
(2015) 07 MAD CK 0295

In the Madras High Court

Case No : Writ Petition No. 12382 of 2015, M.P. Nos. 1 and 2 of 2015

P. Sukanya

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-07-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (2015) 07 MAD CK 0295

Hon'ble Judges : V. Ramasubramanian, J;T. Mathivanan, J

Bench : Division Bench

Advocate : P. Ulaganathan for M. Srividhya, for the Appellant; V.G. Sureshkumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J—The petitioner has come up with the above writ petition challenging the dismissal of her claim for allowing her to write an examination for promotion to the Group B post of Assistant Personnel Officer against the 70% quota reserved for selection among inservice candidates on the basis of a Limited Departmental Competitive Examination.

2. Heard Mr.P.Ulaganathan, learned counsel appearing for the petitioner and Mr.V.G. Sureshkumar, learned standing counsel appearing for the respondents 1 to 3.

3. The petitioner was regularly appointed as a Clerk in Group C on 18.05.1987. She was promoted to the post of Senior Clerk on 07.03.1991. On 06.05.1995, she was rendered surplus in the Department in which she was posted. Therefore, on 21.06.1999, she was posted against a regular vacancy in the Mechanical Department. But, unfortunately, when the petitioner went to the Mechanical Department to join duty, the staff working in the Department opposed on the ground that their opportunities were spoiled by such redeployment. Therefore, the railway administration created a supernumerary post and accommodated the

petitioner, with effect from 10.05.2000.

4. On 01.09.2008, the petitioner was granted scale of pay of Rs. 9300-34800 with grade pay of Rs. 4200 under the Modified Assured Career Progression Scheme (MACPS). Thereafter, she was regularly promoted as Office Superintendent, with effect from 11.11.1993. The scale of pay for the post of Office Superintendent was exactly the same viz., Rs. 9300 - 34800 with grade pay of Rs. 4200/-, which the petitioner has already reached under MACPS.

5. On 04.12.2014, a Notification was issued by the Southern Railway, inviting applications from candidates eligible for taking a Limited Departmental Competitive Examination for promotion to the Group B post of Assistant Personnel Officer. When the petitioner applied, her application was rejected by an order dated 08.01.2015, on the short ground that she had not completed three years of non-fortuitous service in the particular grade pay, as per Rule 203.1 of the Indian Railway Establishment Manual.

6. Challenging the said order dated 08.01.2015, the petitioner filed an application in O.A. No. 470 of 2015 on the file of the Central Administrative Tribunal. The Tribunal dismissed the application, on the ground that a mere financial upgradation granted to the petitioner before 01.11.2013, would not make her eligible for appearing for the selection in terms of Rule 203.1. Aggrieved by the said order of the Tribunal, the petitioner has come up with the above writ petition.

7. There are no disputes about the date of original appointment of the petitioner, the date of her promotion, the date on which she was rendered surplus, the date on which she was accommodated against a supernumerary post and the date on which she was granted MACP and the date on which she was regularly promoted to the post of Office Superintendent.

8. For the purpose of selection to Group B post, the Indian Railway Establishment Manual lays down certain conditions under Rules 203.1 to 203.5. These rules, which underwent an amendment on 05.01.2006, are required to be extracted. Hence they are extracted as follows:

"203.1. Conditions of eligibility:- For the selection, all Group "C" employees working on a regular basis in grade the minimum of which is Rs. 5000/- in the revised scale and in the higher Group "C" grades and who have rendered not less than 3 years of non-fortuitous service in the grade are eligible. There will be no distinction between permanent and temporary employees.

(Railway Board's letter No. E(GP)/2005/2/69 dated 05.01.2006)

203.2. In case a junior employee is considered for selection by virtue of his satisfying the relevant minimum service conditions all persons senior to him shall be held to be eligible, notwithstanding the position that they do not fulfill the requisite minimum service conditions.

203.4. Zone of consideration:- The number of employees to be called for the selection will be in accordance with the sliding scale in the order of seniority as shown below:-

1. vacancies - 5 employees
2. vacancies - 8 employees
3. vacancies - 10 employees
4. vacancies and above - employees equal to three times the number of vacancies.

