

Supreme Court of India

Tamil Nadu Government Statistics ... vs The Commissioner Of Statistics ... on 7 April, 1993

Equivalent citations: AIR 1993 SC 2552, JT 1993 (2) SC 636, (1993) 2 MLJ 133 SC, 1993 (2) SCALE 433, 1993 Supp (4) SCC 420

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Bench: S Pandian, S Agrawal

ORDER S.C. Agrawal, J.

1. Having heard learned Counsel for the parties, we grant special leave to appeal against order dated April 17, 1990 passed by the Tamil Nadu Administrative Tribunal (hereinafter referred to as 'the Tribunal') in T.A. No. 1509 of 1989 and O.A. No. 239 of 1989 and proceed to dispose of the appeals.

2. These appeals relate to appointment on the post of Statistical Inspector in the Department of Statistics of the Government of Tamil Nadu. The said appointment is governed by the statutory rules contained in Section 13 of Tamil Nadu General Sub-ordinate Service Special Rules (hereinafter referred to as 'the Rules'). As a result of reorganisation of the Department of Statistics vide G. O. Ms. No. 3364 dated November 15, 1968 the non-Gazetted staff in the said Department were categorised as technical staff and ministerial non-technical staff. Among the technical staff were included Assistant Statistical Investigators, Statistical Inspectors and Research Assistants. The ministerial non-technical staff consisted of Supervisors, Clerk, Assistants and Superintendents. Supervisors and Clerks in the Department were eligible for appointment by transfer, on the post of Assistant Statistical Investigator provided they possessed a degree in mathematics, statistics or economics. Clerks and Supervisors who did not possess a degree in the said subjects were only eligible for promotion to the post of Assistant and Assistants were eligible for promotion to the post of Superintendent. They could also be transferred to administrative posts in other departments. The ministerial non-technical staff of the Department of Statistics represented to the State Government that promotional opportunities may be provided for them in view of their long service in the Department and after considering the said representations, the State Government vide G. O. Ms. 2351 dated August 20, 1971 decided to permit non-graduate Assistants who had been appointed in the Department of Statistics prior to November 15, 1968, to be appointed on the post of Statistical Inspector and non-graduate junior assistants and supervisors who had been appointed prior to November 15, 1968 to be appointed to the post of Assistant Statistical Inspector. In pursuance of the said decision, G. O. Ms. No. 123 dated October 19, 1973 and G. O. Ms. No. 655 dated July 1, 1977 were issued whereby necessary amendments were introduced in the Rules.

3. Since the aforesaid relaxation was confined to ministerial non-technical staff who had joined the Department prior to November 15, 1968 and was not available to those who joined thereafter, representations were made by the ministerial non-technical staff who joined the Department after November 15, 1968 that there was frustration on account of lack of adequate opportunities for their promotion in the Department. After examining the possibility of improving their promotional opportunities, the Government decided that concessions similar to those extended to ministerial non-technical staff who were appointed prior to November 15, 1968 may be extended to those who joined the Department after that date and with that end in view, G.O. Ms. Nos. 869 and 870 dated September 11, 1985 were issued. G.O. Ms. No. 870 incorporates the said decision of the State

Government and G.O. Ms. No. 869 gives effect to the said decision by introducing amendments in the relevant Rules.

4. The appellant herein is an association of the ministerial staff employed in the Department of Statistics and is representing the Assistants who joined the Department after November 15, 1968. The appellant moved a Writ Petition (No. 6222/87) in the High Court of Madras for the issue of writ of mandamus or other appropriate writ directing respondents Nos. 1 and 2 herein to implement G. O. Ms. No. 869 dated September 11, 1985. It appears that respondent No. 3, M. Gnanasuriyan, who had been appointed on the post of Assistant Statistical Investigator in the year 1984 by direct recruitment, also filed a Writ Petition (No. 4075/89) in the Madras High Court praying for the issue of writ of declaration or any other appropriate writ, order or direction declaring G. O. Ms. No. 869 dated September 11, 1985 as unconstitutional, null and void. After the Constitution of the Tribunal, both these writ petitions stood transferred to the Tribunal and were numbered as T.A. Nos. 1509 of 1989 and 1595 of 1989 respectively. While these cases were pending before the Tribunal, the State Government passed orders dated January 26, 1989 whereby 79 directly recruited Assistant Statistical Investigators were promoted as Statistical Inspectors. Feeling aggrieved by the said orders, the appellant filed an original application (O. A. No. 239/89) before the Tribunal and prayed that the said orders dated January 26, 1989 may be quashed.

