

(2015) 03 MAD CK 0248

In the Madras High Court

Case No : Writ Petition Nos. 464 and 465 of 2011

N. Suresh and Others

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 03 MAD CK 0248

Hon'ble Judges : K.K. Sasidharan, J.

Bench : Single Bench

Advocate : Nalini Chidambaram, for the Appellant; M.S. Ramesh, Addl. Govt. Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—The Challenge is to the order in G.O.Ms. No. 996 dated 4 July 1997 regularising the appointments of temporarily appointed Scientific Assistants Grade II and the consequential proceedings dated 8 December 2010 on the file of third respondent fixing inter se seniority. In short, the petitioners wanted their seniority to be fixed prior to their actual birth in the cadre.

The facts:

2. The petitioners were regularly appointed as Scientific Assistants Grade II based on the selection process initiated by the Tamil Nadu Public Service Commission. The contesting respondents (hereinafter referred to as "temporary appointees") were appointed as Scientific Assistants Grade II on temporary basis under Rule 10(a)(i) of General Rules of the Tamil Nadu State and Subordinate Service Rules. The appointments were made during the period from 19 February 1987 to 7 August 1989. The temporarily appointed Scientific Assistants filed original applications in O.A. No. 1727 and 1728 of 1989 to quash the notification issued by the Tamil Nadu Public Service Commission dated 13 September 1989 calling for applications for direct recruitment and to issue a direction for

regularisation of their services. The Tribunal allowed the original applications by order dated 4 December 1981. The said order was challenged by the Government before the Supreme Court in Civil Appeal Nos. 1242 and 1243 of 1993. The appeals were later withdrawn. The Government thereafter regularised the services of temporary appointees by order in G.O.Ms. No. 996 dated 4 July 1997. The regularisation was given effect retrospectively taking into account the date of their initial appointment. The third respondent thereafter published the seniority list of Scientific Assistants Grade II. Since seniority was fixed taking into account the initial date of appointment of employees who were regularised by order dated 4 July 1997, respondent Nos. 27 and 29 filed Original Application before the Tribunal. The original application was subsequently transferred to this Court and re-numbered as W.P. No. 2111 of 2007. The writ petition was dismissed by order dated 2 September 2010. The petitioners thereafter filed the present writ petitions challenging the order in G.O.Ms. No. 996 dated 4 July 1997 and the inter se seniority list dated 8 December 2010.

Response:

3. The Joint Secretary to Government filed a counter affidavit on behalf of the first respondent. According to the first respondent, the Government have regularised the services of temporary appointees in strict compliance of the directions issued by the State Administrative Tribunal in its order dated 4 December 1991 in O.A. Nos. 1727 and 1728 of 1989. According to the first respondent, the concerned temporary appointees are seniors to the petitioners and their services were rightly regularised from the date of initial appointments.

4. The sixth respondent in her counter affidavit contended that the petitioners were all appointed long after the issuance of the order in G.O.Ms. NO. 996 dated 4 July 1997. Since respondents 4 to 21, 24 and 26 were appointed as Scientific Assistants Grade II in the year 1987, ten years prior to the appointment of the writ petitioners, it is not open to them to claim seniority retrospectively.

5. The respondent No. 27 in her counter affidavit admitted the factual position that her writ petition in W.P. No 2111 of 2007 was dismissed by this Court. According to respondent No. 27, those who were selected by the Tamil Nadu Public Service Commission in the selection held in 1989 should be placed above those whose services were regularised at a later point of time notwithstanding their temporary appointment earlier.

6. The respondent No. 36 filed a counter affidavit on behalf of respondents 34 to 43 wherein it was contended that the writ petitions are not maintainable in view of the order dated 2 September 2010 in W.P. No. 2111 of 2007. According to respondent No. 36, regularisation was made with the concurrence of Tamil Nadu Public Service Commission and as such no interference is called for at this point of time.

Rival Contentions:

7. The learned Senior Counsel for the petitioners made the following substantial contentions.

"(i) The respondents 4 to 43 were appointed on temporary basis. Their services were regularised with effect from the date of their initial appointment in violation of the statutory rules.

