.P. No.28739 of 2007 seeking issuance of a direction to the authorities to permit him to participate in the examination for the post of Assistant Commissioner by Direct Recruitment as per the Commission's Notification No.122 dated 01.08.2007. The said writ petition came to be dismissed by order of this Court dated 01.12.2009 with the following observation: - "... Qualification will have to be decided on the date of notification. The subsequent change in the relevant rule without there being any retrospective to the rules, then the benefit cannot be granted to the petitioner." Reacting on the recommendation made by the 2nd respondent for suitable amendment to the Rules so that the staff of the audit wing also could compete with the staff in the Administrative Wing for the post of Assistant Commissioner, the Government/First respondent, by Letter No.26054/R.E.2-2/2020-1, dated 16.12.2010, referring to the dismissal of the aforesaid writ petition, made it clear that the proposed recommendation is not acceptable since already, there are promotional avenues for the Audit Inspectors and Audit Superintendents to higher posts like Audit Officer and Regional Audit Officer as provided in the Rules and that, the nature of duties and responsibilities involved in the Administrative Wing, where vacancies arose for the post of Assistant Commissioner, are altogether different from that of the Audit Wing. The decision taken by the Government in the aforesaid letter has not been challenged by the petitioner. 7. In respect of the argument that, only based on the service Certificate issued by the Department to the effect that the petitioner was working as Audit Inspector, she was permitted to writ the examination as an eligible candidate and therefore, she must be selected for the post, it is seen that by letters of the Department in R.C. No.56828/2010 B2, dated 02.10.2010 and 09.11.2010, addressed to the TNPSC, it was informed that the petitioner, in whose favour the service certificate was issued, was not eligible to compete in Group-IB Service examination in terms of amendments issued in G.O. Ms. No.355, Tamil Development, Religious Endowments and Information Department, dated 09.10.2009, and based on such letters, the Commission

declined to select the petitioner for the competed post. In such circumstances, when the communications between the authorities reveal that everything was done in consonance with the Rules holding the field good at the relevant time, this Court does not find any substance in the claim of the petitioner that she is legally entitled to be selected merely because she emerged successful in the written examination. I have already held that her post of Audit Inspector in the Office of the Assistant Audit Officer, HR & CE, is not a Feeder Category to the promotional post of Assistant Commissioner in the HR & CE (Administration) Department. Though these two posts look alike, the fact shows otherwise inasmuch as the post of Audit Inspector in the Office of the Assistant Audit Officer, HR & CE, and that of Inspector in the HR & CE (Administration) Department as mentioned in Para 5 (B) (ii) (b) of the Commission's Notification, dated 20.12.2009, are not inter-changeable, for, the former comes under the Audit Wing while the latter under the Administrative Wing. Secondly, the post of 'Audit Inspector' in the Audit Wing is equivalent to the post of Assistant in the Administrative Wing which is not a Feeder Category to the post of Assistant Commissioner, whereas, the post of Inspector in the Administrative Wing is a Feeder post to the Assistant Commissioner. Due to such confusion, she was wrongly allowed to write the examination, however, the ineligibility to write the exam was found out later on, therefore, mere admission to the written examination does not confer any right on the petitioner to claim selection. 8. Coming to the claim of the petitioner by referring to Advertisement No.258 of the Commission wherein the post of Audit Inspector is shown to be a service under the Tamil Nadu Ministerial Service, the said categorisation was meant for the candidates who are aspiring to enter service into the Audit Wing of the Department and such service nomenclature cannot be cited in a given case where the aspects of promotion and other prospects are governed by relevant rules framed from time to time. It must be highlighted herein that the Audit Wing in the HR & CE Department came to be created with a clear scheme that under no such circumstances, the executive staff like the Inspector, Executive Officer, Assistant Commissioner etc. in the Administrative Wing will be posted to the Audit Wing and further, the staff manning the Audit Wing would be kept as a separate and distinct entity and there should be no interchange of personnel between these two wings at any level at any time. Moreover, as mentioned already, the post of Audit Inspector is equivalent to the post of Assistant in the Ministerial service whereas the post of Inspector as mentioned in para 5(B) (ii) (b) of the Commission's Notification is a Feeder Category to the post of Assistant Commissioner in the Department's Administrative Wing; thus, the post of Audit Inspector in the Office of the Assistant Audit Officer cannot be termed to be equivalent to that of Inspector in the Administrative Side. When the Rules provide competition amongst the equals, the endeavour of the persons like the petitioner, who is unequal to compete, to project that she is treated unjustly by the authorities to deprive her of the post for which she is legally entitled to, would hardly be fructuous for the reason that as on the date of notification and as per the Rules, she was ineligible even to write the examination. No doubt, the concept of equality in matters of promotion or selection to a higher post can be predicated only when pormotees are drawn from the same source, but in the present case, the petitioner, in terms of the rules as stood at the relevant time, was not eligible even to write the exam. As there was no preferential treatment of one category in relation to

the other, this Court finds no good argument from the petitioner side to answer the prayer in her favour since the State Government, in its wisdom, declined to amend the Rules to the favour of the Staff Members in the Audit Wing enabling them to compete in the general stream. 9. In the result, the Writ Petition is dismissed as devoid of any merit. However, there will be no order as to costs. Connected Miscellaneous Petition is closed.