
(2020) 03 MP CK 0127
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 1820 Of 2018

Rajeev Kapoor

APPELLANT

Vs

Airports Authority of India & others

RESPONDENT

Date of Decision : 17-03-2020

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya Ko Appeal Adhiniyam, 2005 — Section 2(1)

Citation : (2020) 03 MP CK 0127

Hon'ble Judges : Sanjay Yadav, J; Vishal Dhagat, J

Bench : Division Bench

Advocate : Prakash Upadhyay, Anoop Nair, Deepak Sahu, Manoj Rajak

Final Decision : Allowed

Judgement

Sanjay Yadav, J.

1. There is delay of 769 days in filing the appeal, condonation whereof is being sought vide I.A.No.210/2019 with a leave application (I.A.No.14787/2018).
2. Though opposed at by the respondents, however, taking into consideration the circumstances adverted at in paragraph 3 and 4 of the application which prevented the appellant in filing the appeal within the period of limitation, we are convinced that sufficient cause is made out. Consequently, delay is condoned. I.A.No.210/2019 stands disposed of.
3. Vide I.A.No.14787/2018 leave is sought to Appeal against the order dated 11.08.2016 passed in Writ Petition No.14483/2008. Taking into consideration the fact that in furtherance to order passed in Writ Petition and order has been passed on 29.10.2018; whereby, an earlier order of promotion w.e.f. 02.06.2010 has been modified to take effect from 01.07.2018 which is prejudicial to his interest, the appellant is granted leave to file Appeal under Section 2(1) of the M.P. Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 against the order dated 11.08.2016 passed in Writ Petition No.14483/2008.

4. The Writ Petition in question was filed by respondent No.8 (referred as Petitioner); whereby, he sought quashment of order dated 01.10.2002 and a direction to appoint him as Junior Executive (Trainee) w.e.f. 01.10.2002 and promotion as Assistant Manager and Manager from the date when his contemporaries selected in 2002 were promoted. The petitioner also claimed consequential benefits.

5. The facts on record reveals that the respondent Airport Authority of India (referred as Authority) on 30.08.2001 invited application from departmental candidates for filling up 18 posts of Junior Executive (Personal and Administrative) (Trainee). By another circular dated 19.12.2001 it was clarified that the vacancies are in Field Station and the incumbents will have to appear in written test. That 87 applications were short listed. They were called for interview held on 15.02.2002. Appointment order was issued on 01.10.2002. The order stated that the Competent Authority has approved appointment on the basis of written examination and interview. Present appellant alongwith Respondent No.4 to 7 were appointed as per said order.

6. That, one V.K.Ravindran being aggrieved by the order dated 1. 10.2002 filed Writ Petition No.9608/2008 before the High Court of Judicature at Madras. The petition was dismissed on the ground of delay and laches on 21.04.2008. It was held:

"2. The only ground on which the petitioner has filed this petition is that he had participated in the written test conducted by the respondents in the year 2001 for appointment to the post of Engineer (P & A) wherein he has secured a pass mark and thereafter respondents have also called him for viva-voce, which was also attended by him, but he was not selected. It is also stated that the petitioner came to know that the respondents, without considering the marks secured by the candidates like the petitioner in the written test held in the year 2001 has appointed candidates based on the marks secured in viva-voce, which is contrary to the selection process. The petition is not filed challenging the selection immediately after the results are announced, but filed after a lapse of seven years, seeking the relief of mandamus to direct the respondents to appoint to the post of Junior Engineer (P & A) without challenging selection. Hence, on the said grounds, the writ petition is liable to be dismissed and accordingly, it is dismissed. No costs."

7. In the same year, i.e. 2008, respondent No.8 filed the Writ Petition No. 14483/2008 before this High Court, whereby he sought quashment of order dated 01.10.2002 relating to respondent No.4 to 7 and the direction to promote him with consequential benefit including future promotions. The present Appellant who was also a selectee was however, not impleaded as respondent in said Writ Petition No.14483/2008.

8. Learned Single Judge extensively referring to the note-sheets of 2005 obtained and filed in the Writ Petition, disagreed with the order passed by the

High Court of Judicature at Madras, learned Single Judge observed :

