

(2005) 04 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 18657 of 2000 and W.M.Ps. No's. 24556 and 27009 to 27010 of 2000

K. Elango and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 04 MAD CK 0027

Hon'ble Judges : S.K. Krishnan, J;P. Sathasivam, J

Bench : Division Bench

Advocate : M. Gnanasekar, for the Appellant; Syed Mustafa, for T. Murugesan, Special Government Pleader for Respondents No. 1 and 2 and P.V.S. Giridhar, for Respondents Nos. 4, 6 to 14, 16 and 18 to 21, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Krishnan, J.—Aggrieved against the order of the Tribunal, dated 9.2.2000 passed in O.A.No.498 of 1998, the petitioners have filed

the above Writ Petition.

2. The applicants in O.A.No.498 of 1998 are the respondents in this Writ Petition. As against the order passed by the Tribunal, the petitioners

have preferred the above writ petition. The petitioners in W.P.No.18657 of 2000 are working as Language Teachers Grade I. The petitioners

were promoted during the year 1994. Originally there were two grades prevailing in Pondicherry region, i.e. Grade-I Language Teachers and

Grade II Language Teachers. For Grade I Language Teachers the scale of pay is Rs.1400-26000, whereas, the scale of pay for Grade II teachers

is Rs.1200-2040. Since Grade II Language Teachers have been demanding fixation of pay on par with Grade I Language Teachers for a long time

and some of the teachers in Grade II filed O.A.No.500/89, seeking the upgradation of their pay, as that of Language Teacher Grade I, the

applicants were subsequently promoted to the post of Language Teacher Grade I on 20.9.1998 and 18.10.1998. Thereafter, their services were

regularised as per the order dated 19.4.1995. Based on the guidelines referred in the order passed in O.A. No. 500 of 1989 w.e.f. 1992, the

Language Teachers Grade II as well as the Grade I were amalgamated by order dated 9.9.1997. The said order was issued by the Government of

Pondicherry. While fixing the combined seniority w.e.f. 1992, the Language Teachers Grade II were placed enbloc junior to the juniormost Grade

I. Therefore, these applicants aggrieved against that fixation of combined seniority, the applicants approached the Tribunal for redressing their

grievances. After considering the case of the applicants, the Tribunal passed the order which is as follows:

a. The G.O. So far as it relates to the question of putting the applicants junior most is hereby quashed.

b. The respondents are hereby directed to issue the seniority list fixing the seniority of the Teachers taking their date of joining the service

irrespective of the fact of amalgamation.

3. Aggrieved against the said order passed by the Tribunal, the petitioners, namely, Elango and 36 others preferred this Writ Petition for issuance

of Certiorarified Mandamus calling for the records relating to the order dated 9.2.2000 in O.A.No.498 of 1998 passed by the 22nd respondent

and quash the same and consequently direct the respondents 1 to 3 to prepare a seniority list of Language Teachers(Tamil) with reference to the

date of upgradation of the scale of pay to the petitioners.

4. The learned counsel appearing for the petitioners would contend that the Government Order dated 9.9.1997 came into force already and the

petitioners were promoted to Higher Grades by treating them as Language Teachers Grade I after completing of 3 years from 27.3.1982 and

some of them were granted senior scale and therefore, the order passed by the Tribunal without affording an opportunity to the petitioners is illegal

and that the same is to be set aside.

5. Further, the learned counsel would contend since the Tribunal set aside the Government Order in so far as it relates to the question of seniority,

the seniority of the petitioners was altered to their detriment and in such circumstances and therefore, the order of the Tribunal has to be set aside.

6. The learned counsel appearing for the first and second respondents would submit that there is nothing wrong in the order of the Government and

therefore, the quashing of the provision with regard to seniority is not sustainable under law and that the order of the Tribunal has to be set aside.

7. Per contra, the learned counsel appearing for the respondents would contend that the Tribunal after considering the materials available on record

and the facts and circumstances of the case, came to a right and just conclusion and thereby, it quashed the condition no.iii, and directed to fix the

seniority on the basis of their date of joining irrespective of the fact of amalgamation.

