

(2011) 09 MAD CK 0183
In the Madras High Court
Case No : Writ Petition No. 27050 of 2009

C. Subramani

APPELLANT

Vs

Government of Tamil Nadu and Others

RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Tamil Nadu State Transport Corporation Common Service Rules — Rule 59, 97

Citation : (2011) 09 MAD CK 0183

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Thyagarajan and N. Damodaran, for the Appellant; V. Subbiah, Spl. G.P. For R1, T. Chandrasekaran, for R2 and R3 and M. Ravibharathi, for R4 and R5, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner has filed the present writ petition, seeking to challenge an order dated 15.10.2009 passed by the second Respondent viz., the Managing Director of Tamil Nadu State Transport Corporation Limited having head quarters at Coimbatore and after setting aside the same seeks for a declaration that all appointments to the post of Assistant Manager (Legal) and other posts in the legal wing of the Administrative Department of the second Respondent Corporation are contrary to the Tamil Nadu State Transport Corporation Common Service Rules as null and void and for a consequential direction to consider and appoint persons who possess B.L. qualification and who are working in the lower posts to be appointed as Assistant Manager (Legal), Senior Superintendent (Legal) by invoking Rule 97 of the Service Rules.

2. By the impugned order dated 15.10.2009, the second Respondent appointed M.G. Sadayappan, the 4th Respondent herein as Assistant Manager (Disciplinary Cases), Erode Region and K.T. Govindarajan, the 5th Respondent herein as Deputy Manager (Personnel and Legal), Erode Region.

3. The writ petition was admitted on 23.12.2009. Pending the writ petition, this Court granted an interim stay of the impugned order on condition that the stay will operate only if the order was not given effect to. Subsequently, when the matter came up on 29.07.2010, the interim stay was directed to be continued until further orders. Again when the matter came up on 09.08.2010, not noticing the continuance of the interim order already granted, again it was extended until further orders. When the matter came up on 16.08.2010, the stay was made absolute since the contesting Respondents have not filed any counter affidavits.

4. On notice from this Court, the second Respondent has filed a counter affidavit dated 30.04.2010. Respondents 2 and 3 have also filed additional typed set of papers containing the joining report of Respondents 4 and 5 indicating that they have joined the promoted post, even before the interim order of stay was granted by this Court for the first time on 23.12.2009. At that time, this Court was cautious in making the stay on condition that the stay will operate only if the contesting Respondents 4 and 5 had not joined the said post. But subsequently, when the matter came up, the learned Standing Counsel for the second Respondent never informed this Court about Respondents 4 and 5 joining their duty respectively on 21.10.2009 and 16.10.2009. If only these facts were brought to the notice of this Court, this Court would not have unnecessarily extended the stay order from time to time. Thus the time of the Court was wasted by the request for extension of the interim orders. Even when final interim order was passed on 16.08.2010, this Court was not posted with the information about the joining reports given by Respondents 4 and 5, thereby making this Court to make the interim stay absolute.

5. Heard the arguments of Mr. R. Thyagarajan, learned Senior Counsel leading Mr. N. Damodaran, counsel for the Petitioner, Mr. V. Subbiah, learned Special Government Pleader appearing for the first Respondent, Mr. T. Chandrasekaran, learned Standing Counsel appearing for Respondents 2 and 3 and Mr. M. Ravibharathi, learned Counsel appearing for Respondents 4 and 5.

6. The facts leading to the case are as follows:

The Petitioner was appointed as Junior Assistant in the Dheeran Chinnamalai Transport Corporation Limited at Tiruchirapalli by an order dated 18.09.1987. Subsequently, his services were regularised by a further order dated 30.09.1988. Thereafter, the Petitioner got his services transferred to Anna Transport Corporation Limited and posted to work at Johnsonpet Branch. While the Petitioner was working at Johnsonpet, he applied for permission to undergo B.L. Degree course in the evening law college run by the Central Law college, Salem. The said permission was granted by an order dated 27.09.1989 and it contained three conditions. The third condition was that he should not seek any concession from the Management on account of the permission given to him.

7. It is the claim of the Petitioner he studied in the evening law college and got his B.L. Degree from the Madras University in the year 1992. He also

subsequently got a Diploma in Labour Law. Therefore, he sent a representation to the second Respondent dated 16.12.1992 claiming that in the Erode office of the second Respondent Corporation, there was no Senior Superintendent (Legal) holding Law degree and he must be considered as a direct appointee to the said post on the basis of his legal qualification and the services rendered in the corporation. The said representation was followed by number of representations viz., 15.01.1993 25.03.1998, 09.05.2002, 20.01.2007, 05.01.2009, 23.02.2009, 19.05.2009, 15.06.2009.

8. He contended that in the previous years, in the Transport Corporation, on the basis of the Common Service Rules, promotions were given to persons who are having qualification to higher posts by granting relaxation in terms of Rule 97. Under Rule 97, overriding powers were given to the Board of Directors for relaxing the Rules in a given case and power was also given to the Board to amend, modify, vary or alter.

