

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) 9334 OF 2018
[ARISING OUT OF SPECIAL LEAVE PETITION
(CIVIL) NO.5588 OF 2006]

GOVERNMENT OF TAMIL NADU AND ANR.
ETC. APPELLANT(S)

VERSUS

REGISTRATION DEPARTMENT SC/ST AND
M.B.C. EMPLOYEES GENERAL WELFARE SANGAM
AND ANR. ETC. RESPONDENT(S)

WITH

CIVIL APPEAL NO(S) 9335 OF 2018
[ARISING OUT OF SPECIAL LEAVE PETITION
(CIVIL) NO.5589 OF 2006]

CIVIL APPEAL NO(S) 9336 OF 2018
[ARISING OUT OF SPECIAL LEAVE PETITION
(CIVIL) NO.7651 OF 2006]

ORDER

SLP(C) NO.5588 OF 2006

1. Leave granted.
2. The High Court by the impugned order has taken the view that the posts of Deputy Tahsildar, Assistant Commercial Tax

Officer ("ACTO" for short) and Sub-Registrar Grade-II are promotional posts to which the benefit of reservation to backward classes would not apply.

3. The High Court has taken the above view notwithstanding the fact that under the relevant Rules, namely, Tamil Nadu Revenue Subordinate Service Rules, recruitment to the post of Deputy Tahsildar is exclusively by way of transfer of members of other services whereas in the case of appointment to the posts of ACTO and Sub-Registrar Grade II apart from recruitment by transfer of members of other services, 33-1/3% of the vacancies are to be filled by direct recruitment.

4. The actions of the State Government in making recruitment and providing reservation to the members of the Backward Class category had been assailed by

incumbents who were senior to the persons appointed by way of transfer.

5. The High Court on an elaborate consideration of the matter took the view that though appointment is made by way of transfer the same being to higher post(s) carrying higher pay and higher responsibilities the same amounts to promotion and the rule of reservation in favour of Backward Class cannot be made applicable to promotions. The impugned actions of the State are, therefore, legally fragile. Aggrieved, the State is in appeal before us.

6. The matter lies within a very short compass.

7. The issue is: whether recruitment to posts, which carry a higher pay and higher responsibilities, by way of transfer

would amount to promotion?

8. Ordinarily and in the normal course, it would, as the High Court had held. But, the above conclusion cannot be read *de hors* a consideration of the relevant Rules, namely, Tamil Nadu State and Subordinate Services Rules (hereinafter referred to as "Rules") which define the terms "promotion" and "transfer", namely, Rule 2(13) and Rule 2(15-A) of the Rules. The said Rules 2(13) and 2(15-A) are set out below:

"2(13) "Promotion" means the appointment of a member of any category or grade of service or class of service to a higher category or grade of such service or class;

2(15-A) Transfer: - A member of a service is said to be appointed by transfer when the appointment is made from one category to another category in the same service carrying identical scale of pay."

9. Reading Rule 2(13) of the Rules it would appear to us that the expressions "category", "grade of service" and "class of service" appearing therein must be read *ejusdem generis* to denote 'members of a particular service who get upgraded to a higher post in the same service'.

10. In the present case, from the provisions of the Rules, namely, Tamil Nadu Revenue Subordinate Service Rules, Tamil Nadu Commercial Taxes Subordinate Service Rules and the Tamil Nadu Registration Subordinate Service Rules governing the three posts in question, namely, Deputy Tahsildar, ACTO and Sub-Registrar Grade-II it is clear that so far as the post of Deputy Tahsildar is concerned recruitment is purely and only by transfer from members of other services whereas in the case of other two posts, namely, ACTO and Sub-

Registrar Grade II, recruitment is both by way of transfer and through direct recruitment. Appointment by promotion is clearly not contemplated to any of the said three posts in question by the Rules governing the same.

