

(2015) 08 MAD CK 0232

In the Madras High Court

Case No : Writ Petition Nos. 27645 to 27646 of 2013 and M.P. Nos. 1 of 2015, 2 of 2013

K. Rajakumar and Others

APPELLANT

Vs

Chennai Metropolitan Water Supply and Sewerage Board and Others

RESPONDENT

Date of Decision : 31-08-2015

Acts Referred:

Citation : (2015) 08 MAD CK 0232

Hon'ble Judges : M. Sathyanarayanan, J

Bench : Single Bench

Advocate : Balan Haridass, for the Appellant; N. Ramesh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M. Sathyanarayanan, J—In these writ petitions, the issue to be adjudicated is one and the same and hence, these writ petitions are disposed of by this common order.

2. The petitioner in W.P. No. 27645/2013 is a Diploma Holder in Electrical Engineering and he joined the services of the respondent Board on 27.05.1981 as an Electrical Operator and got promoted as Junior Engineer on 16.10.1990. The petitioner in W.P. No. 27646/2013 is also a Diploma Holder in Electrical Engineering and he joined the services of the respondent Board on 27.05.1981 and got promoted as Junior Engineer on 10.09.1990 and just after him, the petitioner in W.P. No. 27645/2013 got promoted. According to the petitioners, the last person who got promotion in the year 1990 to the post of Junior Engineer is the petitioner in W.P. No. 27645/2013 and thereafter in the year 1994, certain electrical operators were promoted as Junior Engineers. The petitioners would further state that on 27.04.2007, the first respondent Board has issued tentative seniority list of Junior Engineers and invited objections on the same and the petitioner in W.P. No. 27645/2013 was placed at Serial No. 18

and the petitioner in W.P. No. 27646/2013 was placed at Serial No. 32 and his date of promotion as Junior Engineer was mentioned as 24.06.1994, instead of 10.09.1990 and it is his claim that his name was placed just below Mr. K. Rajakumar, the petitioner in W.P. No. 27645/2013 and he has also given his objections in that regard. The petitioners would further state that however persons who are juniors to him, namely the respondents 3 to 11 were placed above them in the proposed seniority list and objections were raised by them and since it has not been taken into consideration, the petitioners herein filed W.P. Nos. 4739 and 4738 of 2013 respectively to consider their objections with a further direction to forbear the first respondent from preparing the panel and effect promotion to the post of Assistant Executive Engineer (Electrical) till final seniority list of Junior Engineers (Electrical) is issued. However, without finalizing the seniority list, juniors to the petitioners were promoted to the said post and as per Regulation 21(a) of the General Service Regulations of the first respondent Board, promotion to the post of Assistant Executive Engineer is based on seniority. The request made by the petitioners was also rejected and the second respondent has passed an order on 09.05.2013 stating that seniority list initially prepared for the post of Electrical Operator, was on the basis of date of joining and not as per Regulation 21(a) of the General Regulations.

3. The petitioners would further state that at the time of making appointment to the post of Electrical Operators, there had been no selection process and appointments were made based on employment exchange sponsorship and on verification of the educational qualification certificate and that is why, seniority list drawn to the post of Electrical Operator was based on the date of joining and no other method could have been adopted at that point of time and based on the same only, the petitioners were promoted to the post of Junior Engineers (Electrical). The petitioners also expressed their grievance that without notice and hearing, seniority list cannot be altered and the alleged seniority list dated 23.03.1998 was never operated and hence, it cannot be the basis for fixing seniority in the post of Junior Engineer (Electrical). The petitioners would further state that by applying Regulation 21(a) at a belated stage, there seniority cannot be pushed down and it cannot be revised after 3 years and the period stipulated therein would also equally applies to the Management. The petitioners had also preferred appeals and were rejected on 12.09.2013 by the first respondent and challenging the legality of the same, the petitioners had filed these writ petitions.

