
(2010) 12 MAD CK 0119

In the Madras High Court

Case No : Writ Petition No. 7383 of 2007 (T) and O.A. No. 6240 of 2002

P.J. Wilson

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:

Citation : (2010) 12 MAD CK 0119

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : N.R. Chandran for G. Justin, for the Appellant; Lita Srinivasan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.N. Basha, J.—The Petitioner has come forward with this petition challenging the order of the Respondent dated 22.09.2000 passed in his proceedings in No. 1516/E2/2000 and consequentially directing the Respondent to promote the Petitioner to the post of Deputy Commissioner of Civil Supplies with effect from 01.01.1994 and to pay all arrears of salary, revision and terminal benefits and pension.

2.0. The case of the Petitioner is that he has entered in the service on 05.01.1960 as Assistant (Auditor) in Local Fund Audit Department. Thereafter, he was transferred to the Civil Supplies Department on 10.06.1966. In the civil supplies department, interse seniority of the employees was not fixed since the employees were drawn from various departments and the same resulted in denial of promotional avenues of the employees. Therefore, the Commissioner of Civil Supplies had sent a proposal to the Government regarding fixation of interse seniority among the employees drawn from various other departments. The Government considered the said proposal and passed G.O. Ms. No. 231, dated 03.10.1978, wherein, in paragraph 1(iii), the proposal was extracted and in para 2(iii), the proposal was accepted. The Government in Letter No. 866/E2/82, Co-operation and Food Department, dated 26.11.1982 has issued guidelines for the drawal of norms with requisite qualification and their seniority

for the feeder post with effect from 1978. As per the G.O. Ms. No. 231, the interse seniority has to be fixed based on the date of his first appointment, namely, on 05.01.1960 in the present department (Local Fund Audit Department).

2.1. The Petitioner was promoted as Superintendent by order dated 31.12.1970 without correctly fixing the seniority because G.O. Ms. No. 231, dated 30.10.1978 was issued subsequently. The Petitioner was posted to work as Personal Assistant to the Deputy Commissioner, North Chennai, with effect from 1991, and thereafter he was promoted as Assistant Commissioner, Civil Supplies, with effect from 09.05.1995 and ultimately, retired on reaching the age of superannuation on 31.05.1995.

2.2. During the entire period of the Petitioner's service, the Respondent did not fix the correct seniority of the Petitioner as per G.O. Ms. No. 231, dated 30.10.1978 and as a result, the Petitioner was denied his due promotion as Deputy Commissioner with effect from 01.01.1994. The Petitioner made several representations to the Respondent to refix his seniority based on the G.O. Ms. No. 231, dated 30.10.1978. As the Respondent had not taken any steps on the representations, the Petitioner had been constrained to file O.A. No. 541 of 1990 before the Tamil Nadu Administrative Tribunal (hereinafter referred to as "the Tribunal"). In that application before the Tribunal, the Government submitted that they were considering the revision of the seniority position with feeder category of Assistant. Therefore, the Tribunal passed an order dated 19.08.1994 directing the Respondent to pass orders without further delay. As the said order was not complied with by the Respondent, the Petitioner had preferred a contempt petition in C.A. No. 259 of 1995 and the said contempt application was closed by order dated 13.02.1996 holding that the prayer of the Petitioner to promote him as Deputy Commissioner by refixing his seniority over and above one Mr. D. William Henry, who was also retired as Deputy Commissioner was under consideration of the Respondent.

2.3. Thereafter, the Petitioner made several representations to the Respondent seeking for the relief of benefit of promotion to the post of Deputy Commissioner with effect from 01.01.1994, the date on which his junior Mr. William Henry was promoted. The said representations were also directed to be disposed of as per the order of the Tribunal in O.A. No. 2789 of 2000. The Respondent by order dated 22.09.2000 informed the Petitioner that one S.K. Ramachandran and S.K. Raman have also filed Original Applications before the Tribunal and got orders for the revision of their seniority. The seniority of those two individuals have direct bearing on the Petitioner's case. Hence, the Government had filed review applications and the decisions were still awaited. It is also stated in the said communication that the request of the Petitioner would be considered immediately after the receipt of the orders of the Tribunal in the review application filed by the Government. The verification of the Petitioner discloses that no such review application is pending on the file of the Tribunal. The

Petitioner is entitled for promotion as Deputy Commissioner with effect from 01.01.1994 as it was given to his immediate junior Mr. William Henry and the Petitioner is also entitled to receive all arrears of salary including the revised pensionary benefits and pension. Being aggrieved against the order dated 22.09.2000, the Petitioner has come forward with the Original Application seeking the above said relief.

2.4. The said Original Application No. 6240 of 2002 pending on the file of the Tribunal, Chennai, has been transferred to this Court and numbered as W.P. No. 7383 of 2007.

