

(2010) 12 MAD CK 0141

In the Madras High Court

Case No : Writ Petition No. 48079 of 2006 (O.A. No. 5750 of 2000)

M. Lakshmanaperumal

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Citation : (2010) 12 MAD CK 0141

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : L. Chandrakumar, for the Appellant; R. Murali, G.A., for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard Mr. L. Chandrakumar, learned Counsel appearing for the Petitioner and Mr. R. Murali, learned Government Advocate appearing for the Respondents.

2. The Petitioner filed O.A. No. 5750 of 2000 before the Tamil Nadu Administrative Tribunal, seeking to set aside G.O. Ms. No. 261 Agriculture Department dated 13.07.2000 and after setting aside the same seeks for a direction to regularise his services in the post of Junior Draughting Officer with effect from 09.05.1996 and extend all benefits.

3. The Tribunal ordered notice of motion on the Original Application and granted an interim stay on 16.08.2000.

4. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 48079 of 2006.

5. During the pendency of the Original Application, a reply affidavit was filed by the Respondents dated 28.08.2002. The applicant was selected through Employment Exchange for being appointed in the Department of Agricultural Engineering on 09.05.1986. At that time, he was a Graduate in B. Sc, had also

secured a National Certificate in the Trade of Draftsman issued by the National Council of Training in Vocation Trade. Though on the date of appointment i.e., on 09.05.1986, he was neither qualified for the post of Assistant Draughtsman nor for the post of Junior Draughting Officer, an order was given to him by the Executive Engineer, (Agricultural Engineering) Coimbatore, appointing him as a Junior Draughting Officer under Rule 10(a)(1) of the General Rules applicable to the Tamil Nadu State and Subordinate Services. In the order itself, it was stated that his appointment was purely under emergency provisions and will not confer any right for future appointments and promotions.

6. The Petitioner was terminated from service by the Executive Engineer (Agricultural Engineering), Coimbatore vide his order dated 30.09.1987. The termination order was given by the Department as his appointment was not made with reference to the amended Service Rules issued vide G.O. Ms. No. 2624, Agriculture Department, dated 02.12.1981 applicable to the post of Junior Draughting Officer.

7. The Petitioner moved this Court by filing a writ petition being W.P. No. 9819 of 1987. On the formation of the Tribunal, the matter was transferred to the Tribunal and was renumbered as T.A. No. 17 of 1993. The Tribunal by its order dated 11.01.1995 directed the Respondents to allow the Petitioner to continue in the post of Assistant Draughtsman and to give him promotion. Aggrieved by the same, the official Respondents filed Review Application 196 of 1995. It was the stand of the Government that the Petitioner though appointed irregularly, on humanitarian basis, he was allowed to continue. Therefore, he is not entitled to get any higher post. The Tribunal in Paragraph 6 of the Review Application 196 of 1995 dated 14.10.1999 observed as follows:

6. Even though, the applicant is not qualified to be appointed as Junior Draughting Officer, the directing by the Tribunal cannot be said to be unreasonable. If we consider the relaxation granted to other persons, the applicant could have succeeded in his claim and continued as Junior Draughting Officer, but unfortunately as there was no review application filed by him, and the review application has been filed only by the Respondents, we are concerned only with that review application, which has been filed only against the last paragraph of the order, directing the applicant's continuance as Assistant Draughtsman with eligibility for further promotion.

8. As against the order in the Review Application, the Petitioner moved the Supreme Court in Civil Appeal No. S.L.P.(Civil) No. 8977 of 1996. The Supreme court remanded the matter back to the Tribunal for fresh consideration.

9. It was pursuant to that, the State Government issued G.O. Ms. No. 261 Agriculture Department dated 13.07.2000. In that order the State Government found that the Petitioner's appointment by the Executive Engineer, Coimbatore was improper as the Petitioner did not possess the educational qualification to be appointed as Junior Draughting Officer, but nevertheless, on considering the facts

and circumstances of the case and also on the basis of the representation made by the Petitioner, in paragraphs 4 and 5 of its order, it was directed as follows:

4. After careful examination, the Government have accepted the proposal of the Chief Engineer (AE) and proposed to implement the order of the Tamil Nadu Administrative Tribunal. Accordingly, Government direct that the services of Thiru M. Lakshmanaperumal, be regularised in the post of Assistant Draughtsman with effect from 09.05.1986 duly relaxing Rule 4 of the adhoc rules infamous of him.

5. In exercise of the powers conferred under Rule 48 of the General Rules contained in Part II of the Thailand State and Subordinate Services in Volume I of the Tamil Nadu Service Manual 1987, the Governor of TamilNadu hereby relaxes Rule 4 of the adhoc rules in favour of ThiruM. Lakshmanaperumal for regularisinghis services in the post of Assistant Draughtsman with effect from 09.05.1986.

10. Pursuant to the order issued by the Government, the Chief Engineer (Agricultural Engineering) by proceedings dated 26.07.2000 reverted the Petitioner from the post of Junior Draughting Officer to that of Assistant Draughtsman and regularised his services with effect from 09.05.1986, namely the date of his initial appointment.

11. The Petitioner once again filed the present O.A. No. 5750 of 2000 seeking to set aside the very Government Order which had granted him regularisationwith retrospective effect in the post of Assistant Draughtsman and sought for a further direction to continue him in the higher post of Junior DraughtingOfficer.

