

(2011) 07 MAD CK 0473

In the Madras High Court

Case No : Writ Petition No. 7657 of 2008

S. Mohan Raj

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Citation : (2012) 3 SLJ 90

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : G. Jeremiah, for the Appellant; V.M. Velumani, Special Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—This writ petition has been filed, seeking to quash the proceedings under Letter No. 5235/C2/2006-07 dated 20.7.2006, issued by the second respondent, wherein, the claim of the petitioner to redesignate the post of semi-skilled workman under Work Charged Establishment (in short WCE) of the Ground Water Wing as Work Inspector, has been declined and also for a direction to the first respondent to consider the claim of the petitioner to redesignate/promote in the light of G.O.Ms. No. 1632 (PWD) dated 26.10.1977 of the first respondent. Heard Mr. G. Jeremiah, learned Counsel appearing for the petitioner and Ms. V.M. Velumani, learned Special Government Pleader appearing for the respondents

2. The case of the petitioner is as follows:

2(a) He worked as Semi Skilled Workman at the office of the Ground Water Division, Thanjavur for about 36 years along with other 35 persons, who worked as helpers and Semi Skilled Workman all over the Tamil Nadu under the control of the fifth respondent herein, namely, the Chief Engineer, State Ground and Surface Water Resources Data Centre, WRO in PWD, Tharamani, Chennai.

2(b) Qualifications for the above posts are either SSLC passed or failed and the

persons were recruited and posted at three places, viz. Chennai, Thanjavur and Madurai. Insofar as the persons appointed in Chennai, they were posted as Work Attendant, the Semi Skilled Workman and the persons appointed at Thanjavur, Tirunelveli and Madurai, were posted as Helpers. Even though their nomenclature is different, they were all doing the same work such as hydrological investigation works in ground water wing.

2(c) He, the work attendants and helpers were recruited in the year 1971-1973 and those persons were working as Semi Skilled Workmen, Work Attendants and Helpers. In fact, there is no further promotion. Hence, the petitioner's association, namely, Tamil Nadu Public Works Department Employees Association (hereinafter referred to as the "Association") made a representation to Government to redesignate all these persons as Work Inspectors. After considering the request of the Association, the Government had redesignated only persons working as Work Attendants as Work Inspectors vide G.O.Ms. No. 1632, PWD dated 26.10.1977. As per the said Government Order, while redesignating the Work Attendants as Work Inspectors Grade I and II, the Government have mentioned that those who passed SSLC are redesignated as Work Inspectors Grade I and persons, who have not passed in SSLC were redesignated as Work Inspectors Grade II. It was not in dispute that the persons, who worked as Helpers or Semi Skilled Workers, either passed or failed in SSLC and carried out the same work. Since the Government did not extend the benefit to the Semi Skilled Workmen and Helpers, as that of Work Attendants in pursuance to G.O.Ms. No. 1632 dated 26.10.1977, the Association made a representation dated 10.8.1989, requesting the Government to consider the case of the Semi Skilled Workmen and Helpers also for the purpose of redesignating them to the post of Work Inspectors. However, the request of the Association stood rejected by the Government vide Order No. 597528/P.CII/98-1 dated 7.11.1989 without assigning any reason for such rejection.

2(d) Aggrieved by the order of rejection, the Association filed O.A. No. 3148 of 1991 before the Tamil Nadu Administrative Tribunal (shortly "Tribunal"), Madras, and the same was admitted with notice to the respondents. However, no counter was filed in the said original application. Tribunal ultimately dismissed the original application by holding that relevant documents were not filed along with the application. Thereafter, a Review Application in R. A. No. 32 of 1992 was filed along with relevant documents and the same was also dismissed by the Tribunal, by recording that no document could be received at the review stage.

