

(2001) 07 MAD CK 0014
In the Madras High Court

D. Sunder Doss and Others	Vs	APPELLANT
The Tamil Nadu Administrative Tribunal and Another		RESPONDENT

Date of Decision : 10-07-2001

Acts Referred:

Citation : (2001) 3 MLJ 94 : (2001) WritLR 856

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Division Bench

Judgement

V.S. Sirpurkar, J.—The present writ petition is filed by 16 unsuccessful applicants whose application has been dismissed by the Tamil Nadu

Administrative Tribunal, hereinafter called Tribunal for the sake of brevity. The said original application was initially filed by 62 persons. Presently,

the writ petition has been filed only by 17 writ petitioners, out of whom one writ petitioner has withdrawn from the array of the writ petitioners. At

the relevant time when the application came to be filed, the applicants/petitioners were working as Under Secretaries in various departments of the

Secretariat of Tamil Nadu Government. Prior to 1961 and more particularly upto 17.1.1961 each department of the Secretariat used to be treated

as a single unit for the purpose of first appointment promotion etc. This system was brought to an end by G.O.Ms.No. 70, dated 17.1.1961, as it

was felt that the prevailing system meant injustice for some departments, inasmuch as in the departments which were relatively smaller, even the

junior persons got promotions compared to their counter-parts in the other departments which were bigger in size. By that G.O.Ms.No. 70, dated

17.1.1961, the whole Secretariat was to be treated as one suit. However, again an exception was carved out by G.O.Ms.No. 1152, dated

24.5.1966 whereby the Finance Department and the Law Department were given a special status. They were segregated and the Finance and

Law Departments were to be treated as one unit respectively in case of few posts only. This position continued till the advent of G.O.Ms.No.

1290. By that Government Order, it was provided that one Unit system was to be followed in case of Law and Finance Departments in respect of

all the posts therein and not partly as was provided by the Government Order No. 1152, dated 24.5.1966. Thus, by G.O.Ms.No. 1290, the

Finance and Law Departments were totally segregated and were to be treated as separate units respectively.

2. The Government thereafter came out with another order No. 1241 dated 7.11.1978. This is a most crucial order insofar as the present

controversy is concerned. By the Government Order, the Government amended the service rules and gave these amendments retrospective effect

from 13.6.1973. Because of these amended rules, the entire Finance Department and Law Department also were treated as one unit for the

purpose of promotion etc. Then, there appear to be some other amendments to the Tamil Nadu Secretariat Services Rules on 12.4.1988 by

G.O.Ms.No. 236 which reiterated the practice starting from 17.1.1961.

3. At this juncture, two persons (not. belonging to Law or Finance Department) filed Original Application No. 166 of 1990 contending therein that

they were discriminated because their juniors were posted at the higher positions in Law and Finance Departments. This O.A. was allowed by the

Tribunal by its judgment dated 16.4.1993 holding that, in view of the statutory provisions and in view of the obvious discrimination the concerned

persons were entitled to be promoted with effect from the date when their juniors in the Finance Department were given promotion.

4. As this stage, the Government issued an order dated 28.1.1994. By this order, again amendments came to be made which amendments could

have resulted in the denial of the rightful promotions to the applications (who did not belong to Finance or Law Department) and hence, the said

order came to be challenged in O.A.No. 7557 of 1995. In this O.A. the prayer was for quashing the aforementioned G.O.Ms.No. 30 personnel

and Administrative Reforms Department, dated 28.1.1994 and the consequently direct the respondent to promote the applicants as Under

Secretaries in Secretariat Departments and to higher posts with effect from the dates when their juniors in the Finance Department were promoted.

In short, this O.A. was nothing but practically a carbon copy of the earlier O.A.No. 166 of 1990. Significantly enough, the order of the Tribunal

dated 16.4.1993 in O.A.No. 166 of 1990 was not challenged by the Government further. Probably because of that the present O.A. came to be

filed. It was claimed that all the applications had been appointed prior to 5.6.1970 and as such, they were entitled to be treated better than their

juniors in the Finance Department (or as the case may be Law Department). In short, it was the contention that even the Finance Department

should be treated as a part of one unit system and should not be treated on the higher pedestal, as was being done earlier.

5. The Tribunal has rejected this application both on delay as well as on merits. It is commented that the applicants/ petitioners did not come in

proper time when the respective appointment were made in the Finance Department and chose only to come as if to challenge Rule 5 as was

amended by the impugned Government Order. The Tribunal also took note of the view taken in O.A.No. 166 of 1990, but found as a matter of

fact that by G.O.Ms.No. 126, dated 29.5.1998 practically the relief was given to all these persons in the shape of monetary benefits. The Tribunal

noted that though this Government Order did not give the benefit of higher status, however it provided notional pay fixation with effect from

29.5.1998. Though, it was claimed before the Tribunal that the applicants were fighting for the status also and not only for the monetary benefits,

that claim was turned out by the Tribunal by the following observation:

Such a level jumping of status is too much of fiction and too much devoid of reality and does no good either to a person on whom such a status is

conferred or to the administration which confers such as status. We are persuaded to feel that the Government have done the most in the most in

the circumstances.