11. If that is so, the rule of reservation set out in Rule 22 of the Rules read with the specific provisions of the Tamil Nadu Commercial Taxes Subordinate Service Rules, Tamil Nadu Registration Subordinate Service Rules and the Tamil Nadu Revenue Subordinate Service Rules would govern the matter and benefit of reservation would be available in posts of Deputy Registrar, ACTO and Sub-Registrar Grade II for Backward Class category also following recruitment by transfer to the said posts.

12. The view taken by the High Court that such appointment by transfer amounts to promotion being without any consideration of the provisions of the Rules we are of the view that the High Court has committed an error in overlooking the definition of the terms "Promotion" and "Transfer" as contained in the said Rules and in applying the principles of general application that would be applicable to determine whether recruitment to a higher post is by way of promotion.

13. For the aforesaid reasons, we are of the view that the order(s) of the High Court impugned in the appeal(s) would require to be interfered with which we accordingly do.

14. Consequently and in the light of the above, the order(s) of the High Court is set aside and the appeal(s) is allowed.

Consequently all pending applications are also disposed of.

SLP(C) NO.5589 OF 2006 AND SLP(C) NO.7651 OF 2006

1. Leave granted.
2. The appeals are disposed of in terms of the order of this Court passed today i.e. 11th September, 2018 in Civil Appeal(s) arising out of special Leave Petition (Civil) No.5588 of 2006. Consequently, all pending applications are also disposed of.

....., J.
(RANJAN GOGOI)

....., J.
(NAVIN SINHA)

....., J.
(K.M. JOSEPH)

NEW DELHI
SEPTEMBER 11, 2018

ITEM NO.13

COURT NO.2

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 5588/2006
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 28-02-2005
IN WP NO. 11296 TO 11298 OF 2003 AND 28787 OF 2004 AND DATED 09-12-
2005 IN RA NOS. 64 TO 67 OF 2005 PASSED BY THE HIGH COURT OF
JUDICATURE AT MADRAS)

GOVERNMENT OF TAMIL NADU AND ANR. ETC.

PETITIONER(S)

VERSUS

REGISTRATION DEPARTMENT SC/ST AND M.B.C. EMPLOYEES
GENERAL WELFARE SANGAM AND ANR.ETC.
(FOR FINAL DISPOSAL)

RESPONDENT(S)

WITH

SLP(C) NO. 5589/2006 (XII)

SLP(C) NO. 7651/2006 (XII)

Date : 11-09-2018 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE K.M. JOSEPH

For parties:

Mr. Vijay Narayanan, Sr. Adv.(Adv. Gen.)
Mr. M. Yogesh Kanna, AOR
Mr. S. Partha Sarathi, Adv.

Mr. K. V. Vijayakumar, AOR

Mr. S. Thananjayan, AOR

Mr. B. Balaji, AOR

Mr. M. A. Chinnasamy, AOR
Ms. C. Rubavathi, Adv.
Mr. V. Senthil Kumar, Adv.
Mr. P. Raja Ram, Adv.
Mr. K. Ethiraj, Adv.

Mr. R. Anand Padmanabhan, Adv.
Mr./Ms. Nishaka Tyagi, Adv.
Mr. Parwal, Adv.
Mr. Pramod Dayal, AOR

Mr. P.R. Kovilan, Adv.
Mr. Naresh Kumar, AOR
Ms. Jubli Momalin, Adv.

UPON hearing the counsel the Court made the following
O R D E R

SLP(C) NO.5588 OF 2006

Leave granted.

The appeal is allowed in terms of the signed order.
Consequently, all pending applications are disposed of.

SLP(C) NO.5589/2006 AND SLP(C) NO.7651/2006

Leave granted.

The appeals are disposed of in terms of the signed order. Consequently, all pending applications are also disposed of.

[VINOD LAKHINA]
AR-cum-PS

[ASHA SONI]
ASSISTANT REGISTRAR

[SIGNED ORDER IS PLACED ON THE FILE]