
(2016) 11 AP CK 0071

In the Andhra Pradesh High Court

Case No : Review W.P.M.P. Nos. 41157 and 49976 of 2014 in W.P. No. 25343 of 2007

J. Shivaji Yadav

APPELLANT

Vs

G. Srinivasa Murthy

RESPONDENT

Date of Decision : 03-11-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2017) 173 AIC 694 : (2017) 2 ALT 116 : (2017) 2 AndhLD 736 : (2017) 1 HLT 278

Hon'ble Judges : A.Ramasubramanian and G. Shyam Prasad, JJ.

Bench : Division Bench

Advocate : Mr. J. Sudheer and Mr. Ponnam Ashok Goud, Counsel, for the Review Petitioner; Mr. Vedula Venkataramana, Counsel, for the Respondent No. 1.; Mr. B. Narasimha Sarma, Standing Counsel, for the Respondent Nos. 2 to 4.

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—The respondents 4, 6 and 7 in a writ petition partly allowed along with another writ petition by a Division Bench of this court have come up with both these review applications seeking a review of the order passed by this Court.

2. We have heard M/s. J. Sudhir and Ponnam Ashok Goud, learned counsel appearing for the review applicants and Mr. B. Narasimha Sarma, learned standing counsel appearing for the Union of India.

3. The applicants in these two review applications along with 8 other candidates filed an application in O.A. No.500 of 2007 on the file of the central Administrative Tribunal, Hyderabad Bench, seeking a direction to the official respondents to convene a review D.P.C. and to consider their claims for promotion to the post of Income Tax Officers. The Tribunal allowed their applications on the ground that the applicants herein appeared for the departmental examination on 31-10-2006, and hence, despite the declaration of

results in April, 2007, they ought to have been considered as having passed the departmental examination on the date on which the examinations were held.

4. Aggrieved by the said order of the Tribunal, one Mr. G. Srinivasa Murthy, who is the 1st respondent in both these review applications filed writ petition in W.P. No.25343 of 2007 on the file of this Court. A group of another 5 persons filed another writ petition in W.P. No.27670 of 2007 against the very same order of the central Administrative Tribunal. Both the writ petitions were disposed of by a Bench of this court dated 28.04.2008 passed in both these writ petitions reads as follows:-

"In the circumstances, we are inclined to modify the order of the Tribunal. Accordingly, the department is directed:-

(1) to conduct review D.P.C. in respect of the persons whose names have not been placed before the D.P.C. which was convened on 28.3.2007 in spite of their fulfilling the eligibility criteria as on the date of convening of the D.P.C. on 28.3.2007:

(2) that a supplemental D.P.C. should be conducted for the persons who have passed the examinations after 28.3.2007 in the order of seniority of passing examinations.

(3) Pending further orders by the Department, the candidates who were promoted as Income Tax Officers should not be disturbed "

5. Seeking a review of the above order, 3 persons, who went before the Tribunal and succeeded, have come up with the present review applications.

6. The dispute between the applicants herein and the unofficial respondents lies in a narrow campus.

7. On 28.3.2007 a D.P.C. was convened for considering the candidature of eligible Income Tax Inspectors for promotion to the post of Income Tax Officers. As per the recruitment rules, persons who have completed 3 years of service as Income Tax Inspectors and who were qualified in the departmental examination were eligible for promotion as Income Tax Officers.

8. Persons who filed Original Applications before the Tribunal had completed 3 years of service as Income Tax Inspectors and they had also appeared for the departmental examination on 31-10-2006. But unfortunately, the results of the departmental examinations were declared only on 10-04-2007. Therefore, the names of the applicants herein as well as the other persons who approached the Tribunal were not included in the list of persons taken up by the D.P.C. for consideration.

9. The Tribunal after taking note of the decision rendered in a similar case and also after taking note of the departmental orders passed in respect of 2001 selection, allowed the application. But the Bench of this Court took the view by the order impugned in these review applications that the applicants before the

Tribunal had not passed the departmental examination as on 01-01-2007, which was the date of eligibility for promotion. This Court also took the view that since the results of the departmental examination were declared on 10-04-2007, the applicants before the Tribunal were not entitled to be considered in the D.P.C. convened on 28-03-2007. Assailing the said view taken by this Court, the applicants have come up with the present review applications.

10. Under normal circumstances, we are only obliged to deal in a review application, with the question as to whether (1) there was any error apparent on the face of the record (2) there was any new material, which has come to light, but which could not be discovered earlier (3) there was any miscarriage of justice. But in the case on hand, we are constrained to set the legal position right at least for the purpose of future guidance. Therefore, we would first deal with the question as to whether a person, who appears in a departmental examination on a particular date, is entitled to be considered as eligible with reference to a subsequent date, if the results of such examination are declared long after the cut off date for determining the eligibility.