3.0. Mr.N.R. Chandran, learned Senior Counsel appearing for the Petitioner contended that the Petitioner was fighting for the relief of promotion on the basis of G.O. Ms. No. 231 and all his representations to the Respondent proved futile and as a result, the Petitioner preferred O.A. No. 6240 of 2002 before the Tribunal. It is contended that as per G.O. Ms. No. 231, the Respondent agreed with the proposal for the fixation of the interse seniority as proposed by the Commissioner of Civil Supplies. It is contended that if the interse seniority is fixed as per the proposal of the Commissioner of Civil Supplies and as agreed by the Respondent/Government, the Petitioner is entitled to the promotion to the post of Deputy Commissioner, Civil Supplies, from 01.01.1994. It is pointed out that the Petitioner's immediate junior one Mr. William Henry has been given the benefit of promotion to the post of Deputy Commissioner, Civil Supplies, whereas, the Petitioner was deprived of his opportunity to be promoted as Deputy Commissioner of Civil Supplies. The learned Senior Counsel would submit that the Tribunal even on an earlier occasion passed an order in O.A. No. 541 of 1990 directing the Respondent to pass orders without further delay after recording the statement made by the Government to the effect that they are considering the revision of the seniority of the Petitioner in the cadre of Superintendent taking into account of his seniority position in the feeder category of Assistant and as the said order of the Tribunal was also not complied with, the Petitioner has filed a contempt petition and the Tribunal passed an order dated 13.12.1996 observing that the prayer of the Petitioner to promote him as Deputy Commissioner of Civil Supplies by refixing his seniority over and above one Mr. William Henry, who has also retired as Deputy Commissioner, is under the consideration of the Government. It is contended that in spite of the said order passed by the Tribunal in the contempt application, the Petitioner has not been given the benefit of revision of interse seniority and promotion as Deputy Commissioner and as such, the Petitioner has been constrained to file the O.A. No. 6240 of 2002 before the Tribunal. The learned Senior Counsel would point out that in respect of the similarly placed officer, namely, one Mr. S.K. Ramachandran, the benefit of promotion was given on the basis of G.O. Ms. No. 231, but the Petitioner has been denied the promotion without any valid reasons. It is contended that even as per the impugned order dated 22.09.2000, it is specifically stated that the order passed in favour of S.K. Ramachandran and one S.K. Raman by the Tribunal have direct bearing on the request of the Petitioner

and as a review application has been filed against the said order before the Tribunal, the request of the Petitioner for refixing his seniority would be considered immediately after the receipt of the orders of the Tribunal. It is contended that the verification of the Petitioner discloses that no such review application was filed before the Tribunal.

3.1. The learned Senior Counsel would further proceed to contend that there is absolutely no lapse on the part of the Petitioner as he is continuously fighting for his cause. It is contended that the question of limitation does not arise in view of the fact that the Petitioner had also filed condone delay petition and the said petition was allowed by the Tribunal and the Original Application was numbered in the year 2002 and thereafter, transferred to this Court and numbered in W.P. No. 7383 of 2007 and the same is pending till date.

3.2. The learned Senior Counsel would also submit that the Respondent having passed the impugned order on 22.09.2000 agreeing that the case of the Petitioner is similar to that of one S.K. Ramachandran and one S.K. Raman and further stating that the prayer of the Petitioner would be considered after the disposal of the review application filed by them, cannot take new grounds and reasons to defeat the claim of the Petitioner. In support of such contention, the learned Senior Counsel would place reliance on the decision of the Hon'ble Apex Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

4. Per contra, Mrs. Lita Srinivasan, learned Government Advocate, would submit that the claim of the Petitioner is liable to be rejected on two grounds, namely, on the ground of lapse as the Petitioner retired in the year 1995 and thereafter, he has given the representation only in the year 1998 and subsequently, filed an Original Application before the Tribunal in the year 2002. The second contention of the learned Government Advocate is to the effect that the Government has already complied with the orders passed by the Tribunal as per the existing rules and the Petitioner cannot compare his case with the case of one Mr. William Henry, who has been given promotion on the basis of the existing rules prior to the ad-hoc rules came into force. It is also contended by the learned Government Advocate that the case of one S.K. Ramachandran and S.K. Raman cannot be compared with the present case as the prayer of the Petitioner is only to the effect of seeking promotion on par with his junior Mr. William Henry, i.e., from 01.01.1994. At this stage, the learned Government Advocate would fairly submit that the review application filed by the Respondent in Review Application No. 68 of 1996 was dismissed on 27.02.2003.

5. This Court carefully considered the rival contentions put forward by either side and also perused the entire materials available on record including the impugned order passed by the Respondent dated 22.09.2000.

6. The fact remains that the Petitioner was fighting for seeking the relief of fixation of interse seniority and promotion to the post of Deputy Commissioner,

Civil Supplies, right from 1998. It is seen that the Petitioner has retired in the year 1995. Yet another important aspect to be borne in mind by this Court is that the Petitioner, after giving several representations and the said representations have not been responded by the Government, ultimately, filed O.A. No. 6240 of 2002 before the Tribunal. A perusal of the record discloses that the condone delay petition was filed by the Petitioner and the delay was condoned and thereafter, the application was taken on file in the above said number in the Tribunal. Therefore, the question of limitation or lapse does not arise in this matter. It is seen that the said Original Application was subsequently, transferred to this Court and numbered as W.P. No. 7383 of 2007. In view of the above said factors, this Court is not able to countenance with the submission of the learned Government Advocate to the effect that the writ petition is liable to be dismissed on the ground of delay and laches.

