
(2014) 06 MAD CK 0206
In the Madras High Court
Case No : W.P. (MD) No. 12319 of 2011

M. Mani

APPELLANT

Vs

The Secretary to Government

RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 4 LLJ 462 : (2015) 1 SCT 446 : (2014) WritLR 1077

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R. Mahadevan, J.—The case of the petitioner is that he was initially appointed as Helper in Manjalar Dam Division, on 05.08.1964. Later, he was appointed as cleaner, on 16.02.1965. Thereafter, on the basis of the recommendation made by the Executive Engineer, he was appointed as Driver, on 01.02.1981 and continued to hold the said post till his retirement, on 31.12.2001. Since the petitioner does not possess the requisite qualification of pass in eighth standard and as he was appointed as Driver by promotion, a proposal was forwarded to the Government, seeking relaxation of rule. In pursuance of the same, the first respondent issued G.O. Ms. No. 2394, Public Works Department, dated 29.11.1989, regularizing the service of the petitioner with effect from the date of the said Government Order. Aggrieved over the same, the petitioner submitted a representation before the respondents. The second respondent, by his letter, dated 02.03.2009, stated that since the first respondent passed final orders, on 05.07.2002, in this regard, no further action is necessary. Challenging the above said two orders, the present Writ Petition has been filed.

2. The learned counsel appearing for the petitioner submits that the claim of a similarly placed person, Mr. P. Tharmaraj, Jeep Driver, like that of the petitioner herein, was considered and his service was regularized with effect from the date of appointment, and hence, the petitioner is entitled for the relief sought for. The

learned counsel, in support of his contention, makes reliance upon an order of this Court in A. Balasubramaniam Environmental Scientist, Tamil Nadu Pollution Control Board (TNPCB) AEL, Cuddalore and Others Vs. The State of Tamil Nadu and The Tamil Nadu Pollution Control Board, .

3. Per contra, the learned Government Advocate appearing for the respondents, reiterating the averments made in the counter affidavit, submits that the petitioner was appointed only on temporary basis, relaxing the qualification, and hence, he is not entitled for the relief sought for.

4. I have considered the above submissions and perused the records carefully.

5. The main contention of the petitioner is two fold (1) that without notice to him, the salary paid to him has been reduced and ordered to be recovered and (2) that his regularization has to be with effect from 01.02.1991 forenoon, after completion of 10 years of service as Driver in line with similarly placed persons.

6. It is not in dispute that the Rule regarding educational qualification for Drivers was relaxed, vide G.O. Ms. No. 2394, Public Works Department, dated 29.11.1989. It is also not in dispute that similarly placed persons, like that of the petitioner, have been regularized from the date of their appointments temporarily as Drivers. In fact, the defence of the respondents is that the other persons were absorbed into the selection grade, as they were qualified, and hence, they were absorbed into selection grade from the date of appointment.

7. This Court is unable to accept the arguments advanced by the learned Government Advocate appearing for the respondents, for the simple reason that once the condition is relaxed, the appointment already made gets confirmed. It cannot change the date of appointment. Therefore, the impugned orders could only be termed as discriminatory. Further, the petitioner, in his affidavit, has sworn that one Mr. P. Dharmaraj, who had completed fifth standard, was absorbed into selection grade, on completion of 10 years of service from the date of appointment. There is no specific denial from the respondents and the respondents have also not produced any documents to disprove the claim of the petitioner. Even in the impugned order, dated 05.07.2002, no reason is given as to how the case of the petitioner is different from the case of the said Mr. P. Dharmaraj and with regard to other persons, it has been stated that the relaxation was granted when they were employed as Drivers. In the case of the petitioner also, it is only after he was promoted as Driver, the order relaxing the Rule has been made. Therefore, this Court is of the opinion that the case of the petitioner is similar to that of other persons to whom the absorption into selection grade has been made with effect from the date of appointment. In the Government Letter No. 168/S/98. dated 28.09.1998, it has been stated that the concession of counting the services rendered by employees in the selection grade/special grade/special temporary post of the lower post having identical or higher scales for the purpose of awarding selection grade in the promotional post must be extended to all employees irrespective of the fact whether it is first level

promotion or not, but limited only once in the selection period. Hence, even according to the said Government Letter, which has been issued after considering various Government Orders, the service of the petitioner temporarily as a Driver is to be taken into consideration, while moving him to selection grade.

