

M. Jayakumar and Others

Vs

State of T.N. and Others

S. Kalyanasundaram and Others

Vs

State of T.N. and Others

Civil Appeals No. 12033 of 1996 with No. 12034 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

30.08.1996

ORDER

1. Delay condoned.

2. Leave granted.

3. These appeals by special leave arise from the order of the Tamil Nadu Administrative Tribunal, Madras Bench made on 13-7-1993 made in TA No. 131 of 1990. The admitted position is that the Tamil Nadu Urban Land Tax Act, 1966 (12 of 1966) (for short, "the Act") was amended so as to extend the provisions thereof to Madurai, Coimbatore, Trichy and Salem. It was further amended, inter alia, so as to extend the provisions of the Act to the belt areas of Madras City. As regards the appointments to the post of ministerial staff therein, they are governed by the Tamil Nadu Ministerial Service Rules (for short, "the Rules"). Rule 3 of the Rules provides the method of appointments and promotions. Rule 3(hh)(ii) reads as under :

"3. Method of Recruitment. - (hh) Besides promotion as provided in Rule 4, appointment to the posts of Superintendents and Assistants in the Office of the Board of Revenue (Land Reforms) may be made as specified in column (2) of the Table below, if no suitable candidates are available for promotion in the Office of the Board of Revenue (Land Reforms).

THE TABLE Posts Method of appointment(i) Superintendents By recruitment by transfer from among Deputy Tahsildars and Tahsildars in the Tamil Nadu Revenue Subordinate Service.(ii) Assistants By transfer from among Assistants in the District Revenue units.##

(i) Appointment to the posts of Superintendents (Selection Grade) in the Office of the Board of Revenue (Urban Land Tax) - Commissioner of Urban Land Tax and in the Offices of the Assistant Commissioners of Urban Land Tax, shall be made by promotion from among the Superintendents in the Urban Land Tax Department and in other branches of the Board of Revenue or by recruitment by transfer from the

category of Deputy Tahsildars in the Tamil Nadu Revenue Subordinate Service.

(ii) Appointment to the posts of Superintendents in the Office of the Board of Revenue (Urban Land Tax) - Commissioner of the Urban Land Tax and in the Offices of the Assistant Commissioners of Urban Land Tax, shall be made by promotion from among the Assistants in the Urban Land Tax Department and from among the Assistants of the District Revenue Unit or other branches of the Board of Revenue.

(iii) Appointment to the posts of Assistants in the Office of the Board of Revenue (Urban Land Tax) - Commissioner of Urban Land Tax and in the Office of the Assistant Commissioners of Urban Land Tax, shall be made by promotion from among the Junior Assistants in the Urban Land Tax Department and from among the Junior Assistants of the District Revenue Unit or other branches of the Board of Revenue.

(iv) Besides direct recruitment as provided in Rule 2, appointment to the posts of Junior Assistants and typists in the Office of the Board of Revenue (Urban Land Tax) - Commissioners of Urban Land Tax, and in the Office of the Assistant Commissioners of Urban Land Tax, shall be made by transfer from among the Junior Assistants and typists of the District Revenue Unit or from other branches of the Board of Revenue, respectively."

4. Under Rule 11 dealing with recruitment to the departmental units, it is stated that for the purposes of direct recruitment etc. to the service, a departmental unit shall mean (a) in the city of Madras, each office; and (b) outside the city of Madras, each department in each district provided that each office or group of offices specified in the table given therein, shall be a departmental unit. Under Item (i) the Board of Revenue shall be one unit for all branches excluding settlement of estates and commercial taxes; under Item (ii) it shall be departmental unit for settlement of estates branch and under Item (iii) it shall be for commercial taxes branch. It would thus be seen that the Board of Revenue shall have three separate departmental units. The Government have further amended the Rules by making Special Rules under GOMs No. 3134, Public Services Department dated 29-9-1975 which came into force w.e.f. 1-3-1970 adding below Rule 3(hh) in the Rules. The said Special Rules read as under :

"(ii) Appointment to the posts of Superintendent (Selection Grade) in the Office of the Board of Revenue (Urban Land Tax) - Commissioner of Urban Land Tax, and in the Offices of the Assistant Commissioner of Urban Land Tax, shall be made by promotion from among the Assistants in the Urban Land Tax Department and from among the Assistants in the District Revenue Unit or other branches of the Board of Revenue.

(iii) Appointment to the posts of Assistants in the Office of the Board of Revenue (Urban Land Tax) - Commissioner of Urban Land Tax and in the Offices of the Assistant Commissioner of Urban Land Tax, shall be made by promotion from among the Junior Assistants, in the Urban Land Tax Departments and from among the Junior Assistants of the District Revenue Unit or other branches of the Board of Revenue.

(iv) Besides direct recruitments provided in Rule 2, appointment to the posts of Junior Assistants and Typists in the Office of the Board of Revenue (Urban Land Tax) - Commissioner of Urban Land Tax and in the Office of the Assistant Commissioners or Urban Land Tax, shall be made by transfer from among the Junior Assistants and Typists of the District Unit or from other branches of the Board of Revenue, respectively.