5. All the aforementioned three matters were heard together and disposed of by the Tribunal by a common order dated April 17, 1990. T.A. No. 1595/89 arising out of W.P. No. 4075/ 89 filed by respondent No. 3 was dismissed as having become infructuous for the reason that the said applicant had already been promoted as Statistical Inspector and had also joined duty. As regards T.A. No. 1509/89 arising out of W. P. No. 6222/89 filed by the appellant, the Tribunal has held that the said case has also become infructuous since G. O. Ms. No. 870 dated November 11, 1985 had already been implemented by the Government. O. A. No. 239/89 filed by the appellant was dismissed by the Tribunal on the ground that the orders issued on January 26, 1989 promoting 79 directly recruited Assistant Statistical Investigators as Statistical Inspectors were perfectly valid and are passed as per the Rules. The Tribunal was of the view that the G. O. Ms. 870 dated November 11, 1985 is operative only from the date of its issue and that respondents Nos. 1 and 2 had come to the correct conclusion that all the Assistant Statistical Investigators who had been appointed prior to November 11, 1985 and whose services were regularised should first be considered for promotion to the post of Statistical Inspector and only thereafter the ratio of 8:2 between Assistant Statistical Investigators and the Assistants on the ministerial side should be applied. Feeling aggrieved by the said decision of the Tribunal dismissing T.A. No. 1509/89 and O. A. No. 239/89, the appellant has filed these appeals.

6. Shri Srinivasan, the learned Counsel for the appellant has urged that the Tribunal was in error in dismissing T.A. No. 1509/89 filed by the appellant as infructuous on the view that the G. O. Ms. No. 870/89 dated September 11, 1985 had already been implemented by the Government. It has been urged that G. O. Ms. No. 870 dated September 11, 1985 as well as G. O. Ms. No. 869 dated September 11, 1985 prescribed ratio of 8:2 between Assistant Statistical Investigators and Assistants in the ministerial side for appointment on the post of Statistical Inspector and in view of the said orders whereby specific provisions have been made by amending the relevant Rules, it was

obligatory on the part of the respondents Nos. 1 and 2 to apply the said ratio while making appointments on the post of Statistical Inspectors against vacancies occurring after September 11, 1985 and since appointments on the post of Statistical Inspector against vacancies occurring after September 11, 1985 have not been made in accordance with quota prescribed for promotion and recruitment by transfer it cannot be said that respondents Nos. 1 and 2 have implemented G. O. Ms. Nos. 869 and 870 dated September 11, 1985. It has also been urged that the Tribunal was in error in holding that respondents Nos. 1 and 2 have rightly promoted 79 directly recruited Assistant Statistical Investigators as Statistical Inspectors by orders dated January 26, 1989 and that all the Assistant Statistical Investigators who were appointed prior to November 11, 1985 and whose services were regularised should first be considered for promotion to the post of Statistical Inspector and only thereafter the ratio of 8:2 between Assistant Statistical Inspectors and Assistants in the ministerial side should be applied.

7. Shri P.R. Seetharaman, the learned Counsel appearing for respondents Nos. 1 and 2 and Shri A.V. Rangam, the learned Counsel appearing for respondents Nos. 3 to 7 have supported the decision of the Tribunal and have submitted that G. O. Ms. Nos. 869 and 870 dated September 11, 1985 are only prospective in operation and they cannot be so construed as to deprive the Assistant Statistical Investigators who had been appointed prior to September 11, 1985 of their right to be promoted to the post of Statistical Inspector in accordance with the provisions that existed in the Rules at the time of their appointment on the post of Assistant Statistical InvestigatOrs. The learned Counsel have also placed reliance on the order dated February 10, 1988 passed by the Division Bench of the Madras High Court in W.A. No. 2146 of 1987.

