

(2012) 06 MAD CK 0130

In the Madras High Court

Case No : W.P.Nos. 31634 and 36989 of 2007

R. Muthurkrishnan and A. Rajaram

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:

Citation : (2012) 06 MAD CK 0130

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Syed Mustafa in W.P.No. 31634/07 and Mr. Karthik in W.P.No. 36989/07, for the Appellant; M.Dig.Vijaya Pandian, AGP For Respondents 1 and 2 in both W.Ps, Mr. S.D.S. Philp For Respondents 3 to 6 in W.P.No. 31624/07 and Mr. M. Devendran For Respondent-3 in W.P.No. 36989/07, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru

1. In W.P.No.31634 of 2007, the petitioner seeks for a direction to revise the date of his promotion as well as his seniority in the cadre of Labour Officer on the basis of revised seniority list of Deputy Inspectors of Labour issued on 07.06.2007. That Writ Petition was admitted on 15.11.2007. Pending the Writ Petition, in the application for interim injunction, this Court held that unless the petitioner succeeds in the main Writ Petition, he cannot get any interim orders. Subsequently, the respondents 3 to 6 got themselves impleaded in M.P.No.2 of 2007 as party respondents to the Writ Petition. The respondents 3 to 6 in M.P.No.1 of 2008 seeks for clarification in the interim order passed by this court. This Court held that the order does not susceptible for any vagueness and it does not require any clarification and it was dismissed with a direction to the official respondents to take a decision on their own. On notice from this Court, a counter affidavit dated 27.5.2008 was filed by the official respondents. In the meanwhile, the 2nd Writ Petition was filed by one A.Rajaram, who is an Assistant Inspector of Labour-VI, Thirunelveli seeking to challenge a memo dated 16.4.2004 and

after setting aside the same seeks for a direction to redraw the seniority list in the cadre of Assistant Inspector of Labour as on 1.4.1984 and to refix his seniority within the admitted substantive vacancies of 241 as on 01.04.1984, more specifically at S.No.207 above Thiru K.Kadirvelu and below C.Poosai Pandian by applying the quota rota rule contained in the special rules and in accordance with the order of the Tamil Nadu Administrative Tribunal dated 12.11.2001 in O.A.No.685/91 & batch as confirmed by this court in its order dated 23.01.2004 in W.P.No.41427 of 2002 & batch with all consequential benefits such as promotion etc., including monetary benefits. That Writ Petition was admitted on 13.12.2007. Pending the Writ Petition, a detailed counter affidavit was filed by the official respondents dated 30.3.2009 together with supporting documents.

2. The Tamil Nadu Public Service Commission has filed an adoption counter dated 7.3.2012. In respect of the first Writ Petition filed by R.Muthukrishnan, in the counter affidavit it was stated that the petitioner joined duty as Assistant Inspector of Labour by direct recruitment through TNPSC on 2.6.1980 and he was promoted as Deputy Inspector of Labour on 16.8.1991 and later promoted as Labour Officer and joined duty on 15.3.1999. Subsequently, he along with others filed Original Application before the Tribunal seeking for a direction to fit them in the substantive vacancies as per the quota rota rule, irrespective of their date of appointment. The Tribunal gave a direction to fix the seniority at the appropriate placement but that does not mean that the applicants have to be given seniority from the date when they were not in service.

3. An appeal was preferred by the State Government before this Court and this Court held that quota rota rule has to be applied only from the date of joining, thus confirmed the order of the Tribunal. Pursuant to the order passed by this Court, seniority list of Assistant Inspector of Labour was communicated by the Commissioner of Labour, Chennai on 16.4.2004.

4. One Rajaram, the petitioner in the 1st Writ Petition and 13 others filed a Contempt Petition before this Court in C.P.No.651 of 2005. The Contempt Petition was dismissed on 25.1.2006. As against the order of the Division Bench, SLP was filed before the Supreme Court in SLP) No.11561 of 2006. In the meanwhile, a revised seniority list of Deputy Inspectors of Labour was communicated by the Commissioner of Labour on 7.6.2007. In that order, it was indicated that the revision of seniority is subject to the orders passed by the Government in the appeal and subject to the orders passed by the High Court in W.P.No.20953 of 2004 and subject to the outcome of the SLP.

