

(2017) 04 MAD CK 0227

In the Madras High Court

Case No : 1571 of 2014 AND M P NOS 1 & 2 of 2014

S.Abdul Azees

APPELLANT

Vs

The Principal Secretary to Govt. & Ors.

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

Citation : (2017) 04 MAD CK 0227

Hon'ble Judges : Hluvadi G.Ramesh, Teekaa Raman

Bench : DIVISION BENCH

Advocate : Hluvadi G.Ramesh, Teekaa Raman

Judgement

1. This writ appeal is directed against the order of the learned single Judge, whereby, the learned single Judge, while directing the respondents to re-fix the seniority of respondents 5 and 6 herein in the appropriate position in the seniority list, however, rejected the case of the appellants herein for re-fixation of seniority.

2. The facts, shorn of unnecessary details, are given hereunder :- The appellants, along with respondents 5 and 6, joined as Junior Assistants on compassionate grounds on various dates, viz., 23.07.1984, 9.1.1986, 13.01.1986, 02.03.1984 and 2.1.1984. The persons, who were working under the 10 (a) (i) category during the period 1981 to 1983, their services were regularised w.e.f. 25.6.1984. The inter se seniority between the persons recruited through the Tamil Nadu Public Service Commission, persons regularised from 10 (a) (i) and the persons, who were appointed on compassionate appointment was governed by G.O. Ms. No.548 Personnel & Administrative Reforms (Per. J) Dept., dated 10.06.1987 and the Special Rules framed under Article 309 of the Constitution of India. Initially, a combined seniority list of the above three categories was issued by the 2nd respondent on 28.01.2000. The issue relating to seniority was put at rest through the decision of this Court in W.A. No.787 of 1978 dated 27.09.1988, which was followed in W.P. Nos.21654 of 2004 etc., dated 3.4.2006. The above facts are not in dispute.

3. The issue pertaining to the case on hand falls within a narrow compass. While it is the contention of the appellants herein that the seniority, which was followed for nearly three decades, is sought to be revised taking umbrage under the G.O. Ms. No.548, Personnel and Administrative Reforms Dept., dated 10.06.1987, which is impermissible and that the combined seniority list issued vide proceedings dated 28.1.2000 should be followed, it is the contention of the respondents/authorities that the same is done in lieu of the Tamil Nadu Special Absorption Rules, 1987 read with the decisions of this Court in W.A. No.787 of 1978 dated 27.9.1988 as also following the instructions issued vide G.O. Ms. No.548 Personnel & Administrative Reforms (Per. J) Dept., dated 10.06.1987.

4. To decide the issue, it would be apt to refer to the relevant Special Absorption Rules, 1987 and the same is extracted hereinbelow for better clarity:- "10. Seniority:- The seniority of a candidate appointed through Special Absorption in 1984, shall be fixed with reference to the date of first temporary appointment in the departmental unit in which he had been absorbed irrespective of whether he had been subsequently discharged for want of vacancies or appointed again through the Employment Exchange in that departmental unit, and not with reference to the date of first appointment in any other departmental unit where he had acted previously before his absorption in the particular departmental unit. He shall be ranked below the candidates selected by the Tamil Nadu Public Service Commission on the results of the competitive examination held in November, 1983 irrespective of the date of appointment of these candidates. If more than one candidate is appointed on the same day, their seniority shall be fixed with reference to the age as laid down in Sub Rule (a) of Rule 35 of the General Rules. The rule of reservation (General Rule 22) shall not apply to these candidates. Provided that if any person is appointed to the post of Junior Assistants/Typists/Steno-Typists in accordance with the Special Rules the seniority of such person shall be placed above the candidates appointed through Special Absorption in 1984. Provided also that if any of the persons appointed to the posts of Junior Assistant/Typists/Steno-Typists in accordance with the Special Absorption Rules, 1987 and whose services were regularised in one department on 25.6.84 and reallocated to a new department for want of vacancy through the Tamil Nadu Public Service Commission shall take his seniority in the new department from the date of temporary appointment in the department from where he was reallocated."

