

A

R. PALANISAMY & ORS.

v.

THE REGISTRAR GENERAL,
HIGH COURT OF MADRAS & ORS.

B

(Special Leave Petition (C) No. 6439 of 2020)

JULY 24, 2020

**[S. A. BOBDE, CJI, A. S. BOPANNA AND
V. RAMASUBRAMANIAN, JJ.]**

C

Service Law – Promotion to the post of Junior Bailiff – Claim for – Various persons working as Record Clerks and Office Assistants in Erode District filed a writ petition before the High Court seeking promotion to the post of Junior Bailiff without insisting on the educational qualification of a pass in SSLC – Their claim was based on the High Court order dated 22.07.2009 in batch of

D

cases and the fact that present vacancies arose before the enactment of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 – The High Court rejected the claim on the ground that the previous judgment dated 22.07.2009 in the batch of cases is no longer of any relevance after coming into force of 2016 Act and that date on which vacancies arose cannot determine the Rule

E

applicable for recruitment by promotion – On appeal, held: After the implementation of the recommendations of (i) The Shetty Commission and (ii) The Tamil Nadu v Pay Commission, no one was entitled to claim a right to promotion to the post of Junior Bailiff, without the prescribed essential qualification – The petitioners

F

cannot take refuge under the failure of the Government to issue necessary amendment to Statutory Rules and the previous judgment of the High Court dated 22.07.2009 – Pending the issue of amendment to Statutory Rules, (i) The nomenclature of the post has changed and (ii) a higher scale of pay also given to the post – One

G

cannot reap the benefit and ignore the requirement – The previous judgment of the High Court dated 22.07.2009 did not take into considerations any of these developments and hence cannot be cited as precedence by petitioners – Further, 2016 Act actually replaces the General Rules for the Tamil Nadu State and Subordinate Services – But Act does not override the Special Rules for Tamil Nadu Basic

H

Service – The High Court and petitioners overlooked s.68 of the 2016 Act – However, the ultimate conclusion reached by the High Court is unassailable – No ground to interfere with the order of the High Court. A

Dismissing the Special Leave Petition, the Court

HELD: 1. It is clear that after the implementation of the recommendations of (i) the Shetty Commission and (ii) the Tamil Nadu V Pay Commission, no one was entitled to claim a right to promotion to the post of Junior Bailiff, without the qualifications prescribed. [Para 13][594-F-G] B

2. The petitioners cannot take refuge under (i) the failure of the Government to issue a necessary amendment to Statutory Rules and (ii) the previous judgment of the High Court dated 22-07-2009 passed in a batch of cases. Pending the issue of amendment to statutory rules, (i) the nomenclature of the post has changed and (ii) a higher scale of pay also given to the post. One cannot reap the benefit and ignore the requirement. The previous judgment of the High Court did not take note of any of the above developments and hence the same cannot be cited as a precedence by the petitioners. [Para 14][594-G-H; 595-A] C D

3. The argument revolving around the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, and the fact that vacancies arose in the year 2015, prior to the enactment, is of no relevance. This Act was enacted to consolidate the law relating to recruitment and the terms and conditions of service of persons appointed to the State and Subordinate services in the State of Tamil Nadu, in terms of the mandate contained in Article 309. Until the advent of this Act, the State of Tamil Nadu, like many other States, was only issuing Rules in exercise of the power conferred by the Proviso to Article 309, though such Rules were meant only to be a stop gap arrangement until an Act of the legislature was made. This 2016 Act actually replaces the General Rules for the Tamil Nadu State and Subordinate Services. But the Act does not override the Special Rules. Section 68 of Tamil Nadu Act No.14 of 2016 makes it clear that the Special Rules will prevail over the provisions of the Act, if any provision of the act is inconsistent therewith. [Para 18][596-B-D] E F G

H

A 4. But the petitioners as well as the High Court overlooked
the above provision. In view of section 68, the High court may
not be right in saying in the impugned order (paragraph 11) that
the Special Rules would no longer govern the service of the
petitioners. The reliance placed by the High Court on Section
B 20(2) of the 2016 Act may not also be fully correct, since the
same does not, by itself prescribe any qualification. Section 20
merely explains what a reference in the Special Rules to the
expression ‘minimum general educational qualification’ would
connote. This provision namely Section 20, is applicable only to
C cases where the Special Rules prescribe the possession of the
minimum general educational qualification as a prerequisite for
appointment to any class or category of service. Section 20 of the
Act read with Schedule-III merely defines the expression
“*minimum general educational qualification*” as found in the Special
Rules. [Para 19][596-F-H]

D CIVIL APPELLATE JURISDICTION: Special Leave Petition
(Civil) No. 6439 of 2020.

