

V.Sahadevan Vs. 1.State of Tamilnadu,

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SooperKanoon Citation : sooperkanoon.com/1168708

Court : Chennai

Decided On : Jun-19-2014

Judge : V.Ramasubramanian

Appellant : V.Sahadevan

Respondent : 1.State of Tamilnadu,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 19.06.2014 CORAM THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN and THE HONOURABLE MS.JUSTICE V.M.VELUMANI Writ Appeal(Md.No.217 of 2011, and Writ Petition(MD)Nos.8732/2007, 6184/2010, 1765/2012, 4516/2013 & 2345/2007 and M.P.(MD)Nos.1 of 2011 and 2 of 2013 in W.A.(MD)No.217 of 2011, 1 of 2012 in WP(MD)No.11765 of 2012 & 1 and 2 of 2007 and 2 of 2014 in W.P.(MD)No.2345 of 2007 W.A.(MD)No.217 of 2011: V.Sahadevan ..Appellant/Petitioner versus 1.State of Tamilnadu, rep.by Secretary to Government, Home (Courts VI) Department, Fort St.George, Chennai-9.

2.State of Tamilnadu, Rep.by Secretary to Government, Finance (Pension) Department, Fort St.George, Chennai-9.

3.The Asst.Accounts Officer, O/o.The Principal Accountant General (A&E).Chennai-600 018.

4.The Assistant Director of Prosecution, Tuticorin, Tuticorin District..Respondents/Respondents Writ Appeal under Clause 15 of Letters Patent against the order of the learned Single Judge, dated 22.10.2010, made in W.P.(MD)No.7628 of 2005.

!For Appellant : Mr.C.Dhanaseelan in WA2172011 ^For Petitioner : Mr.R.Rengaramanujam in WP87322007 For Petitioners : Mr.R.Lakshmanan WP Nos.6184/2010, 11765/2012 & 4516/2013 For Petitioner : Mr.G.Thalaimutharasu in WP23452007 For Respondents : Mr.A.K.Baskarapandian, 1 & 2 in WA2172011, Spl.Govt.Pleader, WPs 8732/2007 & 6184/2010 & Respondents 1 to 3 in WP Nos.6184/2010, 11765/2012 & 2345/2007 For Respondent-3 : Mr.P.Gunasekaran in WA2172011 & WP872322007 & Respondent No.4 in WP23452007 :

JUDGMENT

V.RAMASUBRAMANIAN,J By G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003, the Government of Tamil Nadu amended the Tamil Nadu Pension Rules, 1978 with effect from 01.04.2003.

By the said amendment, a proviso was inserted under Rule 2.

As per the said proviso, the Tamil Nadu Pension Rules were made inapplicable to Government Servants appointed on or after the 1st April, 2003 to the services and posts in connection with the affairs of the State, which are borne on pensionable establishments.

In other words, persons appointed to all types of services in the State of Tamil Nadu on or after 01.04.2003 became ineligible for the grant of pension under the Tamil Nadu Pension Rules.

2.Two persons appointed as Assistant Public Prosecut ORS.one person appointed as a Junior Assistant in the Revenue Department and a few persons appointed as Assistant Medical Officers (Siddha).made a claim before the competent authorities of their departments that the amendment cannot be applied to them.

This claim was on the ground that all of them were recruited to various services before 01.04.2003, the date of coming into force of the amendment, though they

joined duty in the respective posts after 01.04.2003.

But, their claims were rejected by the competent authorities.

3. Therefore, one Assistant Public Prosecutor filed a writ petition in W.P.(MD)No.7628 of 2005.

The writ petition was dismissed by a learned Judge, by an order dated 22.11.2010.

Aggrieved by the said order, he came up with an appeal in W.A.(MD)No.217 of 2011.

4. In the meantime, the Junior Assistant mentioned above had come up with a writ petition in W.P.(MD)No.8732 of 2007.

Similarly, the Assistant Medical Officers had come up with three writ petitions in W.P.(MD)Nos.6184/2010, 11765/2012 and 4516 of 2013.

One more Assistant Public Prosecutor had come up with W.P.(MD)No.2345 of 2007.

The writ petitions filed by the Junior Assistant, Assistant Medical Officers and the other Assistant Public Prosecutor were directed to be tagged along with the writ appeal, since a common question was involved in all the cases.

Accordingly, they were tagged together.

5. We have heard M/s. Mr. C. Dhanaseelam, R. Rengaramanujam, R. Lakshmanan and G. Thalaimutharasu, learned counsel appearing for the writ appellant and writ petitioners. Mr. A. K. Baskara Pandian, learned Special Government Pleader, appearing for the official respondents and Mr. P. Gunasekaran, learned Standing Counsel for the Accountant General (Tamil Nadu). 6. While taking pride in the fact that the average life of an Indian got enhanced to around 67 by the second millennium, the Central as well as the State Governments also appear to have become concerned about the financial implications that the increased life span of Government servants created.

Therefore, the Government of India constituted a Committee to go into the question of reforms with respect to the pension scheme that was in vogue.

Following the same, the Government Tamil Nadu also announced in the Budget Session of 2003-2004 that a new pension scheme would be introduced for those who are recruited on or after 01.04.2003.