4. Mr. Balan Haridass, learned counsel appearing for the petitioners has drawn the attention of this Court to the typed set of documents and would submit that at the time of selection as Electrical Operator, list was prepared on the basis of date of joining and further promotion was given on that basis and at a belated stage, seniority of the petitioners has been set at nought by belatedly applying Regulation 21(a) of the General Regulations of the respondent Board and it is clearly time barred and the Management is also guilty of delay and laches and on account of the said Act of the first respondent/Management, the issue of seniority, which has reached finality, has been revised and the petitioners have

been pushed down and whereas their juniors, namely the respondents 3 to 10 have been placed above them and they were also given promotion. It is the further submission of the learned counsel appearing for the petitioners that while revising the seniority list on 23.03.1998, no objections were called for and no hearing was given and on the sole ground, the impugned orders warrant interference. Alternatively, it is the submission of the learned counsel appearing for the petitioners that the petitioners are not interested in reverting the respondents 3 to 10 and instead, their claim for further promotion as Assistant Executive Engineer may be considered and appropriate orders may be passed.

5. Per contra, Mr. N. Ramesh, learned counsel appearing for the respondents 1 and 2 has invited the attention of this Court to the counter affidavit of the second respondent and would submit that seniority list dated 23.03.1998 is in consonance with Regulation 21(a) of the CMWSSB General Service Regulations, 1978 and though the petitioners raised objections and due reply was given, the petitioners have not chosen to make challenge and nearly after 15 years, they have come forward to file these writ petitions challenging the said list. The learned counsel appearing for the respondents 1 and 2 would further contend that subsequent seniority lists dated 09.03.2001 and 09.05.2013 were prepared based on the seniority list dated 23.03.1998 and those lists were also not put to challenge and hence, the claim made by them in these writ petitions is wholly unsustainable. The learned counsel appearing for the respondents 1 and 2 has drawn the attention of this Court to the counter affidavit and would contend that select list of 54 candidates was prepared and according to the above said Regulations (Communal Roaster), it was approved on 22.05.1981 and both the petitioners had joined the services of the first respondent Board as Electrical Operator (HT) and there is no seniority prior to the year 1998 and though Regulation 21(a) was in force, due to inadvertence, promotion was granted on the basis of the date of joining, in contravention of the said Regulation and the petitioners got subsequent promotion as Junior Engineer (Electrical) on that basis. The first respondent Board taking note of the same, has issued circular inviting objections, if any and objections were raised and thereafter, seniority list prepared in terms of Regulation 21(a) was confirmed and approved, vide proceedings dated 23.03.1998 and based on the seniority list in the cadre of Electrical Operator (HT), seniority in the cadre of Junior Engineer (Electrical) was also fixed and objections were also invited and after considering the objections, seniority list of Junior Engineer (Electrical) was also approved and confirmed, vide proceedings dated 09.03.2001.

6. It is the further submission of the learned counsel appearing for the respondents 1 and 2 that no doubt the petitioners were promoted as Junior Engineer (Electrical) on the basis of the date of joining and though they got promotion out of turn, overlooking their seniors, their promotion as Junior Engineers has not been reverted or reconsidered and to set right the said anomaly, the respondents 3 to 10 were promoted. It is also the submission of the learned counsel appearing for the respondents 1 and 2 that reliance placed

by the petitioners on the unconfirmed notices dated 27.04.2007 and 23.11.2010 is unsustainable for the reason that confirmed seniority lists were published during 1998 and 2001, based on Regulation and the notice issued on 28.11.2012 was neither a panel nor a seniority list and it was just a note addressed to the officers of all departments of the Board to furnish the Suitability Report and Record Sheets of Assistant Engineer/junior Engineers (Electrical) for promotion to the post of Assistant Executive Engineer (Electrical) as per the approximate vacancies available in the said post. In sum and substance, it is the submission of the learned counsel appearing for the respondents 1 and 2 that seniority of the private respondents have been revised and fixed strictly in accordance with law and Regulation 21(a) of the General Regulations and though the petitioners were inadvertently promoted as Junior Engineer (Electrical) on the basis of their date of joining, their position has not been disturbed and the Management has acted in a fair and proper manner and rendered justice to the petitioners as well as the private respondents and prays for dismissal of these writ petitions.

