

# SUPREME COURT OF INDIA

A.Rajagopalan

Vs.

District Collector, Thiruchirapalli District

C.A.No.251-256 of 2015

(R.Banumathi and R.Subhash Reddy,JJ.,)

12.03.2019

## JUDGMENT

**R.Banumathi,J.,**

1. These appeals arise out of the judgment dated 09.03.2012 passed by the Madurai Bench of Madras High Court in WA (MD) BSSB Nos.1285-1290 of 2011 in and by which the High Court has set aside the order of the Single Judge and directed the respondents to draw the seniority list taking Direct recruit Assistants, Promotee graduate Assistants and Promotee non-graduate Assistants as one group for promotion as Deputy Tahsildar. The order of dismissal of the review petitions by the High Court is also impugned in these appeals.

2. The issue involved in these appeals is the implementation of the amended Rule 5(g) in Annexure-III, item No. (ii) of the Tamil Nadu Revenue Subordinate Service Rules (TNRSS Rules) coupled with the judgment of the Supreme Court in *M. Rathinaswami and Others v. State of Tamil Nadu and Others*<sup>1</sup> by which the Supreme Court read down the Rule insofar as the Promotee graduate Assistants and upheld the validity of the Rule to the extent it gives preference to the Direct recruit Assistants over the Promotee non-graduate Assistants. The post of Assistant in Revenue Department is filled up by two sources; one is by direct recruitment through Tamil Nadu Public Service Commission and other is by promotion from the category of Junior Assistants with the minimum qualification of SSLC. The post of Assistant in Revenue Department in the State of Tamil Nadu is governed by the Tamil Nadu Ministerial Service Rules.

The said Rules are framed in exercise of powers conferred by proviso to Article 309 of the Constitution of India. As per the original TNRSS Rules, the inter-se seniority of the Direct recruit Assistants in the Districts shall be fixed in the following cyclical order irrespective of the date of their joining of the duty:-

Annexure IX  
(Referred to in Rule 3g(b)(ii))

First two vacancies	:	Persons appointed by promotion
Third vacancy	:	Persons appointed by direct recruitment
Fourth and fifth vacancies	:	Persons appointed by promotion
Sixth vacancy	:	Persons appointed by direct recruitment

3. The Direct recruit Assistants in Revenue Department submitted representation that they be given preferential treatment in the matter of promotion to the cadre of Deputy Tahsildar without basing their seniority in the Assistant list. In G.O. No.884 dated 12.08.1992, Revenue Department directed the Special Commissioner and Commissioner of Revenue Administration to send necessary draft amendment to the Special Rules to the TNRSS Rules so as to consider the cases of Direct recruit Assistants in the District Revenue Administration on completion of five years training for inclusion in the Deputy Tahsildar list. Accordingly, the Principal Commissioner and Commissioner of Revenue Administration had sent proposals for amendment to Rule 5(g) and Annexure-III to Special Rules for the TNRSS. The State Government approved the draft amendment to Rule 5(g) and Annexure-III Item (ii) to the Special Rules for the TNRSS Rules in G.O. No.133 dated 07.02.1995. The said amendment reads as under:-

“NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendments to the Special Rules for the Tamil Nadu Revenue Subordinate Service Section 28 in Volume III of the Tamil Nadu Services Manual, 1970.

2. The amendments hereby made shall be deemed to have come into force on the 4th December, 1978.

AMENDMENTS

2. In Annexure III, in item (ii), for the last proviso, the following provision(s) shall be substituted namely:-

“provided also that an Assistant appointed by direct recruitment in the office of the

erstwhile Board of Revenue, who has completed a total service of five years, passed all the tests prescribed and undergone training as Firka Revenue Inspector for a period of two years successfully shall be eligible for inclusion of his name in the approved list of Deputy Tahsildars for Madras City, above his seniors appointed other than by direct recruitment or for re-fixation of his seniority over such seniority, if his name has already been included in the list of Deputy Tahsildars. The consideration of his claim shall be against the first vacancy that follows the carried over vacancies.

3. After the proviso so substituted, the following proviso shall be added:-

“Provided also that an Assistant appointed by direct recruitment in the District Revenue Unit, who has completed a total period of five years, passed all the tests prescribed and undergone training as Firka Revenue Inspector for a period of two years successfully, shall be eligible for inclusion of his name in the approved list of Deputy Tahsildars in the District above his seniors appointed other than by direct recruitment or for re-fixation of his seniority over such seniors, if his name has already been included in the list of Deputy Tahsildars. The consideration of his claim shall be against the first vacancy that follows the carried over vacancies”.