2. In Annexure I, under the heading 'Section A - Selection Categories', under the sub-heading 'Revenue Departments' after Item 4, the following item shall be added, namely :

5. Office of the Board of Revenue (Urban Land Tax) - Commissioner of Urban Land Tax and the Offices of the Assistant Commissioner of Urban Land Tax.

(i) Superintendent

(ii) Assistants.

3. In Annexure II, under the heading 'Revenue Department' after Item 4, the following item shall be added, namely :

'5. Office of the Board of Revenue (Urban Land Tax) - Commissioner of Urban Land Tax and the Offices of the Assistant Commissioner of Urban Land Tax.

All members of the service : Commissioner of Urban Land Tax and the ex officio Secretary, Board of revenue (Urban Land Tax) Board of Revenue (ULT).

4. In Annexure III

(i) After category 1 Superintendent in the Directorate of Tamil Development in column (1) and the entries relating thereto in columns (2) and (3) the following category and entries shall be inserted, namely :

#1. Superintendents in By transfer 1. Revenue test. the Office of the or Board of Revenue promotion 2. Survey training (ULT) - Commissioner for a period not of Urban Land Tax less than four and Office of the weeks. Asstt. Commr. of Urban Land Tax. 3. (contd.3) Posts Tests(ii) Assistants in the Office Revenue Tests Parts I, of the Board of Revenue II and III. (Urban Land Tax) - Commissioner of Urban Land Tax and the Assistant Commissioners of Urban Land Tax.##

6. Service to count for promotion. - The Junior Assistant of District Revenue establishment working as Junior Assistant or working into higher post holding more responsibilities in the Urban Land Tax Department shall be entitled to count their services in the Urban Land Tax Department for the purpose of promotion as Assistants in the District Revenue Unit from which they were drawn to the extent they would have otherwise acted as Junior Assistants in the said District Revenue Unit.

Explanation. - For the purpose of these rules, 'District Revenue Unit' means, in respect of office located in Madras City the Revenue Unit of Madras District and in respect of office located in other places the Revenue Unit of the district in which the

office is located, but shall not include persons whose services were not regularised in the respective posts."

5. The controversy having arisen is whether for the purpose of promotions from the category of Assistants to the category of Superintendents, the units in respect of the City of Madras, Office of the Assistant Commissioner (Urban Land Tax) and the Office of the Board of Revenue (Urban Land Tax) and of the Commissioner (Urban Land Tax) would be a common unit? In view of the above-quoted Rules, the answer obviously would be in the negative. It is clear from the record that by GOMs No. 612, Revenue dated 2-5-1989 an abortive attempt was made to infuse all the departments into a common unit for the purpose of promotion but the same came to be cancelled by GOMs No. 642 Revenue dated 18-4-1990. Consequently, even the administrative decision taken had no statutory base but became fugitive. When the respondents approached the Tribunal claiming promotions on the premise that there was a common unit of all the departments in the city, the Tribunal by the impugned order has directed that the respondents be treated as part of the unit of the Board of Revenue and resultantly their cases be considered for promotion. Thus these appeals by special leave.

6. Shri Bhim Rao Naik, learned Senior Counsel for the appellants, contended that the approach adopted by the Tribunal in considering the Board of Revenue and other branches in the city as one unit for the purpose of promotion of Assistants as Superintendents is violative of Rule 3(hh) of the Rules. We find force in the contention. It is seen that Rule 3(hh) has in unambiguous language expressed unequivocally that "if suitable candidates are not available for promotion in the Office of the Board of Revenue (Land Revenue)", then the question of considering the claims of Assistants in other units as amended in GOMs No. 3134 dated 29-9-1975 would arise. It is sought to be contended by the respondents that for over 20 years the respondents had no opportunity for promotion. The appellants are juniors in point of time of appointment and, therefore, they cannot well steal march over the respondents. The Tribunal has considered in equity all the units as one unit for the purpose of promotion and does not call for interference under Article 136 of the Constitution. In similar cases, on an earlier occasion, the same view was expressed to which some of the appellants were parties. We find no force in the contention. We are called upon to interpret the rule. We cannot avoid correct interpretation and supplant equity to sway over statutory rule when Assistants in Board of Revenue are available for promotion to consider the cases of Assistants in other units. Equity operates where law is silent. It will be for the rule-making authority to decide the unit for the purpose of recruitment or promotion. The Government did not agree to integrate all the three units as one. In the face of the unambiguous statutory language employed therein, it would be difficult to give acceptance to the contention of the respondents. Even the amended rule has specifically provided that "in Rule 3, after sub-rule (hh), the following sub-rule shall be added", viz., as extracted above. In the light of the language of Rule 3(hh) and in view of the amendment brought after Rule 3(hh), the necessary conclusion would be that the Assistants, if available from the Board or Revenue Unit, would be considered first for promotion as Superintendent. In their absence, Assistants available in the Office of the Assistant Commissioner of Urban Land Taxes etc. are to be considered for promotion.

7. The appeals are accordingly allowed. The petition filed in the Tribunal stands dismissed but, in the circumstances, without costs.