8. In the Judgment in W.A. Nos. 383 to 389 of 2009, dated 01.09.2009, [State of Tamil Nadu Vs. S. Siluvai Nathan], a Division Bench of this court held as follows:

10. Admittedly, the Writ Petitioners are Drivers and they have no promotional avenues. It is also admitted that they cannot be compared with or treated on par with common categories. It is also not disputed that in respect of drivers working in certain Government Departments, the Ordinary scale of pay was fixed at Rs. 4,000 - 100 - 6000 in which scale, the Selection Grade Pay would be Rs. 5,000 - 8,000/- and Special Grade pay would be Rs. 5,500/- - 9,000/- and there cannot be two scales of Selection or Special Grade pay for the category of Drivers employed in various departments. While so, denying the same benefit to the Writ Petitioners similarly employed and discharging similar function in other departments, amounts to discrimination and violation of Article 14 of the Constitution of India.

9. In the Judgment in C. Eswaran, K. Rajamanickam, V. Velayutham and K. Lakshmi Kanthan Vs. The Secretary to Government Agricultural Department and The Director of Agriculture , this Court has held as follows:

5. The learned Counsel also submitted that in the decision reported in N.S. Balasubramanian and Others Vs. Food Corporation of India, , this Court has taken a similar decision following the judgment of the Hon"ble Supreme Court in para Nos. 13 to 16 and the said judgment reads as follows:

13. Here in this case, the claim of the Petitioners are that they are entitled to be treated like similarly placed persons, who are the Petitioners before the Kerala High Court and who are paid the recovered amount. In effect, the contention of the Petitioners is that they shall be treated equally and if any discrimination is made on the ground that Petitioners 1 to 16 have received Voluntary Retirement Scheme benefits and therefore they are not entitled to get the recovered amount, the same will be violative of Article 14 of the Constitution of India.

14. Article 14 of the Constitution of India clearly prohibits discrimination and if any discrimination without any intelligible differentia, certainly violation will be hit by Article 14 of the Constitution of India, which is a guaranteed fundamental right available to any person. The said right being the fundamental to treat equally among equals, cannot be negated on the plea of waiver or estoppel as rightly held by the Honourable Supreme Court and this Court.

15. In the light of the above submissions and judgments, there is no substance in the arguments of the learned Additional Advocate General appearing for the Respondents that Petitioners 1 to 16 are not entitled to maintain the Writ Petition after accepting the Voluntary Retirement Scheme.

16.(a) The learned Senior Counsel for the Petitioner cited the judgment of the Supreme Court reported in K.C. Sharma and others Vs. Union of India and others, wherein in para 6 it is held as under:

6. Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the Application and the Appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The Appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of O.A. No. 774 of 1994 is condoned and the said Application is allowed. The Appellant would be entitled to the same relief in the matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated December 16, 1993 in O.A. Nos. 395-403 of 1993 and connected matters. No order as to costs.

(b) In another decision cited by the learned Senior Counsel for the Petitioner reported in State of Karnataka and Others Vs. N. Parameshwarappa and Others, the Supreme Court held as under:

8. we do not find any reasonable justification to confine the relief to only such of the teachers who approached the Court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the Court. We are in equal agreement with the Division Bench in denying the payment of interest at compounded rates which, in our view, cannot be justified at all on the facts and circumstances of the case wherein a serious and genuine doubt existed about the applicability of the Government Order dated 30.3.1990, as raised in the proceedings.