2(e) The Association filed a W.P. No. 8940 of 1998 against dismissal of the review application, seeking to quash the orders of Tribunal with a direction to the respondent to redesignate the members of the Association mentioned in Annexure to the writ petition, who were working as Semi Skilled Workmen and Helpers to the post of Work Inspectors. The said writ petition was dismissed as withdrawn by the Hon'ble Division Bench of this Court on 09.10.2011 by observing as follows:

This matter need not be decided in view of the statement made by the learned Government Pleader that the representation on behalf of the petitioner Association is pending with the Government. In that representation, the petitioner Association has raised a question of redesignation of Semi Skilled Workmen and also helpers in tune with the redesignation allotted to the work attendants. The learned Government Pleader says that the Government has to take the decision on that issue.

In view of this, the learned Counsel appearing for the petitioner association seeks to withdraw the writ petition. Accordingly, the writ petition is dismissed as withdrawn. We hope that the representation is decided as early as possible.

2(f) He, having been in possession of PUC educational qualification and also B.A. Degree, was advised to give a representation on 4.5.2005 to the first respondent for consideration of his promotion and the attendant benefits in the light of G.O.Ms. No. 1632/PWD. Since no action was taken on his representation, the petitioner was constrained to file W.P. No. 487 of 2006. This Court, after admitting the said writ petition, directed the first respondent to consider the above representation dated 4.5.2005 in accordance with law within a period of four weeks from the date of receipt of that order.

2(g) In pursuance of the order of this Court, he sent a representation on 29.4.2006 by enclosing his previous representation dated 4.5.2005 and a copy of the order made in W.P. No. 487 of 2006 along with a copy of G.O.Ms. No. 1632/PWD dated 26.10.1977. As there was no response forthcoming from the side of the respondents, the petitioner filed a Contempt Petition No. 831 of 2007. After filing the same, a copy of proceedings in Letter No. 5235/C2/2006-07 dated 20.7.2006 of the second respondent was forwarded to the petitioner's Counsel by the Government Advocate on 3.1.2008, in which, it was stated that the representation of the petitioner was disposed of by the first respondent on 3.4.2007 itself.

2(h) In the impugned communication, it was mentioned that the request of the Association for merger of certain posts i.e., to redesignate the posts of the Ground Water Wing as Work Inspector Grade I, Work Inspector Grade II, Works Inspector Grade III, by relaxing the relevant adhoc rules, was examined in detail and the same was rejected for the reason that after issuance of orders on the recommendation of the Official Committee and one-man committee in 1998, Government have not entertained any request for revision of scale of pay/redesignation/merger of posts/upgradation of posts and accordingly a suitable reply was sent to the Association and the request of the petitioner along with other similarly placed requests made through the Association was examined and rejected.

2(i) Aggrieved by the above order, the petitioner is before this Court by challenging the proceedings in Letter No. 5235/C2/2006-07 dated 20.07.2006 on the ground that the respondents did not take into account the Government Order

in G.O.Ms. No. 1632 dated 26.10.1977 before issuing the impugned proceedings and that the first respondent failed to note that G.O.Ms. No. 286 dated 13.12.2005 was issued to regularise the service of one Narayanan as Work Inspector Grade II from the post of Head Mazdoor.

3. The fifth respondent, viz., the Chief Engineer, has filed counter, stating as follows:

3(a) The petitioner was engaged as NMR (Daily Wages) in Ground Water Division, Thanjavur initially on 2.5.1972 and his service was regularized in the post as Semi Skilled Workman with effect from 01.01.1978. He worked in Ground Water Division, Thanjavur and attained superannuation on 31.3.2010.

3(b) Vide the Government Order in G.O.Ms. No. 1632 PWD, dated 26.10.1977, the first respondent sanctioned scale of pay to certain categories under the provincialised WCE, based on the proposals sent by the Chief Engineer (Ground Water), Chennai. It was also ordered to merge the posts of Work Attendant, Pump Operator and Work Assistant with the corresponding posts on Public Works Department as indicated in the Annexure II of the said Government Order. Based on the Annexure II of the Government Order, the post of Work Attendant Grade I, SSLC passed and above was merged with the post of Work Inspector Grade-I and the post of Work Attendant Grade II, SSLC failed was merged with the post of Work Inspector Grade II. Work Attendant (others) with 5 years of service was merged as Helper (Grade I) and those who had less than 5 years of service were merged with the post of Helper Grade II.

