(2012) 12 MAD CK 0038

In the Madras High Court

Case No : Writ Petition No''s. 4819, 4820, 12142, 24085, 24086 of 2010 and W.P. No''s. 23389 and 23390 of 2012

P. Sekar and Others APPELLANT

Vs

R. Gunasekaran and Others RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Citation : (2013) 1 MLJ 700

Hon'ble Judges : Elipe Dharma Rao, J;Aruna Jagadeesan, J

Bench : Division Bench

Advocate : J. Srinivasa Mohan, Bharat Chakravarthy, Ms. N. Mala, Additional Government Pleader P and S. Raveekumar, for the Appellant; R. Malaichamy and A. Nissar Ahmed, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Jagadeesan, J.—These writ petitions are directed against the order dated 17.4.2009 made in O.A. Nos. 961 and 965 of 2006 by the

Central Administrative Tribunal, Madras Bench and to quash the same. W.P. No. 4819 and 4820 of 2010 are filed by the Respondents 4, 5, 7, 8,

10 and 11 in O.A. Nos. 961 of 2006. W.P. No. 12142 of 2010 is filed by the Respondents 11 and 12 in O.A. No. 965 of 2006. W.P. Nos.

24085 and 24086 of 2010 are filed by the Union of India represented by Secretary to Government, Commercial Tax Department, Government of

Puducherry. W.P. Nos. 23389 and 23390 of 2012 are filed by the Respondents 6 and 9 in O.A. No. 961 of 2006. The facts in brief of the case

are that the Government of Puducherry has sanctioned 23 posts of Assistant Commercial Tax Officers for the Commercial Tax Department. The

Government has framed Recruitment Rules for the said post, issued a notification in GO. 61/F2/A2/2000 dated 17.12.2000 and published the

same in the Gazette of Puducherry dated 16.1.2001. As per the recruitment rules, recruitment to the said post has to be made by promotion

through limited departmental competitive examination. His Excellency, the Lieutenant Governor, Puducherry has approved the same by order

dated 13.6.2002 in G.O. Ms. No. 34/F2/A2/2002/ACTO dated 13.6.2002 and the same was published in the Gazette No. 32 dated 6.8.2002.

In the year 2005, 8 vacancies, that is 7 vacancies in the UR Category and 1 vacancy in the SC Category have arisen in the post of Assistant

Commercial Tax Officer. The said vacancies are to be filled up by promotion through limited departmental competitive examination by following

the syllabus, maximum marks, duration of the examination and type of examination prescribed therefor. The 2nd writ petitioner, the Commercial

Tax Department, Puducherry, issued a circular dated 26.12.2005 informing the proposal to fill up the 8 vacancies and the qualifications prescribed

and the method of selection and requesting the Heads of Departments/Officers, Government of Puducherry to bring the contents of the said

circular to the notice of the concerned, collect applications in the format enclosed thereto, verify the correctness of the particulars furnished therein

and forward the same to them on or before 25.1.2006. In response to the above said circular, 72 candidates submitted their applications through

their parent Departments to the 2nd petitioner, Commercial Tax Department, Puducherry. The 1st writ petitioner, Government of Puducherry is the

nodal agency for conducting all departmental examinations and competitive/ recruitment examinations. The Chief Secretary is in charge of the 1st

writ petitioner who was requested to conduct the limited departmental competitive examinations for selection of candidates for promotion to fill up

the 8 vacancies in the post of the Assistant Commercial Tax Officer. In the mean time, by ID. Note No. A.12020/F2/17/2001/ACTO/PF dated

29.11.2006, the Finance Department informed that two more vacancies have arisen in the said post and the said vacancies are also to be filled up.

Consequently, it became necessary to select 10 candidates, that is, 8 under UR category and 2 in the SC/ST Category for recruitment of 10

vacancies in the post of Assistant Commercial Tax Officer.