9. For all the reasons stated above, the Appeals filed both by the State as well as by the private Respondent teachers fail and shall stand dismissed. Our declaration to extend the benefits of the judgments to others who have not approached the Court, but similarly placed is to do complete and substantial justice. No costs.

(c) In yet another decision reported in Govind Ram Purohit v. Jagjiwan Chandra, 1999 SCC (L&S) 788, in para 3 the Honourable Supreme Court held thus:

3. It was lastly contended by the learned Counsel for the Appellants that whereas the Petition had been filed by only Respondent 1, the High Court while finally concluding the matter has given a direction to promote all those who were senior to the Appellants even though they were not parties to the petition. Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the Seniority- cum - Merit Rule. There was no point in waiting for each and every person to file a petition. Therefore, we do not see any reason why we should entertain such a technical plea when the High Court has done substantial justice to all concerned.

From the analysis of the judgments cited above, it is beyond doubt and clear that once the point is decided in favour of a group of persons, there is no further point in waiting for each and every person to file Petition and pray for the same relief. As held by the Honourable Supreme Court, the benefit of the judgment is equally applicable to similarly placed persons to do complete and substantial justice.

The said judgment was challenged in W.A. No. 956 of 2006 and the First Bench of this Court confirmed the same by order dated 30.10.2006 and the SLP (Civil) No. 6771 of 2007 filed against the said judgment was also dismissed by the Hon"ble Supreme Court on 23.04.2007.

7. In view of the said legal position and if there is no factual difference between these Petitioners and other 11 persons, who have been given the benefit of regularisation on completion of five years of their initial service, the Respondents are directed to consider the claim of the Petitioners based on the representation given by the Petitioners dated 2.8.2010. The Respondents also bear in mind the order passed in W.P. No. 29501 of 2004 dated 12.11.2008 granted in favour of four others which was also implemented by them while passing orders.

10. In yet another Judgment in A. Balasubramaniam Environmental Scientist, Tamil Nadu Pollution Control Board (TNPCB) AEL, Cuddalore and Others Vs. The State of Tamil Nadu and The Tamil Nadu Pollution Control Board, , relied upon by the learned counsel for the petitioner, this Court has held as under:

11. It cannot be gainsaid that in respect of the similarly placed persons, if an earlier order has been passed (based on the same set of facts and circumstances of the case), then the same yardstick/bar/measures will have to be applied in administrative action by the authorities concerned. In fact, the authorities concerned cannot apply a different yardstick or show any kind of discrimination, thereby challenging Articles 14 and 16 of the Constitution of India. To put it differently, similarly placed persons are to be treated alike whether they have approached this Court to secure orders in their favour or not. However, on going through the impugned order of the second respondent 1/6/2012 (in respect of 23 persons mentioned therein) indicates latently and patently that a specific mention was made to the effect that for the persons, who have obtained orders from the High Court in their favour as regards the regularisation of their services with retrospective effect alone, appointment orders have been issued with retrospective date.

12. In the instant case on hand, although the petitioners have sought for a Writ of Mandamus praying for issuance of an order in directing the respondents to regularise their services in their respective posts with retrospective effect from the date of their initial appointment and to provide them with all consequential benefits including monetary benefits, this Court is of the considered view that the second respondent ought to have considered the representation of the petitioners dated 1.5.2012 by taking into account the order of this Court in W.P.

No. 9969/2010 dated 18.4.2011 in the case of S. Arul Doss v. Government of Tamil Nadu and another. However, the second respondent through the impugned order dated 1.6.2012 has stated that only those employees, who secured orders from the High Court in their favour, with regard to regularisation of their services with retrospective effect from the date of their initial appointment, were given appointment orders. This kind of observation in the impugned order of the second respondent dated 1.6.2012 does not fit within the parameters of law in the considered opinion of this Court. As such, this Court is left with no option, but to interfere with the said impugned order of the second respondent dated 1.6.2012 and to set aside the same in the interest of substantial cause of justice.