4. The Promotee Assistants challenged the said amendment by filing O.A. No.2113 of 1995 before the Tamil Nadu Administrative Tribunal, Chennai. The Tribunal set aside the amendment and the G.O. No.884 dated 12.08.1992 and G.O. No.133 dated 07.02.1995 vide its order dated 26.02.1997. Challenging the order of the Tribunal, the Government of Tamil Nadu filed SLP(C) Nos.1821-1823 of 1999 (C.A.Nos.2727-2729 of 2000) in which the Supreme Court granted interim stay on 16.04.1999. The same was subsequently modified by the order dated 10.04.2000 in which the Supreme Court specifically directed that the stay of reversion shall continue and G.O. Nos.884 and 133 will be implemented prospectively i.e. with effect from 07.02.1995 and not retrospectively with a mention that the promotions made will be subject to the final result of the appeal. Since the SLPs were filed after the decision in *L. Chandra Kumar v. Union of India and Others* (1997) 3 SCC 261, the Supreme Court by its order dated 13.08.2003 disposed of the appeals filed by the State of Tamil Nadu by giving liberty to the State of Tamil Nadu to approach the High Court. Pursuant to the order of the Supreme Court, the State filed Writ Petition in W.P. Nos.27173-27174 of 2003 before the High Court of Madras challenging the order of the Tribunal dated 26.02.1997. By the common judgment dated 10.09.2005, the High Court set aside the order of the Tribunal dated 26.02.1997 and upheld the G.O. Nos.884 and 133 dated 12.08.1992 and 07.02.1995.

5. Aggrieved by the order of the High Court, Promotee Assistants filed appeal before the Supreme Court in CA Nos.2251-2252 of 2009. The Supreme Court upheld the G.O. No.884 dated 12.08.1992 and G.O.No.133 dated 07.02.1995 and partly allowed the appeals vide judgment dated 08.04.2009 in *M. Rathinaswami v. State of T.N.* (2009) 5 SCC 625. The Supreme Court upheld the validity of the amendment to Rule 5(g) and Annexure-III item(ii) of TNRSS Rules to the extent that it gives preference to the Direct recruit Assistants over the Promotee non-graduate Assistants observing that the very basis for the

distinction sought to be drawn is that direct recruits are graduates and hence, intellectually superior to non-graduates. However, the Supreme Court read down the rule to save it from becoming violative of Articles 14 and 16 of the Constitution and held that once a promotee becomes a graduate, there cannot be any rational basis for making a distinction vis-a-vis direct recruits and held that the rule is inapplicable to the promotees who are graduates. In paras No. (19), (22) and (32), the Supreme Court held as under:-

“19. In our opinion, by the very same logic given by the respondent and the High Court, a promotee Assistant who is also a graduate has to be placed on a par with the direct recruits because he has also got a degree. In our opinion, we have to hence read down the impugned amendment and interpret it as inapplicable to those promotee Assistants who are also graduates/postgraduates. In other words, the impugned amendment will only enable the direct recruits to be placed above those promotee Assistants who are non-graduates for the purpose of promotion as Deputy Tahsildar.

22. In the present case, both the directly recruited Assistants and promoted Assistants have been integrated into one cadre of Assistants. No doubt, even after this integration for further classification for promotion higher educational qualifications can possibly be a rational basis, but in our opinion there can certainly be no further classification between direct recruits and those promotee Assistants who have acquired the graduation qualification whether before joining as Junior Assistant or thereafter. Once a promotee becomes a graduate we cannot see any rational basis for discrimination against him vis-a-vis direct recruits.

32. For the reasons given above these appeals are partly allowed and the impugned judgment is partly set aside, and it is held that the impugned rule so far as it places directly recruited Assistants above the promotees for promotion as Deputy Tahsildar shall only apply to those promotees who are non-graduates, but it is inapplicable to those promotees who are graduates.”

6. In compliance of the judgment of the Supreme Court, the Government issued directions to the Principal Secretary and Commissioner of Revenue Administration, Chennai in Letter (MS) No.305 dated 07.08.2009 to implement the order of the Supreme Court in letter and spirit and the District Collectors were instructed to take necessary follow up action to implement the order. Accordingly, the District Collectors of Tiruchirappalli, Sivagangai, Tirunelveli, Madurai, Coimbatore and Vellore have passed orders redrawing the seniority list by treating the Direct recruit Assistants on par with the Promotee graduate Assistants and redrawn the panel of Deputy Tahsildars and this has effected the seniority of number of Direct recruit Assistants.

