
(1975) 10 MAD CK 0018
In the Madras High Court

S. Kuppuswamy and Another	Vs	APPELLANT
The General Manager, Heavy Vehicles Factory and Another		RESPONDENT

Date of Decision : 23-10-1975

Acts Referred:

Constitution of India, 1950 — Article 310

Citation : (1976) 2 MLJ 97

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Judgement

V. Ramaswami, J.—These are two writ petitions for the issue of a writ of mandamus directing the respondents to fix the seniority of the petitioners in respect of lower division clerks working in the Heavy Vehicle Factory, Avadi on the basis of the date of entry into service in the said factory in so far as the petitioners are concerned. The petitioner in Writ Petition No. 1945 of 1974 joined the Heavy Vehicles Factory, Avadi as lower division clerk on the 5th of February, 1964 and the petitioner in Writ Petition No. 1944 of 1974 joined as such lower division clerk on 4th December, 1963. though this is also an Ordnance Factory, this does not come under the Director-General of Ordnance Factory, Calcutta, but is directly managed. as an independent unit by the General Manager under the control of the Ministry of Defence.

2. Promotion to the post of upper division clerk in this unit was to be made purely on the basis of seniority and the post of upper division clerk is a non-selection post. In December, 1970, the respondents prepared a seniority list on the basis of Army Instructions No. 241 of 1950. The petitioners contend that the fixation of seniority on the basis of Army Instructions No. 241 of 1950 was illegal and it should be done only on the basis of entry into service in the Heavy Vehicles Factory at Avadi. The learned Counsel for the petitioners further contended that Army Instructions No. 241 of 1950-which were relied on by the respondents in the counter-affidavit have been superseded by office Memorandum dated 22nd December, 1959 of the Government of, India in the

Ministry of Home Affairs and that since the petitioners joined the service in 1903 and 1964 their seniority will have to be fixed in accordance with the principles mentioned in that Office Memorandum and not Army Instructions No. 241 of 1950. In order to understand the contention of the petitioner, it is necessary to refer to certain memorandums and instructions issued in this regard by the Ministry of Home Affairs and the Ministry of Defence.

3. The migration of a large number of Government employees after the partition of the country from areas now forming part of Pakistan created a situation which called for a review of the Rule's relating to the fixation of seniority. Instructions were issued by the Ministry of Home Affairs in order to safeguard the interests of displaced Government servants appointed to the Central Services after partition. In these instructions, the various departments were instructed to give credit for previous service of those Government servants in fixing their seniority. As it was found not possible to regulate the seniority of only the displaced Government servants by giving them credit for previous service, instructions were subsequently issued making these rules applicable to all categories of persons appointed to the Central Services. Those instructions were contained in the Office Memorandum No. 0240/63 62/D-12 dated 1st September, 1949 of the Ministry of Defence. These instructions read as follows:

The question of seniority of Assistants in the Secretariat was recently examined very carefully in consultation with all the Ministries and the Federal Public Service Commission and the decision reached are incorporated in para. 8 of the "Instructions for the initial Constitution of the grade of the Assistants" an extract of which is enclosed. It has been decided that this Rule should generally be taken as the model in framing the rules of seniority for other services and in respect of persons employed in any particular grade seniority should as a general rule, be determined on the basis of the length of service in that grade as well as services in an equivalent grade irrespective of whether the latter was under the control of Provincial Government in India or Pakistan. It has been found difficult to work on the basis of "comparable posts or grades and it has therefore been decided that "service in equivalent grade" should, generally be defined as service on a rate of pay higher than the minimum of the time-scale of the grade concerned. The seniority of persons appointed on permanent or quasi permanent basis, before the 1st January 1944, should, however, not be disturbed.

Instructions for the initial constitution of Assistants grade of the Central Secretariat Service. 3. Seniority of Assistants in Grade IV as newly constituted.

The names of all existing permanent Assistants who are included in the permanent strength of the service and who were confirmed in their posts prior to the 22nd October, 1943 will be arranged in the first instance Ministries in accordance with Rule's in force at present. Such permanent Assistants will be considered senior to all others confirmed in pursuance of these instructions in vacancies arising upto the 22nd October 1950. The order of seniority of the latter group of Assistants, namely, those confirmed after the 22nd October, 1943 which

will be arranged in a single list for all Ministries, will be determined inter se on the basis of their length of continuous service temporary or permanent in the grade of Assistants or equivalent grade provided at any period of service during which the pay actually drawn exceeds Rs. 160 per mensem should be deemed to be service in a grade equivalent to that of an, Assistant.