(ii) The petitioners were all appointed by undergoing regular selection process. The selection was made by the Tamil Nadu Public Service Commission. The seniority prepared by the Tamil Nadu Public Service Commission should be respected while fixing inter se seniority. The impugned seniority list placed the temporary appointees above the petitioners notwithstanding the fact that they were all appointed by resorting to a regular selection process. The impugned regularisation order and seniority list are therefore liable to be set aside.

(iii) The order giving seniority to the temporary appointees by taking into account their initial date of engagement violates the law laid down by the Supreme Court in K. Madalaimuthu and Another Vs. State of Tamil Nadu and Others, ."

8. The learned Senior Counsel for respondent No. 27 supported the case of the petitioner and submitted that the order in W.P. No. 2111 of 2007 is now the subject matter of writ appeal in W.A. No. 2426 of 2010. According to the learned Senior Counsel, direct recruits selected by the Tamil Nadu Public Service Commission should be placed above those who were appointed originally on temporary basis.

9. The learned counsel for respondents 4 to 21, 24 and 26 supported the impugned orders. According to the learned counsel, the writ petitions are liable to be dismissed on the ground of delay and laches. The respondents 4 to 21, 24 and 26 were appointed as Scientific Assistants Grade II in the year 1987, ten years prior to the appointment of writ petitioners and therefore the writ petitioners cannot claim seniority over them.

10. The learned Additional Government Pleader submitted that the order dated 4 July 1997 was issued pursuant to the directions issued by the Tribunal. According to the learned Additional Government Pleader, before regularising the services of respondents 4 to 21, 24 and 26, the Government consulted the Tamil Nadu Public Service Commission and only with its concurrence the impugned order dated 4 July 1997 was issued. The learned Additional Government Pleader further contended that the impugned orders were rightly issued taking into account the initial date of appointment of petitioners and temporary appointees.

The Two issues:

11. (i) Whether the petitioners are entitled to seniority from a date prior to their actual date of entry into service.

(ii) Whether it is open to the subsequent appointees to challenge the earlier

order of regularisation pursuant to the order passed by Tribunal after fourteen years on the ground that the Supreme Court in its judgment rendered in 2006 held that no seniority can be given from the initial date in case it was a temporary appointment.

Analysis:

12. The petitioners 1 and 2 were appointed on 8 March 1997 pursuant to the notification dated 13 September 1989. The petitioners 3 to 24 were appointed vide order dated 26 July 1999 and 13 January 2000 pursuant to the notification dated 22 November 1996. The writ petitioners 25 to 27 were appointed on 22 November 2000 pursuant to the notification dated 25 August 1999. The petitioners 28 to 36 were appointed on 18 February 2005 and 12 July 2005 pursuant to the notification dated 19 July 2001 of Tamil Nadu Public Service Commission.

13. The Director of Forensic Science Department, Chennai appointed respondents 4 to 34 as Scientific Assistant Grade II on temporary basis under Rule 10(a)(i) of the General Rules of the Tamil Nadu State and Subordinate Service Rules. The appointments were made during the period from 19 February 1987 to 7 August 1989.

14. While temporary appointees were working, the second respondent issued a notification dated 13 September 1989 calling for applications for appointment to the post of Scientific Assistant Grade II by direct recruitment. It was in relation to the vacancies for the period from 3 October 1986 to 1989. The notification was challenged by the temporary appointees in O.A. Nos. 1727 and 1728 of 1989. The Tamil Nadu Administrative Tribunal issued a direction by order dated 4 December 1991 which reads thus:

"We direct the appointments made prior to 9 December 1988 should also be dealt with in the same manner as appointments made prior to 3 October 1986 and regularised on that basis. The action initiated by the Commission may relate only to vacancies available after such regularisation. Persons appointed in 1989 should take their chances in the examination for which notification has been issued in the same year." 15. The order dated 4 December 1991 passed by the Administrative Tribunal in O.A. Nos. 1727 and 1728 of 1989 was challenged by the Government before the Supreme Court in Civil Appeal Nos. 1242 and 1243 of 1993. The appeals were dismissed as withdrawn on 24 September 1996.