2. The first writ petitioner fixed the date for conducting limited departmental

competitive examination as 26.11.2006 and issued hall tickets to 57

eligible candidates. The 1st writ petitioner also enclosed the syllabus prescribed in the order bearing G.O. Ms. No. 34/F2/A2/2002/ACTO dated

13.6.2002 for information to the candidates. Out of 57 eligible candidates, 53 candidates appeared and have written the limited departmental

competitive examination. Result was to be published on the next day, that is, on 27.11.2006. While so, the 1st writ petitioner received a Dami

Official letter dated 27.11.2006 from the Former Chairman of the III Finance Commission, Government of Puducherry, pointing out that in the

examination conducted on 26.11.2006, the questions were asked out of the prescribed syllabus and requested to ensure that the evaluation of the

papers is done in such a way that the candidates from the Commercial Tax Office are not unduly benefited and the candidates from other

Departments are not affected. Thereafter, the 1st writ petitioner made a verification and found that the mistake pointed out in the said letter was

correct and the question Nos. 91 to 100 included in the question paper for the said examination were out of the prescribed syllabus. In such

circumstances, on 28.11.2006, the Chief Secretary and the Under Secretary of the 1st writ petitioner assessed the above situation and took a

decision to award 10 grace marks to those questions asked out of syllabus uniformly to all the candidates. Accordingly, the answer sheets were

sent to the evaluator again and 10 grace marks were uniformly awarded to all the candidates. While awarding grace marks, they have deducted the

marks already awarded to the applicants, who have attempted the questions, to the correct answers in respect of the question Nos. 91 to 100,

which were asked out of the syllabus. Based on the marks awarded as aforesaid, selection list dated 4.12.2006 was prepared consisting of 10

candidates including the names of the Respondents 4 to 13 in W.P. No. 24085 of 2010. All the 10 selected candidates have joined duty between

15.12.20006 and 20.12.2006 and stated to be working as Assistant Commercial Tax Officers. The applicants in O.A. No. 961 and 965 of 2006

challenged the select list dated 4.12.2006 before the Tribunal, praying to quash the select list and consequently to direct the writ petitioners 1 and

3 to select candidates for appointment to the post of Assistant Commercial Tax Officer on the basis of the marks obtained by them in the limited

departmental competitive examinations held on 26.11.2006.

3. The applicants in the original applications in O.A. Nos. 961 and 965 of 2006 before the Tribunal contended that there is no provision in the

recruitment rules to grant such grace marks and addition of even a single mark in the name and style of grace marks would affect the whole

process of selection. Thus, they questioned the method of grant of grace marks which, according to them, has deprived the applicants in getting

selected and also questioned the syllabus which is in variance with the recruitment rules. It was, therefore, contended that awarding grace marks

and selection of candidates by awarding grace marks is unjustifiable and in such view of the matter, it was contended that the only alternative

course available to the Union of India is to conduct the written examination afresh.

4. The writ petitioners, on the other hand, contended that awarding of grace marks in such a situation is not a new concept, but an appropriate and

efficacious measure to rectify the error. It was submitted that no candidate had faced any disadvantage by award of such grace marks and all the

candidates who have written the said examination have been equally benefited, but only 10 candidates in the order of merit have found a place in

the select list. It is further submitted that all the 10 candidates thus selected already joined duty. The Government of Puducherry submitted that

competent body assessed the situation with its expertise knowledge in the field correctly and with all bona fide intentions had taken a decision to

award grace marks uniformly to all the candidates without causing harm to any of the 53 candidates and therefore, the said decision is just, fair,

valid and sustainable. It was pointed out that none of the selected candidates have alleged any mala fide or irregularity in the said process.

5. The Tribunal, after hearing the submissions and after considering the material placed on record, set aside the notification dated 4.12.2006 and

directed the official respondents to conduct a fresh examination as per the recruitment rules and select the candidates on merits. As against the

same, these writ petitions have been filed.

6. We have given our careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the

entire records and also perused the impugned order.

7. As per the Recruitment Rules to the post of Assistant Commercial Tax Officer, the post has to be filled up 2/3rd by promotion and 1/3rd by

direct recruitment. Ten vacancies fall under the promotion quota. The promotion has to be made from the grade of LDC, UDC and Stenographer

Grade III, who possess degree of a recognized University and put in 5 years of service in Government of Puducherry and who have become

eligible by passing the prescribed departmental tests as given below:

(i) Accountancy Test in Commercial Taxes Department (Chartered Accountants and Graduates in Commerce are exempted from passing this test)

(ii) Test in Puducherry General Sales Tax Act, 1967 and the Central Sales Tax Act, 1956 and the Rules framed under these Acts.

(iii) Accounts Test for Subordinate Officers conducted by the Puducherry Administration.