In accordance with the order, Army Instructions No. 241 of 1950 were issued relating to the determination of seniority of persons employed in the grades mentioned therein. These instructions are as follows:

241. Seniority of Civilian employees in lower formations. In accordance with the orders contained in para. 2 of Ministry of Defence O.M. No. 0240/63 62/D-12 dated 1st September, 1949, published as Annexure "A" to this Instruction, seniority of persons employed in a particular grade is to be determined as indicated below:

(i) Persons who were appointed on a permanent or a quasi-permanent basis in the grade concerned prior to the 1st January, 1944 according to the date of such appointment followed by,

(ii) Persons who were appointed on a permanent or a quasi permanent basis in the grade concerned on or after 1st January, 1944 and persons temporarily employed in that grade arranged in the order of their continuous length of service in that grade or in equivalent grade, the latter as defined in para. 2 of Ministry of Defence O.M. No.0240/636 2/D-12, dated 1st September, 1949 (Annexure "A").

(2) Seniority of ex-servicemen employed in lower formations of the Army and ex-Burma Government servants who are included in the post. 1943 block is to be regulated in accordance with Ministry of Defence O.M. No. 4604/D-12 dated 20th February, 1950 (Reproduced in Annexure "B" to this Instruction) and A.I. No. 72 of 1950 respectively.

(3) War service candidates and temporary employees confirmed in vacancies reserved for them during the war will be dealt with as indicated below:

(a) Their seniority will first be determined in accordance with the provisions of Ministry of Home Affairs O.M. No. 30/4/46 Ests. (R) dated 18th September, 1947, reproduced in A.I. No. 380 of 1949.

(b) Persons who are entitled to count seniority from a date earlier than 1st January, 1944 under A.I. No. 380 of 1949 shall be included in category (1) referred to in para. (1) above in the following order:

(i) Persons who were confirmed in the grade concerned during the particular year arranged according to date of confirmation; followed by

(ii) temporary employees appointed to the posts reserved for them, who are allotted to that year arranged according to age; followed by

(iii) war service candidates appointed to permanent posts reserved for them who are allotted to that year arranged according to age.

(c) Persons who are entitled to count seniority from a date later than 31st December, 1943 shall be included in category (ii) referred to in para, (i) above and their seniority in the grade in which they are confirmed against vacancies reserved for them, shall be determined in accordance with the dates fixed under para, 1(ii) above or the dates on which they were appointed or deemed to have been appointed to the grade concerned for the purposes of fixation of pay under A.I. No. 380 of 1949, whichever is earlier.

(4) All officers under the control of Ministry of Defence are required to prepare revised seniority lists of civilians employed, in various grades in accordance with the above instructions; Dates of seniority fixed with reference to special consideration to the individual case, e.g., under next below Rule will remain unaltered.

The principles contained in the memorandum dated 1st September, 1949 were extended later on in relation to the ex-Government servants of Burma appointed to Central Services and the employees of former Part B States taken over to the Centre as a result of Federal Financial Integration. By a further memorandum dated 31st March, 1950 as amended by memorandum dated 20th September, 1952, the seniority of candidates with War Service appointed to the Central Service was also regulated.

4. The position was reviewed by the Government of India sometime in 1958 and 1959. It was felt that as the specific objects underlying the instructions had been achieved there was no longer any reason to apply those instructions in preference to the normal principles for determining the seniority and therefore it was decided that thereafter the seniority of all persons appointed to the various Central Services should be determined in accordance with the general principles. Accordingly, Office memorandum dated 22nd December, 1959 issued by the Government of India, Ministry of Home Affairs, after citing the various Office memorandums referred to earlier, canceled those instructions except in regard to the determination of seniority of persons appointed to the various Central Services prior to 22nd December, 1959. Army Instruction No. 241 of 1950 was not one of those memorandums which was cancelled in this memorandum dated 22nd December, 1959. The relevant portion of the general principles for determination of seniority in the Central Services prescribed by this memorandum dated 22nd December, 1959 reads as follows:

(1) These principles shall apply to the determination of seniority in Central Civil Services and Civil Posts except such services and posts for which separate principles have already been issued or may be issued hereafter by Government.