As per the new scheme, each employee had to contribute certain amount and Government was to contribute an amount.

7.In order to give effect to the new scheme, the Government also issued necessary amendment to the Tamil Nadu Pension Rules, 1978, under G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003.

However, the amended rule was given effect from 01.04.2003.

As per the said amendment, a proviso was inserted under Rule 1(2) of the Tamil Nadu Pension Rules, 1978.

The proviso reads as follows: ".Provided that these rules shall not apply to Government servants appointed on or after the 1st April 2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent".8.The appellant in the writ appeal and the petitioners in the other writ petitions had applied for selection to various posts such as the post of Assistant Public Prosecutor, the post of Junior Assistant and the post of Assistant Medical OfficeRs.in response to the Notifications issued by the Tamil Nadu Public Service Commission.

Though the Notifications were issued long before 01.04.2003, the actual appointment of the appellant and the other petitioners happened only after 01.04.2003.

The reasons for such delay could be best understood only when we get into the factual details of each of those cases to the extent necessary.

Therefore, let us delve upon the factual details.

9.The case of the Assistant Public Prosecut ORS.In the year 2001, the Tamil Nadu Public Service Commission notified the recruitment of 53 Assistant Public Prosecutors Grade-II in the Tamil Nadu General Service for the years 1998-2002.

After completion of the process of selection, the Tamil Nadu Public Service Commission sent a list of about 53 candidates, who are provisionally selected for appointment.

The list was sent on 02.11.2001.

Immediately, the Government passed G.O.(4D) No.63, Home (Courts-VI) Department, dated 24.09.2002, directing the appointment of 51 out of those 53 candidates.

The names of the appellant in W.A.(MD)No.217 of 2011 and the petitioner in W.P.(MD)No.2345 of 2007 were left out on the ground that there was a hitch due to a police report.

However, the said hitch was removed later and the Government issued G.O.(4D) No.37, Home (courts-VI) Department, dated 23.04.2004, appointing both of them as Assistant Public Prosecut ORS.In other words, the actual appointment of the appellant in W.A.(M)DNO.217 of 2011 and the petitioner in W.P.(MD)No.2345 of 2007 took place only after the amendment to the Tamil Nadu Pension Rules.

10.The case of the Junior Assistant, the petitioner in W.P.(MD)No.8732 of 2007: The petitioner in W.P.(MD)No.8732 2007 was selected for appointment to the post of Junior Assistant, under the quota reserved for Scheduled Tribes.

But, the community certificate to this effect was not enclosed by him to the application that he filed with the Tamil Nadu Public Service Commission.

Therefore, despite being selected for appointment, way- back in the recruitment of the year 1998, he was not issued with posting ordeRs.Eventually, he was appointed on 26.04.2004.

In other words, he got appointed after one year of the amendment to the Tamil Nadu Pension Rules.

11.The case of the Assistant Medical OfficeRs.(a)The Notification for selection of Assistant Medical Officers was issued on 24.08.2002.

An examination and viva-voce was conducted in December, 2002.

The selection notification was issued on 31.01.2003.

But, the actual posting orders came to be issued only after the amendment to the Tamil Nadu Pension Rules.

(b)After joining duty, the Assistant Medical Officers made representations.

When those representations were turned down, some of the Medical OfficeRs.including the petitioners in W.P.(MD)Nos.11765 of 2012 and 4516 of 2013 filed a batch of writ petitions in W.P.(MD)No.3829 of 2010 etc.The writ petitions were allowed by a learned Judge of this Court, by a common order dated 25.07.2011, holding that the Medical Officers cannot be deprived of the benefits.

However, instead of giving a positive direction to the Government to grant the benefit of the unamended Tamil Nadu Pension Rules, the learned Judge directed the Government to consider their representations and to pass ordeRs.Taking advantage of this, the respondents rejected the claim of the Medical OfficeRs.Therefore, challenging those ordeRs.the Assistant Medical Officers have come up with W.P.(MD)Nos.6184/2010, 11765/2012 and 4516/2013.

12.Before proceeding to consider the legal submissions, it is necessary to note certain undisputed facts, which are as follows: (i)All the writ petitioners as well as the writ appellant were issued with orders of appointment only after 01.04.2013.

(ii)The petitioners and the appellant have not challenged the proviso to Rule 2 of the Tamil Nadu Pension Rules.

(iii)In the case of Assistant Public Prosecut ORS.the delay for the issue of appointment orders was on account of some criminal case pending investigation.

(iv)In the case of the Junior Assistant, the delay in issuing the order of appointment was due to his failure to produce the community certificate, despite

having applied under the reserved category.

(v) Insofar as the Assistant Medical Officers are concerned, the reason for the delay in the issue of appointment orders to them are not very clear.

13. In the background of the above facts, the common contentions of all the learned counsel appearing for the writ appellant and the writ petitioners are as follows: (i) That all the writ petitioners and the writ appellant were actually "recruited".

before the cut-off date, namely 01.04.2003, though they were appointed after 01.04.2003.

(ii) That the amendment that came into effect from 01.04.2003 cannot be made applicable to their cases on account of the second proviso to Rule 3 of Part-II of the General Rules for Tamil Nadu State and Subordinate Services.

