

PETITIONER:
A.MAHUDESWARAN & ORS.

Vs.

RESPONDENT:
GOVERNMENT OF TAMIL NADU & ORS.

DATE OF JUDGMENT: 12/03/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATASWAMI K. (J)

CITATION:
JT 1996 (5) 506 1996 SCALE (3)289

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NOS.5162-72 OF 1996
(Arising out of SLP (C) Nos.6120-30 of 1994)
O R D E R

Delay condoned.

We have heard learned counsel for the parties.

Leave granted.

The facts are not in dispute. Consequent upon the abolition of the post of the Village Officer in the year 1982, around 2000 Section Writers assisting the village officers were sought to be taken into the Survey and Settlement Department on their completion of three months training to be given to them and then appointed as Surveyor-cum-Draftsman on contract basis Pursuant thereto, the appellants were given training as Surveyors on a fixed pay. On completing the training of three months prescribed by the Government, they were appointed as Surveyors. The appointment as Surveyors was to take effect from the date they joined the duty in the new updating District Survey Unit to which they were allotted. Consequently, they joined the duty and were discharging duty either as Surveyor or Draftsman against regular pay-scales.

It is also not in dispute that pursuant to the recommendations made by the Assistant Director of Survey in various orders, the Government had sought recruitment through the Public Service Commission. The Public Service Commission had granted relaxation. In furtherance thereof, the Government relaxed the age qualification of some of them and appointed them in the Tamil Nadu Survey and Settlement Subordinate Service with effect from the date on which the regular pay scales were given to them in April 1987. It is also not in dispute that many of the appellants have been subsequently promoted either as Field Surveyors or Inspectors. The clarification thereafter has been sought by the Assistant Directors as to how the combined seniority of the persons who were working as Surveyor or Draftsmen in the

respective units was to be determined. The Government in their clarificatory letter dated August 29, 1990 stated that the procedure of seeking their option and treating them as separate units and regularizing the respective candidates in the units to which they opted would create problems for the reason that the required number of posts may not be available in the respective units and that, therefore, it would be better to regularize their services either as Field Surveyor or Draftsman and keep them with effect from the date of their respective promotions given subsequently.

In furtherance of that clarification the regularization of the services of the appellants came to be made by the Assistant Directors.

It would appear that subsequently a representation was made by the contesting respondents in these cases on the basis of which the clarification was sought for. The Government in the impugned proceedings dated July 31, 1992 directed to regularize the services of the respondents. Consequently, the appellants became junior-most. They challenged the orders in the Tribunal in a number of matters and the Tribunal by its common order dated October 27, 1993 disposed of all the services in alternative Vacancies. It would appear that the Government also had taken the stand in the Tribunal to adopt alternative vacancies to the persons working in the posts of Surveyor and the Draftsman depending upon the number of posts available in each unit. The regularization was directed to be done accordingly. Calling that order in question, these appeals by special leave have been filed.

Shri S. Sivasubramaniam and Shri R. Mohan, learned senior counsel appearing for the appellants, contended that the Government having regularized their service in the Survey Department and directed to appoint them on regular basis w.e.f. the date on which they were appointed after completing the training and the Public Service Commission having agreed for regularization of the services of the appellant and given promotion to the higher posts, the Government have rightly regularized the services of the appellants. There is no illegality in the process of regularization made by the Assistant Director, Salem. Subsequent order directing re-regularisation is without any basis. It is violative of the principle of natural justice for the reason that no material has been placed on the basis of which their services duly regularized could be set at naught nor was any opportunity of representation before unsettling the regularization given.

Shri Ambrish Kumar, learned counsel appearing for the contesting respondents, argued that the Government in the counter-affidavit filed in the Tribunal has stated that regularisation of the persons in the alternative posts available in the District would be more fair and equitable; it would be consistent with the legitimate expectations, that regularizing any of the appellants in the Survey Department would cause undue hardship to the contesting respondents and that, therefore, The Tribunal was right in giving direction to regularize the services of the appellants in the alternative posts available to the candidates. It is also sought to be contended that the same principle was applied throughout the State except in Salem District and that, therefore, it would create undue hardship to the contesting respondents.

Shri A. Mariarputham, learned counsel appearing for the State has contended that in view of the clarification given by the Government in the letter dated August 29, 1990, regularization of the services of the candidates in the

manner intended by the Government would be more equitable and would be not only consistent with the orders issued by the Government from time to time but also keep the persons who had gained experience in the promotional posts to be available to the State; rotational system may cause hardship to such of the candidates who were appointed and gained promotion as they would be pushed down to adopt rotational system.

Having given our anxious consideration to the respective contentions, the question that arises for consideration is; whether the Government was justified in directing re-regularisation of the services of the appellants? It is not the case of the State that the Assistant Director, Salem has committed any illegality or violated the orders of the regularization issued by the State Government in the respective Government orders. We have been taken through all the Government orders which would indicate that the Government was conscious of giving benefit to 2000 Section Writers whose services were sought to be utilized in the Survey and Settlement Department. They were appointed on regular basis by way of relaxation of the statutory Rules of recruitment in the Department. It also indicates that they would be appointed with effect from the date on which they were discharging their duties. In other words, the principle adopted by the Government is fair and consistent with Rules 10(a)(i) and 23 of the Tamil Nadu State & Subordinate Service Rules, It would be given effect from the date the candidate first discharged his duty on that post. Thus, it could be seen that the regularization of the services is consistent with the General Rules, namely, the Tamil Nadu State & Subordinate Service Rules.

The question then is: whether the rotational system sought to be adopted is consistent with the Rules? It is true that some of the candidates were working in the respective fields, namely, as Draftsmen and Surveyors. It is seen that each one is independent of the other. The Survey Department consists of Surveyors, Field Surveyors, firka Surveyors, Subinspectors, Deputy Inspectors, Inspectors and Assistant Directors. As far as the Draftsman Department is concerned, the hierarchical posts of the Draftsman are Draftsman, Senior Draftsman, Head Draftsman, Manager (Technical), Assistant Director (Maps) and Assistant Directors (Drawings). It would thus be seen that each is a distinct and separate service and one cannot be mingled with the other. When this nomenclature and service conditions are made different, there is no scope for intermingling the be seen that the regularization of the services of the appellants is consistent with the General Rules and also with the Scheme in Special Rules. The Direction, therefore, to regularize the services of the persons in the rotational alternative vacancies would create hardship to the senior persons who have come into service much earlier to the other sources and who would be given seniority over the senior Surveyors. The doctrine of legitimate expectation must be consistent with the operation of the statutory rules, orders or Act. For instance, promotion on the basis of merit and ability enables a more meritorious junior-most incumbent to steal a march over senior-most person in the service. In such a case, legitimate expectation gets back seat. In a converse case of promotion on the basis of seniority without reference to merit would generate legitimate expectation. When the principle of merit is involved, the legitimate expectation dashes of its hopes inculcating spirit of competence and zeal to improve excellence. Regulation of legitimate expectation can not be indiscriminately projected

but requires consideration in the setting and scenario of factual backdrop. Though a wrong principle of regularization by rotation generates expectation of regularization, it cannot be said to be legitimate nor be put in operation contrary to General and Special rules. In other words, the view taken by the Tribunal is not consistent with the Scheme of the Special Rules and also of the General Rules. Therefore, the orders are illegal.

The appeals are accordingly allowed, but, in the circumstance, without costs.

JUDIS