Ministries or Departments which have made separate Rule's or issued instructions on the basis of instructions contained in the Ministry of Home Affairs O.M. No. 30/44/48-Apptts., dated the 22nd June, 1949, are requested to

consider modification of those Rule"s or instructions on the basis of these general principles. However, whenever it is considered necessary to follow principles different from those laid down in this memorandum, a specific reference should be made to the Ministry of Home Affairs who will consult the U.P.S.C. As regards individual cases, the Ministry of Home Affairs will decide the cases on which the advice of the Commission should be obtained.

5. It is seen from these, that these principles were intended to apply only for the determination of seniority in Central Civil Services and Civil Posts and not for civilians in Defence Services. But as in the original instructions of 1st September, 1949, the various Ministries were requested to consider the modification of existing rules in their Ministries regarding the determination of seniority in accordance with this office memorandum of 22nd December, 1959, so far as persons employed in Class I and Class II posts in Defence in their memorandum No. 10(1)/60/D (Appeal dated 11th March, 1965) it issued instructions that the seniority of the persons after 11th March, 1965 to Class I and Class II posts in the lower formations in the Ministry of Defence would have to be determined in accordance with the general principles annexed to that memorandum. Suffice it to say that these instructions require the seniority to be fixed with reference to the date of confirmation of probation and not as contained in Army Instructions No. 241 of 1950. By another memorandum dated 22nd of May, 1972, these principles applicable to Class I and Class II were made applicable to the civilians in Class III and IV of the Ordnance Factories Organisation and paid from the Defence Service Estimates as and from that date. Thus persons appointed subsequent to 22nd May, 1972, civilians Class III and IV of Ordnance Factories would take their confirmation and not as contained in Army Instructions No. 241 of 1950. But what the learned Counsel for the petitioners contended is that even as and from 22nd December, 1959 Army Instructions No. 241 of 1950 became ineffective and the seniority would have to be determined only with reference to the date of confirmation in regard to persons who joined service subsequent to that date. The learned Counsel contended in this regard that these instructions dated 22nd December, 1959, would be applicable to every one of the Ministries including the Ministry of Defence and if, in any particular department of that Ministry, they wanted to have a different principle from that prescribed therein they will have to specially lay down those Rule"s after consulting the Union Public Service Commission and so long as they do not make any special provisions like that, the general principles for determination of seniority in the Central Services prescribed in that memorandum would be applicable. I am unable to agree with this contention of the learned Counsel. The Constitution recognises various services under the Union of India under Article 310. The Defence Services, Civil Servants of the Union, All India Service persons holding posts connected with defence and civil posts under the Union are the; various categories referred to therein. The Defence Service and persons holding any posts connected with the defence are therefore not included in the category of civil services of the Union or civil posts under the Union. They are two different categories. Therefore when

these general principles were prescribed for the determination of seniority in the Central Service, it could not proprio vigore apply to either the Defence Services or to persons holding any post connected with the defence. If these principles were to be made applicable it should be only by a special instruction that will have to be made as in Army Instructions No. 241 of 1950. It is in view of this position that the Ministry of Defence issued; the memorandum dated 11th March, 1965 and 22nd May, 1972 above referred to. Request made to the Ministries and departments to consider modification of the existing instructions on the basis of the general principles for determination of seniority in the Central Services prescribed in the memorandum dated 22nd December, 1959 does not in any way abrogate Army Instructions No. 241 of 1950 and could not have also that effect as the civilians in Defence Services are governed by separate rules. It is true that some of the rules applicable to the Central Civil Services and Civil Posts were made applicable to civilians in Defence Services but by merely applying the Rule's we could not equate the persons, connected with defence as persons in civil Services or civil posts under the Union within the meaning of Article 310 of the Constitution. Only by modifying the existing Rule's as requested in this memorandum, the Rule's that were governing the civilians in defence service could be modified; As already stated that was done so far as Class III and Class IV of the Ordnance Factories Organisation only from 22nd May, 1972. Therefore the petitioners could, not ask for the fixation of the seniority without reference to Army Instructions No. 241 of 1950.

6. In the result these writ petitions fail and are dismissed; The Rule nisi in each case is discharged, but there will be no order as to costs.