8. For a proper appreciation of the respective contentions urged by the learned Counsel, it is necessary to refer to the relevant provisions in the Rules. Prior to the issuance of G. O. Ms. No. 869 dated September 11, 1985, the relevant provisions in the Rules were as under:

Rule 2:

2. Appointment. - (a) Appointment to the category specified in Column (I) of the Table below shall be made by the methods specified in Column (2) thereof:

THE TABLE Category Methods of appointment XXX XXX XXX Statistical (1) By direct recruitment; or Inspectors (2) By promotion from the category of Assistant Statistical Investigators; or (3) By recruitment by transfer from the category of Assistant in the Department of Statistics: Provided that up to 31st December, 1975, the vacancies shall be filled up as follows:- (i) Direct Recruitment - 40% (ii) Promotion - 50% (iii) Recruitment by transfer - 10% Provided further that on and from the 1st January 1976, 20 percent of the vacancies shall be filled up by direct recruitment and that the remaining 80 per cent of the vacancies shall be filled up by promotion and by recruitment by transfer in the ratio of 8 : 2 : Provided also that in the case of promotion the Assistant Statistical Investigators appointed up to the year 1970 (both the subject graduates and others) shall be promoted in the order of combined seniority as fixed by the Director of Statistics. Then the first ten Assistant Statistical Investigators (other than subject graduates) appointed (by promotion and by recruitment by transfer from the categories of Supervisors and Senior Assissitants) during the year

1971 shall be promoted. The remaining Assistant Statistical Investigators (other than subject graduates) of the same batch of 1971 shall be promoted along with subject graduate Assistant Statistical Investigators directly recruited during the year 1972 in the ratio of 1 : 1: Provided also that no Assistant, who is junior in the category of Junior Assistant/Typist shall be promoted as Statistical Inspector before his Seniors appointed by transfer from the category of Junior Assistants as Assistant Statistical Investigators are promoted by virtue of the operation of the ratio, namely, 10 percent or 8:2 as the case may be, intended for the method of appointment by recruitment by transfer. Explanation - Item (3) above and the provisos thereto shall be operative only till all the persons who entered service in the Department of Statistics prior to 15th November 1968 as Junior Assistant or Typist or Steno-typist and those who entered service in the Department of Statistics prior to the 17th June 1969 as Supervisors either retire from service or are appointed as Statistical Inspectors and thereafter the provisions shall cease to exist. XXX XXX XXX Rule 4: 4. Qualifications. - No persons shall be eligible for appointment to the category specified in Column (1) by the method specified in Column (2) of the Table below, unless he possesses the qualifications specified in the corresponding entries in Column (3) thereof. THE TABLE Category Method of Qualifications Appointment XXX XXX XXX Statistical Inspector Promotion or (1) Must possess a degree with Statistics, recruitment by Mathematics or Economics as the main sub- transfer subject; and (2) Must have put in a service of not less than two years in the category of Asst, Statistical Investigator or Assistant, as the case may be; Provided that the qualification specified in Item (1) above shall not be insisted upon in the case of Assistant Statistical Investigators and Assistants who entered into service in the Department of Statistics prior to 15 th November 1968, and who possess the minimum general educational qualification. Preference shall be given to candidate who possess experience in Statistical Investigations:

9. By G.O. Ms. No. 869 dated September 11, 1985, the Explanation in Rule 'X' relating to appointment of Statistical Inspectors was substituted as follows:

Explanation.- Item (3) above and the proviso thereto shall be operative to all the persons who entered service in the Department of Statistics as Junior Assistant, Typist or Steno-Typist as the case may be.