8. Initially, the Government of India passed an order dated 27.3.1992, upgrading the Junior Craft Teacher, Junior Physical Education Teacher,

Junior Language Teachers, Junior Domestic Teachers, Junior Music Teachers and Junior Dance Teachers.

9. After the said upgradation of the post the scale of pay was revised from Rs.425-15-560-EB-20-640 to Rs.440-20-500-EB-25-700. The said

order would be in force w.e.f. 5.9.1981. Thereafter, considering the inequality in the scale of pay some Junior Language Teachers belonging to

Grade II approached the Tribunal to direct the respondents to upgrade the scale of pay of Rs.330-560- to 440 - 750 as it was done in the case of

physical education teachers and pay the arrears from 27.3.1983. The Tribunal, after considering the case of the applicants passed the following

order.

The applicants who have put in 3 years of service and who are passed S.S.L.C. and who have passed SSLC and Vidwan are entitled to the scale

of pay 440-750 with such modification as has happened thereafter in respect of their scale of pay. Their pay shall be fixed notionally on

27.3.1982. They will be entitled to arrears only from the date of filing the application viz., 23.6.1989.

10. Even after the passing of the said order by the Tribunal, the Government of Pondicherry, has not considered the case of the applicants.

Therefore, the applicants submitted a report to the authorities concerned on 27.6.1993, 18.8.1993, 31.12.1993 and 28.8.1994.

11. As already discussed above considering the inequality in the scale of pay to the Language Teachers Grade II and Language Teachers Grade I,

the Government of Pondicherry, passed an amalgamation order dated 9.9.1997.

12. In Uday Pratap Singh v. State of Bihar (1994) 28 A.T.C. 453, which was relied on by the learned counsel appearing for the respondents, the

Supreme Court held as follows:

By a catena of decisions of this Court, it is now well-settled that by an executive order the statutory rules cannot be whittled down nor can any

retrospective effect be given to such executive order so as to destroy any right which became crystallised. In this connection, it is profitable to refer

a decision of this Court in T.R. Kapur v. State of Haryana, wherein it is held that rules framed under Article 309 of the Constitution cannot affect

or impair vested rights, unless it is specifically so provided in the statutory rules concerned. It is obvious that an executive direction stands even on

a much weaker footing. It is true, as laid down in Bishan Sarup Gupta v. Union of India, that effect of upgradation of a post is to make the

incumbent occupy the upgraded post with all logical benefits flowing therefrom and can be treated as promoted to the post. Still it cannot be

gainsaid that no retrospective effect could be given to any merger or erstwhile lower branch into higher branch in the cadre so as to affect the

vested rights of incumbents already occupying posts in the erstwhile higher branch of the cadre. In the present case, it has to be kept in view that

the contesting respondents were directly recruited and appointed in the Senior Branch on 12.5.1974 and 25.5.1974 respectively, while the

appellants were appointed on 2.11.1975 in the merged cadre. It is true that their order of appointment purports to give them appointment

retrospectively from 1.4.1974 but such effect cannot be given so as to destroy the seniority rights of the writ petitioners, respondents herein, who

were inducted as direct recruits in the Senior Branch prior to 2.11.1975. The earlier decision of the Patna High Court in the case of Kartik Charan

Jha Case was rightly distinguished by the Division Bench in the present case as in Ja case the direct recruits were inducted much after 2.11.1975

when the mergees got their Junior Branch's appointments upgraded to the combined merged cadre and became a part and parcel of the Senior

Branch earlier to these direct recruits, while in the present case all the contesting

respondents had entered the Senior Branch much prior to

2.11.1975 as seen above. Therefore, they were entitled to be treated as seniors to the appellants.

13. In the light of the discussions held above and following the principles laid down in the said decision, we are of the view that the order of the

Tribunal is correct and that no interference is warranted.

14. In result, the Writ Petition fails and is dismissed. No costs. Connected W.M.Ps. are also dismissed.