
(2015) 03 MAD CK 0569

In the Madras High Court

Case No : Writ Appeal Nos. 1599 and 1600 of 2014, Writ Petition No. 2570 of 2015, M.P. Nos. 1/2014, 1/2015 and 2 of 2015

A. Elangovan and Others

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Citation : (2015) 03 MAD CK 0569

Hon'ble Judges : V. Ramasubramanian, J;P.R. Shivakumar, J

Bench : Division Bench

Advocate : R. Thiagarajan, SC and N.G.R. Prasad, for the Appellant; P.H. Arvinth Pandian, AAG assisted by T.N. Rajagopalan, SGP and C.V. Shaichandran, GA, Advocates for the Respondent

Judgement

V. Ramasubramanian, J—The writ appeals arise out of the dismissal of a batch of writ petitions, questioning the correctness of the fixation of seniority as between in-service candidates, who were directly recruited as Sub-Inspectors through a special process of selection and those directly recruited from the open market. The writ petition is filed by S. Sheik Babu, challenging the rejection of his request for fixation of seniority over and above the direct recruits and also challenging the consequential panel for promotion to the post of Deputy Superintendent of Police.

2. We have heard Mr. R. Thiagarajan, learned Senior Counsel and Mr. N.G.R. Prasad, learned counsel appearing for the appellants in the writ appeals, Mr. R. Muthukumarasamy, learned Senior Counsel appearing for the writ petitioner, Mr. P.H. Arvinth Pandian, learned Additional Advocate General appearing for the State and Mr. K. Venkatramani, learned Senior Counsel, Mr. K.M. Vijayan, learned Senior Counsel, Mr. Balan Haridas, Mr. M. Radhakrishnan, Mrs. Lita Srinivasan and Mr. R. Sankarasubbu learned counsel appearing for the respective contesting Respondents.

3. On 1.1.1994, the Chairman of the Tamil Nadu Uniformed Services Recruitment

Board, issued a Notification inviting applications for direct recruitment to 500 posts of Sub-Inspectors of Police (men) in the Tamil Nadu Police Force. The Notification did not enable the in-service candidates (namely those who are already working in the Department as Police Constables or Head Constables) to apply.

4. The candidates, who applied in response to the said Notification, were invited for certificate verification and physical measurement and physical efficiency tests, on 20.3.1994. They were also made to take a written test on 30.3.1994.

5. After the process of certificate verification, physical measurement and physical efficiency tests and the written test was over, a few Constables approached the Tamil Nadu Administrative Tribunal by filing O.A. Nos. 1368, 1651, 1652 and 1785 of 1994, claiming that the in-service candidates should also be permitted to participate in the selection, by granting necessary relaxation wherever required. While admitting the applications, the Tamil Nadu Administrative Tribunal granted interim order of status quo on 13.4.1994. Thereafter, several Constables filed applications before the Tribunal. All the applications were taken up together by the Tamil Nadu Administrative Tribunal and they were disposed of by a common order dated 18.1.1995. By the common order, the Tribunal directed the Department to conduct a special selection for in-service candidates, by relaxing the upper age limit as provided in the Recruitment Rules. Interestingly, the Tribunal (i) did not set aside the Notification dated 1.1.1994; and (ii) did not direct the in-service candidates to be allowed to participate in the same selection, but directed a special selection to be held for them.

6. In the meantime, the vacancies as notified on 1.1.1994 got multiplied. Therefore, the Government first issued an order in G.O. Ms. No. 1054, Home (Police III) Department, dated 13.07.1995. By the said order, the Government directed that 20% of the vacancies in the quota for direct recruitment be reserved for the Police Constables and Head Constables in (i) the Armed Reserve (ii) Taluk Police and (iii) Tamil Nadu Special Police Battalion. The remaining 80% was directed to be filled up from the open market. The Government ordered further that necessary draft amendments to the Recruitment Rules both for the Tamil Nadu Police Subordinate Services and for the Tamil Nadu Special Police Subordinate Services will be issued separately. In para 4 of the said G.O. Ms. No. 1054 dated 13.07.1995, the Government directed that the inter se seniority of those recruited from the open market will be below to those recruited from among the Departmental candidates.