From the Judgment and Order dated 05.11.2019 of the High Court
of Judicature at Madras in Writ Petition No. 3312 of 2019.

E Purushottam Sharma Tripathi, Praveen Vignesh, Mukesh Kumar
Singh, Advs. for the Petitioners.

The following Order of the Court was passed :

ORDER

F 1. Aggrieved by the dismissal by the High Court, of their claim for
promotion to the post of Junior Bailiff, persons working as Office
Assistants/Record Clerks in various courts in Erode District of the State
of Tamil Nadu have come up with this special leave petition.

2. We have heard Mr. Purushottam Sharma Tripathi, learned
counsel appearing for the petitioners.

G 3. 22 persons, of whom 3 are working as Record Clerks and the
rest working as Office Assistants in various courts in Erode District
filed a writ petition on the file of the High Court of Judicature at Madras,
seeking a Mandamus to consider their claim for promotion to the post of
Junior Bailiff, without insisting on the educational qualification of a pass
H

in SSLC. Their claim was based upon (1) a previous order of the High Court dated 22.07.2009 in a batch of cases and (2) the fact that the vacancies to which they lay a claim, arose before the issue of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and that, therefore, a pass in SSLC cannot be insisted upon as a qualification for promotion to the post of Junior Bailiff.

4. The High Court rejected the claim on the ground that the previous judgment of the Court dated 22.7.2009 in the batch of cases is no longer of any relevance, after the coming into force of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and that the date on which the vacancies arose cannot determine the Rule applicable for recruitment by promotion. Therefore, aggrieved by the said order, the petitioners are before us.

5. As pointed out earlier, there were 22 petitioners before the High Court, out of whom 3 persons are working as Record Clerks and the remaining 19 are working as Office Assistants. The post of Office Assistant falls under category 5 of Class-III of the Tamil Nadu Basic Service. All matters concerning the posts in the Tamil Nadu Basic Service, such as their constitution, appointing authority, method of recruitment, qualifications prescribed for appointment, probation, discharge and postings and transfers, are governed by a set of Special Rules known as the Special Rules for Tamil Nadu Basic Service, issued in exercise of the powers conferred by the Proviso to Article 309 of the Constitution. Rule 1 of these Special Rules divides the posts in the entire Tamil Nadu Basic Service into four classes, with each class being sub-divided into various categories of posts. While Class-I has 4 categories of posts, Class-II has 5 categories of posts, Class-III has 6 categories of posts, Class-IV has 86 categories of posts. The post of Office Assistant falls under category 5 of Class-III of the Tamil Nadu Basic Service. Most of the petitioners before the High Court belonged to this category.

6. Three petitioners before the High Court were working as Record Clerks and this post falls under category 1A of the Tamil Nadu General Subordinate Service. The terms and conditions of service of the posts falling under the Tamil Nadu General Subordinate Service are stipulated in another set of Special Rules known as Special Rules for Class XXII of the Tamil Nadu General Subordinate Service, issued in exercise of the power conferred by the Proviso to Article 309.

H

A 7. Thus, in essence, the petitioners who went before the High
Court, seeking promotion to the post of Junior Bailiff, belonged to two
categories of posts, in 2 different services, one falling in the Tamil Nadu
Basic Service and another falling in the Tamil Nadu General Subordinate
Service, each of which is governed by a separate set of Special Rules
B issued in exercise of the power conferred by the Proviso to Article 309.

8. The post to which the petitioners laid a claim by way of
promotion, *namely* the post of Junior Bailiff, was formerly known as the
post of “*process server*” falling under Category 3 of Class-III of the
Tamil Nadu Basic Service. It was a Group ‘D’ post. But after the
C implementation of the recommendations of the Tamil Nadu V Pay
Commission, the post of Process Server, was upgraded from being a
Group ‘D’ post into a Group ‘C’ post and consequently deleted from the
Basic Service and included in the Tamil Nadu Judicial Ministerial Service
(which is a service superior to the Basic service). This upgradation was
accompanied by a consequential upward revision of the pay-scale also.
D This exercise of upgradation of the post from Basic Service to Judicial
Ministerial Service with a higher pay scale, was done under a Government
order in G.O.Ms.No. 1653, Home, (Cts.V) Department, dated
22-12-2008. Though necessary amendments to both sets of statutory
rules namely the Special Rules for Tamil Nadu Basic Service (for the
deletion of the post there-from) and the Special Rules for Tamil Nadu
E Judicial Ministerial Service (for the inclusion of the post therein) were to
follow, it never happened.