203.5. Since employees from the different streams will be eligible to appear for the selection, their integrated seniority for purposes of the selection should be determined on the basis of total length of non-fortuitous service rendered in grade Rs. 6500-10500 (R.S.) and above. In other words the date of appointment to the grade Rs. 6500-10500 (R.S.) on a non-fortuitous basis will be the criterion.

9. It is seen from the Rules extracted above that fundamentally, a person to be eligible for consideration for a Group B post, should satisfy three criteria viz., (a) that he should be working in any one of the Group C posts on a regular basis, (b) that he should be working in a grade the minimum of which is Rs. 5,000/- in the revised scale and (c) that he should have rendered not less than three years of non-fortuitous service in the grade.

10. The expression "non-fortuitous service" is defined in the note in para 320 of the Indian Railway Establishment Manual as follows:

"Non-fortuitous service" means, the service rendered after the date of regular promotion after due process."

11. Therefore, on the basis of Rule 203.1 read with the definition of the expression "non-fortuitous service" in the Note in para 320 of the Manual, the respondents 1 to 3 have contended that the petitioner did not complete three years of non-fortuitous service on a regular basis in the post of Office Superintendent. The respondents 1 to 3 have taken the date 01.11.2013 as the date from which the petitioner's eligibility could be counted.

12. But unfortunately, the respondents have omitted to take note of Rule 203.2. Rule 203.2 stipulates that all the three conditions stipulated in Rule 203.1, need not be fulfilled by a person, if he can show that any one of his juniors has been considered for selection by virtue of such junior satisfying the relevant conditions prescribed in Rule 203.1.

13. In the application filed before the Tribunal, the writ petitioner specifically took a ground in ground No. c that as per Rule 203.2, she is entitled to be considered in view of her juniors having been considered.

14. Not stopping with that, the petitioner also filed an additional affidavit before the Central Administrative Tribunal. In the additional affidavit, the petitioner had

stated in paragraphs 2 to 4 that persons who were juniors to her, have been considered for selection. In paragraphs 5 and 6 of the additional affidavit, the petitioner had also furnished a list of about 19 persons, who entered the grade pay of Rs. 4,200/- and who had been permitted to take part in the examination.

15. The respondents 1 to 3 had filed a reply statement before the Tribunal. In the reply statement, the respondents 1 to 3 took a stand in paragraph 17 that for the application of Rule 203.2, only those who fall within the same seniority unit could be considered. Paragraph 17 of the reply statement filed by the respondents 1 to 3 before the Tribunal is extracted as follows:

"17. As regards para 5(f) it is submitted that the averments in this para are totally incorrect and devoid of truth. Junior and senior relationship can be determined only between employees of same seniority unit and not between employees belonging to different seniority units. Thus the contention of the applicant comparing staff working in other departments is not correct. Hence the rejection of the applicant's candidature due to non-fulfilment of criteria laid down in the notification is valid in law. None of the juniors in the seniority unit of the applicant have been allowed to appear for the written exam. As such there is no arbitrariness or violation of Article 14, 16 and 21 of the Constitution of India. The act of the respondents in rejecting the applicant's candidature is within the principles of natural justice, fair play, equity and good conscience. The applicant's contentions in this para are therefore refuted as baseless and the applicant is put to strict proof of the averments."

16. Therefore, the respondents 1 to 3 have taken a stand that unless a person belongs to the same seniority unit, he is not entitled to the benefit of Rule 203.2. It is also the contention of Mr.V.G. Sureshkumar, learned standing counsel for the respondents 1 to 3 that unless the petitioner compares herself with those who have reached the very same grade pay, she cannot pitch her claim on the basis of Rule 203.2.

17. However, we are unable to agree with the stand taken by the respondents 1 to 3 for the simple reason that the explanation of the respondents 1 to 3 with reference to Rule 203.2 and with reference to the same seniority unit, is without reference to Rule 203.5. Rule 203.5 speaks about the employees from different streams. We have already extracted Rule 203.5.