7. Closely following the above Government Order, yet another order was issued on 1.8.1995 directing the Tamil Nadu Uniformed Services Recruitment Board to recruit 1100 persons instead of 500 persons. Thereafter, another letter was issued by the Government to the Recruitment Board, directing it to recruit 270 Sub-Inspectors of Police from among in-service candidates against the 20% quota created for them under G.O. Ms. No. 1054 dated 13.07.1995.

8. As a result, a separate Notification was issued on 18.10.1995 by the Recruitment Board for the recruitment of 270 Sub-Inspectors from among the in-service candidates.

9. Ultimately, a total of 1100 candidates were selected from the open market and 267 candidates were selected from among the in-service candidates. The first batch of 500 candidates recruited from the open market joined training on 1.3.1996. The second batch of 600 candidates recruited from the open market joined training on 2.6.1997 along with those 267 in-service candidates. Thus, there was a time gap of about 15 months between (i) the date on which those 500 candidates recruited from the open market joined training and (ii) the date on which 600 candidates recruited from the open market and 267 in-service candidates joined training.

10. It appears that in the year 2005, the first batch of directly recruited candidates gained promotion as Inspectors of Police forcing a group of in-service candidates to file a petition in W.P. No. 2068 of 2005. In the said writ petition, the candidates recruited from the open market were not made parties. However, an interim order was passed on 27.1.2005 directing the Government to prepare a "C" List, including even the in-service candidates who were the petitioners.

11. Finally, the writ petition W.P. No. 2068 of 2005 was disposed of by a learned Judge by an order dated 30.10.2009, directing the official respondents to consider the claim of the in-service candidates in accordance with the Statutory Rules issued in G.O. Ms. No. 1627, Home (Police III) Department, dated 24.10.1996.

12. On the same date namely 30.10.2009, a similar order was passed by this Court in favour of another group of in-service candidates in W.P. No. 24151 of 2005.

13. In pursuance of the orders passed in those writ petitions, the Director General of Police examined the claim of the in-service candidates with reference to the Statutory Rules and issued a Memorandum dated 20.1.2010, rejecting the claim of those 267 in-service candidates for fixation of seniority over and above the first batch of 500 candidates directly recruited from the open market.

14. After three years of the rejection of the request of the in-service candidates, the Director General of Police issued a Memorandum dated 22.11.2013, calling for the list of eligible Inspectors of Police, fit for appointment as Deputy Superintendents of Police, for the purpose of empanelment. Immediately, a group of in-service candidates including those who obtained orders in W.P. No. 2068 of 2005, filed a batch of writ petitions (i) seeking to have their seniority fixed over and above the first batch of 500 candidates directly recruited from the open market; and also (ii) seeking to set aside the proposed empanelment for the post of Deputy Superintendents of Police.

15. All the writ petitions namely W.P. No. 2727 of 2014 batch of cases were

dismissed by a learned Judge by a common order dated 24.11.2014. As against the said order, two persons have come up with the above writ appeals. In the meantime, another person has come up with a writ petition, challenging the original order of the Director General of Police dated 20.11.2010 and the panel dated 22.11.2013. Therefore, all of them were taken up together for hearing.

16. The main contention of the learned Senior Counsel appearing for the appellants and the writ petitioner is that two selections were held in pursuance of a single Notification for direct recruitment issued on 1.1.1994 and that both selections were held in the same year. Therefore, it is their contention that as per the Proviso to Rule 24(a), the seniority of the Sub-Inspectors directly recruited from among the members of the service and the members of the Tamil Nadu Police Subordinate Service should be fixed above the direct recruits selected from the open market in the same year. In simple terms, the contention of the appellants and the writ petitioner is that if one set of candidates are directly recruited from the open market as Sub-Inspectors and another set of candidates are directly recruited by way of selection from among the members of the service in the same year, the latter should be given seniority over and above the former as per the statutory rules.

17. This, according to the appellants/petitioner, is the plain language of the Proviso to Rule 24(a), which was inserted by way of amendment to the Special Rules under G.O. Ms. No. 1627 Home Department dated 24.10.1996 with retrospective effect from 13.7.1995. This Proviso to Rule 24(a) of the Special Rules reads as follows :

"Provided that the seniority of the Sub-Inspectors directly recruited from among the members of this service and the members in the Tamilnadu Police Subordinate Service, shall be fixed above the direct recruits selected from open market in the same year."