7. Being aggrieved by the orders of the District Collectors, a batch of writ petitions were filed by the Promotee non-graduate Assistants, praying to stay the orders of redrawing of the seniority list. The Direct recruit Assistants also filed a batch of writ petitions against the revised list of Deputy Tahsildars by District Collectors of Tiruchirappalli, Sivaganga and Tirunelveli inter-alia challenging their reversion inter alia contending that the revised lists

also contained the names of Promotee Assistants who are non-graduates. The Single Judge of the High Court initially vide order dated 19.04.2010 directed the authorities to maintain status quo in the writ petitions filed by Direct recruit Assistants. However, the Single Judge vide order dated 12.10.2011 dismissed the writ petitions holding that the judgment of the Supreme Court dated 08.04.2009 is declaratory and binding on all concerned. The learned Single Judge held that no direction to implement the order of the Supreme Court is necessary as the direction of the Supreme Court is bound to be obeyed by all authorities concerned including the District Collectors.

8. Challenging the judgment of the Single Judge dated 12.10.2011, a batch of writ appeals were filed before the Madurai Bench of Madras High Court. The Madurai Bench vide common judgment dated 09.03.2012 set aside the judgment of the Single Judge and directed the State of Tamil Nadu to draw the seniority list taking Direct recruit Assistants, graduate promotees as well as non-graduate promotees forming as one group and directed the State to draw the panel as on 04.12.1978 and reconsider the promotion subject to the candidates satisfying the criteria required under the rules within a period of two months. While passing the impugned judgment, the Division Bench took into consideration the Letter (MS) No.392 dated 30.12.2011 in and by which the government accepted the proposal of the Principal Secretary, Revenue to dispense with the degree or graduation as minimum educational qualification for the post of Deputy Tahsildar and directed to take non-graduate promotees along with graduate promotees and direct recruits as one group, based on the seniority as on 04.12.1978 for the post of Deputy Tahsildar. The Division Bench also directed the State not to disturb the cases of those candidates who were already promoted but not in service either on account of retirement on superannuation or by reason of death. The review petitions filed by the appellants herein were dismissed by the Madurai bench of Madras High Court. Being aggrieved, the appellants and others have filed these appeals.

9. We have heard Mr. Shekhar Naphade and Mr. P.S. Narsimha, learned senior counsel appearing for the appellants. We have heard Mr. V. Giri, learned senior counsel appearing for the State of Tamil Nadu. We have heard Mrs. Nalini Chidambaram and Mr. V. Krishnamurthy, learned senior counsel appearing for Promotee graduate Assistants. We have heard Mr. R. Viduthalai, learned senior counsel appearing for Promotee non-graduate Assistants. We have perused the impugned judgment and materials on record.

10. The question involved in these appeals is the implementation of the amendment to Rule 5(g) of TNRSS Rules 11 and Annexure-III, item(ii) coupled with the judgment of the Supreme Court in Rathinaswami in and by which the Supreme Court upheld the amendment to the rule qua Promotee non-graduate Assistants and read down the rule insofar as the Promotee graduate Assistants.

11. The State of Tamil Nadu issued G.O. No.884 whereby directions were issued to amend Rule 5(g) and Annexure-III, item(ii) of TNRSS Rules retrospectively i.e. with effect from 04.12.1978. Accordingly, G.O. No.133 dated 07.02.1995 was issued providing amendment to the statutory Rules. The validity of the amendment to Rule 5(g) and Annexure-III item (ii) to the TNRSS Rules in G.O. Nos. 884 and 133 dated 12.08.1992 and 07.02.1995 has

been upheld by the Supreme Court in Rathinaswami. While upholding the amendment to the Rule, the Supreme Court read down into the Rule to the extent that it gives preference to the Direct Recruit Assistants over the Promotee Assistants who are graduates. The Supreme Court held that the amended rule giving preference to the Direct recruit Assistants would be applicable only to the Promotee non-graduate Assistants and Rule would be inapplicable to the Promotee Assistants who are graduates.

12. In the judgment of the Supreme Court in Rathinaswami, there is no specific clarification as to the mode of implementation of the judgment dated 08.04.2009 and as to how the Promotee graduate Assistants and Direct recruit Assistants are to be integrated for considering them for promotion as Deputy Tahsildars; whether prospectively or retrospectively with effect from 04.12.1978.