5. Once again the petitioner filed another Writ Petition to fix the seniority in the cadre of Labour Officer. The SLP filed by the State was dismissed by the Supreme Court as withdrawn by order dated 27.7.2007. The petitioner's seniority in the post of Deputy Inspector of Labour was fixed as 328(a) above the name of Thiru S.Mupidathi. Subsequently, since proposals were sent by the Commissioner of Labour, it was proposed to fix the seniority of the petitioner as Serial No.290(a)

above the name of Gunablan Fernando in the cadre of Labour Officer. It was pending consideration by the State Government and it takes some more time for approving the proposal. In the meanwhile, a proposal was received from the Commissioner of Labour for the post of Assistant Commissioner of Labour by the State Government. As per G.O.(Ms.) No.1583, Labour and Employment Department dated 28.9.1979, 15th April is the crucial date for preparing the panel. At that time the petitioner was not qualified to be included in the panel for the post of Assistant Commissioner of Labour. In paragraphs 25 and 27, it was averred as follows:

25... as per the above said Special Rules for the Tamil Nadu Labour Service, the petitioner is qualifying for the post of Assistant Commissioner of Labour only on 5.4.2008. Therefore, he could be considered fro the panel for the year 2008-2009 when he qualifies.

27. even if the seniority of the petitioner is revised based on the revision of his seniority in the cadre of Deputy Inspector of Labour, he could not be included in the panel for the post of Assistant Commissioner of Labour for the year 2007-2008, as has not completed one year of service in the post of Inspector of Labour, on the crucial date of 15.4.2007, which is mandatory for inclusion in the panel.

6. The learned counsel for the petitioner placed reliance upon the order passed by this Court in W.P.Nos.23081, 23083 and 31714 of 2007 dated 22.11.2007. In that cases, the present petitioner R.Muthukrishnan was also the petitioner in W.P.No.31714 of 2007 and those Writ Petitions were allowed by this Court with a direction to include the petitioners" name in the panel for the post of Assistant Commissioner of Labour. But that order was passed on 22.11.2007 only on the ground that they were not given proper posting for which they were not responsible. But, on that ground, the previous order cannot be invalidated, as the respondents went strictly on the basis of posting given to them and as per the Rules framed by the State Government.

7. The case of the petitioner Rajaram in W.P.No.36989 of 2007, are as follows:

The petitioner Rajaram along with 37 others were recruited by TNPSC for appointment to the post of Assistant Inspector of Labour in respect of direct recruitment, which arose over a period from 1973-1974 to 1978-1979 and only 34 among them have joined the service. The petitioner was one among the 34 who joined service as Assistant Inspector of Labour during the year 1980 and two of them in the said group joined during the year 1981. Inter-se seniority of the Assistant Inspectors of Labour including the petitioner was determined and fixed with reference to their date of their appointment as contemplated by the Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules. As on 1.4.1984, the petitioner along with others claimed revision of seniority based on the quota rota rule relying upon the proviso to Rule 3(a) of the Special Rules for the Tamil Nadu Labour Subordinate Service. That was rejected by the

Commissioner of Labour by its memo dated 5.11.1990. Challenging the same, the petitioner preferred Original Application before the Tamil Nadu Administrative Tribunal.

8. The Tribunal by its common order dated 2.11.2001 held that they are entitled for seniority following the quota rota rule from the date of their appointment. The Writ Petition filed by the State was rejected by the Division Bench over which the SLP was also filed. The quota rota which stood in the year 1973 and also adopted after undergoing various amendments at various point of time after 17.11.1973 was taken into account as the foundational and fundamental basis for computing the ratio of vacancies allocable between the direct recruits and the transferees. Subsequently the quota-rota methodology of integrating seniority between the direct recruits and the transferees of Assistant Inspectors of Labour was finalized and implemented by the Commissioner of Labour. The resultant interse seniority came to be fitted against the revised seniority numbers starting from 400 to 401, which includes 34 direct recruits and 68 transferees in the ratio of 1:2. The ratio was properly prepared. The first vacancy in every block of 3 vacancies being invariably assigned to the direct recruits. In this process, certain transferees were downgraded so as to accommodate direct recruits to fix the correct percentage of quota-rota rule. Even when the Contempt Petition Nos.651 to 654 of 2005 were filed questioning the revision of the seniority, the Contempt Petitions were rejected by this Court and this court held as follows:

5. Although the decision was to refix seniority from the date of joining of these petitioners, which is of the year 1980, in order to set right the whole issue in a full-fledged manner and according to the statue, the refixation was made by the respondents officials from the year 1973. There was also statutory requirement of the same and in the process of such necessity to oblige the provisions of the statue, the directions of the High Court in the above mentioned Writ Petitions was also found to have been manifestly obliged. This is the stand of the respondents. In this connection, mention is necessarily to be made at the outset that direction of the High Court gets included in the statutory obligation and without treating them as distinct and different, the fulfilling of the provisions which include the compliance of the directions may have to be appreciated, in case factually it is found proper.

In the light of the fact that this Court had already approved the basis for fixing the seniority and the seniority has been properly fixed, there is no case made out for quashing the impugned orders. Hence, both the writ petitions stand dismissed. No costs.