
(2012) 06 MAD CK 0211

In the Madras High Court

Case No : Writ Petition No. 16076 of 2012

R. Rajendran and Others

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 27-06-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 2 SCT 435

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : R. Surya Prakash, for the Appellant; V. Subbiah, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—The prayer in the writ petition is to quash the order of the second respondent dated 16.8.2011 and consequently, direct the respondents to grant Selection Grade in the post of Junior Inspectors to the petitioners by counting their entire service as Sericulture Demonstrators with all revisions and attendant service benefits including arrears. It is the case of the petitioners that they were originally employed in the post of Sericulture Operative, which was subsequently re-designated as Sericulture Demonstrator and further re-designated as Junior Inspector of Sericulture on the basis of the order passed by the Government merging the post of Sericulture Operative and Sericulture Demonstrator into Junior Inspector of Sericulture. The request of the petitioners seeking selection grade pay in the merged post viz., Junior Inspector of Sericulture was rejected by the Department. The petitioners are claiming relief pursuant to the judgment of this Court in W.A. No. 1398 of 2008 wherein, the very same respondents challenged the order of the learned single Judge made in W.P. No. 28492 of 2006 dated 1.7.2008. In the said writ petition, the learned single Judge gave directions to grant selection grade in the post Junior Inspector of Sericulture to the petitioners thereon from 25.9.1989 and 24.9.1989

respectively taking their total service from their initial dates of appointment as Sericulture Demonstrators and pay the arrears. In the writ appeal, the Division Bench considered the matter elaborately and passed the following order:-

3. The main ground on which the writ appeal has been filed challenging the order of the learned Judge is that the applicants in the original application before the Tribunal to whom relief has been given in order dated 05.11.1993 are different from the present respondents. While it is the case of the learned Special Government Pleader that those applicants before the Tribunal were appointed in the year 1961, the present respondents were appointed in the year 1979 and therefore, for the grant of Selection Grade, the date of joining original service has to be taken into consideration and therefore, according to the learned Special Government Pleader, the learned Judge ought not to have extended the benefit of the order given by the Tribunal dated 05.11.1993.

4. On the other hand, Mr. Chandrasekaran, learned Counsel for the respondents would submit that what was decided by the Tribunal earlier in batch of cases was not relating to the date of entry into service but the merger of the posts viz., Sericulture Operatives that of the Sericulture Demonstrators and that of Sericulture Demonstrators to that of the Junior Inspectors. It was taking note of the said merger into consideration, the Tribunal has passed final orders. The Tribunal has held that merger is in effect re-designation and not promotion. In that view of the matter, direction was given to the appellants herein to take the original date of joining duty as Sericulture Operative for the purpose of conferring Selection Grade in the post of Sericulture Demonstrators which was subsequently merged as Junior Inspectors of Sericulture. The order of the Tribunal in the batch of cases dated 05.11.1993 makes it very clear, which is as follows:-

The post of Sericulture Demonstrators was in the scale Rs. 265-425 or 280-450 in the ordinary grade, in the selection grade Rs. 310-500. The posts were merged with the higher category of Junior Inspector of Sericulture on the scale Rs. 325-550 in the ordinary grade and 400-700 in the Selection Grade with effect from 01.10.1984. The revised scales for the post of Junior Inspector of Sericulture are 610-1075, Ordinary grade and 705-1230 Selection Grade according to G.O.Ms. No. 694, Finance (Pay Cell) Department dated 11.08.1986.

On the basis that consequent on merger of the lower post of Sericulture Demonstrators with the higher category of Junior Inspector of Sericulture which was earlier the promotion post for the Sericulture Demonstrators, the 5 Sericulture Demonstrators should be deemed to be appointed to a higher post, pay is sought to be refixed in the ordinary grade of the higher post even though they were eligible for selection grade with reference to the period of service as Sericulture Demonstrators.

The presumption that on merger of two categories, if one category was lower and the merger was with higher category constituting promotion avenue earlier

is in fact promotion and on that basic pay should be fixed as if on promotion is not correct. The merger has that effect of upgrading the lower post to the higher category and the scales of pay becomes same. Therefore, but for the merger and Sericulture Demonstrator would be eligible for selection grade with reference to his service as such and the pay scale applicable would be the common scale now applicable to the Junior Inspector of Sericulture in which category the Sericulture Demonstrators has been merged. The merger therefore, is in effect re-designation and not a promotion. The benefit of service as Sericulture Demonstrator can not be denied for fixation of pay in selection and special grades, if only for the reason that but for the re-designation consequent on the merger, the Sericulture Demonstrators would be eligible to count their entire service for purpose of selection and special grades in new scale for the post which is the same as that of Junior Inspector of Sericulture.