9. The Petitioner found that by an order dated 01.06.2009, one M. Sivasubramanian, Selection Grade Section Officer was re-designated as Assistant Manager, (MACT), Erode Region and one K.S. Karunanidhi, Selection Grade Section Officer in the Internal Audit Section, Erode Region was transferred and posted as Assistant Manager (PF, Pension and Gratuity). Therefore, he sent a further representation dated 15.06.2009 requested to post him as Assistant Manager (Legal) as there was nobody having B.L. Degree qualification. Thereafter, when he found that the same Sivasubramanian, Karunanidhi and another person viz., K.P. Ramasamy were promoted as Assistant Manager in the MACT Section, PF Pension, Gratuity, Corporate Office as well as Disciplinary cases Section respectively, he once again renewed his request by sending a further representation on 06.11.2009 stating that he should be promoted in any one of the three posts viz., Assistant Manager (Law) or Assistant Manager (MACT) or Assistant Manager (Disciplinary Cases). He sent further representation with similar request. Thereafter, he moved this Court with the present writ petition with the relief already noted above.

10. In order to prove that in the past, persons who were having lower qualification were promoted and posted as Superintendent (Legal) based upon their educational qualification, he filed several documents in the form of additional typed set. The documents related to appointment of one Sekar, Junior Assistant in Cholan Roadways Corporation Limited, Kumbakonam as Superintendent (Legal) and S. Jayaseelan, Junior Assistant in Kattabomman Transport Corporation Limited, Tirunelveli as Superintendent (Legal) in Annai Sathya Transport Corporation Limited. Similarly, he cited the case of one C. Krishnamurthy, Assistant in PTC Limited as Superintendent (Legal). It is unnecessary to reproduce all those details. It is suffice to state that the Petitioner claimed that if any person is qualified and working in a lower post, it does not debar the Respondent Transport Corporation in promoting such persons by granting necessary relaxation under the Rules.

11. The learned Senior Counsel also referred to judgment of this Court in W.P. No. 34648 of 2006 and batch cases which were disposed of by a common order dated 27.03.2007 for contending that in respect of same Common Service Rules, when the Respondent introduced the ratio of 3:1 for promotion to the post of Assistant Managers from the cadre of Assistant Engineer, the same was upheld stating that the Common Service Rules fixing quota for promotion of persons in the managerial cadre from the feeder category of Assistant Engineers to the post of Assistant Managers on 3:1 ratio between the Degree Holders and Diploma holders was valid.

12. The learned Counsel also produced an order dated 21.07.2010 issued by the second Respondent promoting two other persons viz., R. Prabhu and K. Kanagasabapathy, who are not qualified in Law as Assistant Managers from the post of Selection Grade Section Officer (MACT & Labour) and Selection Grade Section Officer performing the duties as Welfare Officer, Head Officer. He further stated that several posts in the Legal Department are vacant and showed a statement that none of the persons who are officiating in those posts are having legal qualifications. It is in that context he sought for a direction as prayed for.

13. Per contra, Mr. T. Chandrasekaran, learned Counsel for the Transport Corporation submitted that in the seniority list of administrative staff, the Petitioner is at Sl. No. 199 and he was not even in the zone of consideration for promotion to the next higher post. He also submitted that the Petitioner's service record is poor and he has suffered as many as 16 punishments during the period from 1993 to 2002.

14. Under the Common Service Rules, the post of Assistant Manager (Legal) is filled up by promotion or by direct recruitment. The rule reads as follows:

Assistant Manager (Legal)

i) By promotion from among the holders of the post of Senior Superintendent (Legal) and holders of any other post in the grade of Senior Superintendent in the Administrative Department who possess the qualification prescribed for direct recruitment.

OR

ii) By direct recruitment.

15. The Senior Superintendent (Legal) is again filled up by three methods viz., by transfer or by promotion or by direct recruitment. The rule reads as follows:

Senior Superintendent (Legal)

i) By transfer from among the holders of the post of Senior Superintendent (Admn. & Accts) and Assistant Welfare Officer who possess degree in Law awarded by a recognised University.

OR

ii) By promotion from among the holders of the post of Superintendent (Admn. & Accounts), who possess a degree in Law awarded by a recognised University and who have completed not less than five years in the grade of Superintendent.

OR

iii) By direct recruitment

16. After referring to Rule 59, the learned Counsel stated that overriding power is given to the Board, for special reasons, to fill up any of the posts in the Corporation in any manner it may choose. In other respects, the persons will have to come only on the basis of the recruitment rules and in respect of recruitment by promotion, if no suitable persons are available for such appointment by promotion, then the vacancies in such category may be filled up by "direct recruitment" by selection from among the holders or any other category of post who possess the qualification prescribed for direct recruitment to the next lower category (in the line of promotion to the higher category) and as per the experienced prescribed.