10. In Rule 4 relating to the qualifications for promotion or recruitment by transfer for Statistical Inspectors, the following proviso was added:

Provided further that the qualifications specified in items 1 and 2 above shall not be insisted upon in the case of Assistants who entered service in the Department of Statistics after the 15th November, 1968 and who have put in a service for a period of not less than five years as Assistant within a total service of ten years in the Ministerial service and possess the minimum general educational qualification prescribed in Schedule I to Part-II of the Tamil Nadu State and Subordinate Service Rules or a pass in S.S. L.C. Public Examination (11 years courses with eligibility for College course).

11. From the aforesaid provisions contained in the Rules, it would appear that prior to the issuance of G. O. Ms. No. 869 dated September 11, 1985 appointment to the post of Statistical Inspector could be made by three modes, i.e., (1) by direct recruitment; (2) promotion from Assistant Statistical

Investigators and (3) by recruitment by transfer from the category of Assistants in the Department of Statistics. Quotas were also prescribed for appointments from the three sources. In respect of appointments prior to, January 1, 1976, the said quotas were 40% for direct recruitment, 50% for promotion and 10% for recruitment by transfer. With effect from January 1, 1976, the said quotas were revised and 20% of the vacancies were required to be filled by direct recruitment and remaining 80% of the vacancies had to be filled by promotion and by recruitment by transfer in the ratio of 8 : 2. In view of the Explanation in column (2) of the Table in Rule 2(a) against the category 'Statistical Inspectors' the provisions for appointment on the post of Statistical Inspector by recruitment by transfer from the category of Assistants in the Department of Statistics were to be operative only till all the persons who entered into service in the Department of Statistics prior to November 15, 1968 as Junior Assistant, typist or Steno-Typist and those who entered into service in the Department of Statistics prior to June 17, 1969 as Supervisors either retired from service or were appointed as Statistical Inspectors and thereafter the provisions relating to recruitment by transfer would cease to exist. Under Rule 4, qualifications were prescribed for promotion or recruitment by transfer on the post of Statistical Inspector and in order to be eligible it was necessary that a person should (1) possess a degree with Statistics, Mathematics or Economics as the main subject; and (2) must have put in a service of not less than, two, years in the category of Assistant Statistical Investigator or Assistant, as the case may be. In view of the proviso in column (3) of the Table in Rule 4 against the category "Statistical Inspector" the qualification, specified in column (1) with regard to degree with Statistics, Mathematics or Economics as the main subject was not to be insisted in the case of Assistant Statistical Investigators and 1 Assistant who entered into service in the Department of Statistics prior to, November 15, 1968 and who possessed the minimum general educational qualification, but preference was to be given to candidates who possessed experience in Statistical Investigations. In other words, prior to issuance of G. O. Ms. No. 869 dated September 11, 1985, Assistants on the ministerial non-technical side who had entered into service in the Department of Statistics prior to November 15, 1968, were eligible for appointment on the post of Statistical Inspector by way of recruitment by transfer even though they did not possess a degree with Statistics, Mathematics or Economics as the main subject and a ratio of 8 : 2 was fixed in respect of 80% of the vacancies which were required to be filled by promotion and by recruitment by transfer.

12. As a result of the amendments that were introduced in the Rules by G.O. Ms. No. 869 dated September 11, 1985, the quota prescribed for vacancies to be filled by recruitment by transfer from the category of Assistants in the Department of Statistics remained unaltered. By the substitution of the Explanation in column (2) of the Table in Rule 2(a), the restriction that recruitment by transfer from the category of Assistants would be operative only till all the persons who entered into service in the Department of Statistics prior to November 15, 1968 as Junior Assistant, Typist or Steno-Typist and those who entered service in Department of Statistics prior to June 17, 1969 as Supervisors either retired from service or were appointed as Statistical Inspectors, was removed and the said source of recruitment by transfer was made available for all the persons who entered into service in the Department of Statistics as Junior Assistant, Typist or Steno-Typist, as the case may be, irrespective of their date of entry in such service. Furthermore, by insertion of the second proviso in column (3) against the category of 'Statistical Inspectors' in the Table below Rule 4 relating to qualifications, the qualifications specified in items Nos. 1 and 2 of Column (3) for

