

(2008) 06 MAD CK 0069

In the Madras High Court

Case No : Writ Petition No. 23578 of 2003 and W.P.M.P. No. 29138 of 2003

M. Malarvannan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-06-2008

Acts Referred:

Citation : (2008) 06 MAD CK 0069

Hon'ble Judges : P.K. Misra, J; K. Chandru, J

Bench : Division Bench

Advocate : P.V.S. Giridhar Associates, for the Appellant; V. Radhakrishnan, SC for respondents 1-4 and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard the arguments of Mr. P.V.S. Giridhar, learned Counsel appearing for the petitioner and Mr. V. Radhakrishnan, learned Senior Standing Counsel appearing for the Railways and perused the records.

2. The petitioner, an unsuccessful applicant before the Central Administrative Tribunal (CAT) in O.A. No. 1044 of 2001 has filed the present writ petition. After seeking to set aside the order dated 24.10.2002, confirming the order dated 04.4.2001 passed by the fourth respondent Union of India, he seeks for reinstatement and regularisation in the post of Radiographer - III with all consequential benefits.

3. The brief facts leading to the termination of the petitioner are as follows:

3.1. On 23.7.1993, the post of Radiographer became vacant in the Hospital at Integral Coach Factory (ICF) due to the death of the permanent. It is stated that the Southern Railway is the cadre controlling authority to place indent with the Railway Recruitment Board (RRB) for the said post. On 24.11.1993, the petitioner was engaged as a substitute Radiographer for a period of three months and subsequently, it was extended by another three months up to 26.5.1994. By an order dated 12.5.1994, the petitioner was granted temporary status. But by

every order of extension, he was informed that it will not give him the right of permanent absorption.

3.2. Under paragraph 164(2) of the Indian Railways Establishment Manual (for short, "IREM"), the qualification prescribed for the post of Radiographer is a Matriculation with Physics and Chemistry and also a Diploma from recognised Institute. One experience in routine work in X-Ray and Electrographic Branch is a desirable condition and Science Graduate with Diploma in Radiography will be given preference. Subsequently, the said qualification was amended by the Railway Board by proceedings dated 23.6.1994 and the qualification for the post of Radiographer was prescribed as follows:

Qualification for direct recruitment are Matriculation with Physics and Chemistry and Diploma in Radiography (2 years course) from recognized institute. Science Graduates with Diploma in Radiography (2 years course) will be preferred.

3.3. Between 1994 and 1996, the petitioner had applied for recruitment to the post of Radiographer pursuant to the notifications issued for vacancies which arose at Thiruvananthapuram, Bengaluru and Mumbai. His applications were entertained since the notifications calling for applications were pursuant to the indent placed on RRB before the amendment to the RR. The following were the result of his attempt to get permanent employment:

Sl. No.	Name of the Railway	Notification	Reference	Result of Selection
1	RRB/Trivandrum	"1/94	Not successful	2 RRB/Bangalore
"3/94	Not successful	3 RRB/Bangalore	"6/94	Not successful
4	RRB/Mumbai	"1/95	Not successful	

3.4. However, when notification for the vacancy at Chennai was issued by Notification No. 2/97-98 calling for applications, it was noticed that the petitioner did not have the qualification as per the amended Rule. But then he filed an O.A. No. 971 / 98 and sought for a direction to the RRB to sit for the examination. The CAT, by its order dated 12.11.1998, directed the RRB to permit the petitioner to sit for the written test and for attending the viva-voce. But it was directed that the results may not be published pending the O.A. The petitioner attended the test and interview but was not successful. Therefore, his O.A. was closed as infructuous.

3.5. Thereafter, the petitioner sent a representation dated 07.11.2000 and sought for regularisation of his services. The petitioner was informed by the respondents that his services cannot be regularised on the basis of his past service. It was stated that he was allowed to continue till such time, a regular candidate is appointed to the said post. The CAT, by its order date 20.12.2000, directed the Ministry of Railways to consider his representation and till the disposal of the representation directed status quo to be maintained.

4. Pursuant to the said direction, the RRB, by its order dated 04.4.2001, rejected his case for regularisation which was also communicated by the Senior Personnel

Officer with a covering letter dated 25.4.2001. It is stated by the petitioner that the Chief Personnel Officer, ICF, by his letter dated 16.6.2001, recommended the regularisation of his services on the ground that he had put in 7= years of service. The RRB clearly informed that the said request cannot be considered in the light of the rule position which was already indicated to the ICF. Challenging these communications, the present writ petition has been filed.

5. Mr. P.V.S. Giridhar, learned Counsel for the petitioner contended that the petitioner had put in 7-1/2 years of service and at the time of initial appointment, as a substitute stenographer, he had the necessary qualification. He also stated that he was working against a permanent post in the ICF Hospital and the Chief Personnel Officer had also recommended his case for regularization. He further submitted that he has been given the status of temporary Railway servant and as per paragraph 5.5. of the consolidated circular dated 29.01.1991, he need not undergo a regular selection. It is enough if a screening committee goes through the petitioner's credentials and recommend his case for absorption. He also submitted that the amended Rules will not apply to the petitioner's case.

6. With this factual matrix, the learned Counsel relied on the decision of the Supreme Court in Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, and more particularly, relied on the following passage found in paragraph 9 of the said judgment:

Para 9: ...The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

7. He further submitted that the reasoning in Rangaiah's case (cited supra) came to be approved and followed in B.L. Gupta and Another Vs. M.C.D., .