(iii) That all candidates selected and recruited along with the writ petitioners and the writ appellant could join duty before 01.04.2003 and these writ petitioners and the writ appellant alone could not join duty before 01.04.2003, due to some delay or the other, not wholly attributable to the writ petitioners and the writ appellant.

(iv) That the distinction between 'recruitment' and 'appointment' as enunciated in the General Rules for Tamil Nadu State and Subordinate Services has not been appreciated.

(v) That when candidates are recruited in respect of vacancies that arose in a particular year of appointment, the terms and conditions of services of all persons appointed for the year of allotment should remain the same.

(vi) That having selected and recruited them at a particular point of time with reference to a particular set of rules, the Government is prohibited by the principles of promissory estoppel from applying a different set of rules of a few persons.

(vii) That though the original intention of the Government was only to make the amended rule applicable to persons recruited after 01.04.2003, the amendment

went far beyond the original intention and used the nomenclature ".appointment".
and hence it is contrary to the original intention.

14. Apart from the above common contentions, the writ petitioners and the writ appellant also raised a few other contentions, specific to their individual cases.

We will deal with those contentions, after we exhaust the common contentions.

15. Common Contention No.1.

The fiRs. common contention of all the parties is that they were all recruited before 01.04.2003, though appointed after 01.04.2003.

Therefore, they claim that the amended rules cannot be applied to persons who were recruited though not appointed before 01.04.2003.

16. In order to appreciate the correctness of this contention as well as the various other contentions that revolve around the two important words ".recruitment".

and ".appointment"., we have to go back a little bit to linguistics if not etymology.

The word ".appointment".

is not defined as such in the General Rules.

However, the expression ".appointed to a service".

is defined in Rule 2(1) of the General Rules for Tamil Nadu State and Subordinate Services, to mean the date from which he discharges for the fiRs. time the duties of a post borne on the cadre of a service or commences the probation, instruction or training.

17. Similarly, the word ".recruitment".

is not defined in the General Rules, However, the expression ".recruited direct".

and ".recruited by transfer".

are defined in Rule 2(14) and 2(15) of the General Rules.

18. Rule 2(14) of the General Rules reads as follows: ".(14). A candidate is said to be 'recruited direct'".

to a service, class, category, or post when, in case his fiRs. appointment thereto has to be made in consultation with the Commission, on the date of its notification inviting applications for the recruitment and in any other case, at the time of his fiRs. appointment thereto, he is not in the service of the Government of India or the Government of a State.

Provided that for the purposes of this definition a person shall be deemed to be not in the service of the Government of India or the Government of State-- (i) If a period of five years has not elapsed since his fiRs. appointment to a service of the Government of India or the Government of a State; or (ii) If he belongs to the Scheduled Castes, Scheduled Tribes or Backward Classes;".

19. Rule 2(15) of the General Rules reads as follows: ".(15) A candidate is said to be ".recruited by transfer".

to a service-- (a) If, at the time of his fiRs. appointment thereto, he is either a full member or an approved probationer in the Madras High Court Service or in any other service, the rules for which prescribe a period of probation for member thereof; or (b) in case, at the time of his fiRs. appointment thereto, he is the holder of a post which has been included in another service but for which no probation has been prescribed, if he has put in that post satisfactory service for a total period of two years on duty within a continuous period of three years. Explanation.- Where the special rules for a service provide for recruitment to that service or to any class or category thereof by transfer from any specified service, class or category, a candidate need not, for the purposes of such recruitment, be a full member or an approved probationer in the service, class or category so specified, provided he is a full member or an approved probationer in any other service class or category;".

We are not concerned with the expression ".recruited y transfer".But the expression ".recruited direct".

may, to some extent, be taken to throw light on the interpretation to be given.

20.A careful look at Rule 2(14) would show that to be a person recruited directly to a post, such person should not already be in the service of the Government of India or the Government of a State.

The date with reference to which this prescription is ascertained, as per Rule 2(14).depends upon whether the fiRs.appointment is to be made in consultation with the Service Commission or otherwise.

In respect of posts for which fiRs.appointment has to be made only in consultation with the Service Commission, a person should not be in the Service of the Government of India or the Government the State, on the date on which the Service Commission issues a Notification inviting applications for recruitment.

In respect of posts for which appointment is to be made otherwise than in consultation with the Public Services Commission, the date for reckoning whether a person is already in the service of the Government of India or the State Government is the date of fiRs.appointment.

21.Therefore, it is clear that the focus of the definition under Rule 2(14) is actually on the word ".direct".

and not on the word ".recruited".Hence Rule 2(14) is of no assistance to understand the distinction between the two expressions ".recruitment".

and ".appointment".22.However, judicially, this distinction has been brought forth in several cases by courts.

In Prafulla Kumar Swain v.

Prakash Chandra MiSr. 1993 (Supp) 3 SCC181 the Supreme Court pointed out the distinction between these two expressions on the following lines: ".The term recruitment connotes and clearly signifies enlistment, acceptance, selection or

approval for appointment.

Certainly this is not actual appointment or posting in service.

In contradistinction, the word ".appointment".

means an actual act of posting a person to a particular office."

