
(2008) 10 MAD CK 0139

In the Madras High Court

Case No : Writ Petition No. 26279 of 2006

C. Harris and M. Narasuraju

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 30-10-2008

Acts Referred:

Citation : (2008) 10 MAD CK 0139

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : P. Chandrasekaran, for the Appellant; C.K. Vishnupriya, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—The Petitioners are working as Drivers-Mechanics in Tamilnadu Fire Service Department. The next avenue of promotion is Station Officer (Transport). The grievance of the Petitioners in the present writ petition is that consequent to trifurcation of Tiruchirapalli District in G.O. Ms. No. 913, Revenue Department dated 30.9.1995 and when a direction was issued in G.O. Ms. No. 1485 Home (Police XVII) Department dated 4.10.1996, for creation of Divisional Fire Offices at three districts namely, Trichirapalli, Karur District with Head quarters and Perambalur District with Head quarters, Perambalur District, one post of Station Officer (Transport) and two posts of Fireman orderlies in the existing Tiruchirapalli Division were surrendered. According to the Petitioners surrendering of the above said posts cannot be made by executive instructions. It is further submitted that there was absolutely no justification warranting surrender of the posts which would affect the promotional chances of the Petitioners. The Respondents have filed a detailed counter affidavit justifying their action of surrendering the above said posts.

2. Heard the learned Counsel for the parties and perused the materials available on record.

3. In this context, it is worthwhile to extract few judgments of the Supreme Court on the power of courts to interfere with the domain of the executive.

4. In *P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others*, at paragraph 10 of the judgments, the Supreme Court held as follows:

Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment of eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

5. The above legal position has been affirmed in a recent judgment in *Indian Drugs & Pharmaceuticals Ltd. v. Workmen, Indian Drugs & Pharmaceuticals Ltd.* reported in (2007) 1 SCC 408 at paragraph 37,

that creation and abolition of posts and regularisation are purely executive functions vide *P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others*, . Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the Respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. This Court cannot arrogate itself the powers of the executive or legislative. There is broad separation of powers under the constitution, and the judiciary, too, must know its limits.

6. In a recent decision, *State of Haryana and Others Vs. Navneet Verma*, , the Supreme Court after considering various decisions, summarised the power of the

government in creating/abolishing a post as follows:

- a) the power to create or abolish a post rests with the government;
- b) whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity;
- c) Creation and abolition of posts is a matter of government policy and every sovereign government has this power in the interest and necessity of internal administration.
- d) Creation, continuation and abolition of posts are all decided by the government in the interest of administration and general public,
- e) The court would be the least competent in the face of scanty material to decide whether the government had acted honestly in creating a post or refusing to create a post or its decision suffers from malafide legal or factual;
- f) as long as the decision to abolish the post is taken in good faith in the absence of material, interference by the court is not warranted.

7. In view of the judgments of the Supreme Court of India, it is prerogative right of the government to abolish or surrender the post of Station Officer (Transport) and two posts of fireman orderlies in the existing Trichirapalli District subject to the requirement and pleasure of the Government. I do not see any malafide in surrendering the posts. Creation and abolition of posts in service can be made by issuance of executive orders. Chances of promotion is not a statutory right and therefore the contention of the Petitioner that he would be losing his promotional chance consequent to the surrendering of posts of Station Officer (Transport) and two posts of fireman orderlies cannot be countenanced in law.

8. In view of the above I do not find that the Petitioner has made out a case warranting interference of the impugned order. The writ petition is dismissed. No costs.