promotion or recruitment by transfer, namely, degree with the Statistics, Mathematics or Economics as the main subject and service of not less than two years in the category of Assistant Statistical Investigator or Assistant were dispensed with, in the case of Assistants who entered service in the Department of Statistics after November 15, 1968 and who had put in a service for a period of not less than five years as Assistant within a total service of ten years in the ministerial service and who possessed the minimum general educational qualification prescribed in Schedule I to Part-II of the Tamil Nadu State and Subordinate Service Rules or a pass in S.S. L.C. Public Examination (11 years courses with eligibility for College course).

13. It is no doubt true that the amendments which were introduced in the Rules by G. O. Ms. No. 869 dated September 11, 1985 are prospective in nature which means that they were operative with effect from the date of the said notification, i.e., September 11, 1985 and would govern all appointments on the post of Statistical Inspector against a vacancy arising after September 11, 1985. This would mean that with effect from September 11, 1985, a vacancy arising on the post of Statistical Inspector in the Department of Statistics has to be filled in accordance with the Rules as amended by G. O. Ms. No. 869 dated September 11, 1985 and Assistants and other ministerial non-technical staff who entered service in the Department of Statistics after November 15, 1968 and who satisfy the requirements of the Rules with regard to eligibility and qualifications are required to be considered for recruitment by transfer on the post of Statistical Inspector against the vacancies available for them in accordance with the ratio prescribed for recruitment by transfer from Assistants under Rule 2. In this context, it may be stated that the ratio of 8 : 2 for promotion from the cadre of Assistant Statistical Investigators and recruitment by transfer of Assistants had been introduced by G. O. Ms. No. 655 dated July 1, 1977 and was not introduced by G. O. Ms. No. 869 dated September 11, 1985. The State Government was not justified in proceeding on the basis that since G. O. Ms. No. 869 dated September 11, 1985 is prospective in nature, Assistant Statistical Investigators who were appointed prior to September 11, 1985 and whose services had been regularised should first be considered for promotion to the post of Statistical Inspector and only thereafter the ratio of 8 : 2 between Assistant Statistical Investigators and Assistants on the ministerial side could be applied. It must, therefore, be held that it was not permissible for the State Government to postpone the implementation of the Rules, as amended by the G. O. Ms. No. 869 dated September 11, 1985 in the matter of recruitment by transfer on the post of Statistical Inspector or Assistants who entered service in the Department of Statistics after November 15, 1968 till all the Assistant Statistical Investigators who had been regularly appointed by direct recruitment prior to September 11, 1985 had been promoted as Statistical Inspector.

14. We may now refer to the order of the Division Bench of the High Court dated February 10, 1988 in W. A. No. 2146 of 1987 on which reliance has been placed by the learned Counsel for the respondents. The writ appeal No. 2146 of 1987 had been filed against the order of a learned single Judge dated August 14, 1987 in Writ Miscellaneous Petition No. 6046 of 1987 whereby the learned single Judge had refused to pass any interim order in W. P. No. 4075 of 1987 that was filed by respondent No. 3 in the Madras High Court wherein he had challenged the legality of G. O. Ms. Nos. 869 and 870 dated September 11, 1985. The Division Bench of the High Court by its order dated February 10, 1988, disposed of the appeal with the following observations:

....It appears that the writ petition filed by the petitioner-appellant was clearly intended to safeguard his rights which flow from the judgment of this Court. As long as the seniority of the direct recruits is not affected, they cannot have any grievance with regard to the implementation of the impugned Government Orders. We need not, therefore, stay the implementation of the Government Orders, but we make it clear that in any case, even assuming that the Government wants to implement the impugned Government Orders, it will not in any way affect the seniority of the direct recruits as determined by the earlier judgment.

