

A STATE OF TAMIL NADU AND ORS. ETC.

v.

S. THANGAVEL AND ORS. ETC.

NOVEMBER 29, 1996

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[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Tamil Nadu State and Subordinate Service Rules: Rule 4(a) and 39-Interpretation of.*

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*Service Law—Panel—Preparation of—Power of Government to make supplementary list—Tamil Nadu State and subordinate service—Promotion—Rule requiring that panel should be prepared annually against estimated vacancies—Date prescribed by Rule for preparation of panel—On prescribed date no vacancies anticipated—But due to bifurcation of the firkas and*

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*upgradation of the Sub-Taluks into Taluks, 23 new posts were created by the Government for filling up the same—Consequently list drawn and appointments made—Challenge by respondents—Tribunal held that in the light of the Rules, the Government was devoid of power to make any supplementary list—Appeal preferred by State—Held, the view taken by the Tribunal is not correct—In normal circumstances, a list shall be annually prepared in the*

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*prescribed manner taking into account the vacancies existing or anticipated as on the prescribed date due to contingencies enumerated therein—But that does not mean the Government is denuded of its power to make the list when new situation had arisen—Undoubtedly, in this case, as on the prescribed date there were no vacancies and, therefore, a list could not be prepared—But due*

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*to creation of new posts on account of administrative exigencies, namely, bifurcation of the firkas and upgradation of the sub-taluks into taluks, new posts were created—Consequently, new posts were required to be filled up—The authorities, instead of making temporary promotions under Rule 39 of the Rules, filled them up on regular basis from all the eligible candidates.—Therefore, the preparation of the list cannot be said to be unwarranted due to aforestated exigencies—The G.O.Ms. No. 1227/1981 has no*

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*application to these facts.-*

*Code of Civil Procedure, 1908 :*

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*Sections 2(8) and (9)—Administrative Tribunal—'Judge', 'Judgment'*

*and 'Order'—Judgment is the decision of a court of justice upon the respective rights and claims of the parties to an action in a suit submitted to it for determination—The word "Judgment" denotes the reasons which the court gives for its decision—The members of the Tribunal cannot be considered to be Judges and their statement cannot be treated to be a decree; it may be construed to be only an order for the purpose of decision arrived at by the Tribunal under the Administrative Tribunal Act—The Tribunal's order cannot be treated to be a judgment or decree but they should be only an order.*

*Service Law—Promotion—Respondent qualified as on September 15, 1982 for promotion as Deputy Tehsilder—List prepared before due date and he was made ineligible on account of list made in advance of due date—Direction by Tribunal to include his name in the list—Held, the view of the Tribunal is perfectly correct, the list was prepared two days prior to the due date,—Since admittedly, the respondent was qualified as on the due date, namely, September 15, 1982, he is entitled to be empanelled in the list for promotion, after due consideration, as per Rules.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 16636-37 of 1996 Etc.

From the Judgment and Order dated 11.6.91 of the Tamil Nadu Administrative Tribunal at Madras in T.A. No. 123 and 127 of 1989.

T. Harish Kumar, V. Krishnamurthy, and K.K. Mani for the Appellants.

Ms. Asha Nair, Y.S. Rao, C. Balasubramaniam, K.R. Kumar, V. Krishnamurthy, T. Raja and Ms. Abha R. Sharma for the Respondents.

The following Order of the Court was delivered :

CA.@ SLP (C) NOS. 18886-87/91 & 9056-57/92

Leave granted.

We have heard learned counsel on both sides.

Tamil Nadu Administrative Tribunal at Madras by purported judgment and order, made on June 11, 1991 in T.A. Nos. 123 and 127 of 1989, has held that under Rule 4(a) of the Tamil Nadu State and Subordinate

**A** Service Rules on preparation of the panel either with the names or 'nil' annual list, the Government exhausted their power to make another list in the same year for promotion of the subordinate officers to the higher post in the State or Subordinate service. The said view is in question in these appeals.

**B** The admitted position is that due to bifurcation of new firkas and upgradation of Sub-Taluks into Taluks 23 vacancies of Assistants had arisen in Pudukottai District. The crucial date for preparation of the panel, is as prescribed by the appropriate rules. It is not in dispute in these cases that the crucial date is March 15, 1979. As on the date, there were no vacancies existing or anticipated in the said District. But due to bifurcation

**C** of the firkas and upgradation of the sub-Taluks into Taluks, as stated earlier, 23 new posts were created by the Government for filling up the same. List had been drawn and appointments to the said posts of Assistants came to be made. The respondents filed the OAs in the Tribunal challenging the power to prepare the list. The Tribunal had held that in the light

**D** of Rule 4(a) of the Rules, the Government is devoid of power to make any supplementary list. The list once made, is construed to be an annual list and by operation of provisions thereof, the Government is left with no power to make any supplementary list in that behalf. The Tribunal has also relied upon the instructions issued by the Government in their G.O.Ms.