16. The Government have complied with the directions issued by the Tamil Nadu Administrative Tribunal in its letter and spirit. The Government issued an order in G.O.Ms. No. 996 dated 4 July 1997 regularising the services of temporarily appointed Scientific Assistants Grade II from the date of their initial appointments. The said order has become final, even before the appointment of the petitioners as Scientific Assistants Grade II.

17. The Government thereafter issued a provisional seniority list of Scientific

Assistants Grade II on 20 April 1998. The seniority list was challenged by respondent Nos. 27 and 29 in O.A. No. 7206 of 1999. The original application was later transferred to this Court and it was renumbered as W.P. No. 2111 of 2007. The contesting respondents herein were also parties to the said writ petition. The learned Judge on the basis of materials available on record and taking into account the direction issued by the Tribunal in O.A. Nos. 1727 and 1728 of 1989 held that Rule 35(a) would not apply to the case on hand. According to the learned Judge the said rule would apply only to the candidates selected by the Tamil Nadu Public Service Commission. The following observation made by the learned Judge would make the position clear.

"16. When the temporary services of these petitioners and the respondents were already regularised and their seniority also came to be fixed on the basis of the order passed by the Tribunal which also became final and since the posts of Scientific Assistant Grade II were brought under the purview of TNPSC from 9.12.1988 instead of 3.10.1986 and as per the communication from the TNPSC dated 22.12.1995, the petitioners were selected and came to be appointed only on 8.3.1997 ten years after the appointments of the respondents, the claim of the petitioners that they must be placed as seniors above the respondents is not legally sustainable. As rightly contended by the learned Additional Government Pleader appearing for the State, after regularising the services of both the petitioners and the respondents on the basis of the order passed by the Tribunal in O.A. Nos. 1727 and 1728 of 1989 dated 04.12.1991, as bound by the direction of the Tribunal after regularisation of their services, their seniority was also fixed on the guidelines issued by the Tribunal in its order dated 4.12.1991. As such, if the ranks assigned by the TNPSC were to be considered for fixing their seniority as claimed by the petitioners, then the petitioners would have to be placed as new recruits in the vacancies arose only in the year 1989-90 and their seniority position also would be far below their present position, namely in Sl. Nos. 35 and 32 respectively, for the simple reason, that the petitioners were appointed by the TNPSC only on 8.3.1997 whereas the respondents and the petitioners were appointed originally through Employment Exchange between 1987 and September 1988. Therefore, rule 35(a) will not apply to the present case, but will apply only to seniority among the candidates selected by the TNPSC. Further, I have already held that Rule 35(a) will not apply to appointments made outside the purview of the TNPSC, because, these posts were brought under the purview of TNPSC only from 09.12.1988 but much before the respondents were appointed as Scientific Assistant Grade II.

17. When the posts were not under the purview of TNPSC in the year 1988, more importantly when the TNPSC and the State Government also have accepted the order of the Tribunal dated 04.12.1991 by not bringing their posts under the purview of TNPSC from 1986 but bringing the posts under the purview of TNPSC only from 09.12.1988, both the respondents and the petitioners need not be selected by the TNPSC as their services were already regularised with fixing up of their seniority. This view is taken not only to avoid the argument that the inter-se

seniority once settled will be unsettled but fairness, equity and law also demand no interference with the concluded inter-se seniority already settled.

18. Therefore, I conclude precisely that after both the petitioners and the respondents were appointed in the year 1987-88 as Scientific Assistant Grade II under Rule 10(a)(i)(1) through Employment Exchange when the TNPSC and the State Government finally regularised their services by fixing their seniority, there would not be any more need for selection of the same candidates by the same TNPSC as their regularisation and seniority were already settled. Otherwise, the settled position will not only unsettle the final and concluded position but will also pave way for chaos in the administration at the cost of harmful and serious effect on the administration."

18. The contention now taken by the petitioners have all been answered earlier by this Court in W.P. No. 2111 of 2007.

19. The petitioners now challenges the order dated 4 July 1997 in G.O.Ms. No. 996 with a view to fill up the lacunae inasmuch as retrospective regularisation was not under challenge specifically in the earlier writ petition in W.P. No. 2111 of 2007.

20. The Government have issued final seniority list on 8 December 2010. In the said list, the Government have indicated the inter se seniority of regular appointees and temporary appointees in the post of Scientific Assistant Grade II.