15. The judgment referred to in these observations is in Writ Appeal No. 360/79 arising out of W. P. No. 2368/79 in the Madras High Court. It appears that the State Government had prepared a seniority list of Assistant Statistical Investigators who had been directly recruited as well as those who had been promoted as Assistant Statistical InvestigatOrs. Writ Petition No. 2368/79 was filed by the directly recruited Assistant Statistical Investigators who were aggrieved by the said seniority list. The said writ petition was dismissed by the learned Single Judge. On appeal, the Division Bench of the Madras High Court quashed the said seniority list. The seniority to which reference is made in the order dated February 10, 1988 of the Division Bench of the High Court in Writ Appeal No. 2146 of 1987 was the seniority of the direct recruits in the cadre of Assistant Statistical InvestigatOrs.

16. As regards the order of the Division Bench of the High Court dated February 10, 1988, it may be mentioned that the said order was passed in proceedings for an interim order during the pendency of W. P. No. 4075 of 1987, which on transfer to the Tribunal was numbered as T. A. No. 1595 of 1989 and which has been dismissed as infructuous by the Tribunal by its order dated April 17, 1990. Moreover, the said order has no bearing whatsoever on appointment of Assistants directly on the post of Statistical Inspector. It is confined in its application to promotion to the post of Statistical Inspector from the cadre of Assistant Statistical Investigator insofar as direct recruits and promotees in the said cadre of Assistant Statistical Investigators are concerned. We are unable to appreciate how the said order of the Division Bench of the High Court dated February 10, 1988 in W. A. No. 2146/87 can be invoked in support of the decision that all the Assistant Statistical Investigators who had been directly recruited prior to September 11, 1985 and whose services was regularised should first be considered for promotion to the post of Statistical Inspectors and only thereafter the ratio of 8 : 2 between the Assistant Statistical Investigators and the Assistants in the ministerial side should be applied. It must, therefore, be concluded that respondents Nos. 1 and 2 were not justified in not giving effect to quota prescribed for appointment by recruitment by transfer on the post of Statistical Inspector from amongst Assistants who had entered service in the Department of Statistics after November 15, 1968 against vacancies occurring on the post of Statistical Inspector after the amendment of the Rules by G. O. Ms. No. 869 dated September 11, 1985.

17. It has not been disputed during the course of arguments that since September 11, 1985 till date, 174 persons have been promoted from the cadre of assistant Statistical Investigators to the post of Statistical Inspector. As per the quota of 8 : 2 for promotion from the cadre of Assistant Statistical Investigator and recruitment by transfer from amongst Assistants and other ministerial non-technical staff prescribed in Rule 2 of the Rules, 35 posts of Statistical Inspector should have been made available for Assistants who had become eligible for appointment on the post of

Statistical Inspector by recruitment by transfer as a result of the amendments introduced in the Rules by G. O. Ms. No. 869 dated September 11, 1985. The non-implementation of G. O. Ms. No. 869 dated September 11, 1985 has, thus, resulted in Assistants and other Ministerial non-technical staff in the Department being denied appointment on 35 posts of Statistical Inspectors. It would be in the fitness of things that the imbalance in the cadre resulting from such denial of appointment on the 35 posts of Statistical Inspectors is removed at the earliest and it is ensured that it does not recur. For that purpose, it is necessary that appointment on the next 35 vacancies occurring on the post of Statistical Inspector should be made by recruitment by transfer from amongst Assistants and other Ministerial non-technical staff in the Department of Statistics who entered service after November 15, 1968 and after the said 35 vacancies are filled in this manner, future vacancies on the post of Statistical Inspector should be filled up from the three sources of appointment in accordance with the quota as prescribed in Rule 2 of the Rules.

18. In the result, the appeals are allowed, and the order dated April 17, 1990 passed by the Tribunal in T. A. No. 1509 of 1989 and O. A. No. 239 of 1989 is set aside to this extent that the next 35 vacancies on the post of Statistical Inspector shall be filled by recruitment by transfer from amongst Assistants and other Ministerial non-technical staff who entered service in the Department of Statistics after November 15, 1968 and after such appointments have been made, future vacancies on the post of Statistical Inspector should be filled up in accordance with the quota prescribed in Rule 2 of the Rules. There will be no order as to costs.