12. Mr. L. Chandrakumar, learned Counsel for the Petitioner strenuously contended that the Petitioner had the basic qualification to hold the post of JuniorDraughting officer and he was sponsored through Employment Exchange. Therefore, there was no illegality in the original appointment. The subsequent amendment made to the Special Rules, providing for higher qualification need not affect the case of the Petitioner. He also submitted that the government having granted aratification with retrospective effect that should be done only in the post of Junior Draughting Officer and not that of Assistant Draughtsman. Lastly, out of desperation, he submitted that by virtue of the interim order of the Tribunal, he had continued in the post of Junior Draughting Officer and if this Court were to uphold the impugned order, then he will have the prospector getting reverted to the lower post and prayed foresting aside the order.

13. Taking the last submission first, it must be noted that any interim order given by any Court cannot be the final order and it is always subject to the final order to be passed by the Court. In effect, if any final order is passed, interim order becomes merged with the final order and it does not have any capacity to stand on its own.

14. In this context, it is necessary to refer to the following decisions of this Court and the Bombay High Court, which are as follows. A Division bench judgment of

this Court in C. Kamatchi Ammal Vs. Kattabomman Transport Corporation Ltd. and Others, has held that interlocutory orders made in the course of proceedings will necessarily lapse with the decision of the suit unless the suit is one for permanent injunction and the interim injunction is made permanent as a part of the decretal order made by the court.

15. The Bombay High Court vide its decision reported in Ramesh Akre and Ors. v. Smt. Mangalabai Pralhad Akre and Ors. reported in AIR 2002 Bom 487 has held as follows:

21. Similarly, it is also not necessary that suit should be disposed of only on merits in order to bring an end to interim order. What is contemplated in-law is that such interim order would continue to operate till suit is disposed of one way or the other and would come to an end on the day suit is disposed of. Whether suit is disposed of for want of prosecution or on merits is not the criteria to decide existence of interim orders. These orders by their very nature are temporary and remain in force only during the pendency of the suit and come to an end when the suit is disposed of one way or the other.

Therefore, on that ground the Petitioners' grievance cannot be accepted.

16. The first submission that the Petitioner had necessary educational qualification also cannot be accepted. Though the Petitioner referred to the Special Rules in G.O. Ms. No. 1760, Agriculture dated 10.06.1970, wherein the educational qualification of National Trade Certificate in Draughtsman Civil was also accepted, but that is not the qualification at the time when the Petitioner was appointed. The impugned order clearly refers to the qualification for the said post and the Petitioner do not have the said qualification.

17. The second submission that he ought to have been appointed as a Junior Draughting Officer also does not stand to reason. His initial appointment was only under Rule 10(a)(1) and the order itself showed that it was due to exigency and liable to be terminated at any time and there is no equity that can be raised by the Petitioner.

18. The Tribunal in Review Application 196 of 1995 dated 14.10.1999, clearly stated that the Petitioner has to work only in the post of Assistant Draughtsman with eligibility for further promotion. The Tribunal itself noted that the Petitioner never filed any review application on its earlier order and therefore, the Tribunal was not in a position to grant any further relief. Though that order was under challenge and the matter was remitted for fresh consideration, the Government had granted a correct relief to the Petitioner. It is the very same order by which he was granted regularisation from the original date of appointment. The Petitioner must also be grateful to the Government for having passed the order in his favour.

19. In the Counter affidavit, with reference to the qualification, in paragraph 4, it was averred as follows:

It is submitted that the applicant was terminated from service by the Executive Engineer (Agricultural Engineering) Coimbatore by his order dated 30.09.87. The termination was made by the Department as his appointment was not made with reference to the amended rules issued in G.O. Ms. No. 2624, Agriculture dated 2.12.81 for the post of Junior Draughting Officer by direct recruitment shall be made with reference to the qualification namely D.M.E or D.C.E or D.C.B.E by the state Board of Technical Education and Training, Madras whereas the applicant was a B. Sc., Graduate with NTC in Draughtsman (Civil) issued by the National Council of Training in Vocational Trade. The applicant is not at all qualified for the post of Assistant Draughtsman or Junior Draughting officer at the time of his appointment or even now. Though he did not possess the requisite qualification for the said post, Honourable Tribunal has passed orders on 14.10.99 in the Review Application 196 of 1995 in (T.A.17/93) filed by the Agricultural Engineering Department in favour of the applicant on humanitarian grounds and to allow him to continue as Assistant Draughtsman and to give him consequential promotion. Accordingly orders of Government obtained in G.O. Ms. No. 261, Agriculture (A.A.III) Department, dated 13.07.2000 that the services of the applicant be regularised in the post of Assistant Draughtsman with effect from 9.5.86 already relaxing the Rule 4 of Adhoc rules in favour of him. Based on the Government instructions, in letter No. EE4/83558/99 dated 26.07.2000, the applicant was reverted as Assistant Draughtsman and allotted to the Executive Engineer (Agricultural Engineering) Nagercoil for giving posting as Assistant Draughtsman for which he again filed this Original Application and obtained stay order.

20. With reference to the Petitioner continuing in the higher post on the strength of the Court order, in paragraph 7, it was stated as follows:

It is submitted that the applicant is neither qualified for the post of Junior Draughting Officer nor for the post of Assistant Draughtsman at the time of his appointment and even now. However considering his long years of service on humanitarian grounds, the Honourable Tribunal has ordered him to continue as Assistant Draughtsman and to get consequential promotion. Based on the Honourable Tribunal's order, orders from Government duty condoning the irregular appointment was obtained to post the applicant as Assistant Draughtsman. Hence his statement that neither he held charges nor was appointed as Assistant Draughtsman is a false one.

21. Under these circumstances, the Petitioner cannot claim equity and as a matter of right to continue in the higher post to which he was not eligible to be appointed at the first instance.

22. In view of the above, the writ petition stands dismissed. No costs.