18. However, the claim of the appellants/writ petitioner is opposed by the contesting respondents on various grounds such as (a) that the selections did not take place in the same year and hence, the benefit of the Proviso to Rule 24(a) is not applicable to the in-service candidates; (b) that in any case, only one set of rules out of three sets of rules that govern the Police Force in the State of Tamil Nadu got amended under G.O. Ms. No. 1627 dated 24.10.1996; and (c) that in any case, the appellants/writ petitioner are guilty of delay and laches, disentitling them to any relief.

19. We have carefully considered the above submissions.

20. In order to find an answer to the issues raised on both sides, it is necessary, at the risk of repetition, to go back to the historical background and provide certain dates, about which, there is no dispute between the parties. They are as follows :

"(i) the date on which a Notification for direct recruitment of 500 candidates was

issued = 1.1.1994;

(ii) the date on which the candidates from the open market were invited for certificate verification, physical measurement and physical efficiency tests = 20.3.1994;

(iii) the date on which a written test was conducted for the applicants from the open market = 30.3.1994;

(iv) the date on which the in-service candidates approached the Tamil Nadu Administrative Tribunal and secured an interim order to maintain status quo = 13.4.1994;

(v) the date on which the Tribunal disposed of all the applications of the in-service candidates, directing the Department to carve out a percentage of posts for in-service candidates and to hold a special selection exclusively for them = 18.1.1995;

(vi) the date on which the Department accepted the judgment of the Tribunal and issued orders carving out 20% of the posts intended for direct recruitment to be filled up from among in-service candidates, by a process of special selection = 13.7.1995 (G.O. Ms. No. 1054);

(vii) the date on which the interview was held for some of the candidates from the open market, after being shortlisted in the physical measurement and physical efficiency tests and written examination = 19.7.1995;

(viii) the date on which the Government notified Tamil Nadu Uniformed Services Recruitment Board that direct recruitment from the open market should be for 1100 posts instead of 500 posts = 1.8.1995;

(ix) the date on which the Government notified Recruitment Board to proceed with a special selection of 270 Sub-Inspectors from among the in-service candidates = 14.8.1995;

(x) the date on which the candidates from the open market, who had successfully passed all the tests (physical measurement and physical efficiency tests and written examination) were called for medical examination = 11.10.1995;

(xi) the date on which the in-service candidates were called for the first time for physical measurement and physical efficiency tests = 6.11.1995 (call letters were issued on 18.10.1995);

(xii) the date on which the cut off date for fulfilment of eligibility criteria for in-service candidates was notified as 1.7.1995 = 20.11.1995;

(xiii) the date on which the candidates eventually selected for direct recruitment from the open market were called upon to join duty = 1.3.1996;

(xiv) the date on which the Government actually amended the rules providing for

20% quota for in-service candidates within the 50% quota reserved for direct recruitment = 24.10.1996;

(xv) the date on which the Government relaxed one more eligibility criteria namely the minimum height of 170 cms (apart from the relaxation with respect to age), for the in-service candidates, for the purpose of selecting 267 persons = 31.1.1997 (under G.O. Ms. No. 134); and

(xvi) the date on which 267 in-service candidates were selected for direct recruitment as Sub-Inspectors and sent for training = 2.6.1997."

21. Therefore, it is clear (a) that though the original notification for direct recruitment of 500 candidates from the open market triggered the entire sequence of events, the selection from the open market and the selection from among the departmental candidates, were conducted independently and they proceeded on different tracks; (b) that while the tests such as physical measurement and physical efficiency and written examination for recruitment from the open market were over in the year 1994, leaving the medical examination alone to be held in October 1995, the very notification for recruitment of 267 candidates from among those already serving in the Department was issued only on 18.10.1995; and (c) that while the first batch of 500 candidates selected from the open market joined training on 1.3.1996, those 267 departmental candidates selected as per the decision of the Tribunal were sent for training only on 2.6.1997.