3(c) The first respondent had passed the said orders when the Adhoc Rules for the posts under WCE were yet to be issued. In effect, persons were appointed to the posts under WCE pending issue of Adhoc Rules for the posts. The first respondent in Para 3 of the said Government Order had also ordered that the time scale of pay indicated in Annexure-I and Annexure-II to the orders be sanctioned only to those who were fully qualified to hold the post concerned.

3(d) Though the petitioner was engaged by the Department as NMR, his services were not regularized until 31.12.1977 and he continued in the temporary capacity as Semi Skilled Workman from 2.5.1972 to 31.12.1977. Therefore, the petitioner is ineligible to stake any direct or indirect claim as per the orders of the first respondent in G.O.Ms. No. 1632 PWD, dated 26.10.1977, as the first respondent had ordered the merger and consequent time scale of pay is only for persons who are fully qualified to hold the post of Semi Skilled Workman in which the petitioner was engaged was not covered by the orders of merger issued in the Government Order.

3(e) The first respondent, vide G.O. Ms. No. 461 PWD dated 15.3.1980, had issued Adhoc Rules for the post of Work Inspector Grade-I, Work Inspector Grade-II, Helper Grade-I, Helper Grade-II and Semi Skilled Workman among other category of posts. The Adhoc Rules shall be deemed to have come into force on and from 07.05.1966, which also provide for savings clause for the

existing incumbents in explanation II of Rule 6 of the Adhoc Rules. According to the Adhoc Rules, the qualification prescribed for the following posts are as follows:

Therefore, it may be seen from the table that the qualification prescribed for each posts are different and distinct. As such the hierarchy of the posts and the status of the posts had been settled, defined and assigned.

3(f) The general principle of the service rules that persons holding the qualification prescribed to a post shall only be appointed to that post. As such, any request for redesignating a post with a corresponding post either with a higher qualification or lower qualification would create a back door entry for recruitment and would also violate the general principle of the service rules: Hence, the request of petitioner to redesignate the posts of Semi Skilled Workman, Helper Grade-I and Helper Grade-II with that of Work Inspector Grade I and Work Inspector Grade II after issuance of Adhoc Rules for the said posts would be legally untenable and would trigger of a similar request than persons who aspire to hold a post but does not possess the qualification prescribed for the post. Therefore, the benefit or concession of merger or redesignation, if any, after issuance of Adhoc Rules would violate the terms and conditions of the relevant rules and would set a bad precedent.

3(g) The qualification acquired by a person determines the suitability of that person to hold a post or not and is the primary basis for selection. This experience may be an added advantage, but is not the key factor for selection. Therefore, the first respondent, vide Lr. No. 597528/PCII/98-1 dated 7.11.1981, rejected the request of the Association to redesignate the posts of Semi Skilled Workman and Helpers with that of Work Inspector. Consequent to the orders of the Hon'ble Division Bench of this Court in W.P. No. 8940 of 1998 dated 9.10.2001, the first respondent, on 24.9.2002, called for remarks of the fifth respondent on the representation of the Association dated 26.8.2002. Thereafter, a proposal to redesignate only the eligible Semi Skilled Workman, Helper Grade-I and Helper Grade-II to that of Work Inspectors was sent by the fifth respondent to the first respondent vide Lr. No. D1/2204/2002 dated 21.2.2003.

3(h) The first respondent, who is the statutory authority for redesignating the posts as per the proposals of the fifth respondent, had examined the proposals on its merit. Finally, the first respondent in his Lr. No. 44900/ C2/04-10 dated 06.2.2006 had informed the third respondent with a copy to the fifth respondent that after issuance of orders on the recommendations of the Official Committee/ One Man Commission 1998, the Government had not entertained any request for revision of scale of pay/ redesignation/merger of posts/upgradation of post. Hence, the request for merger of Helper post with that of Work Inspector Grade-I & Work Inspector Grade-II is not feasible for implementation. The precedent case mentioned in the writ petition relates to the orders from Head Mazdoor to Work Inspector Grade-II, but the petitioner has requested to appoint him as Work Inspector Grade-I, for which, Bifurcated Engineering course is also the prescribed

requisite qualification. Therefore, any request for redesignating a post with a corresponding post either with a higher qualification or lower qualification would create a back door entry for recruitment and would also violate the general principle of the service rules.