8. The said reasoning was also referred to and followed in State of Rajasthan Vs. R. Dayal and Others, and the learned Counsel referred to the following passage found in paragraph 8 of the judgment:

Para 8: ...This Court has specifically laid that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in in accordance with the law existing as on the date when the vacancies arose.

Undoubtedly, the selection came to be made prior to the amendment of the Rules in accordance with law then existing since the anticipated vacancies also must have been taken into consideration in the light of Rule 9 of the Rules. But after the amended Rules came into force, necessarily the amended Rules would be required to be applied for and given effect to. But, unfortunately, that has not been done in the present case. The two courses are open to the Government or the appointing authority....

9. He further referred to the following passage found in paragraph 11 of the judgment of the Supreme Court in *Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others*, :

Para 11: It is, thus, settled law that the process of selection must be in accordance with the law existing as on the date of selection. Keeping a candidate in the waiting list does not confer any vested right in his favour much less indefeasible right....

10. With reference to the argument of the respondent Railways basing upon *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, , the learned Counsel heavily relied upon the subsequent judgment of the Supreme Court in *U.P. State Electricity Board v. Pooran Chandra Pandey and Ors.* 2007 AIR SCW 6904. He further placed reliance upon the judgment of a Division Bench of this Court in *M. Gnanasekar v. M. Ramesh and Ors.* made in W.P. No. 36731 of 2006 and another case, disposed on 11.6.2007.

11. Per contra, Mr. V. Radhakrishnan, learned Senior Counsel submitted that admittedly, the petitioner does not possess the amended qualification. The consolidated circular issued by the Railways regarding absorption of ad hoc employees in paragraph 3.2. clearly states that the substitutes will have to vacate their posts when a regular selection is made by the Railways. He also submitted that the petitioner pursuant to the notification in 2/97-98 issued by the RRB, applied for the post at Chennai and finding that he was not qualified, moved the CAT and with an interim order, he wrote his examination but was not successful. But, he, however, allowed the CAT to dismiss the O.A. as infructuous without arguing the original cause of action viz., that the qualification prescribed will not apply to his case. Having allowed the said order to become final, he is estopped from contending otherwise. The qualification prescribed will not apply with reference to any vacancy but only when it is notified. In the present case, when the vacancy was notified, he was found not qualified.

12. With reference to the plea of regularization, he submitted that the regularization is not and cannot be a mode of recruitment and appointment made contrary to the prescribed qualification will be illegal and such illegality cannot be cured by taking recourse to regularization. In this context, he referred to the following two decisions and took this Court to the various passages indicated hereunder:

(i) *A. Umarani Vs. Registrar, Cooperative Societies and Others*,

(ii) Secretary, State of Karnataka and Others Vs. Umadevi and Others,

13. He further submitted that the regularization can be done only in accordance with the Rules and not de hors the Rules. He referred to the decision in Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., and placed reliance upon paragraph 34 of the said judgment:

Para 34: Thus, it is well settled that there is no right vested in any daily-wager to seek regularisation. Regularisation can only be done in accordance with the rules and not dehors the rules. In E.Ramakrishnan v. State of Kerala this Court held that there can be no regularisation dehors the rules. The same view was taken in Kishore (Dr.) v. State of Maharashtra, Union of India v. Bishamber Dutt. The direction issued by the Services Tribunal for regularising the services of persons who had not been appointed on regular basis in accordance with the rules was set aside although the petitioner had been working regularly for a long time.

14. After giving our anxious consideration to the rival submissions made at the bar, we are of the view that the order of the CAT impugned in this writ petition does not call for any interference.

15. The CAT framed four issues and gave finding on each of the four issues against the petitioner. The CAT was correct in holding that the qualification for the post will be the date of notification calling for applications and not at the time when the alleged vacancy arose. In the present case, by the time when the notification was issued, the amended Rules have come into force. The CAT also rejected the case of legitimate expectation put forth by the petitioner on the basis of length of ad hoc service and categorically stated that in the absence of the petitioner being qualified to hold the post and also getting selected in terms of the RR, any direction given will be perpetuating an illegal act. The CAT also rejected the plea for granting relaxation in terms of Rule 114 of the IREM and also held that getting temporary status of a Railway servant will not automatically entitle him to get absorption as can be seen from the relevant circulars issued by the Railways. Though the petitioner had gone before the CAT and got an interim order to write the examination by challenging the prescription of new qualification, but, however, allowed the O.A. to be dismissed thereby putting a seal of finality to the said issue.

16. Even otherwise, the legal precedents relied on by the learned Counsel for the petitioner do not support the case of the petitioner. The decisions of the Supreme Court relied on by the respondent Railways with reference to regularization has a direct application to the case on hand and those decisions cannot be explained away by referring to certain stray passages found in the subsequent pronouncements of the Supreme Court. Even the reference made to the Division Bench of this Court to the unreported decision in M.Gnanasekar's case (cited supra) will not help the case of the petitioner because the challenge made therein was to the State action in conducting a limited competitive examination in consultation with the TNPSC for absorbing certain candidates who were initially

appointed on ad hoc basis. It was in that background, the Division Bench had referred to Rule 48 as an enabling provision to hold such a selection process.

17. We do not find any substance in the writ petition and it is devoid of merits and accordingly, it will stand dismissed. However, there will be no order as to costs. Connected Miscellaneous Petition will stand closed.