23. In K. Narayanan v.

State of Karnataka 1994 (Supp.) 1 SCC 44 the Supreme Court indicated that the word ".recruitment"., according to the dictionary, means ".enlist". It is a comprehensive term and includes any method for inducting a person in public service.

Appointment, selection, promotion and deputation are all well known methods of recruitment.

24. Similarly, the word ".appointment".

has been considered by courts to include both ".direct recruitment".

as well as ".promotion". In Union of India v.

Sankalchand Himatlal Sheth (1977) 4 SCC 193 the Supreme Court pointed out that appointment means initial entry into service.

25. Therefore, it is clear that 'recruitment' is nothing more than a mere selection or enlistment, while 'appointment' is the actual act of offering a post to an individual.

Insofar as the civil posts and civil services under the State are concerned, it is well settled for a long time that they are not merely based on contract but are governed by statutory rules issued in terms of the proviso to Article 309 of the Constitution of India.

An appointment to a post in the civil services of the State is actually one of status.

Therefore, a vested right is created in a person only after he is appointed to a service or a post.

Till a person is actually appointed, he is merely a selectee for the post and his selection or enlistment does not confer any right.

As pointed out by the Supreme Court in *State of Madhya Pradesh versus Raghvir Singh Yadav* 1994 (6) SCC151 the Government is entitled even to cancel a selection and conduct a fresh recruitment.

The candidates, who got selected, may only have a legitimate expectation to be considered but, according to the rules in vogue.

Therefore, on the ground that the writ petitioners and the writ appellant were recruited or enlisted or selected for appointment, they cannot claim a right on par with those who were actually appointed to the service.

26.Common Contention No.2: The second common contention of the writ petitioners and the writ appellant is that the amended rule cannot be applied to their cases, in view of the second proviso to Rule 3 of the General Rules of Tamil Nadu State and Subordinate Services.

27.The General Rules for Tamil Nadu State and Subordinate Services comprise of two parts.

Part-I contains the definitions of various expressions, apart from two provisions, one relating to pay, allowances, etc.and another relating to the determination of the cadre strength.

Part-II of the General Rules contain the substantial provisions relating to various terms and conditions of service.

28.Rule-1 of Part-II of the General Rules makes it clear that those rules shall apply to all State and Subordinate Services and to the holders of all posts who are temporary or permanent in any such service.

Rule 3 of Part-II of the General Rules states that any rule continued by virtue of Article 313 of the Constitution or made under the proviso to Article 309, shall be applicable to all persons holding posts intended to be held by members of that service, class or category on the date on which the rule was made.

Two exceptions are carved out to this General Rule, in the form of two provisos.

For better understanding, Rule 3 with its two provisos are extracted hereunder.

"3.Application of rules:- Any rule continued by Article 313 of the Constitution of India or made under the proviso to Article 309 of that Constitution in respect of any service, class or category thereof shall be applicable to all persons holding posts intended to be held by members of that service, class or category on the date on which rule was made.

Provided that nothing in any such rule shall unless a contrary intention is expressly indicated therein, operate to deprive any such person of any right or privilege to which he is entitled by or under any rule or applicable to him prior to the making of such rule: Provided further that no such rule shall be applicable to candidates who had been approved for appointment to any such service, class or category by the Commission or by any other authority competent in that behalf prior to the making of such rule or who had applied for such approval in response to any advertisement inviting applications, published by the Commission or any other authority competent in that behalf prior to the making of such rule."

29.The fiRs.proviso is nothing but a restatement of the well established rule that no rule shall take away any right or privilege already vested in a person.

We are not concerned with the fiRs.proviso, as that is not what is relied upon by the writ petitioners and the writ appellant.

30.The focus of the petitioners and the appellant is actually on the second proviso.

As per the second proviso, no such rule (meaning thereby, a rule as indicated in the main part of Rule 3) shall be applicable to candidates who had been approved for appointment to any service by the Service Commission prior to the making of

such rule or who had applied for such approval in response to any advertisement inviting applications published by the Commission prior to the making of such rule.

In other words, a rule is applicable only to persons who are in service on the date on which the rule is made.

It shall not be applicable to candidates who had been merely approved for appointment to any service or who had applied in response to any advertisement inviting applications, published by the Commission prior to the making of such rule.

31.Keeping the scope of main part of Rule 3 and the second proviso to Rule 3, let us see how far the contention of the petitioners and the appellant is valid.

As stated earlier, the contention of the petitioners and the appellant is that by virtue of the second proviso to Rule 3, the amendment does not apply to persons who were approved for appointment before the making of the rule or who had applied for approval in response to any advertisement inviting applications, published by the Public Service Commission.

32.But, the appellant and the petitioners have failed to take note of an inherent lacuna in their contention.

The benefit of the application of the General Rules for Tamil Nadu State and Subordinate Service, in entirety, can be claimed by the writ petitioners and the writ appellant only after their entry into service.

A mere recruitment or an enlistment or a selection do not make the writ petitioners and the appellant, the holders of any post temporary or permanent.

If we have a careful look at Rule 1 of Part-II of the General Rules, it could be seen that the rules in Part-II are made applicable to all State and Subordinate Services and to the holders of all posts whether temporary or permanent.