In all the cases of notional promotion or notional pay fixation, it is only the monetary benefit which could be made available. Deemed promotions

and notional promotions are concepts related to by gone days expired times and period.

In short, the Tribunal was of the view that by the Government's action of making

the notional pay scales available to the persons like the applicants, the injustice if any was redressed.

6. The judgment is very seriously challenged by the applicants and Mr. Vijay Narayan, the learned Counsel appearing for the petitioners, in his usual persuasive style pointed out to us that the action of the Government has been anomalous right from the beginning. The argument is that there is no reason why the Finance Department in this case should have been treated to be on a higher pedestal by treating it as a single unit. Learned Counsel argues that, as compared to the employees of the Finance Department the others were being given the step motherly treatment. The learned Counsel very heavily assails the view expressed by the Tribunal that the notional monetary benefits given by the Government would compensate the injustice or at least redress the grievance of the applicants. The learned Counsel says that if the applicants had the real opportunity to serve in the better capacity and in the better posts, they could not be deprived of the higher posts by merely paying some compensatory amounts in the nature of notional monetary benefits. In short, the learned Counsel claims for a direction that the applicants cases should be directed to be considered for the promotional posts in the Finance Department and such promotion should be related to the date on which the juniors of the applicants were promoted.

7. As against this, the learned Government Pleader opposed the writ petition by pointing out that in the first place, the Tribunal has held the application to be belated. The Government Pleader then suggests that even on merits the claim of the petitioners cannot be sustained as the application itself was defective.

8. Considering the rival submissions, the first and foremost question that comes would be regarding the tenability of the application in the light of the reliefs claimed. In the original application, the relief is couched in the following language.

And to direct the respondent to promote the applicants as Under Secretaries in Secretariat Departments and to higher posts with effect from the date of which the juniors in Finance Department were promoted.

[Italics supplied]

A glance at this prayer would suggest that the petitioners seek the posting in the higher posts where the juniors of the applicants have been posted

and presently working. The most important factor to be considered is that, those persons who have allegedly superseded the petitioners are not the

parties before us. They were also not the parties before the Tribunal. The petitioners, at no point of time tried to locate the exact number of posts

and the incumbents there upon who would have been or who would be affected by the judgment of the Tribunal or by the present judgment. No

effort was made throughout to point out as to how many posts are available and as to how many persons would be required to be reverted in

order to accommodate the petitioners in the event of the applicants succeeding or in the event of the petitioners succeeding before us. In the

absence of such persons, we cannot conceive a direction as has been claimed by the petitions because that would not only wholly disturb the

otherwise smooth government machinery, but also would spell out terrible injustice against those who have already been promoted and whose

promotions will be wrested from them without their being heard. It is for this reason that we do not propose to go into that question of the notional

promotion which has been sought by the petitioners. We have already found that the Government has by G.O.Ms.No. 126, dated 29.5.1998

conferred the monetary benefits on the persons like the applicants.

9. Mr. Vijay Narayan however invited our attention to para Nos. 14 and 15 of the said Government Order and points out that the said benefit

which has been given is conditional and very strangely the Government has excluded those persons who have filed any case on the issue in question

either in Tamil Nadu Administrative Tribunal or in any Court of Law. He also invites our attention to the further sentence in paragraph 15,

However if they unconditionally withdraw the case and accept the present order unconditionally, then they will also be eligible for the benefit of

this order." The learned Counsel says that this is totally derogatory and discriminatory. He also points out that a person cannot be penalised merely

because he seeks to establish his right in the Court of Law. He also invited our attention to the format of the undertaking to be furnished by the

seniors in one unit for upgradation of their pay with their juniors in Finance Unit. There also, the learned Counsel invites our attention to the

undertaking which the concerned person has to sign. We are completely convinced that such a stand by the Government is totally uncalled for.

Merely because an employee tries to establish his constitutional or other rights in a Court of Law in a lawful manner, he cannot be punished nor the

arm twisting tactics can be used by the Government by obtaining any such undertaking from the employees. In this cases, we are fully convinced

that the applicants, if they could be otherwise covered by G.O.Ms.No. 126, would certainly be entitled to all the benefits and for that purpose it

would not be possible for the Government to exclude them only on the ground of their having approached the Court of Law. Similarly, in our

opinion it will not be necessary for such employees to give any undertaking of the sort which has been sought by the Government. We clarify that

even without that the employees would be entitled to the monetary benefits. The writ petition is therefore allowed to the extent that has been

indicated above. No costs. Consequently, connected W.M.P.No. 4914 of 1999 is closed.