7. In response to the said submission, the learned counsel appearing for the petitioners has invited the attention of this Court to the Note appended to Regulation 21 of the General Regulations, 1978 and would submit that as per the said Note, all applications from the Board employees for the revision of their seniority in a post, should be submitted within three years from the date of appointment to a category to the authority concerned and applications received after the said period will be rejected, however these orders will not apply to cases of rectifying orders, resulting from mistake of facts. In the light of the said Note, the position of the petitioners in the seniority on the basis of the date of joining cannot be disturbed, as the limitation period of 3 years prescribed in the said Note would equally apply to the Management also and the Management is guilty of delay and laches. The learned counsel appearing for the petitioners, in support of his submissions, placed reliance upon the decision of the Hon'ble Supreme Court of India in K.R. Mudgal and Others Vs. R.P. Singh and Others, AIR 1986 SC 2086 : (1986) 1 JT 597 : (1987) 1 LLJ 214 : (1986) 2 SCALE 561 : (1986) 4 SCC 531 : (1986) 3 SCR 993 : (1987) 1 SLJ 221 : (1987) 1 UJ 223 .

8. This Court has carefully considered the rival submissions and also perused the materials placed before it.

9. It is relevant to extract Regulation 21(a) of the General Regulations of the first respondent Board:

"21. Seniority:

a) The seniority of a person in the Board's service with respect of a category or grade shall be determined by the rank obtained by him in the list of approved candidates drawn up by the Board subject to the rule of reservation where it applies; the date of commencement of his probation shall be the date on which he joins the Board's service irrespective of his seniority."

10. It is an admitted fact that the petitioners and others were selected as

Electrical Operators (HT). Regulation 21(a) of the CMWSSB General Regulations, 1978 was in force and due to inadvertence on the part of the officials, who were working in the services of the first respondent at the relevant point of time, seniority was fixed based on the date of joining and based on which, the petitioners also got further promotion as Junior Engineer (Electrical). The first respondent Board woken up to the said fact and invited objections. The petitioners and others had given their objections and it was considered by the first respondent/Management and they also given a reply stating that ever since the formation of the Board (CMWSSB), no seniority list for the cadre of Electrical Operator (HT) has been published and a decision has been taken to fix the seniority of employees in the respective category and while fixing the same, there shall be realignment in the list. It is further stated in the said reply that it is advisable to continue with the existing list drawn, based on the date of joining and there are clear regulations on fixation of seniority and it is also not desirable to violate the regulations and at one point of time, should be set right in the interest of smooth administration and the petitioners need not have any apprehension as their interest will be protected by drawing the correct seniority list. The said reply was also communicated to the petitioners, vide proceedings of the first respondent dated 23.03.1998 and an Annexure was also enclosed along with the said reply containing the seniority list of Electrical Operator (HT).

11. Subsequently, the first respondent Board fixed the seniority of Junior Engineer (Electrical) and prior to the said proceedings, objections raised by the petitioner in W.P. No. 27645/2013 along with three others were also considered and the following reply was given:

"The objection has been examined with reference to Regulation 21(a) of CMWSSB Board Employees Service Regulation, 1978. According to which their seniority has to be determined only with reference to the rank obtained by them in the list of approved candidates drawn by the Board subject to the rule of reservation. In the absence of approved seniority list promotions have been given based on date of joining. As such the question of taking the date of joining as the basis for determining seniority can't be complied with. Further, the Hon"ble High Court, Madras in its judgment dt. 22.9.2000 in W.P. No. 15357 of 1992 has held that Regn. 21(a) of CMWSSB Regn. is in order.