The petitioners and the appellant were not holders of any post as on 01.04.2003.

Therefore, if at all the second proviso to Rule 3 confer a benefit (we do not think they confer any benefit).such a benefit could not be claimed by persons, like the

petitioners and the appellant, on 01.04.2003, by virtue of Rule 1 of Part-II of the General Rules.

The petitioners and the appellant have lost sight of this inherent lacuna in their second common contention.

33. In any case, the interpretation sought to be adopted by the petitioners and the appellant to the second proviso to Rule 3 is wholly misconceived.

If the second proviso is read together with the main part of Rule 3, it will be clear that in the first place, the main part of Rule 3 makes every rule issued under the proviso to Article 309 of the Constitution applicable to persons who are in service on the date on which the Rule is made.

The second proviso clarifies that such rule will not apply to persons who are selected for appointment or who have applied in response to an advertisement.

In other words, what is stated in positive terms in the main part of Rule 3 is what is reiterated in negative terms in the second proviso.

If the main part of Rule 3 and the second proviso are recast in simple terms, they would read as follows: (i) All Rules shall apply to persons who are in service on the date of issue of the rules.

(ii) Those rules will not be applicable to persons who are merely approved for appointment or who had just applied for appointment.

34. Therefore, the second common contention emanates from a misunderstanding or misreading of the second proviso to Rule 3 of Part II of the General Rules.

35. As a matter of fact, the second proviso to Rule 3 actually destroys the very case of the writ petitioners and the writ appellant.

The writ petitioners and the writ appellant are actually persons who are approved for appointment to some services, before the making of the rule.

Therefore, they are covered by the second proviso.

Secondly, the rules that were in force on the date of their approval for appointment will not apply to them.

What the petitioners and the appellant are now seeking is the application of the benefit of a rule that was in force on the date of their approval for appointment.

Therefore, they are, in essence, seeking a benefit contrary to Rule 3 and the second proviso thereunder.

Hence the second common contention is rejected.

36.Common Contention No.3.

The third common contention is that all others selected along with the writ petitioners and the writ appellant could join duty before 01.04.2003 and the writ appellant and the writ petitioners could not do so.

According to the writ petitioners and the writ appellant, they are not responsible for the delay.

Therefore, the writ petitioners and the writ appellant contend that they cannot be penalised for something for which they are not responsible.

37.But, we do not agree with the said contention for two reasons.

The first is that on the question of operation of a rule or the application of a rule, circumstances, situations or sympathies can have no role.

If a person could not pass the check-post, at the appointed time, he loses the benefit irrespective of the reasons as to why he could not pass the check-post at the appointed time.

The applicability of statutory rules, would not depend upon the situation in which each person is placed.

38.The second reason as to why we do not agree with the petitioners and the appellant is that they are not wholly correct in contending that they were not responsible.

Insofar as the two Assistant Public Prosecutors are concerned, their appointments were delayed due to the police verification on their suspected involvement in a criminal case.

Insofar as the Junior Assistant is concerned, he did not produce the community certificate at the time of certificate verification.

Mr.Rengaramanujam, learned counsel for the petitioner in W.P.(MD)No.8732 of 2007, contended that his client had applied for the issue of a community certificate long before and that the same was delayed by the officials for a period of six years. Therefore, he contends that his client was not responsible for the non-production of the community certificate.

39. But, the above contention is to be stated only to be rejected.

The petitioner in W.P.(MD)No.8732 of 2007 applied specifically under the quota reserved for Scheduled Tribes.

He claimed himself to be a person belonging to 'Hindu Kattunaicken Community', classified as Scheduled Tribe.

But, unfortunately, he produced only school certificates in support of his claim.

We do not know how he was included in the select list at all in the fiRs place.

An application of a person for appointment to a post, specifically reserved for certain categories, can be considered to have been validly made only if the certificate to prove the same is enclosed to the application.

If the community certificate is not enclosed, the application of such a person can be considered only under the Open Category.

The petitioner in W.P.(MD)No.8732 of 2007 should have taken care to obtain the community certificate much before the application for recruitment to the post.

40. Claiming that a community certificate will not come under the category of essential certificates, Mr.Rengaramanujam, learned counsel for the petitioner,

placed reliance upon the decision of a Division Bench of this Court in Secretary, Tamil Nadu Public Service Commission v.

M.Chithra 2010 (2) MLJ146 In that case, the respondent had applied for recruitment to Group-IV Services.

She did not produce community certificate, both at the time of making the application and at the time of certificate verification.

She produced the same later and the same was not accepted.

She unsuccessfully challenged the non-selection before a learned Single Judge.

But, the Division Bench reversed the said decision, creating a distinction between certificates which are essential and certificates which cannot be said to be essential.

According to the Division Bench, certificates relating to special considerations as well as communities are not essential for entertaining the applications of the candidates.

Therefore, on the basis of the said decision, it is contended by the learned counsel for the petitioner that the non-production of the community certificate could not have delayed the appointment of the petitioner in W.P.(MD)No.8732 of 2007.

41.But, the decision in Secretary, Tamil Nadu Public Service Commission versus M.Chithra, has to be understood in the context of certain fundamental principles of law.