7. Now coming to the impugned order passed by the Respondent dated 22.09.2000, it is to be stated, at the outset, that the Respondent has not at all denied or rejected the prayer of the Petitioner and on the other hand, it is clearly stated that the prayer of the Petitioner would be considered immediately after the disposal of the review application filed by the Respondent against the orders of the Tribunal in the matter of one S.K. Ramachandran and one S.K. Raman. It is pertinent to note that in the impugned order, it is made crystal clear by the Respondent that the order passed in favour of one S.K. Ramachandran and one S.K. Raman have a direct bearing on the request made by the Petitioner. It is relevant to extract the said portions of the impugned order as hereunder:

3. It is seen from the records that you have joined in the Civil Supplies Department, on 10.06.66 as Assistant and Thiru.S.K. Ramachandran joined in the Civil Supplies Department on 16.10.65. You had been promoted as Superintendent on 7.1.71, whereas, Thiru.S.K. Ramachandran was first promoted as Superintendent on 20.04.70. Both of you had been reverted and repromoted on 9.3.73 and 25.9.74 respectively. In another case, Tamil Nadu Administrative Tribunal, in its order in O.A. No. 956 of 1991 filed by Thiru S.K. Raman, has ordered that the applicant should be given seniority as per G.O. Ms. No. 416, Food, dated 10.6.66. It is seen from the records that Thiru.S.K. Raman has been promoted as Assistant on 3.9.59 in the Revenue Department, and joined as Assistant in Board of Revenue (Civil Supplies) on 23.3.63, and promoted as Senior Superintendent on 1.3.73.

4. Both the above said orders of Tamil Nadu Administrative Tribunal, have direct bearing on your request. Review Application has been filed against the orders of the Tamil Nadu Administrative Tribunal, referred to above and its decisions are still awaited, and that your request for revising further your seniority would be considered immediately after receipt of the orders of the Tamil Nadu Administrative Tribunal in the Review Application filed by the Government.

A reading of the above portion of the impugned order would make it crystal clear that the Government has not rejected the request of the Petitioner, but on the

other hand, stated that the request of the Petitioner for seeking the above said relief would be considered after receiving the orders of the Tribunal in the review application filed by the Government.

8. It is now brought to the notice of this Court by the learned Government Advocate that the review application filed by the Government in Review Application No. 68 of 1996 was ultimately dismissed on 27.02.2003. Therefore, this Court is of the considered view that there is absolutely no legal impediment for the Respondent to give the benefit and the relief sought for by the Petitioner by refixing the interse seniority and promoting him as Deputy Commissioner, Civil Supplies, on the date on which his immediate junior one Mr. William Henry, was promoted, i.e., from 01.01.1994.

9. The learned Government Advocate mainly contended that the relief sought for by the Petitioner is only to the effect of fixing his interse seniority with one Mr. William Henry and he cannot take advantage of the orders passed in favour of one Mr. S.K. Ramachandran and one Mr. S.K. Raman. This Court is not able to countenance with such contention for the simple reason, as rightly pointed out by the learned Senior counsel for the Petitioner, that the Respondent cannot take a different stand and new ground or reason for defeating the claim of the Petitioner. At the risk of repetition, it is to be reiterated that as per the impugned order dated 22.09.2000, the relief sought for by the Petitioner was not at all rejected and on the other hand, the Petitioner was requested to wait till the disposal of the review application filed by the Government before the Tribunal in respect of the orders passed in the matters of one S.K. Ramachandran and one S.K. Raman. It is also already pointed out by this Court that the Respondent had made it crystal clear that the orders passed in the matter of the said S.K. Ramachandran and S.K. Raman by the Tribunal would have a direct bearing on the prayer made by the Petitioner.

10. The learned Senior Counsel for the Petitioner rightly placed reliance on the decision of the Hon"ble Apex Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . The Hon"ble Apex Court in the said decision has held as hereunder:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

Otherwise, an order bad in the beginning may, by time it comes to court on account of a challenge, get validated by additional grounds later brought out.

The principle laid down by the Hon"ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case in view of the reasons assigned by this Court in the earlier portion of this order.

11. In view of the aforesaid reasons, this writ petition is allowed and without

setting aside the impugned order of the Respondent dated 22.09.2000 as this Court held that the said order is not against the relief sought for by the Petitioner, this Court is constrained to direct the Respondent to fix the interse seniority of the Petitioner on the basis of G.O. Ms. No. 231, dated 30.10.1978 and promote him as Deputy Commissioner, Civil Supplies, from the date on which his immediate junior one Mr. William Henry was promoted, i.e., with effect from 01.01.1994 with all attendant benefits. As it is seen that the Petitioner had retired as early as in the year 1995, the Respondent shall give notional promotion and other consequential benefits to the Petitioner, as stated above, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.