13. The State of Tamil Nadu by its Letter (MS) No.305 dated 07.08.2009 directed the District Collectors to implement the order of the Supreme Court in letter and spirit. In the absence of any clarification in the judgment of the Supreme Court, the District Collectors passed various types of orders reversing promotions effected between 1995 to 2009 and placing Promotee graduate Assistants in the earlier panel by revising the seniority thereby upsetting the promotions not only in the rank of Deputy Tahsildars but also further promotions were effected. It is stated that some of the District Collectors implemented the order of the Supreme Court dated 08.04.2009 with retrospective effect i.e. 04.12.1978. After amendment of Tamil Nadu Revenue Subordinate Service Rules vide G.O. No.133 dated 07.02.1995, promotions were effected in all the categories. Promotions were effected not only to the category of Deputy Tahsildar but further promotions are made to the post of Tahsildars, Deputy Collectors, District Revenue Officers etc. Be it noted that in the judgment of this Court dated 08.04.2009, no specific directions were issued for revision of seniority list or to upset the promotions which were already given.

14. Letter No.392 dated 30.12.2011:- The Supreme Court in paras (25) and (26) in Rathinaswami held that “whether graduate degree is a sufficient basis for classification vis-a-vis non-graduates and whether such classification has rationale relation to the nature of duties of a Deputy Tahsildar” is for the State of Tamil Nadu to decide and “only executive authorities have expertise in administrative matters and it is ordinarily not proper for the Supreme Court to sit in appeal over the decisions unless it is something totally arbitrary or shocking.” Based on the observations of the Supreme Court, Principal Secretary to the State Government vide its Letter (MS) No.392 dated 30.12.2011 recommended for amendment to Rule 5(g) of the TNRSS Rules Annexure-III, item (ii) to the effect that it may not be appropriate to prescribe graduation or degree as minimum educational qualification for the post of Deputy Tahsildar. The State of Tamil Nadu vide its letter dated 30.12.2011 accepted the recommendation of the Principal Secretary/Commissioner of Revenue Administration and directed not to prescribe degree or graduation as minimum qualification for the post of Deputy Tahsildar. Acceptance of the recommendation of dispensing with the graduation as the essential qualification is still under consideration of the State Government. In that letter, Government merely accepted the recommendations of the Principal Secretary and Commissioner of Revenue who has opined that it may not be appropriate to prescribe graduate qualification as essential qualification for the post of

Deputy Tahsildar. It is to be pointed out that at this stage, appointment to the post of Deputy Tahsildar is governed by rules framed under proviso to Article 309. In the absence of any amendment to such rules, the decision of the Government, as accepted in the letter dated 30.12.2011 issued in Letter (MS) No.392, has no consequence so far as non-graduate Promotees are concerned.

15. The Division Bench did not keep in view that the letter No.392 dated 30.12.2011 is still only a proposal and the rules are yet to be amended. The Division Bench fell in error by relying upon the said letter dated 30.12.2011 and erred in directing the State to treat the Promotee non-graduate Assistants, Promotee graduate Assistants and Direct recruit Assistants as one category and draw revised seniority list for the purpose of promotion to the post of Deputy Tahsildar. The Division Bench failed to notice that the amendment to Rule 5(g) of TNRSS Rules by G.O. No.133 dated 07.02.1995 has been upheld by the Supreme Court and has attained finality. The direction of the Division Bench to treat all three categories viz. Promotee non-graduate Assistants, Promotee graduate Assistants and Direct recruit Assistants as one group for the promotion to the post of Deputy Tahsildar virtually amounts to reversing the judgment of the Supreme Court. In our considered view, the direction of the Division Bench in the impugned judgment is wholly misconceived.

16. In these appeals, the State of Tamil Nadu has filed two counters. In the counter filed in November, 2013, in para No. (5), the State Government has taken a stand that “the direction of the Division Bench in the impugned judgment categories non-graduate promotee along with graduate promotee and Direct Recruits” as “one group” is agreeable to the State Government and only on that basis, the State Government issued letter No.392 dated 30.12.2011. The stand of the State Government in para No. (5) of its counter filed in November, 2013 is unacceptable as it is in clear deviation from the judgment of the Supreme Court in Rathinaswami. Of course, subsequently in the common rejoinder filed by the State of Tamil Nadu, the State has taken the stand that the averments raised by the State Government in para No. (5) of the affidavit are not acceptable and not a correct stand. In the rejoinder, it is further averred that based on the amended rule since promotions have been effected, government has decided not to disturb the 313 Direct recruit Assistants who had already been included in the panel of Deputy Tahsildars from the year 1995 and further promotions have been effected as Tahsildars etc. The State Government has also taken a clear stand that the implementation of the order of the High Court dated 09.03.2012 with effect from 04.12.1978 would result in reversion of 313 Direct recruit Assistants who had already been promoted by virtue of preferential treatment. The stand of the State Government not to disturb 313 Direct recruit Assistants reads as under:-