As a matter of fact, having a certificate on hand and not being able to produce it is different from not having a certificate at all.

The case of the petitioner is not one where he had a certificate but could not produce it.

He had just applied for a certificate and had not obtained it.

He cannot, therefore, shift the blame on the respondents.

42. In Dolly Chhanda versus Chairman, JEE (2005) 9 SCC 779 the Supreme Court was concerned with the case of a candidate who had applied for admission to the M.B.B.S. Course.

She had applied under the reserved MI category, claiming that she was the daughter of an Ex-serviceman discharged on the ground of permanent disability.

The certificate produced by her was considered to be not satisfactory with reference to the requirement.

Therefore, her candidature was rejected.

Thereafter, her father applied for a fresh certificate on the ground that the previous certificate contained a mistake of fact.

A fresh certificate was issued and the candidate participated in the second counselling.

But, she was not considered.

When she challenged her non-selection, the High Court dismissed the writ petition on the ground that the certificate produced by the candidate at the time of counselling did not bring her case within the eligibility criteria under the reserved category.

When the matter was taken to the Supreme Court, the Supreme Court held as follows: ".7. The general rule is that while applying for any couRs. of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary.

There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed.

This has to be established by producing the necessary certificates, degrees or mark sheets.

Similarly, in order to avail of the benefit of reservation or weightage, etc., necessary certificates have to be produced.

These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation.

Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure.

Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature."

43.The ratio laid down in Dolly Chhanda was what was sought to be followed by the Division Bench of this Court in Secretary, TNPSC v.

M.Chitra.

But, a careful reading of Dolly Chhanda would disclose that the general rule is to the effect that certificates should be produced at the time indicated in the application form.

The exceptions to the rule carved out in Dolly Chhanda are very rare.

In Dolly Chhanda itself, the candidate produced a certificate.

That certificate was later on modified by the competent authority.

Therefore, the certificate relating to the service rendered by the candidate's father stood corrected.

But, in this case, the petitioner never had a certificate until 2004.

44.It must be remembered that cases of students seeking admission to higher educational courses cannot be placed on the same pedestal as cases of persons seeking employment.

Even if they can be placed on the same pedestal, the ratio laid down in Charles K. Skaria v.

Dr. C. Mathew (1980) 2 SCC 752 followed in Dolly Chhanda can, at the most, allow the petitioner to seek appointment.

In other words, the petitioner may probably argue on the basis of Dolly Chhanda that he is entitled to be appointed.

After getting appointment, Dolly Chhanda will not enable him to get the date of appointment pre-poned to a date anterior to 01.04.2003.

45. The Supreme Court has held categorically in Sorathi Builders versus Shreejirupa BuildCo. Limited (2009) 11 SCC 9 that an application which did not contain the necessary enclosures as required by the prospectus or the advertisement is an incomplete application and that therefore it cannot be accepted.

No distinction can be made by courts between certificates which are essential and certificates which are non-essential, at least in the matter of appointment to public services, as it stands on a different footing than admission to educational courses.

The power of the appointing authorities to insist upon the production of certificates which in their opinion are necessary cannot be diluted by courts.

Moreover, a community certificate can never be held to be a non-essential certificate.

Persons from reserved categories actually run a different race.

They are granted relaxation in the upper age limit for competing.

If a person does not enclose the community certificate, he cannot even be allowed to participate in the examination, if he was claiming relaxation in the upper age limit.

Therefore, the very permission of a candidate to appear for an examination may depend sometimes upon the community certificate.

Hence, we do not think that the above contention can be accepted.

46. Insofar as the case of the Assistant Professors are concerned, the Notification for recruitment was issued on 24.08.2002.

The selection process was completed in December, 2002.

The select List was published in January, 2003.

But, the appointments were made after 01.04.2003.

The fact that the actual appointment took place after 01.04.2003 is only a circumstance for which both parties cannot be blamed.

If the delay between January, 2003 when the select list was released and October, 2003 when they were actually appointed is considered as a huge delay, in respect of the cases of the writ petitioners in W.P.(MD)Nos.6184 of 2010, 11765 of 2012 and 4516 of 2013, the same logic can be applied in a different way also.

A careful look at G.O.Ms.No.259, dated 06.08.2003, would show that the proposal for such an offer to a new pension scheme emanated in October, 2001 from the Government of India.

It took nearly two years to take a full and complete shape.

Somebody got the benefit of this delay.

The petitioners were affected by the delay in their appointment.

So long as the delay in issuing the amendment or the delay in making the appointment is not intentional or mala fide, the fall of the guillotine on 01.04.2003 is unavoidable.

Hence the third common contention is rejected.

47.Common contention No.4.

The fourth common contention revolves around the distinction between the words 'recruitment' and 'appointment'.

We have already covered this aspect while dealing with the fiRs.common contention.

48.Common Contention No.5.

The 5th common contention is that when a group of persons are appointed against vacancies relating to a particular year of allotment, the terms and conditions of service for all of them should remain same.

This contention is based upon the fact that some of the persons, who were selected along with the writ petitioners and the writ appellant herein, could join duty much before 01.04.2003.

Therefore, the petitioners and the appellant claim discrimination.

49.But, the above contention is a natural consequence of service jurisprudence.