8. Based on the Recruitment Rules, the Government of Puducherry has issued an order prescribing the following syllabus, maximum marks,

duration of the examination etc. vide G.O. Ms. No. 34/F2/A2/2002/AC70 dated 13.6.2002 notified in Gazette No. 32 dated 6.8.2002:

As scheduled, the competitive examination for promotion to the post of Assistant Commercial Tax Officer was held on 26.11.2006 and it appears

that 53 candidates have appeared for the examination. The answer papers are said to have been valued on the same day by the Examiners and the

result was to be published on the next day i.e. on 27.11.2006. While the matter stood thus, on the basis of a letter received from Thiru. R.S. Chari,

Chairman, Second Finance Commission, Government of Puducherry pointing out that the questions asked in the examination included Central

Sales Tax Act which is not prescribed in the syllabus for the examination, the Department of Personnel and Administration Reforms had taken up

the matter and decided to rearrange the marks awarded to the answers by giving 10 grace marks to those questions under the Central Sales Tax

Act which is not included in the syllabus. Accordingly, the answer papers were again sent back to the Examiner to rearrange the marks by granting

10 grace marks to ten questions from Sl. Nos. 91 to 100. However, the marks awarded to correct answers by the candidates in respect of

questions from S. Nos. 91 to 100 have been reduced in order to avoid duplication in awarding marks for the said questions.

9. There is no dispute that questions from Sl. Nos. 91 to 100 have been asked out of the prescribed syllabus. There is nothing on record to show

how this error crept in and who was negligent. It may be noticed that instructions were issued and supplied by the Government of Puducherry to

the candidates appearing for the examination that questions for the limited departmental competitive examination shall be asked from the syllabus

prescribed for the examination in terms of subjects in Puducherry General Sales Tax Act and Rules, General English, Simple Arithmetic prescribing

20 marks each. For test of reasoning 20 marks is prescribed. It is seen that some of the candidates selected for appointment admittedly did not

answer the questions on CST Act, whereas they have been given grace marks. The directions given by the Under Secretary to Government,

Department of Personnel and Administration Reforms (Personnel Wing) Puducherry to the Director of Planning and Research Department is on

the basis of the opinion given by Thiru. R.S. Chari, Chairman, Second Finance Commission, Puducherry, who is in no way connected with the

conduct of the examination. The Commissioner of Commercial Tax is one of the members of the Departmental Promotion Committee for the

selection to the post of Assistant Commercial Tax Officers and it appears that opinion in this regard for awarding grace marks has not been

obtained from him who is the implementing authority of PGST and CST Act. The suggestion of an officer, who is not the recruitment committee

member and no way connected to the conduct of Examination, ought not to have been taken into consideration, especially when no grievance was

raised by any of the candidates with regard to the questions asked out of syllabus.

10. The letter of the Director of Planning and Research vide letter No. 51/ PRD/2006/DIR/PA dated 27.11.2006 discloses that they have decided

to give 10 grace marks to all the candidates, but, on revaluation, the marks obtained by virtue of correct answers were reduced to the candidates,

who had given correct answers in respect of questions from Sl. Nos. 91 to 100. Because of this reduction, there is an imbalance in marks and

disparity in valuation and the award of grace marks.

11. The applicants before the Tribunal put forth a contention that if grace marks were not awarded and the marks obtained in the examination was

taken as such, the applicants would have found a place in the select list. Per contra, the Official Respondents contended that by the award of grace

marks, all the 53 candidates have been benefited and therefore, the contention that they lost their legitimate chance for promotion cannot be

sustained. It is relevant to state here that to become eligible to appear for the limited departmental competitive examinations, the candidates should

have passed the accountancy test for Sales Tax Department, test in Puducherry General Sales Tax and Central Sales Tax Act and the rules framed

thereunder and accounts test for such officers. Therefore, only those, who have passed the above said departmental tests, are eligible to appear for

limited departmental competitive examinations. The syllabus for the said limited departmental competitive examination is PGST and Rules, General

English, Simple Arithmetic, test of reasoning and general awareness. Though in the syllabus for examination of limited departmental competitive

examinations, CST and Rules are not included, but indisputably, they must have knowledge as regards the General and Central Sales Tax Act and

therefore, grace marks need not have been awarded at the instance of a person, who was unconnected with the conduct of examination or the

selection list.

12. Therefore, in the facts and circumstances of the case, though it has been consistently argued before us that the selected candidates have

already joined duty, since the said selection does not meet the legal standards, we are of the considered view that the Tribunal was right in setting

aside the Examination and directing the fresh examination to be conducted as per the recruitment rules and select the candidates on merits. In the

result, these writ petitions are dismissed, confirming the impugned order. No costs. Consequently, the connected MPs are closed.