According to seniority in the feeder category viz., Electrical Operator (HT) which was drawn as per rotation as per roster, Thiru S. Karthikeyan JE (Elec.) is senior and hence their request to fix seniority above him are not feasible of compliance."

12. It is pertinent to point out at this juncture that objections raised by the petitioners and other persons, similarly placed, with regard to the fixation of seniority in the cadre of Electrical Operator (HT) as well as Junior Engineer (Electrical) were considered and appropriate orders were passed on 23.03.1998 and 09.03.2001 respectively and the petitioners, for the reasons best known to them, did not challenge it. Once again, while fixing the seniority in accordance with Regulation 21(a) of the CMWSSB General Regulations, 1978, objections

were invited and the objections raised by the petitioners and others were considered and a detailed order was passed on 09.05.2013 by the Managing Directors and it is relevant to extract para 5 of the said proceedings:

"5. In order to set right the anomaly and to have a clear record of seniority, a fresh Notice 6th cited towards proposed seniority among Junior Engineer (Electrical) in consonance with Regulation 21(a) of CMWSSB Board Employees Service Regulation 1978 inviting objections if any, was circulated as confirmed already in 2001, superseding the Notices 4th and 5th cited. Notices were served to all the serving 73 Junior Engineers (Electrical) and have been acknowledged. Only two J.Es viz., Thiru A.B. Elangovan and Thiru K. Rajakumar have objected to the proposed seniority of J.E.(E). Their main contention is that they joined in the service of the Board on 27.05.1981 as E.O.(HT) and based on their joining dates they were treated as seniors and promoted as Junior Engineer (Ele.) on 10.09.1990 and 16.10.1990 respectively. They should be placed in the seniority above the J.Es (Ele.) who were promoted during 1994. Any deviation from the above is injustice to them. The seniority by which they were promoted was not in consonance with the Regulations. Thiru A.B. Elangovan & K. Rajakumar were appointed as E.Os.(HT) by direct recruitment on 27.05.1981. They were placed at Sl. No. 45 and 23 respectively in the approved list. They were promoted as Junior Engineers (Ele.) during 1990 based on their joining date in the post of E.O. (HT). Whereas Thiru S. Karthikeyan who was placed at Sl. No. 3 in the approved list was promoted during 1994 as he joined as E.O.(HT) later after the petitioner's joined duty. This anomaly was rectified during 1998. A confirmed seniority among E.Os(HT) in consonance with the Regulations above was published during 1998 vide Proceeding 1st cited in the cadre of E.O.(HT) and in that list they were placed in the right places as per the approved list. However, the promotions ordered earlier based on the joining dates were not reverted. A confirmed seniority among J.Es(Ele) was published during 2001 vide proc. 2nd cited in consonance with Regulations above and they were placed in the right places in accordance with the approved list. Their request to fix their seniority based on their joining date is not sustainable under the Regulations and hence overruled. A detailed reply to them has been given separately vide Memo No. CMWSSB/P&A/RA3/16548/12, dt. 09.05.2013."

13. The petitioners made a challenge to the said proceedings by preferring appeals to the Board and the Board has also independently considered their ground of appeals and rejected both the appeals, vide impugned order dated 12.09.2013. The judgments relied on by the learned counsel appearing for the petitioners in K.R. Mudgal and Others Vs. R.P. Singh and Others, AIR 1986 SC 2086 : (1986) 1 JT 597 : (1987) 1 LLJ 214 : (1986) 2 SCALE 561 : (1986) 4 SCC 531 : (1986) 3 SCR 993 : (1987) 1 SLJ 221 : (1987) 1 UJ 223 , lays down the proposition that the satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years and it is essential that anyone who feels aggrieved by the seniority assigned to him should approach the Court as early as