5. On a reading of the said order, it is not possible to accept the contention of the learned Government Pleader that the averments in the above said batch of cases are distinct from that of the respondents' case. The only difference is that the applicants therein have joined service in the year 1961 while the present respondents have joined in the year 1979. But the post remains the same. The respondents have joined as temporary Sericulture Operatives which was subsequently merged and called as Sericulture Demonstrators from the year 1981 by G.O.Ms. No. 603 dated 08.03.1989. Subsequently, Sericulture Demonstrators post itself has been merged with the Junior Inspector of Sericulture now called as Junior Inspector of Sericulture.

6. It is well settled that once similarly placed persons as that of the respondents have been given a relief, the respondents are also entitled to get such benefits.

7. In that view of the matter, we see no reason to interfere with the order of the learned Single Judge. The Writ Appeal fails and the same is dismissed. No costs. M.P. No. 1/2008 is also dismissed.

2. The learned counsel Mr. R. Surya Prakash, appearing for the petitioners submitted that the said order of the Division Bench was implemented by the Department in its order issued in Proceedings br/K/e/f/2095/M/2008 dated 26.10.2010 and the said persons were paid the benefit arising out of the said judgment viz., selection grade and special grade.

3. It is the contention of the petitioners that they are also similarly placed and therefore, they have submitted a representation before the respective respondents, which was rejected by the impugned order dated 16.08.2011

4. The said order is challenged in this writ petition contending that when similarly placed persons have been granted relief by virtue of the order of the Division Bench, by the proceedings dated 26.10.2010, the same benefit should be extended to the petitioners, who are also similarly placed. Learned counsel further submitted that prior to the said order of the learned single Judge, which is confirmed in appeal, the Department accepted the order passed by the Tamil

Nadu State Administrative Tribunal in a batch of applications in O.A. Nos. 4852 of 1992 etc. dated 5.11.1993 and implemented the said common order by proceedings dated 25.8.1996. The said order of the Department reads as follows:-

PROCEEDINGS OF THE ASSISTANT DIRECTOR OF SERICULTURE, AVALAPALLI AT HOSUR

PRESENT: Thiru R. RENGARAJ, B.Sc.

Rc. No. 2208/A/92

Dated: 25.8.96

Sub: Establishment - Tamil Nadu Industries Subordinate Service - Junior Inspector of Sericulture - Refixation of Pay and Allowances in the Selection Grade - Scale revised - orders issued.

Ref: 1) This office Proc. No. 2208/A/92 dated 21.3.92

2) This office Proc. No. 2208/A/92 dated 1.8.94

3) Director of Sericulture, Salem Ir. Rc. No. 42070/DSE2/92-1 dated 23.8.96.

ORDERS

As per the final judgment of the Tamil Nadu Administrative Tribunal, Madras, O.A. No. 4858/92, 229 to 239 and 877/93 dated 5.11.93 the Pay of Junior Inspector of Sericulture mentioned below has been re fixed in the Selection Grade as per the IVth Pay Commission in the time scale 1200-30-1560-40-2040 as Rs. 1,200/- as minimum with effect from 1.6.88 in this office reference Ist cited.

As per the Audit objection 1988-89 (para 38) it has been observed that the Pay fixation done to the individuals on his movement to Selection Grade is not correct and requires revision. Accordingly the Pay already fixed in the reference Ist cited, was cancelled and refixed the Pay and allowances in the Ordinary grade scale i.e. 975-25-1150-30-1660 with effect from 1.6.88 vide this office proceedings IIInd cited.

Now as the Director of Sericulture, Salem in letter IIIrd cited it has been instructed to give effect to the orders dated 5.11.93 passed by the Honourable Tamil Nadu Administrative Tribunal in OA No. 4858/92, 229 to 239 & 677/93 immediately and to implement the above orders of the Tribunal.

Hence as per the 5th Pay Commission recommendation and also as per the Honourable Tamil Nadu Administrative Tribunal order said above the Pay of the following Junior Inspector of Sericulture are again refixed in the Selection Grade working in this office as follows, with effect from 1.6.88 in the time scale Rs. 1200-30-1560-40-2040/-.

5. It is also submitted that following the Division Bench order made in W.A. No.

1398 of 2006, the learned single Judge of this Court allowed similar writ petitions in W.P. No. 28403 of 2011 by an order dated 29.2.2012 and W.P. Nos. 9859, 10548 and 11098 of 2012 by an order dated 26.4.2012 and therefore, the petitioners are also entitled to get similar relief.

6. The learned Special Government Pleader submitted that the petitioners are not entitled to get the relief and that the respondents are having any intention to file SLP against the order of the Division Bench dated 21.04.2009 i.e., after the expiry of three years. The learned Special Government Pleader however, during the course of his arguments, submitted that the respondents are taking steps to file SLP before the Hon"ble Supreme Court against the order of the Division Bench made in W.A. No. 1398 of 2008 dated 21.4.2009 though the order is implemented. No other distinguishing fact is neither raised nor pleaded before this Court in this writ petition.