"Therefore, it is apparent that the petitioner (Vikas Mishra) is a person if merit list as per the established procedure would have been prepared, then certainly he would have been selected and appointed on the post of Junior Executive and other four persons, namely Subhash Chandra Sikka, Debashish Ghosh, M. Hemalatha and G. Kumarguru, who found place in the appointment order, would not have been selected and appointed by the said examination and the persons, namely V.K. Ravindran, K. Mohan, Vikash Mishra and Deepak Shrivastava would have found placed in the select list replacing them. Thus it is apparent that the petitioner is a person, who would have been selected if this wrong has not been done, as reflected from the note sheets of the Airports Authority of India and the persons joined in this writ petition as respondents No. 4 to 7 would have been out of the final select list Annexure P/3 and appointment and posting order Annexure P/7. Thus, it is clear that the officials of the department when reassessed the process of selection in November 2005 they found that the selection has not been duly made by their department by which the petitioner has been deprived from appointment. In the said sequel of facts, in my considered opinion, the issue of delay and laches, as raised by the department, is not germane. If the said plea is accepted, it would amounting to ratify the wrong done by the departmental authorities confirmed by this Court, which is not permissible under the law. Once the truth has been brought to the notice of this Court, that too by acceptance of the wrong committed by the department this petition cannot be dismissed on the ground of delay and laches. In that view of the matter, I respectfully disagree with the view taken by the Madras High Court in the case of V.K. Ravindran v. The Chairman, Airports Authority of India and others-W.P. No. 9608 of 2008 and M.P. No. 1 of 2008. In addition to the aforesaid, it is required to be observed that the Madra High Court had not considered the case on merit, which has been duly discussed in the present case on the basis of documents, which have been received under Right to Information Act. In that view of the matter, in the considered opinion of this Court, the selection and appointment as made by the department ignoring the marks of the written test and interview in the ratio of 80:20, which is a procedure established by the department, cannot be recognized."

9. Apparently, the present Appellant's appointment was not questioned nor was it discussed at departmental level. Be that as it may. Learned Single Judge relying on the decision by the Supreme Court in *Tridip Kumar Dingal vs. State of West Bengal* (2009) 1 SCC 768 disposed of the petition in the following terms:

"7. In view of the foregoing discussion and in the light of the judgment of Apex Court in the Case of *Tridip Kumar Dingal* (supra), in the considered opinion of this Court, following directions are issued:

(1) The petitioner who was found meritorious amongst the select list of 17 candidates be placed in the said select list at Sl. No.14 and be appointed as per the select list prepared by the department, which is quoted hereinabove and the

action in this regard be taken within a period of three months.

(2) The case of the respondents No. 4 to 7 who were selected and appointed, but their selection was not found appropriate by the department as per their own note sheet as quoted hereinabove may be considered by the department for their adjustment on the available vacancies in terms of the Judgment of Apex Court in the case of Tridip Kumar Dingal (supra), otherwise, if the department is of the opinion that their adjustment is not possible then after affording opportunity of hearing to them appropriate order may be passed within a period of three months.

(3) It would be open to the department to take decision with respect to other selected candidates in terms of the judgment rendered in the case of Tridip Kumar Dingal (supra) for their selection and appointment. It is further directed that after selection and appointment of the petitioner he be extended all other promotional benefits as allowed to other candidates. Such benefits be extended notionally because the petitioner has not worked on the post and the appropriate orders be passed in this regard within a period of six months."

10. However, careful reading of the directions given by learned Single Judge reveals that it is not in consonance with the decision in Tridip Kumar Dingal (supra) wherein the status of all selectees was not interfered with which is evident from the verdict therein. Their Lordships held:

"61. In our opinion, the learned counsel for the State is right in contending that even if this Court holds that the appellants who have approached this Court are entitled to some relief, such relief could be granted to those candidates who had grievance against the selection and who had challenged the action of the respondent authorities but it could not be extended to the applicants who have approached this Court in the present proceedings.

62. Though there is considerable force in the argument of the learned counsel for the State and contesting respondents that there is substantial delay on the part of the appellants in approaching this Court, in the light of factual scenario and the direction which we are inclined to issue, we have thought it fit not to dismiss Special Leave Petitions on the ground of delay but considering merits of the case, we are issuing necessary directions granting relief to the appellants who were vigilant about their rights.

63. Similarly, there is also substance in the contention of the learned counsel for the respondents that the appellants, by appearing in the written examination and oral interview had taken a chance and having failed have approached the Tribunal. Again, a Special Leave Petition filed by some candidates has already been dismissed by this Court. But in the larger interest and keeping in view vacancies in the cadre, we have granted equitable relief in favour of eligible and qualified applicants.

64. In the result, the appeals are partly allowed. Service of 66 candidates who

were selected and appointed in 1998-99, whose appointments were initially not challenged and thereafter who were protected by the Tribunal and by the High Court have not been disturbed. The appellants who are similarly situated to 66 respondents who are protected in the present proceedings will be treated at par with those respondents. And if on the basis of merit list prepared as per the order of the High Court, they are found eligible and qualified, the State Government will consider their cases, i.e. the cases of the appellants and will appoint them in accordance with law. Age bar, if any, will not come in the way of those candidates. The said benefit, however, is limited to those candidates who have challenged the selection by approaching the Tribunal, the High Court and this Court. Our directions will not apply to those candidates who have approached this Court for the first time by filing Interim Applications. Their applications, therefore, stand dismissed."