There are instances where the age of retirement of Government servants had been reduced from 60 to 58 or from 58 to 55 in the past.

Such provisions are also given effect to only from some cut-off date.

Persons who joined duty before the cut-off date and those who joined duty after the cut- off date faced similar consequences.

50.Sometimes, the benefit of upward revision of pay scales is granted with effect from a particular date.

Those who retire on a date immediately preceding the date of implementation of the revision of pay scales get affected.

Likewise, these are natural consequences of the well known application of rules.

51.The concept of equity has to be understood only in the context of application of the rules.

It cannot be understood on the basis of the operation of the rules in new cases.

Therefore, the fifth common contention is rejected.

52.Common Contention No.6.

The 6th common contention is based upon the principle of promissory estoppel.

But, we do not know how the principle of promissory estoppel would apply.

53.The terms and conditions of service of persons, appointed to civil posts and the civil services under the State, are governed by statutory rules.

When the field is occupied by statutory rules, the question of any promise and the Government going back on the promise would not arise.

The power to issue rules and amend the rules emanates from the proviso to Article 309 of the Constitution.

Therefore, the question of promissory estoppel cannot apply.

54.Till a person is actually appointed to a service, he cannot acquire any status and no promise is held out to such a person.

As a matter of fact, on the date of their actual appointment, the only promise held out by the Government to the writ petitioners and the appellant is reflected in the rules that came into effect on 01.04.2003.

The rules that were in existence before 01.04.2003, did not constitute any promise to persons who had not been appointed till then.

Therefore, this contention is also rejected.

55.Common Contention No.7.

The last common contention is that originally the intention of the Government was to extend the benefit of the previous pension scheme to all those recruited upto 01.04.2003 and that the same was diluted when an amendment was issued under G.O.ms.No.259.

This contention is based upon the preamble to G.O.Ms.No.259.

56.In the preamble to G.O.Ms.No.259, the Government had used the word ".recruitment".Since the word ".recruitment".

connotes mere enlistment or selection, the petitioners claim that they are entitled to the benefit of the old rules as they had been enlisted/selected/recruited before 01.04.2003.

57.But, unfortunately for the petitioners and the appellant, the word 'recruitment' appears to have been used in the preamble part of the Government Order as a lose expression.

But, in the actual amendment, the Government had used the appropriate language, namely, the word ".appointment".The proviso to Rule 1(2) inserted by way of amendment uses only the expression ".appointment".The amended Rule 1 of the Tamil Nadu Pension Rules, 1978, reads as follows: ".1.Short title and commencement.--- (1) These rules may be called the Tamil Nadu Pension Rules, 1978.

(2) They shall be deemed to have come into force on the 1st January 1979.

Provided that these rules shall not apply to Government Servants appointed on or after the 1st April 2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent."

58.The use of expression 'recruitment' in the preamble portion has no meaning since that part can only be an indication.

An amendment to the rules is to pass through different departments and it is issued in the name of the Governor.

Therefore, what will hold the field is only the rule and not the executive part of the order.

Hence, the said common contention is also rejected.

59. Apart from the above common contentions, the individual writ petitioners and writ appellant have raised some specific contentions with respect to their cases and we wish to deal with them now.

60. Mr. R. Rengaramanujam, learned counsel for the petitioner in W.P.(MD) No. 8732 of 2007, contended that though the petitioner was actually appointed only in April, 2004, he was granted seniority on par with his batchmates who were selected in the recruitment of the year 1998.

On the basis of such seniority, he had also been given further promotions.

Therefore, he contended that the petitioner cannot be discriminated, only in the matter of pension, when he has received all other benefits.

61. Mr. R. Rengaramanujam, learned counsel for the petitioner also relies upon a few decisions of this Court as well as the Supreme Court.

The decisions relied upon by the learned counsel for the petitioner are as follows:

(i) Y.V. Rangaiah versus J. Sreenivasa Rao (1983) 3 SCC 284 (ii) P. Mahendran v.

State of Karnataka AIR 1990 SC 405 (iii) N.T. Bevin Katti v.

Karnataka Public Service Commission AIR 1990 SC 1233 (iv) B.L. Gupta versus M.C.D.- (1998) 9 SCC 223 (v) Sonia versus Oriental Insurance Company Co. LTD.- AIR 2007 SC 2932 (vi) Gidla Satyanarayana v.

Union of India (2013) 1 MLJ 217 62. We have carefully considered the above submissions of Mr. R. Rengaramanujam, learned counsel for the petitioner.

63. In Y.V. Rangaiah, the Supreme Court was concerned with a case where a panel for promotion was prepared after a long delay resulting in the deprivation of the chances of promotion.

In the meantime, an amendment to the Rule was issued.

This was found fault by the Supreme Court.

This case has no relevance to the case on hand, in view of the fact that the petitioners before the Supreme Court were already in service and there was a statutory violation in the matter of preparation of panel within the time prescribed.

Moreover, the amendment took away the rights vested already in the employees.

Therefore, the Supreme Court came to the conclusion that it did in that case.

But, in the case on hand, the petitioner had no vested right created in his favour till he was actually appointed to the post.

Therefore, the delay in issuing appointment orders cannot be said to have resulted either in the creation of any vested right or in the annulment of such right.