3(i) The final stand of the fifth respondent in the counter is that claim of the petitioner to redesignate the post would be legally untenable, after issuance of Adhoc Rules for the said post and hence, he prayed for dismissal of the writ petition.

4. The main contention of the learned Counsel for the petitioner is that the first respondent, by relaxing the Adhoc Rules, passed an order earlier in G.O.Ms. No. 286 dated 13.12.2005, for regularisation of service of one Narayanan as Work Inspector Grade II from the post of Head Mazdoor and the same benefit could be extended to the petitioner also, which would, otherwise, amount to disparity. Moreover, the higher qualification acquired by the petitioner was not taken into account and the relaxation was not extended to him. Therefore, reasons assigned in the impugned proceedings are improper.

5. Per contra, learned Special Government Pleader would submit that the effect of redesignation is based on the Adhoc Rules, issued by the first respondent and relaxation of Adhoc Rules, claimed by the petitioner, was examined in detail. Meanwhile, on receipt of the recommendations of the Official Committee/One Man Commission 1998, the Government had taken a policy decision not to entertain any request for revision of scale of pay/redesignation/merger of posts/upgradation of post. Since it is purely a policy decision taken by the Government, letter of the second respondent cannot be faulted with. In fact, the petitioner was not in possession of required qualification either on the date of redesignation/merger or during the period of relaxation of Adhoc Rules. Therefore, there is no substance in the claim of the petitioner.

6. Heard the learned Counsel on either side, perused the material documents/relevant records and the respective Government Orders.

7. A circumspection of the facts would reveal that the petitioner was engaged as NMR on 2.5.1972 and his services were not regularized until 31.12.1977. He served in the capacity of Semi Skilled Workman on temporary basis from 2.5.1972 to 31.12.1977. The Chief Engineer (Ground Water) forwarded a proposal for sanction of time scale of pay to certain categories of the WCE personnel also in the Ground Water Wing, since revised scales of pay have not been sanctioned in the Government Order in G.O.Ms. No. 142, PWD dated 3.2.1973. Based on the proposal sent by the fifth respondent, the first respondent had sanctioned scale of pay to certain categories under the provincialised WCE vide G.O.Ms. No. 1632 PWD dated 26.10.1977, through which, the posts of work attendants, Pump Operator and Work Assistant were ordered to be merged with the corresponding posts in the Public Works Department as indicated in Annexure-II.

8. It was further directed by the Government that the time scales of pay as indicated in Annexures I and II of the said order, be sanctioned only to those who were fully qualified to hold the posts concerned. It was also made clear in the Government Order that the time scale of pay was sanctioned with retrospective effect from 24.11.1970 in the case of persons whose services were provincialised from the date and in the case of others, from later date, on which, their services were provincialised. A procedure was also laid down for fitment in the new scales to the extent that if the present emoluments that in (Pay Plus Dearness Allowance) is less than the minimum the new scales of pay, the pay may be fixed at the minimum. Accordingly, the Government Order was given effect. The first respondent had ordered merger and consequent time scale of pay is only for persons, who are fully qualified to hold the post of Semi Skilled Workman, in which, the petitioner was engaged was not covered by the orders of merger issued in the Government Order.

9. However, the first respondent passed another order in G.O.Ms. No. 461 PWD dated 15.3.1980, by issuing Adhoc Rules for the post of Work Inspector Grade-I, Work Inspector Grade-II, Helper Grade-I, Helper Grade-II and Semi Skilled Workman among other category of posts. It was mentioned that the Adhoc Rules shall be given effect on and from 7.5.1966, which also provide for savings clause for the existing incumbents in Explanation II of Rule 6 of the Adhoc Rules.