18. Admittedly, Rule 203.1 enables all categories of Group C employees to be eligible for participation in the process of selection. It does not make a distinction between one category and another. There are only three basic essential qualifications prescribed in Rule 203.1. To those prescriptions, there is an exception incorporated in Rule 203.2. The interpretation to be given to Rule 203.2 is found in Rule 203.5. Therefore, if a person is able to establish that many of his juniors have been permitted to write the exams, irrespective of the category to which they belonged in Group C post, then the respondents 1 to 3 cannot deny the benefit of Rule 203.2 to the petitioner.

19. In this regard, it will be useful to extract the relevant portion of the additional affidavit filed by the petitioner before the Tribunal. Therefore, paragraphs 5 and 6 of the additional affidavit filed by the petitioner before the Tribunal are extracted as follows:

5. It is humbly submitted that if the date of entry into Grade Pay is taken into account, the following candidates are juniors as evidenced from the same proceedings dated 23.02.2015.

6. The candidates at Serial No. 13 and 45 are juniors to the applicant on both the counts as evidenced from their own order dated 23.02.2015. Hence Rule 203.2 comes for the rescue of the applicant and she also is entitled to take part in the Selection Process. That apart the list furnished below would clearly reveal that nearly 19 other persons are also juniors to the applicant as far as grade pay is concerned who were given opportunity to take part in the selection as evidenced from the proceedings dated 23.02.2015.

20. Therefore, we do not think that the respondents 1 to 3 were right in rejecting the benefit of Rule 203.2 to the petitioner. In addition, the stand taken by the respondents 1 to 3 with regard to the counting of services rendered in MACP, does not also appear to be correct.

21. The respondents 1 to 3 have taken a stand that the actual grade pay of the petitioner was Rs. 4500-125-7000 and that under the Modified Assured Career Progression Scheme, she was granted the pay of Rs. 9300-34800 together with grade pay of Rs. 4200/-. This grade pay of Rs. 4500-7000 is at Sl. No. 9 in Section I of the First Schedule to the Railway Board circular bearing No. 108/08 dated 11.09.2008. Therefore, the contention of the respondents 1 to 3 is that the prescription that a person should be in a grade whose minimum is Rs. 5000/- was not satisfied by the petitioner, in terms of the regular scale of pay. The respondents 1 to 3 would contend that what is granted under the MACP cannot be taken into account, in view of the clear stipulations contained in the scheme itself. Para 19 of the scheme, states that the purpose of MACP is only to place a person at personal posts in the immediate higher grade, without the benefit of actual promotion. Therefore, according to the respondents 1 to 3, grant of MACP cannot count.

22. But we do not think that we need to go into the question whether the MACP cannot be counted even for making a person eligible to take a Limited Departmental Competitive Examination for promotion to a higher post. Though we would like to hold that the same should be counted, we would not hold so.

23. Even assuming that MACP does not enure to the benefit of the petitioner, yet she is entitled to the benefit of Rule 203.2. How Rule 203.2 has to be interpreted is clear from Rule 203.5.

24. We should also point out one more issue. It appears that several persons who are similarly placed like the writ petitioner also filed applications before the

Tribunal. By interim orders, the Tribunal permitted those persons to write the Limited Departmental Competitive Examination. The writ petitioner was not granted the benefit of such an interim order. Therefore, she came up with the above writ petition. While ordering notice, we permitted the petitioner, without prejudice to the rights of the respondents 1 to 3, to write the examination.

25. During the pendency of the writ petition, all persons who wrote the examinations, either after getting interim orders from the Tribunal or in their natural course, failed. In other words, not a single candidate including the writ petitioner and including those who specifically obtained interim orders from the Tribunal could make it in the examination. Therefore, the Notification that was issued for Limited Departmental Competitive Examination has actually failed to achieve its purpose.

26. But the question still remains at large, in view of the fact that if no interpretation is given to the manner in which a person's eligibility is to be counted, the petitioner cannot become eligible for promotion through Limited Departmental Competitive Examination, until the expiry of three years from 01.11.2013. Therefore, we have ventured to go into this question in detail.

27. In view of the above, the writ petition is allowed and the impugned order of the Tribunal is set aside. We only hold that the petitioner is eligible to participate, as per Rules 203.1 and 203.2, if any future selection takes place. No costs. Consequently, connected miscellaneous petitions are closed.