9. But in the meantime, another event took place. That event
related to the implementation of the recommendations of the First
National Judicial Pay Commission (Shetty Commission) made in the year
F 2003. The Report recommended the creation of 2 categories of posts of
Bailiffs in the Process establishment of courts, wherever there was only
one category of the post. But in the State of Tamil Nadu, there were
already 2 categories of posts namely Junior Bailiff and Senior Bailiff.
The First National Judicial Pay Commission also recommended in its
G report, (i) the grant of higher pay scales for both categories of bailiffs
and (ii) the prescription of Matriculation as the minimum general
educational qualification both for direct recruitment and for promotion to
these 2 categories of posts of Bailiffs. These recommendations were
accepted by the Government of Tamil Nadu and the revision of the pay

H

scales of the posts of Bailiffs took place under G.O.Ms.No. 40, Home (Cts.V) dated 11-2-2008. Thereafter, the Government also issued G.O. Ms.No.761, Home (Cts.V) dated 10-7-2008, accepting the recommendation of the Shetty Commission that the minimum general educational qualification for the posts in the Process Establishment of courts, shall be Matriculation, both for direct recruitment and promotion.

10. Thus 2 things happened during the year 2008, which are as follows:

(A) The first was the implementation of the recommendations of the Shetty Commission (i) to create 2 categories of Bailiffs (Junior Bailiff and Bailiff/Senior Bailiff) with a revision of the scales of pay of the posts and (ii) the prescription of the qualification of Matriculation. (B) The second was the implementation of the recommendations of the Tamil Nadu V Pay Commission (i) for deleting the post of Process Server from the Basic Service and including the same in the Judicial Ministerial Service under the name 'Junior Bailiff' and (ii) granting a higher scale of pay for the post.

11. As a matter of fact, apart from the aforesaid category of Process Servers in the Moffussil courts, upgraded as Junior Bailiffs and included in the Judicial Ministerial Service, there were also other categories of Bailiffs, already in existence in the Tamil Nadu Judicial Ministerial Service. They were (1) Bailiff, Court of Small Causes-cum-Court keeper, City Civil Court, Madras; (2) Senior Bailiffs of the Presidency Court of Small Causes, Madras; (3) Junior Bailiffs of the Presidency Court of Small Causes, Madras; (4) Process-Writers of the Presidency Court of small Causes, Madras. These posts already existed in categories 1 to 4 of Class-II of the Tamil Nadu Judicial Ministerial Service. Similarly, there was also one more post namely the post of Senior Bailiff in Mofussil Courts, falling under Class-V of the Tamil Nadu Judicial Ministerial Service.

12. For appointment to the aforesaid categories of posts of Bailiff falling under Class-II and Class-V of the Tamil Nadu Judicial Ministerial Service, the Special Rules for Tamil Nadu Judicial Ministerial Service, prescribe the completion of SSLC as an essential qualification. This can be seen from the table below Rule 19 of the Special Rules for Tamil Nadu Judicial Ministerial Service:

H

A	2.(c) Senior Bailiff	Direct recruitment or recruitment by transfer	Minimum General Educational Qualification (Substituted vide G.O.Ms. No.316, Home (Ser.I) Dept., dated 12.02.1990 (Proviso Omitted vide G.O.Ms. Nos.1771, Home (Cts.v) Dept., dated 25.11.1996)
B			
C	2.(d) Junior Bailiffs and Process Writers.	Direct recruitment or recruitment by transfer	Minimum General Educational qualification or a pass in the Indian Air Force educational test for reclassification to Leading Air Craftsman. Provided that in the case of appointment by transfer from the Tamil Nadu Last Grade Service and Tamil Nadu General Subordinate Service the educational qualifications shall be completed Secondary School Leaving Certificate. Provided further that in the case of a person who was a member of the Tamil Nadu Last Grade Service or the Tamil Nadu General Subordinate Service before 1969, the educational qualification shall be anything higher than the minimum than prescribed for the category to which the transferee belonged before 1969.
D			
E	(for items 2(b) and 2(c), items 2(b), 2(c) and 2(d) substituted, vide G.O.Ms No.1600, Home Dept., dated 15.06.1971		
F			

13. Therefore, it is clear that after the implementation of the recommendations of (i) the Shetty Commission and (ii) the Tamil Nadu V Pay Commission, no one was entitled to claim a right to promotion to the post of Junior Bailiff, without the qualifications prescribed as above.