**E** No. 1227 dated December 10, 1981.

Shri T. Harish Kumar, learned counsel for the appellants, contends that Rule 4(a) would apply in the case where normal exigencies of service would operate in which event the Government or the competent officer

**F** would be in a position to assess the existing vacancies or the vacancies likely to arise or temporary vacancies likely to arise but in view of the creation of the new posts in the year due to bifurcation of the firkas and upgradation of the sub-taluks into taluks the said Rule cannot be strictly interpreted denuding the Government of the power to make appointment by promotion. The view taken by the Tribunal is not correct in law. Shri

**G** K. Ram Kumar, learned counsel for the respondents, on the other hand, has contended that the Rule is operative whether for the existing vacancies or for the anticipated vacancies including the new vacancies likely to arise. Rule 39 of the Rules gives power to make temporary appointments and in ensuing year they can be promoted on regular basis. The Government

**H** having issued the instructions in G.O. Ms.No.1227/81 cannot make any

appointment by preparing a supplementary list which is not warranted or contemplated under Rule 4(a) of the Rules. A

In view of the respective contentions, the question that arises for consideration is: whether the view taken by the Tribunal is correct in law? We have come across number of judgments of various Administrative Tribunals in the country treating their orders to be "*a judgment and order*" obviously under Section 2(9), CPC. The view seems to be not correct in law. A judgment means a statement given by a Judge of the grounds of a decree or order. Section 2(8) defines "Judge" to mean the presiding officer of a civil court. An officer, therefore, is appointed to preside and to administer the law in a court of justice and clothed with judicial authority. Judgment is the decision of a court of justice upon the respective rights and claims of the parties to an action in a suit submitted to it for determination. The word "judgment" denotes the reasons which the court gives for its decision. The members of the Tribunal cannot be considered to be Judges and their statement cannot be treated to be a decree; it may be construed to be only an order for the purpose of decision arrived at by the Tribunal under the Administrative Tribunal Act. Under these circumstances, we must hold that the Tribunal's order cannot be treated to be a judgment or decree but they should be only an order. B  
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In this case, Rule 4(a) of the Rules contemplates that all first appointments to a service or class or category or grade thereof State of Subordinate, whether by direct recruitment or by recruitment by transfer or by promotion, shall be made by the appointing authority from a list of approved candidates. Such list shall be prepared in the prescribed manner by the appointing authority or any other authority empowered in the special rules in that behalf. The list shall be published in the case of Gazetted Officer in the State Gazette and in the case of Subordinate officer on the notice board of the respective office. It is also contemplated to communicate such a list to all persons obviously to put them on notice that such a list was made so that, if they feel aggrieved, they may take necessary corrective measures according to law. E  
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The, provision contemplate that the list of approved candidates for appointment by promotion and by direct recruitment or recruitment by transfer to all the categories of posts in the State of subordinate services shall be prepared annually against the estimated number of vacancies H

- A expected to arise during the course of a year. The estimate of vacancies shall be prepared taking into account the total number of permanent posts in a category; the number of temporary posts in existence, the anticipated sanction of new posts in the next year, the recruitment post of leave reserves; the anticipated vacancies due to retirement and promotion, etc.
- B in the course of the year. It would, thus, be seen that in normal circumstances, a list shall be annually prepared in the prescribed manner taking into account the vacancies existing or anticipated as on the prescribed date due to contingencies enumerated therein. That does not mean the Government is denuded of its power to make the list when new situation had arisen. Undoubtedly, in this case, as on the prescribed date there were no vacancies and , therefore, a list could not be prepared. But due to creation of new posts on account of administrative exigencies, namely, bifurcation of the firkas and upgradation of the sub-taluks into taluks, new posts were created. Consequently, new posts were required to be filled up. As a result, the authorities, instead of making temporary promotions under Rule 39 of the Rules, filled them up on regular basis from all the eligible candidates.
- D Under those circumstances, the preparation of the list cannot be said to be unwarranted due to aforesated exigencies. The G.O. Ms. No. 1227/1981 has no application to these facts. Under these circumstances, the view taken by the Tribunal is not correct.
- E The appeals are accordingly allowed. The order of the Tribunal is set aside.

*CA @ SLP (C) No. 11070/92*

Leave granted.

- F This appeal by special leave arises from the orders of the Tamil Nadu Administrative Tribunal at Madras, made on March 19, 1992 in T.A. No. 268 of 1990.
- G The admitted position is that the respondent, for promotion as a Deputy Tehsildar, was to qualify and in fact qualified as on September 15, 1982. A list was prepared two days before the due date and he was made ineligible on account of the preparation made in advance of the due date. Respondent had then filed O.A. It was contended by the appellant that since annual list was already prepared on September 13, 1982 on which
- H date, he was not qualified, he is not eligible to be included in the list. It

was negated by the Tribunal and it was directed to include his name in the list. The view of the Tribunal is perfectly correct, the list was prepared two days prior to the due date, Since, admittedly, the respondent was qualified as on the due date, namely, September 15, 1982, he is entitled to be empanelled in the list for promotion, after due consideration, as per Rules. Therefore, the direction given by the Tribunal to include his name in the list is not vitiated by any error of law warranting interference. A B

The appeal is accordingly dismissed in view of the aforestated facts.  
No costs.

T.N.A.

Appeal dismissed.