

(2009) 07 MAD CK 0523

In the Madras High Court

Case No : Writ Petition No. 9725 of 2000

P. Velayutham

APPELLANT

Vs

The Pondicherry Institute of Post Matric Technical Education

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Constitution of India, 1950 — Article 16, 16(4)

Citation : (2009) 07 MAD CK 0523

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : V. Ajayakumar, for the Appellant; T.P. Manoharan, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Nagamuthu, J.—The respondent Puducherry Institute of Post Metric Technical Education was established by the Government of Puducherry for the purpose of imparting post Metric Technical Education, etc. in the Union Territory of Puducherry. It is a Society registered under the Societies Registration Act. The respondent has established as many as four Polytechnic Colleges in the Union Territory of Puducherry. The respondent has also framed Recruitment Rules for all the posts. All the Central Civil Service Rules except the Pension Rules and General Provident Fund Rules apply to the employees of the respondent.

2. During the year 1993, there were four vacancies for the post of Lecturers in Electronics and Communication Engineering in the Women's Polytechnic, Puducherry and Dr. B.R. Ambedkar Polytechnic, Yanam, established by the respondent. In the selection process which held on 18.11.1993 and 19.11.1993, the petitioner was selected as against the vacancy reserved for scheduled caste. Three other persons by name M. Thanigasalam, V. Vijayalakshmi, T.A. Balarajuswamy were selected as against the rest of the three vacancies under the general quota. The Selection Committee recommended the appointment of the above four candidates including the petitioner on 28.1.1994. The other three

candidates joined service in time, whereas the petitioner took some time and joined service belatedly.

3. The respondent published a tentative seniority list of Lecturers in the Institutions under the respondents by its proceedings No. PIPMATE/11020/21/A.1 dated 10.11.1996. In the said tentative list, in so far as Electronics and Communication Engineering is concerned, the petitioner was kept as No. 3 in the seniority and below him M. Thanigasalam, V. Vijayalakshmi, T.A. Balarajuswamy, were kept as Nos. 4, 5 and 6. Subsequently, a final list of seniority was published by the respondent on 14.10.1997. In the said final list, M. Thanigasalam, V. Vijayalakshmi, T.A. Balarajuswamy, were kept above the petitioner as Nos. 3, 4 and 5 and the petitioner was kept at No. 6. Claiming that the petitioner should have been kept above M. Thanigasalam, V. Vijayalakshmi, T.A. Balarajuswamy, the petitioner has come forward with this Writ Petition challenging the said seniority list, it is contended.

4. It is the contention of the petitioner that as per the reservation Roster maintained by the respondent, out of the four vacancies for which selection was held in the year 1993, as per the turn, the first vacancy was reserved for scheduled caste and the other three were earmarked under the open quota. Since the petitioner was selected as against the scheduled caste quota, he should have been kept as No. 1 among the four selected candidates and the others should have been kept below him in the seniority list.

5. In the counter, it is submitted that the reservation Roaster is intended to be an aid to determine the number of vacancies for scheduled caste and not for determining seniority. As per the order in O.M. No. 10/52/73. Estt. (SCT) issued by the Department of Personnel and Administrative Reforms dated 24.5.1974, to all the Ministries in the Government of India, the Roasters which have been prescribed to give effect to the reservation for scheduled caste candidate, through O.M. No. 1/11/69-Estt.(SCT) dated 22.4.1970 and No. 1/72-Estt.(SCT) dated 12.3.1973, are for determining the number of vacancies reserved for Scheduled Castes and Scheduled Tribes in any particular examination, recruitment etc., and the roaster is not for determining the order of actual appointment or for the purpose of determining seniority.

6. The learned Counsel appearing for the respondent would rely on the above Government Order and submit that out of four vacancies, for which selection was held during the year 1993, one was reserved for the scheduled caste as per the roster and it cannot be said that the said vacancy is the first vacancy among the four for the purpose of fixation of seniority. It is further stated that as per the marks secured in the interview Thanigasalam secured 75 marks, V. Vijalakshmi secured 75 marks, Mr. T.A. Balarajuswamy secured 70 marks and the petitioner secured 62 marks, the selection was made in the order as 1 to 4 respectively keeping M.Thanigasalam as No. 1, V. Vijayalakshmi as No. 2, T.A. Balarajuswamy as No. 3 and the petitioner at No. 4, and the selection list was submitted to the respondent.

7. The appointment orders were made on the basis of the said selection list and according to the same, the seniority was fixed. It is further submitted that in the tentative list of seniority, of course it is true that the petitioner was kept above the said three persons, but when the above three persons submitted their objections, the mistake was found out and therefore, it was rectified and the petitioner was rightly kept below the above said three persons in the final list. Thus, according to the respondents there is no justification in the grievance of the petitioner.

8. I have considered the above rival submissions.

9. When an identical question arose for consideration before the Hon''ble Supreme Court in *Bimlesh Tanwar Vs. State of Haryana and Others*, , after analysing various earlier judgments, the Hon''ble Supreme Court has ultimately held as follows:

40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of a class of citizenry who are socially or economically backward. Article 16 of the Constitution of Indian is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority, is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in *P.S.Ghalaut* does not lay down a good law.

The law laid down in the said judgment squarely applies to the facts of the present case.

10. As rightly pointed out by the learned Counsel for the respondent, as per the Government Orders referred to above also, reservation Roasters are intended to be an aid only to determine the number of vacancies and not for determining seniority. Seniority is to be determined on the basis of selection list based on comparative merits. In this case, as per the marks secured in the interview, since the petitioner had secured lesser marks than the other three candidates, in the select list, he was kept at No. 4 among the four selected candidates. Based on the same, his seniority has also been fixed. Therefore, the contention of the petitioner that the vacancy reserved for scheduled caste as per the Reservation Roaster is the first vacancy and therefore overlooking the other three, he should be kept above the said three candidates cannot be countenanced. Thus, in my considered opinion, the seniority of the petitioner has been rightly fixed and as such no interference is called for.

11. The learned Counsel for the petitioner would raise another objection to say that before changing the seniority list, thereby bringing the petitioner below the above said three persons, no opportunity whatsoever was given to the petitioner. He would further submit that the petitioner was under the impression that the seniority as stated in the tentative seniority list would be finally published as final seniority list. It may be true that objections were raised by *M. Thanigasalam, V.*

Vijayalakshmi, T.A. Balarajuswamy, but, the grievance of the petitioner is that before accepting the objections raised by those three persons and before altering the seniority, the petitioner ought to have been given opportunity. On this ground, according to the petitioner, the impugned seniority list is liable to be set aside.

12. Though, there appears to be some justification in the argument of the learned Counsel for the petitioner, the entire facts and circumstances of the case as extracted above would show that because no such opportunity was given to the petitioner, he has not been in any way prejudiced. Even before this Court, the only contention of the petitioner is that his seniority should have been fixed as per the Reservation Roaster. In the earlier paragraphs, I have negated the same. Except the said objection, the petitioner has got no other objection regarding the final list of seniority. Had an opportunity been given to the petitioner, he would have raised only the said objection. Since there is no substance in the said objection, giving an opportunity now to the petitioner would be only a wasteful exercise as it would be an empty formality and so, I am of the view that no further opportunity need be given to the petitioner by setting aside the impugned seniority list. Absolutely, I find no merit in the Writ Petition and thus the same is liable to be dismissed.

13. In the result, the Writ Petition fails and the same is dismissed. No costs.