7. The learned counsel appearing for the petitioners submitted that the order of the Division Bench and the order of the Tamil Nadu State Administrative Tribunal referred to above having been implemented by the respondents, now they cannot take a different stand and the said attitude is discriminatory. In support of his contentions, the learned counsels cited a decision of the Hon"ble Supreme Court in the case of K.C. Sharma and others Vs. Union of India and others,

8. I have considered the rival submissions made by the learned counsel appearing for the petitioners and the learned Special Government Pleader appearing for the respondents.

9. It is not in dispute that similar relief that has been sought for by the petitioners, was granted to several persons by the orders dated 25.8.1996 and 26.10.2010. The Tamil Nadu Administrative Tribunal passed an order on 5.11.1993 in a batch of applications. The said order was accepted by the respondents without any murmur and was implemented. The Division Bench of this Court dismissed the writ appeal filed by the department as early as 21.4.2009. Without challenging the said order, the same was also implemented. It is well settled principles of law that when similarly placed persons are claiming similar benefit, without any factual difference, the same benefit should be extended to them and the said issue is no longer res integra. In the decision of the Hon"ble Supreme Court reported in K.C. Sharma and others Vs. Union of India and others, it has been held as follows:-

6. Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal, is therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of O.A. No. 774 of 1994 is condoned and the said application is allowed. The appellants would be entitled to the same relief in the matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated

16.12.1993 in O.A. Nos. 395-403 of 1993 and connected matters. No order as to costs.

10. In the decision reported in *State of Karnataka and Others Vs. N. Parameshwarappa and Others*, it is held thus:

8. As indicated earlier, the learned Judges in the Division Bench confined the relief granted to the period w.e.f. 1-4-1990. A faint challenge has also been made to this part of the order, but not of any substance or merit, for acceptance. Relief in this regard has been so confined to more than one relevant and justifying reason and one such was the absence of the Union of India and the University Grants Commission before the Court as party to the proceedings. Even that apart some of the facts of the submission made by Mr. V.R. Reddy, learned Senior Counsel appearing for the respondent teachers, which found favour of our acceptance and dissuaded us from interfering with the judgment under challenge in these appeals, if persuaded to their logical extent only fortifies the said conclusion arrived at by the Division Bench of the High Court. One such contention was that it was permissible for the Government, independently of the Central Government assistance also to extend the benefits to the teachers beyond that which has been provided for by the Government of India. Such responsibility, even under the government order dated 30-3-1990 has been undertaken from 1-4-1990 onwards by the State Government to implement the scheme in entirety. Therefore, for such added reasons too we are in entire agreement with the judgment of the Division Bench that the relief accorded should be confined to the period w.e.f. 1-4-1990 only. At the same time we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the court. We are in equal agreement with the Division Bench in denying the payment of interest at compounded rates which, in our view, cannot be justified at all on the facts and circumstances of the case wherein a serious and genuine doubt existed about the applicability of the government order dated 30-3-1990, as raised in the proceedings.

11. In *Govind Ram Purohit v. Jagjiwan Chandra* 1999 SCC (L & S) 788, in para 3, it has been held thus:

3. It was lastly contended by the learned counsel for the appellants that whereas the petition had been filed by only Respondent 1, the High Court while finally concluding the matter has given a direction to promote all those who were senior to the appellants even though they were not parties to the petition. Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the seniority-cum-merit rule. There was no point in waiting for each and every person to file a petition. Therefore, we do not see any reason why we should entertain such a technical plea when the High Court has done substantial justice to all concerned.

The above referred Supreme Court decisions were followed by me in N.S. Balasubramanian and Others Vs. Food Corporation of India, . The said order was challenged in W.A. No. 956/2006 and the same was dismissed on 30.10.2006 and SLP (C) No. 677/2007 filed against the Division Bench order was also dismissed by the Supreme Court on 23.04.2007. In the decision reported in Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, Recent Apex Judgments (R.A.J.) 197 : 2011 (5) SCC 553 (Radhy Shyam v. State of Uttar Pradesh) the Supreme Court held that the policy of pick and choose in acquiring some parcels of land while leaving many other parcels of lands under Land Acquisition Act is discriminatory and violation of Article 14 of the Constitution of India. The Division Bench of this Court in the decision reported in Tamil Nadu Housing Board Vs. Mrs. Uma Maheswari Ramasamy and Others, held that there must not be discrimination in land acquisition proceedings. In the decision reported in Hari Ram and Another Vs. State of Haryana and Others, the Supreme Court held that if the Courts are not correcting the wrong action of the Government it may leave citizen with the belief that citizen is right in contacting right persons in the Government as if judicial proceedings are not efficacious. Thus similarly placed persons are bound to be treated equally without discrimination is a fundamental right guaranteed under Article 14 of the Constitution of India.

12. Applying the above said decisions to the facts of this case, the impugned order is set aside and the respondents are directed to extend the benefit to the petitioners as it is extended to similarly placed persons by the order of the Department dated 25.08.1996 and 26.10.2010 and the benefit should be extended and paid to the petitioners within a period of three months from the date of receipt of a copy of this order. Accordingly, the writ petition is allowed with above directions. No costs. Consequently, connected miscellaneous petitions are closed.