“....the Government considering the earlier G.Os 884 and 133 having been implemented from 1995 and that too with the intervention of orders of the Supreme Court and the High Court have decided not to disturb the 313 DRAs who had already been included in the panel of Deputy Tahsildars from the year 1995 and to implement orders of the Supreme Court from the date of orders i.e. 08.04.2009”

17. As discussed earlier, as per G.O. Nos. 884 and 133 dated 12.08.1992 and 07.02.1995 respectively and the amendment to Rule 5(g) of TNRSS Rules had been upheld by the

Supreme Court, of course, by reading down into the Rule that the Promotee graduate Assistants are to be treated on par with Direct recruit Assistants. The classification of the “Promotee graduate Assistants” on par with Direct recruit Assistants is only by virtue of the order of the Supreme Court dated 08.04.2009. As rightly pointed out by Mr. Shekhar Naphade, learned senior counsel appearing for the appellants and Mr. V. Giri, learned senior counsel appearing for the State, the implementation of the order with effect from 04.12.1978 would create unprecedented confusion and upset the settled position of Direct recruit Assistants who had been promoted from 1995 till 2009 by virtue of the amended Rule conferring preferential treatment on the Direct recruit Assistants. If such a course of action is permitted, it would seriously prejudice the rights of those of the Direct recruit Assistants who have been promoted from 1995.

18. By wrongly relying on the letter dated 30.12.2011 of the Government, in the impugned judgment, the High Court has held that graduate and non-graduate Promotee Assistants would be considered as one single category along with Assistants and the impugned judgment of the High Court cannot be sustained and is liable to be set aside.

19. In the result, the impugned judgement of the High Court is set aside and these appeals are allowed with the following observations and directions:-

(i) Promotions of the Direct recruit Assistants effected between 07.02.1995 and 08.04.2009 and their seniority in their respective positions as on date, shall not be disturbed;

(ii) The benefit extended to the graduate promotee Assistants by placing them on par with Direct recruit Assistants is to be given effect to prospectively from the date of judgment of this Court dated 08.04.2009 rendered in the case of M. Rathinaswami v. State of T.N. reported in (2009) 5 SCC 625;

(iii) After 08.04.2009, the promotion to the post of Deputy Tahsildar from its feeder category, i.e., Direct recruit Assistants and Promotee graduate Assistants, shall be strictly in accordance with the judgment of this Court referred above, i.e., treating Promotee graduate Assistants on par with Direct recruit Assistants. Such promotion shall be given effect to, without reference to any interim order(s) passed by the High Court;

(iv) If any panels are prepared, and promotions are given, after 08.04.2009 for promoting the Assistants to the post of Deputy Tahsildars in Tamil Nadu Revenue Subordinate Service contrary to the judgment of this Court dated 08.04.2009, such panels and promotions have to be revised so as to bring in conformity with the judgment of this Court referred above;

(v) By virtue of the judgment of this Court dated 08.04.2009, referred above, Promotee graduate Assistants are placed on par with Direct recruit Assistants. So far as Promotee non-graduate Assistants are concerned, the amended rule holds the field, which gives preferential treatment to Direct recruit Assistants, over Promotee

non-graduate Assistants;

(vi) Promotee non-graduate Assistants, who are impleaded as party respondents in these appeals, are not entitled to any directions in their favour, as much as, all these appeals are preferred by Direct recruit Assistants;

(vii) While implementing the above directions, if the seniority and promotion, of the persons who are already retired or dead, is affected in any manner, payments made on account of such seniority and promotion earlier granted to them during the interregnum period, i.e., from 08.04.2009 till this date shall not be recovered.

(viii) So far as Promotee non-graduate Assistants are concerned, it is open for them to pursue with the Government for appropriate amendment to the Rules, in which event we keep it open to Government to consider such request on its own merits.

Judgment Referred.

<sup>1</sup>(2009) 5 SCC 0625