17. In the light of these rule position, it was contended by him that the Petitioner's name do not find a place in the panel from the feeder category for promotion to the post of Assistant Manager (Legal) and as on date, the post of Assistant Manager (Legal) is not available. Consequent upon the new organisational chart for the posts of Assistant Manager (MACT), Assistant Manager (Disciplinary cases) do not require B.L. as qualification. The claim of the Petitioner cannot be entertained at this stage as it will go against the established procedure and will cause prejudice to the other bonafide senior most supervisory cadres. With reference to Respondents 4 and 5, it was stated that they are senior most persons in the respective feeder categories and the 5th Respondent was an MBA Graduate having BGL Degree.

18. Though Mr. R. Thyagarajan, learned Senior Counsel stated that since the Petitioner is qualified, he should be considered for promotion, which requires a Law degree, this Court is not inclined to consider the said request as it will involve re-writing the service Rules of the second Respondent Corporation. The Petitioner do not have any legal or enforceable right for the grant of relief. The filling up of the post by promotion or by transfer is based upon the recruitment rules and the Petitioner only because he has possessed a law degree cannot seek for a direction from this Court to relax the necessary recruitment rules and promote him to the higher post.

19. The Supreme Court in Rajasthan Public Service Commission Vs. Kaila Kumar Paliwal and Another, held that the recruitment rules will have to be strictly followed and even in the matter of relaxation of any Rule, it has to be strictly construed. When the Rules are clear and explicit, it must be given effect to. In this context, it is necessary to refer to the following passages found in paragraphs 21 to 23:

21. Recruitment to a post must be made strictly in terms of the Rules operating in the field. Essential qualification must be possessed by a person as on the date of issuance of the notification or as specified in the Rules and only in absence thereof, the qualification acquired till the last date of filing of the application would be the relevant date. (See *Ashok Kumar Sharma v. Chander Shekhar*, *U.P. Public Service Commission v. Alpana and Harpal Kaur Chahal v. Director Punjab Instructions*.)

22. Even where there exists a provision for relaxation, for example relaxation in age, the same must be strictly complied with. (See *Kendriya Vidyalaya Sangathan v. Sajal Kumar Roy* and *P.K. Ramachandra Iyer v. Union of India*.)

23. We are not oblivious of the fact that the question as to whether a person fulfils the criteria of teaching experience or not would depend upon the rules operating in the field. When the rules are clear and explicit, the same has to be given effect to. Only in a case where the rules are not clear, the candidate concerned must place adequate material to show that he fulfils the requisite qualification. (See *State of Bihar v. Dr. Asis Kumar Mukherjee*.)

20. The Supreme Court vide its judgment *State of Maharashtra v. Shashikant S. Pujari* reported in (2006) 13 SCC 175, has held that a person can avail the benefit of relaxation only when he comes within the purview thereof. In paragraph 36, it was held as follows:

36...The eligibility criteria cannot be relaxed unless there exists a specific provision therefor. A person can avail the benefit of relaxation notification only when he comes within the purview thereof and when he satisfies the conditions specified therein.

21. The Petitioner's contention that only because he is possessing Law degree, he should be appointed as Assistant Manager (Legal) cannot be countenanced by this Court. If it is allowed, he will not only supersede more than 100 seniors and it will also pervert the recruitment rules which provides for feeder category and the Petitioner do not come under the feeder category for promotion and merely because he possess academic qualification attached to the post, it does not mean on that basis he will be given preference. In this context, it is necessary to refer to the judgment of the Supreme Court in *Bibhudatta Mohanty Vs. Union of India (UOI) and Others*, . In paragraph 12, it was observed as follows:

12...However, the preference clause for higher qualification does not mean that irrespective of fulfilment of other norms SSC-passed have to be preferred. Where any rule or guideline provides preference in respect of some higher qualification, it only means that all other requirements being equal, a person possessing higher educational qualification will be preferred. It cannot, however, be considered as the sole criterion for preference in selection and appointment.

22. The last contention that similar relief was given to some other candidates in different Transport Corporation cannot be a ground for the Petitioner claiming the

relief. In this context, it is necessary to refer to the judgment of the Supreme Court in Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, , wherein, the Supreme Court has held that merely because the Government had chosen to implement a wrong order which became final, that by itself will not give any cause of action to the other persons without deciding the issue on merit. It is therefore necessary to extract para 26 of the judgment and it reads as follows:

A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realised, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. of course, the position would be viewed differently, if Petitioners plead and prove that the State had adopted a "pick-and-choose" method only to exclude Petitioners on account of mala fides or ulterior motives. Be that as it may. On the facts and circumstances, neither the principle of res judicata nor the principle of estoppel is attracted. The administrative law principles of legitimate expectation or fairness in action are also not attracted. Therefore, the fact that in some cases the validity of the circular dated 29-10-1999 (corresponding to the Defence Ministry circular dated 11-9-2001) has been upheld and that decision has attained finality will not come in the way of the State defending or enforcing its circular dated 11-9-2001.

23. In the light of the above, there is no case made out to grant the relief claimed by the Petitioner. Accordingly, the writ petition stands dismissed. However, there will be no order as to costs.