11. The above question has assumed significance in view of the following 4 dates:

(1) the date on which the applicants before the Tribunal appeared for the departmental examination was 31-10-2006;

(2) the cut off date for determining the eligibility for promotion was 01-01-2007;

(3) the date on which the D.P.C. was convened was 28-03-2007;

(4) the date on which the results of the departmental examination were declared was 10-04-2007.

12. The result of the decision of this Court, which is under review is that the applicants before the Tribunal could not be considered as having passed the departmental examination, as on the cut off late for determining eligibility namely 11-01-2007. But this view appears to be erroneous. Whenever the passing of a departmental examination is prescribed as essential either for the grant of increments or for consideration for promotion to the next higher post, the date on which the candidate appeared for the examination or the last of such examinations, should be taken to be the date on which he has qualified, irrespective of the date of declaration of results. But both the Tribunal as well as this Court has not taken note of this fundamental premise.

13. Since the applicants before the Tribunal had appeared for the departmental examination on 31-10-2006 and they were declared to have been passed the examination, the applicants before the Tribunal should be deemed to have qualified according to the rules, as on the cut off date for eligibility namely 01-01-2007 irrespective of the fact that the D.P.C. was convened on 28-03-2007 and the results were declared on 10-04-2007.

14. But unfortunately, we are unable to grant any relief to the applicants herein

since they are on a review before us. There are three reasons as to why we could not grant relief to the applicants especially in a review application. They are:-

(1) one group persons already filed a review application in W.P.M.P. No.17749 of 2008, seeking a review of the common order passed, in so far as W.P. No. 27670 of 2007 is concerned. That review application was dismissed by the very same Bench which passed the original order by an order dated 14-08-2008. In other words, the judgment of the Division Bench rendered in common in respect of two writ petitions viz., W.P. Nos.25343 and 27670 of 2007, was refused to be reviewed on an application taken out in W.P. No.27670 of 2007. Therefore, the application for review of the very same common order passed in respect of W.P. No.25343 of 2007 cannot meet with any other fate.

(2) The applicant in Rev. WPMP. No.49976 of 2014 had already gone to the Supreme Court in SLP (Civil) Nos.21309 and 21310 of 2008 against the common order passed by the Division Bench. But the SLPs were dismissed on 08-09-2008 at the admission stage. Though the doctrine of merger may not apply in cases where SLPs were dismissed without a reasoned order, we are taking note of the same in the context that we have detailed above.

(3) The third reason as to why we cannot grant any relief to the applicants is that the review applications have been filed after more than 6 years. The judgment under review was rendered on 28-04-2008. The applications for review were filed in the year 2014. While the applicants in one review application came up with a condone delay petition and got the delay condoned, the applicant in the other review application did not even file a condone delay petition. This is perhaps due to the fact that no period of limitation is prescribed by any law for seeking a review of the order passed in a writ petition under Article 226 of the Constitution Of India. Though by force of habit, review applications are filed under Order 47, Rule 1, we do not know whether the period of limitation has prescribed by Code of Civil Procedure would apply.

15. However, it is contended by Mr. J. Sudhir, learned counsel appearing for the applicants in one review application (1) that this is a case of serious miscarriage of justice warranting a review; (2) that no person will be prejudiced by these review applications being allowed, as the rival parties have already retired; and (3) that an important departmental circular, which throws light upon the issue, was suppressed by the respondents.

16. We have carefully considered the above submissions. It may be true that the applicants have been put to prejudice on account of incorrect interpretation of the law. But every injustice cannot come within the purview of serious miscarriage of justice.

17. The fact that there are no rival claimants is no ground to undertake the exercise of a review after more than 6 years. The claim of the applicants that they stumbled upon the circular of the department only recently cannot be accepted. The circular relied upon by the review applicants no doubt show that a

decision was taken way back on 18-07-2007 by the Government not to conduct any D.P.C. in between the date of examination and the declaration of results. The fact that the respondents have acted contrary to the circular, would have been a good ground in the main writ petition, but cannot be allowed to be raised now.

18. Additionally, the circular is of no significance at all, if one understands the legal position that the results of an examination will relate back to the date of last examination.

19. Admittedly, the applicants were subsequently promoted in the supplemental D.P.C. What the applicants are fighting is only a fixation of seniority with reference to the D.P.C. held on 28-03-2007. That is a battle that they should have fought independently.

20. Therefore, the review applications cannot be entertained and hence, they are dismissed.