11. From the above Judgments, it is clear that the action of the respondent in absorbing similarly placed persons from the date of appointment and rejecting the claim of the petitioner is clearly discriminatory and in violation of Article 14 of the Constitution of India. The very purpose of moving persons employed into selection grade is because of the fact that there is no promotion. All the person receives is only monetary compensation. The very purpose of creation of selection grade cannot be permitted to be defeated on technicalities, more so, by discrimination.

12. In defence to the claim of laches in challenging the impugned proceedings, dated 05.07.2002, and the order of recovery, the learned counsel for the petitioner has relied upon the Judgment in K.K. Perumalsamy v. Tamil Nadu Electricity Board, reported in 2011 (1) CWC 652, wherein the First Bench of this court has held as under:

12. Coming to the case on hand, as noticed above, the Appellant claimed rectification of the pay anomaly on the ground that similarly situated employee, junior to him, made a representation for rectification of pay anomaly, which was corrected. Even the requests of the employees posted in the higher level for rectification of anomaly of pay have been accepted, but the request of the Appellant for similar relief was rejected not on the ground of delay, but on the ground that the same was not feasible.

13. In M.R. Gupta Vs. Union of India and others, , a similar question arose before the Supreme Court for consideration. In that case, the employee joined the services of the State of Punjab as Demonstrator in the Government Polytechnic in 1967. Thereafter, he joined the services of the Railways in 1978. The employee claimed that the fixation of his pay on his joining service in the Railways was incorrect and that he was entitled to fixation of his pay after adding one increment to the pay which he would have drawn on 1.8.1978 in accordance with the Rules. The representation of the said employee was rejected and he approached the Administrative Tribunal for proper fixation of his pay. The Application was contested by the employer on the ground that it was time barred since the cause of action had arisen at the time of the initial fixation of his pay in 1978 or latest on rejection of his representation. The subsequent representation made by the employee for proper fixation of pay was immaterial for this purpose.

Allowing the Appeal filed by the employee the Supreme Court observed that-

6. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See 1950 (52) BomLR 181 (Federal Court)).

14. After giving our anxious consideration on the facts of the case and the law discussed herein above, we have no hesitation in holding that the learned Single Judge has not correctly appreciated the law while dismissing the Writ Petition. Hence, the impugned judgment cannot be sustainable in law." It is clear from the above said Judgment that the question of laches would not be applicable in service matters. In this case, right from the date of retirement, the petitioner has been agitating the issue with the respondents.

13. With regard to the recovery of the amount paid to the petitioner, this Court, in *Rajasekaran Nair N. Vs. Secretary to Government, Municipal Administration and Water Supply Department*, reported in 2006 (2) MLJ 420, relied upon by the learned counsel for the petitioner, held as under:

10. In the other Judgment cited by the learned counsel for the petitioner which is reported in *Jaswant Singh Vs. Punjab Poultry Field Staff Association and Others*, , the Supreme Court held that even if a person promoted is not qualified to hold the post, he is entitled to get the pay and allowances admissible to the promotion post.

12. The other objection that the promotion was given only as stop-gap arrangement is also answered by the Hon'ble Supreme Court in *Union of India Vs. Central Administrative Tribunal*, [2004] ATJ 24.

13. The above referred settled position of law reveals that the respondents are bound to pay salary to the petitioner for the periods for which he worked in the higher post. Consequently, the difference in pay shall be calculated and paid to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

14. The above Judgment is squarely applicable to the facts of the case. Therefore, having found that the action of the respondent in denying the absorption to selection grade from 01.02.1991 forenoon amounts to discrimination, this Court has no option, but to set aside the impugned orders. Accordingly, the impugned orders are set aside and the respondents are directed to refund the amount already deducted and re-fix the pay of the petitioner on

par with other persons, who were absorbed, on completion of 10 years from the date of their appointments as Drivers within six weeks from the date of receipt of a copy of this order.

15. In the result, the Writ Petition is allowed. No costs.