possible as otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties and the Hon'ble Supreme Court of India has also placed reliance upon the judgment rendered by the Constitution Bench of the Hon'ble Supreme Court in *Malcom Lawrence Cecil D'souza Vs. Union of India (UOI) and Others*, AIR 1975 SC 1269 : (1975) 2 LLJ 98 : (1976) 1 SCC 599 : (1975) SCC 409 Supp : (1975) 7 UJ 471 . In the considered opinion of the Court, the said judgment rather aids the case of the management for the reason that fixation of seniority done in respect of Electrical Operators (HT) and Junior Engineer, vide proceedings dated 23.03.1998 and 09.03.2001 respectively, have not been put to challenge and the decision of the second respondent dated 09.05.2013 merely reiterated the stand of the Management/board, taken by them in the above said proceedings and the petitioners had woken up belatedly only when the orders were passed by the second respondent on 09.05.2013 and they preferred appeals, which had also ended in dismissal, vide impugned order dated 12.09.2013.

14. It is a well settled position of law that right to seniority is not a fundamental right and it is merely a civil right. It is also a well settled position of law that the seniority list once published cannot be disturbed at the behest of a person who chose not to challenge it for many years.

15. In *State of Haryana and Others Vs. Vijay Singh and Others*, AIR 2012 SC 2901 : (2012) 135 FLR 191 : (2012) 7 JT 577 : (2012) 7 JT 575 : (2013) LabIC 98 : (2012) 7 SCALE 484 : (2012) 8 SCC 633 : (2012) 3 SLJ 435 : (2012) AIRSCW 5444 : (2012) AIRSCW 4713 : (2012) 6 Supreme 161 , the question arose as to the fixation of seniority in the backdrop of ad hoc initial appointment made dehors the statutory rules and later the services were regularized by the State Government. It has been held in the said decision that when the appointment is made without following the procedures prescribed under the relevant point of time, are not entitled to have the seniority fixed on the basis of total length of service and the appointee cannot claim seniority after his appointment is later on regularized. In the case on hand, though Regulation 21(a) was in existence even in the year 1978, while selecting the list of 54 candidates during the year 1981, date of joining was taken into consideration and the promotion of petitioners and others to the post of Junior Engineer was given on the basis of date of joining. By application of Regulation 21(a), the private respondents are senior to the petitioners and realizing the mistake only, objections were called for and fixation of seniority of Electrical Operator (HT) was done on 23.03.1998 and so also the fixation of Junior Engineer on 09.03.2001. Objections were also once again called for in respect of seniority list of Junior Engineer (Electrical) and one of the petitioners, namely Mr. K. Rajakumar did raise his objections and it was also considered along with other objections and it was rejected on 09.05.2013. It is very pertinent to point out at this juncture that the order of the second respondent dated 09.05.2013 merely reiterates and confirms the stand taken while fixing the seniority list of Junior Engineers on

09.03.2001. Admittedly, the petitioners did not challenge the fixation of seniority of Electrical Operators (HT) done on 23.03.1998 and for Junior Engineers, done on 09.03.2001.

16. Though the first respondent Management has placed the private respondents above the petitioners, they did not revert the petitioners from the post of Junior Engineers and thereby, acted judiciously and fairly. The order passed by the second respondent dated 09.05.2013 and the appellate order passed by the first respondent on 12.09.2013 would exhibit application of mind to all the relevant facts and upon a detailed consideration, the request made by the petitioners came to be rejected.

17. This Court, considering the rival submissions and on careful scrutiny of the entire materials placed before it, is of the view that there is no error apparent or infirmity in the reasons assigned in the impugned order.

18. It is the submission of the learned counsel appearing for the petitioners that most of the private respondents had retired and only some of them are in service and considering the age of the petitioners, their request for further promotion may be considered by the respondents 1 and 2. In this regard, it may be open to the petitioners to do so in the form of representations to the second respondent, who, on receipt of the same, may consider and dispose of the same in accordance with law in the light of existing facts and circumstances.

19. In the result, both these writ petitions are dismissed subject to the above observations. No costs. Consequently, connected miscellaneous petitions are closed.