64. In P. Mahendran, the issue before the Supreme Court was whether the eligibility criteria fixed under the statutory rules can be changed, after the commencement of the selection process.

Therefore, the said decision also has no application.

Any amendment changing the eligibility criteria would stand on a different footing than a change in the conditions of service.

65. In N.T. Bevin Katti, the Government itself had notified that the revised directions contained therein would not apply to the selection in respect of which advertisement had already been issued.

Moreover, the amendment related to a mode of selection.

Amendments relating to methods of selection stand on a different footing than the amendment dealing with conditions of services.

66. In B.L. Gupta, the Supreme Court was again concerned with a case of recruitment.

Following Y.V.Rangaiah, the Court held that the vacancies which occurred prior to the amendment of the Rules, would be governed only by the old rules.

This case also did not concern a rule relating to conditions of service of employees appointed to a post.

67.In Sonia, a person working as an Assistant in an Insurance Company applied for appointment to the post of Assistant Administrative Officer, in terms of the promotional policy of the Company.

As per the policy, exchange of vacancy between Scheduled Castes and Scheduled Tribes was permissible.

But, this policy was subsequently amended.

Therefore, the Court held that the amendment cannot affect the selection process already initiated.

Therefore, the said case is also one relating to promotion of a person already in service, whose vested right was sought to be taken away and the rules got changed half-way through the selection process.

Hence, the said decision is also no avail.

68.In Gidla Satyanarayana, the Division Bench of this Court was concerned with the right of a person kept in the reserved list.

We do not know how the said decision is of any relevance to the case on hand.

69.The substantial argument of the learned counsel for the petitioner that the petitioner has been given all other benefits, including seniority on par with his batchmates and that therefore this benefit alone cannot be deprived to him, cannot really be accepted.

As we have pointed out earlier, he applied for the post as a candidate belonging to the Scheduled Tribe community.

But, he did not have the necessary community certificate.

He relied only the entries found in the Secondary School Leaving Certificate.

We do not know how his case was considered as one under reserved category at all.

70. Insofar as the case of Assistant Medical Officers is concerned, one specific contention raised by Mr. R. Lakshman, learned counsel for the petitioners, is that the petitioners already filed a writ petition in W.P.(MD)No.3829 of 2010.

That writ petition was allowed with a specific finding to the effect that the amended rule cannot be made applicable to the petitioners. But, instead of granting a relief directly to the petitioners, the learned Judge remanded the matter back to the respondents for a fresh consideration.

Instead of reconsidering the matter in the light of the observations of the learned Judge in W.P.(MD)No.3829 of 2010, the respondents rejected the claim.

Since a contempt could not be technically maintained, as against the order of rejection, the petitioners had to come up with fresh writ petitions.

Hence, it is contended by Mr. R. Lakshman, learned counsel for the petitioners that the finding rendered by the learned Judge has attained finality and that the respondents, not having filed any appeal against the order in W.P.(MD)No.3829 of 2010, cannot re-agitate the issue in these writ petitions.

71. But, we are afraid that the above contention is unsustainable.

The finding recorded by the learned Judge in W.P.(MD)No.3829 of 2010 cannot be said to be final and conclusive.

It can, at the most, be taken to be a prima facie conclusion.

This is why the attempt made by the petitioners to allege contempt against the respondents got aborted.

It is admitted by the learned counsel for the petitioners that contempt petitions arising out of the order in W.P.(MD)No.3829 of 2010 was dismissed on the ground

that there was no violation.

Therefore, the issue was thrown open for fresh consideration and hence we do not agree with the above contention of the petitioners. 72. Mr. R. Lakshman, learned counsel for the petitioners, relied upon the decision of Queen's Bench in *Carlill versus Carbolic Smoke Ball Co.* - (1893) 1 QB 256. But, the said decision arose under the law of Contract with particular reference to wagering contracts.

The employment of the petitioners is not a matter of contract.

It is a matter of status.

It is governed by statutory rules.

Therefore, the said contention cannot be accepted.

73. A few persons actually filed a writ petition in W.P.No.2470 of 2013 on the file of this Court, challenging G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003.

In the decision rendered on 06.02.2013 (*R. Vijayakumar versus Government of Tamil Nadu*), K. CHANDRU, J. upheld the amendment to the Tamil Nadu Pension Rules and dismissed the writ petition.

Therefore, as on date, the rules hold the field.

The petitioners and the appellant having been appointed to the respective posts only after the cut-off date are bound by the rules that have come into force on the date of their appointment.

Hence, their claim for the benefit of the unamended rules cannot be sustained.

74. In view of the above, the writ appeal and the writ petitions are dismissed.

No costs.

Connected miscellaneous petitions are also dismissed.

To 1.The Secretary to Government, Government of Tamil Nadu, Home (Courts VI) Department, Fort St.George, Chennai-9.

2.The Secretary to Government, Government of Tamil Nadu, Finance (Pension) Department, Fort St.George, Chennai-9.

3.The Asst.Accounts Officer, O/o.The Principal Accountant General (A&E).Chennai-600 018.

4.The Assistant Director of Prosecution, Tuticorin, Tuticorin District.

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