22. Therefore, we find, on facts, that at least the first batch of 500 candidates selected for direct recruitment from the open market and the set of 267 departmental candidates selected under 20% quota cannot be said to have been selected for appointment either in the same selection or in the same year. Hence, whichever way the Proviso to Rule 24(a) of the Special Rules is interpreted, it does not enure to the benefit of the in-service candidates at least in so far as the first batch of 500 candidates selected from the open market are concerned. We have already extracted the Proviso to Rule 24(a) inserted in the Special Rules under G.O. Ms. No. 1627 Home dated 24.10.1996. The said rule uses the expression "in the same year". The appellants and their colleagues cannot be said to have been recruited or even selected in the same year, as those of the first set of 500 candidates from the open market. Even if we give the benefit of a liberal interpretation and construe the expression "in the same year" to mean "in the same selection", the departmental candidates may not benefit, since we find, on facts, that the selections were distinct and separate.

23. Merely because the original notification (like the original sin) dated 1.1.1994 acted as the fountainhead, from out of which, two streams, one for direct recruitment from the open market and another for a special selection from among the departmental candidates flowed, it cannot be said that they belonged to the same selection. Therefore, the claim of the appellants that the appellants and other in-service candidates, who were included in the select list of 267

persons, should have seniority over and above those directly recruited from the open market, is clearly unsustainable both on facts and in law.

24. There seems to be one more difficulty for the appellants/petitioner. The entire Tamil Nadu Police Force comprises of (i) the Local Police, who are governed by a set of rules known as the Special Rules for Tamilnadu Police Subordinate Services; (ii) the Armed Reserve, who are governed by a set of rules; and (iii) Tamil Nadu Special Police Battalion, which is governed by another set of special rules. The post of Sub-Inspector of Police is in Category 2 of Class I of the Tamil Nadu Police Subordinate Service and the recruitment to such a post, qualifications prescribed and other terms and conditions of service of persons holding the said post, are governed by the Special Rules for Tamil Nadu Police Subordinate Services, available in Section 34.

25. But, the post of Sub-Inspector of Police in the Tamil Nadu Special Police Battalion is in Category 2 under Rule 3 of the Tamil Nadu Special Police Subordinate Service Rules. Consequently, the promotion to the post of Sub-Inspectors in the Special Police Battalion, is actually from Havildars, while it is from Head Constables, in the Tamil Nadu Police Subordinate Service (Local Police). Persons appointed to Armed Reserve are from another category and they are governed by another set of rules. Though the recruitment was made in common in pursuance of the directions of the Tamil Nadu Administrative Tribunal, the Government appears to have amended only the Special Rules for Tamil Nadu Police Subordinate Services and not the Special Rules for the other two Services.

26. G.O. Ms. No. 1627 Home dated 24.10.1996 actually sought to cover members of both the Services namely Tamilnadu Police Subordinate Services and Tamilnadu Special Police Subordinate Services, as seen from the manner in which the Proviso to Rule 24(a) was worded. But, we do not know if an amendment made to one set of rules can be read into another set of rules, merely because the same amendment spoke about both sets of rules. Therefore, the departmental candidates also have an uphill task in claiming seniority over and above the direct recruits from the open market.

27. It appears that the departmental candidates (267 in number) were given seniority over and above the second batch of 600 candidates directly recruited from the open market, since all of them joined duty together on 2.6.1997. This appears to have given rise to another set of litigation, which is independently pending on the file of this Court. Therefore, we refrain from recording a final opinion on the contention relating to the lacuna in the amendment to the rules.

28. The third contention of the respondents is that appellants/petitioner are guilty of delay and laches. Since we have found, even on merits, that those 267 departmental candidates cannot claim seniority over and above the first batch of 500 candidates directly recruited from the open market, we do not wish to go into the question of delay and laches. Even if we give the benefit of doubt to the appellants/petitioner that they were not aware of the rejection of their request

for fixation of seniority way back in the year 2010, the in-service candidates may not get the benefit of a verdict on merits.

29. In fine, we find that the claim of the appellants/petitioner is unsustainable both in law and on facts. Accordingly, both the writ appeals as well as the writ petition are dismissed. No costs. Consequently, all the miscellaneous petitions are also dismissed.