G 14. The petitioners cannot take refuge under (i) the failure of the Government to issue necessary amendment to Statutory Rules and (ii) the previous judgment of the High Court dated 22-07-2009 passed in a batch of cases. Pending the issue of amendment to statutory rules, (i) the nomenclature of the post has changed and (ii) a higher scale of pay also given to the post. One cannot reap the benefit and ignore the

H

requirement. The previous judgment of the High Court did not take note of any of the above developments and hence the same cannot be cited as a precedence by the petitioners. A

15. In fact, if the petitioners pitch their claim on the ground that till an amendment to the statutory rules is issued, the higher qualification cannot be insisted, then they will have to stand or fall on the basis of the rule position as it exists. The Special Rules for Tamil Nadu Judicial Ministerial Service (as it remains without amendment) do not contain any post called Junior Bailiff in Moffussil courts. Class-II of the said service comprise of 4 categories of Bailiffs all of which are in the Presidency Court of Small Causes, Chennai. Class V comprises of only one category of post namely Senior Bailiff in Moffussil courts. Therefore, the petitioners cannot lay a claim on the basis of the unamended Tamil Nadu Judicial Ministerial Service Rules. B C

16. Similarly, the petitioners cannot claim anything even on the basis of the Special Rules for Tamil Nadu Basic Service, since the Basic Service also does not contain any post called Junior Bailiff. There was a post called 'Process Server' in the Basic Service, but a higher scale of pay was granted to the said post on the basis of the recommendations of the Pay Commission with a view to delete it from the Basic Service and include it in the Judicial Ministerial Service. The benefit of a higher pay scale having got attached to the post with a corresponding obligation to look for a higher qualification, it is no more open to the petitioners to attack the qualification alone. D E

17. There is one more reason why the Special Rules for Tamil Nadu Basic Service (as they exist) cannot be pressed into service by such of those petitioners who are working as Office Assistants. Rather than helping them, these rules will actually destroy their claim. The post of 'Process Server' is in Category 3 of Class-III of the Basic Service. The method of recruitment to various posts in the Basic Service are prescribed in the Table below Rule 3 (a) of the Special Rules for Tamil Nadu Basic Service. This Table below Rule 3 (a) prescribes that all categories of posts in Class-III can be filled up only by 3 methods of recruitment namely (i) Direct recruitment (ii) Recruitment by transfer from any other service and (iii) Transfer from Class-IV. Since the post of Office Assistant falls in Category 5 of the very same Class-III of the very same service, those petitioners who are working as Office Assistants, cannot fit their claim for promotion into any one of the above F G H

- A 3 methods of recruitment. Therefore, if the petitioners place too much reliance upon the fact that the rules stand unamended, most of them (19 out of 22) will be knocked off by the prescription contained in the Table below Rule 3(a).

18. The argument revolving around the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, and the fact that vacancies arose in the year 2015, prior to the enactment, are of no relevance. This Act was enacted to consolidate the law relating to recruitment and the terms and conditions of service of persons appointed to the State and Subordinate services in the State of Tamil Nadu, in terms of the mandate contained in Article 309. Until the advent of this Act, the State of Tamil Nadu, like many other States, was only issuing Rules in exercise of the power conferred by the Proviso to Article 309, though such Rules were meant only to be a stop gap arrangement until an Act of the legislature was made. This 2016 Act actually replaces the General Rules for the Tamil Nadu State and Subordinate Services. But the Act does not override the Special Rules. Section 68 of Tamil Nadu Act No.14 of 2016 makes it clear that the Special Rules will prevail over the provisions of the Act, if any provision of the act is inconsistent therewith. Section 68 reads as follows:

- E *“If any provision of this Act is inconsistent with any provision of the special rules applicable to any particular service, the special rules shall, in respect of that service, prevail over the provisions of this Act.”*

19. But the petitioners as well as the High Court overlooked the above provision. In view of section 68, the High court may not be right in saying in the impugned order (paragraph 11) that the Special Rules would no longer govern the service of the petitioners. The reliance placed by the High Court on Section 20(2) of the 2016 Act may not also be fully correct, since the same does not, by itself prescribe any qualification. Section 20 merely explains what a reference in the Special Rules to the expression ‘minimum general educational qualification’ would connote. This provision namely Section 20, is applicable only to cases where the Special Rules prescribe the possession of the minimum general educational qualification as a prerequisite for appointment to any class or category of service. Section 20 of the Act read with Schedule-III merely defines the expression “*minimum general educational qualification*” as found in the Special Rules.

H

R. PALANISAMY & ORS. v. THE REGISTRAR GENERAL, 597
HIGH COURT OF MADRAS & ORS.

20. Therefore, in fine, the ultimate conclusion reached by the High A
court is unassailable, despite the omission of the High court to take note
of section 68 of the Tamil Nadu Government Servants (Conditions of
Service) Act, 2016 and the interpretation that Section 20 deserved. Hence
we see no ground to interfere with the order of the High court. Therefore,
the special leave petition is dismissed. B

Ankit Gyan

SLP dismissed.