10. In the Adhoc Rules, the qualification against the posts of Work Inspector Grade 1 & II, Helper Grade I & II and Semi Skilled Workman has been clearly indicated as detailed above. It is a general principle of service rules that those persons, who hold the qualification on that date prescribed to a post, shall only be appointed to that post. Therefore, it is to be seen that consequent time scale of pay, as ordered by the first respondent, is only for persons who are fully qualified to hold the post of Semi Skilled Workman in which the petitioner was engaged was not covered by the orders of merger issued in the Government Order, as he was not having required qualification on that date.

11. It is noticed that on a direction by the Tribunal dated 15.12.2003 to consider the request of one Narayanan for appointment as Work Inspector Grade II from the post of Head Mazdoor, the Government regularized Narayanan in the said post with effect from 1.7.1988 by granting monetary benefit from the date of issue of the order, by relaxing the rule relating to educational qualification. To that effect, the Government issued an order in G.O.Ms. No. 286 dated 13.12.2005, wherein, it has been categorically stated as follows:

In exercise of the powers conferred by Rule 48 of the General Rules contained in Part II of the Tamil Nadu State and Subordinate Service Rules contained in Volume-I of the Tamil Nadu Services Manual 1987, the Governor of Tamil Nadu hereby relaxes the provisions of Rule 6 (1)(b) of the Adhoc Rules issued in G.O.Ms. No. 461, Public Works Department, dated 15.3.1980 as amended in G.O.Ms. No. 1966 Public Works Department dated 23.11.1981 in respect of Thiru V.Narayanan, Head Mazdoor, Building Construction and Maintenance Sub-

Division, Public Works Department, Kumbakkonam so as to enable him to be brought into regular establishment with effect from 1.7.1988 in the category of Work Inspector Grade-I I.

On the basis of the above order, the consistent plea of the petitioner is that similar relaxation could be extended to him also, which cannot be accepted primarily on the ground that first of all, the petitioner was not qualified on the date of merger / redesignation and did not fulfill the general principle of Service Rules for holding the post of Work Inspector Grade I or Grade II. Unless the Government relaxes the provisions of Rule 6 (1)(b) of the Adhoc Rules, the request of the petitioner cannot be accepted. But, the Government, on receipt of recommendation of the Official Committee and one-man committee in 1998, have taken a policy decision not to entertain any request for revision of scale of pay/redesignation.

12. Therefore, the impugned orders and the policy decision taken by the Government are in no way said to be illegal and contrary to the rules and principles of natural justice. Moreover, It is not for this Court to assess the correctness of the Government Orders unless or otherwise proved to be arbitrary exercise of power or violative of basic rules. Hence, the decision taken by the second respondent cannot be termed as de jure infirmed and not sustainable especially in absence of any arbitrariness or ultra vires of " the rules. Therefore, the impugned order passed by the second respondent is perfectly valid in the eye of law, which does not require any interference by this Court. Hence, the writ petition deserves no merit consideration and is liable to be dismissed.

13. At the same time, by considering the fact that the petitioner joined the service of the respondents on 2.5.1972 and attained superannuation on 31.3.2010 and also taking into account the fact that the petitioner has not yet approached the first respondent with regard to his claim similar to one Narayanan, to whom relaxation in the Adhoc Rules vide G.O.Ms. No. 286 dated 13.12.2005 was made, I am of the considered view that the petitioner may approach the first respondent by giving a detailed representation to extend the very same treatment to him shown to the similarly placed person. Accordingly, while upholding the impugned order passed by the second respondent, the petitioner is directed to submit a detailed representation to the first respondent by enclosing relevant Government Orders and other documents in support of his claim for similar treatment within a period of four weeks from the date of receipt of copy of this order. If any such representation is made by the petitioner, the first respondent, namely, the Secretary to Government, Public Works Department, Chennai, is directed to consider the same and pass appropriate orders within a period of four weeks thereafter.

With the above observation and direction, this writ petition is dismissed. No costs.