
(2014) 08 MAD CK 0133

In the Madras High Court

Case No : Writ Appeal Nos. 168 and 169 of 2012

A. Baby Sabeena

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 6 MLJ 210

Hon'ble Judges : N. Paul Vasantha Kumar, J;K. Ravichandra Babu, J

Bench : Division Bench

Judgement

1. These Writ Appeals are directed against the order of the learned Single Judge made in W.P. No. 1286 of 2009 and W.P. No. 502 of 2010, dated 29.08.2011 and 07.09.2011, whereby the said writ petitions were dismissed. The appellants are the writ petitioners. They filed the said writ petitions challenging paragraph 3(ii) of the Government Order made in G.O.Ms. No. 334, Public Works Department. dated 19.10.2007 and letter No. 12236/C2/2008/4, dated 05.09.2008 and consequently, for a direction to the respondents to regularise the services of the petitioners/appellants from the date of completion of 10 years of Casual Labourer service and to revise and refix the scale of pay by arriving at a notional increment till the date of the said Government Order and to extend all consequential benefits.

2. The case of the appellants/petitioners before the Writ Court is as follows:

(i) The appellants/petitioners were all NMRs and the Government decided to bring the appellants into regular establishment and passed G.O.Ms. No. 334, Public Works Department, dated 19.10.2007, regularising about 1056 NMRs. Before passing such Government Order, there were several other Government orders wherein the NMRs were brought into regular establishment commencing from G.O.Ms. No. 1035, Public Works Department, dated 14.04.1976, to G.O.Ms. No. 141, Public Works Department, dated 20.03.2007. All the Government Orders extended the benefit of regularisation on completion of 10 years of NMR

service and directed that the incumbents were eligible to get notional pay fixations and allowances as per orders in force by retrospective effect of regularisation, except the G.O.Ms. No. 334, dated 19.10.2007, wherein the benefits were conferred only from the date of Government Order. The actual monetary benefits has been directed to be made effective from the date of issue of the said G.O.Ms. No. 334, dated 19.10.2007. The appellants/petitioners are aggrieved only to the extent of the benefits being conferred from the date of issue of the Government Orders. In other words, the appellants/petitioners are aggrieved against paragraph 3(h) of the G.O.Ms. No. 334, whereby the financial benefit was sought to be reckoned from the date of issue of the Government Order. Such reckoning of the financial benefit has resulted in deprivation of the accrued service rights and benefits. The appellants/petitioners are entitled for entire service period counted for the purpose of pension and other service benefits including the monetary benefits on and after the completion of 10 years after adjusting the payments already paid and by fixing the scale of pay on the said date notionally.

(ii) By contending so, the appellants/petitioners filed the above writ petitions with the relief as stated supra.

3. The said writ petitions were resisted by the respondents by contending that as the impugned Government Order regularising the services of 1056 NMRs was issued based on sympathetic consideration by relaxing certain rules and as already the benefit of regularisation has been given, the appellants/petitioners' prayer to consider their services with retrospective effect from the date of initial appointment for other benefits, could not be considered as clarified in letter dated 05.09.2008.

4. It was argued before the learned Single Judge by the counsel for the petitioners/appellants that in the matter of fixation of benefits, the Government should not discriminate. The learned Single Judge dismissed the writ petitions by holding that the impugned Government Order was a scheme framed by the Government in respect of qualified number of NMRs to be relaxed and have put in reckoned service thereafter and since a scheme of that nature has to be comprehensive scheme and the appellants/petitioners were beneficiaries of the scheme, and therefore, they cannot seek to improve upon the scheme by seeking the relief as prayed for in the writ petitions.

5. Mr. L. Chandrakumar, learned counsel appearing for the appellants/petitioners submitted that the appellants/petitioners are seeking only fixation of notional benefits consequent upon retrospective regularisation of their services on and after the completion of 10 years of service of NMR Casual Labourers on the basis of the impugned Government Order. He further submitted that the said Government Order was implemented in an improper manner only insofar as the appellants are concerned, whereas in respect of around over 600 persons, the competent authority had chosen to give effect to the date of regularisation and had fixed the notional benefits from the date of issue of the Government Order,

thereby entitling those persons to avail the accrued increments and they have also availed such benefits. Thus he contended that this sort of discrimination though pointed out before the learned Single Judge, has not been taken into consideration while passing the order in the writ petitions. According to the learned counsel, the non-extension of notional benefits insofar as the appellants are concerned is a discriminative action of the respondents. In support of his submission, the learned counsel filed additional typed set of papers wherein he has enclosed certain proceedings issued by the competent authorities in respect of similarly placed persons showing that the benefits as sought for by the appellants in this case have been extended to those similarly placed persons.

6. Per contra, Mr. P.H. Arvind Pandian, learned Additional Advocate General appearing for the respondents submitted that the appellants/petitioners having been granted regularisation by the impugned Government Order, cannot challenge the portion of the said order seeking for retrospective notional benefits of fixation of pay. He, in other words, supported the impugned Government Order as well as the order passed by the learned Single Judge.

7. We have considered the rival submissions made by the learned counsel appearing for the appellants and the learned Additional Advocate General appearing for the respondents and perused the materials placed on record.