11. It is rightly pointed out by learned counsel for the Appellant that if the proposition of judgment in *Tridip Kumar Dingal* (supra) were adhered there was no occasion for the Authorities to have tinkered with the select list of 01.10.2002 after a period of over 16 years.

12. It is noticed that Supreme Court in *Tridip Kumar Dingal* (supra) after taking into consideration the aspect of delay, laches and the right of the selectees directed the State therein that if on the basis of merit list prepared as per the order of the High Court, the Appellants are found eligible and qualified, the State Government will consider their case, i.e. the cases of the appellants and will appoint them in accordance with law. Age bar, if any, will not come in the way of those candidates. The said benefit, however, is limited to those candidates who have challenged the selection by approaching the Tribunal, the High Court and this Court. Thus there was no direction for incursion of the name of the Appellant in the select list of 1998-99. The Appellant were to be appointed from future date. Whereas, the direction by learned Single Judge is for incursion of the name of the petitioner by redrawing the select list; whereby, 17 persons were appointed and only four of them were impleaded. The order by learned Single Judge, in our considered opinion, will lead to redrawing the entire select list of 01.10.2002.

13. In *Ramrao vs All India Backward Class Bank Employees Welfare Association* (2004) 2 SCC 76, it is held:

"Effect of absence of the appellants as parties

27. It is true that the order of promotion was in question in Writ Petition No. 1551 of 1990 at the instance of one Ashok but even in the said writ petition the Promotees were not impleaded as parties. As in the case of the Association, even in the writ petition filed by Ashok, the order of dereservation passed by Union of India or NABARD or the Sponsor Bank had not been questioned. Admittedly, Union of India or NABARD were not parties in the said writ petitions. An order issued against a person without impleading him as a party and, thus, without

giving him an opportunity of hearing must be held to be bad in law. The appellants herein, keeping in view the fact that by reason of the impugned direction the orders of promotion effected in their favour had been directed to be withdrawn indisputably were necessary parties. In their absence, therefore, the writ petition could not have been effectively adjudicated upon. In absence of the 'Promotees' as parties, therefore, it was not permissible for the High Court to issue the directions by reason of the impugned judgment.

Analysis :

28. It is not the contention of the Association that procedures for effecting promotion had not been followed. The promotees were, admittedly eligible for promotion and they had, thus, legally been promoted. The only question which was raised related to compliance on the part of the Bank as regard the procedure of dereservation. The High Court, therefore, was required to consider the said question only in the event, the factual foundation therefor had been laid down in the writ petition. The Association did not file even any supplementary affidavit or an application for amendment of the writ petition praying for a relief as regard quashing of the order of dereservation or bringing the appellants herein as parties thereto in the writ petition. In absence of any challenge to the order of dereservation and in absence of the Promotees having been impleaded as parties, the impugned directions could not have been issued by the High Court, more so when the appellants herein had not been given an opportunity of being heard. Once dereservation is made, the vacancies became available for being filled up by general category candidates and, thus, therefor the respondent Bank was not required to reexamine the question of availability of the Scheduled Tribe candidates for appointment on dereserved vacancies. The view taken by the High Court that even after dereservation was made, the Bank was required to reexamine the availability of ST candidates on the dereserved vacancies, was, therefore, not correct particularly when the High Court itself found that the cut off date being 31.8.1989 was correctly fixed by the Bank."

14. In the case at hand only four of the selectees were made parties. Whereas, seventeen persons including the present Appellant were appointed. In that event learned Single Judge is not justified in reframing the entire select list. Though learned Single Judge declined to non suit the petitioner on the ground of delay taking note of the note-sheets, which however, did not culminate into any order.

Be that as it may. Even if the exercise of equitable jurisdiction is upheld, the order cannot be allowed to cause detriment to the selectees who were not parties. In view whereof, the impugned order deserves to be modified in the terms of the decision in *Tridip Kumar Dingal* (supra) that the petitioner, i.e. respondent No.8 if found suitable to be accommodated on the post of Junior Executive (Trainee) from the future date without disturbing the appointment of the candidate selected by order dated 01.10.2002. Thereafter, consider him for promotion to higher post in the hierarchy in accordance with law. The direction in paragraph 7 of the impugned order is set-aside with above modification.

15. Since we have set-aside the order in Writ Petition with modification, thus partly allowing the Writ Petition, as a necessary corollary all orders passed in furtherance to impugned order dated

11. 08.2016 in Writ Petition No.14483/2008 are set-aside.

16. The Appeal is allowed to the extent above. No costs.