21. The petitioners are now challenging the regularisation order on the ground that subsequent judgments of the Supreme Court and more particularly the decision in K. Madalaimuthu and Another Vs. State of Tamil Nadu and Others, made it very clear that there is no question of regularising the services from the initial date of appointment.

22. The Tribunal in its order dated 4 December 1991 issued a specific direction to the first respondent to regularise the services of temporary appointees taking into account their date of initial appointment. The said order has become final in view of the dismissal of Civil Appeals by the Supreme Court. The Government have implemented the order by regularising the services of concerned respondents by order in G.O.Ms. No. 996, dated 4 July 1997. The petitioners were all appointed only thereafter. In short, even while making applications for appointments, the petitioners were fully aware that the Government have regularised the services of temporary appointees from the date of their initial appointment and as such earlier appointees would be placed above them. The petitioners knowing fully well the factual position, submitted application for appointment and thereafter accepted the appointment order. It is not open to the petitioners now to challenge the regularisation order issued long before their appointment. The petitioners were not even born to the cadre as on the date on which the regularisation order in G.O.Ms. No. 996, dated 4 July 1997 was issued.

23. The petitioners have woken up from slumber and filed these writ petitions

after publishing the inter se seniority list on 8 December 2010. The temporary appointees are therefore perfectly correct in their contention that the writ petitions are liable to be dismissed on the ground of delay and laches.

24. The learned Senior Counsel for the petitioners in her reply contended that the petitioners are affected by the impugned seniority list dated 8 December 2010 and only at that point of time they realised the need of challenging the regularisation order and as such it cannot be said that there is delay and laches. I am not inclined to accept the said submission.

25. The petitioners were aware even on the date of their appointment that the contesting respondents were seniors to them. In fact the tentative seniority list was published on 20 April 1998 and it was challenged in O.A. No. 7206 of 1999. The petitioners who were appointed prior to 20 April 1998 cannot be heard to say that they were not aware of the regularisation order dated 4 July 1997 or their seniority position. The impugned order dated 4 July 1997 clearly shows that the services of contesting respondents were regularised from their initial date of appointment. Therefore it is but natural to place the petitioners below the temporary appointees. It is therefore very clear that the petitioners have slept over the issue and filed writ petitions more than ten years later.

Supreme Court on delay and laches:

26. In *Vijay Kumar Kaul and Others Vs. Union of India (UOI) and Others*, , following the earlier judgment relating to delay and laches, the Supreme Court held that belated approach in filing writ petition is impermissible.

"26. From the aforesaid pronouncement of law, it is manifest that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy.

27. The acts done during the interregnum are to be kept in mind and should not be lightly brushed aside. It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time."

27. Recently in *Londhe Prakash Bhagwan Vs. Dattatraya Eknath Mane and Others*, , the Supreme Court observed that in case the delay in challenging action is abnormal, Court has no power to condone it

"8.....Now, the sole question which falls for our consideration is:

When can an aggrieved person apply before the court, if no limitation is prescribed in the statute for filing an appeal before the appropriate forum?

We have duly considered the said question.

9. Even if we assume that no limitation is prescribed in any statute to file an application before the court in that case, can an aggrieved person come before the court at his sweet will at any point of time? The answer must be in the negative. If no time-limit has been prescribed in a statute to apply before the appropriate forum, in that case, he has to come before the court within a reasonable time. This Court on a number of occasions, while dealing with the matter of similar nature held that where even no limitation has been prescribed, the petition must be filed within a reasonable time. In our considered opinion, the period of 9 years and 11 months, is nothing but an inordinate delay to pursue the remedy of a person and without submitting any cogent reason therefor. The court has no power to condone the same in such case."

28. The Supreme Court in *State of Uttaranchal and Another Vs. Sri Shiv Charan Singh Bhandari and Others*, , followed the judgment in *P.S. Sadasivaswamy Vs. State of Tamil Nadu*, . The Supreme Court in the said decision held that in case a junior is promoted over his head, the senior must challenge it atleast within six months or at the most a year of such seniority and that any one who sleeps over his right is bound to suffer.

"24. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in *Ghulam Rasool Lone Vs. State of Jammu & Kashmir and Another*, ."

26. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in *P.S. Sadasivaswamy Vs. State of Tamil Nadu*, , wherein it has been laid down that:

"2. ... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters." " Seniority - a civil right:--

29. The Supreme Court in *H.S. Vankani and Others Vs. State of Gujarat and Others*, , underlined the importance of seniority and the consequences of unsettling the seniority.

The Supreme Court said:--

"38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a government servant depends either

on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority, etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to limitative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.

39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action."

30. The claim made by the petitioners for fixing their seniority in the post of Scientific Assistants Grade II above temporary appointees is opposed to all canons of service jurisprudence. It is a settled legal position that persons cannot claim seniority from a date on which they were not even born into the cadre.

31. The Supreme Court in *Amarjeet Singh and Others Vs. Devi Ratan and Others*, , held that an employee cannot be given seniority prior to his birth in the cadre. The Supreme Court said:--

"27. The law permits promotion with retrospective effect only in exceptional circumstances when there has been some legal impediment in making the promotions, like an intervention by the court. An officer cannot be granted seniority prior to his birth in the cadre adversely affecting the seniority of other officers who had been appointed prior to him. "The latecomers to the regular stream cannot steal a march over the early arrivals in the regular queue." [Vide *SP. Kapoor (Dr.) v. State of HP*. *Shitla Prasad Shukla v. State of UP*. (SCC p. 190, para 10) and *Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of UP*.]"

32. The view expressed in *Amarjeet Singh* was followed by the Supreme Court later in *Pawan Pratap Singh and Others Vs. Reevan Singh and Others*, .

33.(a) The learned Senior Counsel for the petitioners placed reliance on the judgment of the Supreme Court in *K. Madalaimuthu and Another Vs. State of Tamil Nadu and Others*, in support of her contention that the Supreme Court

interpreted Rule 4(a) of Tamil Nadu State and Subordinate Service Rules, and made it very clear that temporary appointees would be entitled to seniority only from the date of regularisation. There is no doubt with regard to the law laid down by the Supreme Court in K. Madalaimuthu cited supra.

(b). However, the facts of the present case is entirely different. The Tribunal passed an order directing the Government to regularise the services of temporary appointees from their initial date of appointment. The Government have complied with the said direction and issued the regularisation order. The order passed by the Tribunal has therefore become final. This is a case of those who were appointed long after the issuance of order regularising the services of temporary appointed candidates. The judgment of the Supreme Court in K. Madalaimuthu cannot be applied retrospectively to set aside the order passed by the Government on the basis of the directions issued by the Tribunal, which has attained finality. In case concluded issue of seniority is revised time and again on the basis of subsequent declaration of law, it would affect the morale of employees.

Consultation with Public Service Commission:

34. The learned Senior Counsel on the basis of information obtained under the Rights to Information Act contended that the Tamil Nadu Public Service Commission was not consulted before regularising the services of temporary appointees. The Tamil Nadu Public Service Commission in its communication dated 31 August 2012 has only said that on verification of available records, it was found that no concurrence has been given. It was an information given on the basis of available records. However, the impugned G.O.Ms. No. 996, dated 4 July 1997 clearly shows that the Tamil Nadu Public Service Commission was consulted before regularising the services. I therefore, reject the contention taken by the learned Senior Counsel with regard to the failure to seek concurrence of Tamil Nadu Public Service Commission.

Conclusion:

35. The Government have appointed the temporary appointees on account of administrative exigency. They have worked for years together. The Tribunal having found that the Government have regularised the appointments made prior to 3 October 1986 rightly directed regularisation of other employees appointed prior to 9 December 1988. It was a one time measure. The Government though challenged the order before the Supreme Court, subsequently took a conscious decision to comply with the direction and accordingly the Civil Appeals were dismissed as withdrawn. The petitioners who are subsequent appointees now wanted the benefit given to the temporary appointees by way of regularisation of their services to be recalled after seventeen years. Some of the petitioners were College students when the Government appointed the temporary appointees on account of administrative necessity. The petitioners have no legal or moral right to challenge the regularisation order issued long prior to their entry into service.

I therefore do not find any merit in the contentions taken by the petitioners.

36. In the upshot, I dismiss the writ petitions. No costs.