8. It is an admitted fact that the appellants and other similarly placed persons numbering 1056 were granted the benefit of regularisation through G.O.Ms. No. 334, dated 19.10.2007. But the grievance of the appellants is that paragraph 3(ii) of the said impugned Government Order reckoned the financial benefit from the date of issue of the Government Order, thereby resulting in deprivation of the accrued service rights and benefits. In other words, it is the contention that they are entitled for the entire service period to be counted or taken into account for the purpose of pension and other service benefits including the monetary benefits on and after the completion of 10 years of service by fixing the scale of pay notionally with retrospective effect.

9. Mr. L. Chandrakumar, the learned counsel appearing for the appellants submitted that the appellants are seeking only notional fixation of pay retrospectively without monetary benefits as has been given to other similarly placed persons, as could be seen from the various proceedings annexed in the additional typed set of papers. In the additional typed set of papers, order passed by the Government in G.O.Ms. No. 124, Public Works Department, dated 15.05.2008, notional benefit was given to 333 similarly placed persons for the purpose of annual income and pension. The relevant portion of the Government Order reads as follows:

"English Translation:

"The Suggestion of the Engineer in Chief, Water Resources Organisation and the Chief Engineer (General) Public Works Department, was carefully considered by the Government. Accordingly, the services of the 333 Daily Wages Technical

Assistants whose services have been regularised through the Government Orders 3 to 7 read under reference, can be considered as a special case, that their services can be regularised from the date of completion of 10 years of services, and the left out period of service (the period from the date of completion of 10 years of service by individuals, till the date on which Government Order was issued) can be taken into account without monetary benefits/back wages as per the rules relating to usual promotion, yearly increment and pension. Further, the Government hereby orders that their pay shall be fixed notionally. Further, as their services are being regularised retrospectively, the Government hereby orders that the request sought for promotion over and above the juniors who had been promoted prior to the issuance of this Government Order, shall not be entertained."

10. One of the appellants has also filed an affidavit dated 30.07.2014, stating that the appellants have been treated with hostile discrimination, while about 600 similarly placed persons have been given the benefit of notional fixation of their scale of pay retrospectively.

11. When the said affidavit as well as the additional typed set of papers were placed before this Court and also served on the other side, the learned Additional Advocate General after getting instructions from the respondents, was not in a position to deny or dispute those proceedings relied on by the appellants to contend that they have been discriminated.

12. From the perusal of the above said Government Order issued in respect of similarly placed persons based on the very same G.O.Ms. No. 334, it could be seen that the contention of the appellants that they are treated differently resulting in discrimination, is well founded.

13. As rightly contended by the learned counsel appearing for the appellants, what is sought for is only a notional fixation of pay retrospectively on completion of 10 years of their service without any monetary benefit, so that they would get their entire service period counted for the purpose of service benefits including the monetary benefits.

14. In our considered view granting of such notional fixation of pay retrospectively without monetary benefit is not going to affect the Government in any way, especially when such benefit was given to other similarly placed persons numbering more than 600 as has been seen in the above referred proceedings. The learned Single Judge failed to consider this aspect of discrimination and dismissed the writ petitions only on the reason that the appellants/petitioners having benefited by regularising of their service through impugned Government Order, cannot seek to improve upon the scheme. In our considered view such finding of the learned Single Judge is not correct in view of the fact that the appellants/petitioners are not seeking to improve the scheme and on the other hand seek the benefit conferred to similarly placed persons based on the very same Government Order as has been discussed supra. The

action of the respondents in treating the appellants differently is in violation of Article 14 of the Constitution of India. Right to treat similarly placed persons equally is a fundamental right guaranteed under the Constitution of India. The said position is made clear in the following decisions:

(i) Prem Chand Somchand Shah and Another Vs. Union of India (UOI) and Another, . In paragraph 8 of the Judgment, it is held thus:

"8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question"

(ii) In Radhy Sham v. State of U.R., (2011) 5 SCC 552, it is held that policy of pick and choose in some parcel of the land and leaving many other parcels of the land under the Land Acquisition Act is discriminatory and violation of Article 14 of the Constitution of India.

(iii) In Sham Lal and Others Vs. State of Punjab and Others, , the aforesaid position is reiterated in this case.

(iv) In State of Uttar Pradesh Vs. Dayanand Chakrawarty and Others, , it is held that there cannot be any discrimination in treating equally placed persons on same footing for all purposes. The above decisions were followed by the Division Bench, of which one of us (N. Paul Vasantha Kumar, J.) is a member in the decision in the case of Union of India Vs. S. Subramani and The Registrar, .

15. As the appellants have established the discriminatory treatment meted out to them, as could be seen from the available proof, which are not disputed by the respondents, the orders of the learned Single Judge upholding the action of the Government are liable to be set aside. In fine, the Writ Appeals are allowed and the respondents are directed to notionally fix the pay of the appellants/petitioners retrospectively with effect from the date of completion of 10 years of service as NMRs, with monetary benefits from the date of the Government Order, dated 19.10.2007, as it has been extended to others in G.O.Ms. No. 124, Public Works Department, dated 15.05.2008. Such exercise shall be commence and completed by the respondents, within a period of eight weeks from the date of receipt of a copy of this order. No costs.