(Emphasis supplied)

5. From the above rules, it is unambiguously clear that those persons, who were appointed through the Tamil Nadu Public Service Commission by means of competitive examination held in the year 1983, are to be fitted above the persons, who were appointed on compassionate appointment, however subject to the cut-off date of 25.6.1984. Insofar as candidates appointed prior to 25.6.1984, i.e., before the appointment of candidates through the Special Rules, their seniority also to be fixed above the candidates appointed through the

Special Absorption.

6. It is the stand of the appellants that their seniority should be reckoned from the date of their initial appointment on compassionate grounds, which is clear from Rule 10 of the Special Absorption Rules, extracted above, and they are to be placed above the persons, who were recruited under the Special Rules.

7. This stand of the appellants is countered by the respondents stating that G.O. Ms. No.548, Personnel & Administrative Reforms (Per-J) Dept., dated 19.6.1987 would cover the case of fixation of seniority of the persons appointed through the different streams, be it compassionate appointment, through TNPSC or through the Special Rules. It is the contention of the respondents that initially without adhering to the Government Order issued in G.O. Ms. No.548 Personnel & Administrative Reforms (Per-J) Dept., dated 19.6.1987, seniority list was drawn, which, on being brought to the notice of the respondent authorities, revised seniority list was drawn in consonance with the above Government Order and communicated vide G.O. (D) No.81, Micro, Small and Medium Enterprises (E-II-I) Dept., dated 15.6.2012. Vide the said Government Order in G.O. (D) No.81, Micro, Small and Medium Enterprises (E-II-I) Dept., dated 15.6.2012, instruction for fixation of seniority was also given and in consonance thereof, the seniority list was drawn. The contention of the appellants that three decades have passed since the fixation of seniority is not correct and that the seniority has been time and again revised on certain discrepancies in the drawal of seniority being brought to the notice of the respondent authorities, the last of which was vide G.O. (D) No.81, Micro, Small and Medium Enterprises (E-II-I) Dept., dated 15.6.2012.

8. It is evident from the records that the impugned Government Order in G.O. (D) No.81, Micro, Small and Medium Enterprises (E-II-I) Dept., dated 15.6.2012 was issued in the year 2012 and as per the prayer of the petitioners in the writ petition, they want the combined seniority list issued on 28.01.2000 vide proceedings of the 2nd respondent in IC&DIC Proceedings No.166008/BB2/1993 to be restored. Therefore, it is evident from the prayer that the contention of the appellants that the seniority fixed more than three decades ago is sought to be revised is per se erroneous and cannot be countenanced.

9. Reckoning of seniority, as is extracted above, as is prescribed under Rule 10 of the Special Rules, clearly emphasise as to how the inter se seniority to be fixed between the various categories of persons. It further prescribes 25.6.1984 as the cut off date for reckoning the seniority of the individual. It is to be pointed out at this juncture that the said Government Order in G.O. Ms. No.548, Personnel & Administrative Reforms (Per-J) Dept., dated 10.06.1987 has not been challenged and it continues to hold the field till date.

10. Subsequent to G.O. Ms. No.548, Personnel & Administrative Reforms (Per-J) Dept., dated 10.06.1987, the Government, in G.O. (2D) No.250, Revenue Department dated 26.5.2009, had issued orders as to how seniority of

individuals appointed through various channels should be reckoned. For better clarity, the relevant portion of the counter dovetailing the same is extracted hereinbelow :- "7. It is submitted that in G.O. (2D) No.250, Revenue Department dated 26.05.2009, the Government had issued orders placing Tamil Nadu Public Service Commission recruits above candidates appointed under Special Absorption Rules, 1984 in the following sequence:-

(1) Candidates recruited and allotted by Tamil Nadu Public Service Commission after the conduct of Tamil Nadu Public Service Commission competitive examination 1983 candidates (as per Commission's seniority);

(2) Candidates appointed under Special Absorption Rules, as per G.O. (Ms.) No.996, Personnel & Administrative Reforms Dept., dated 22.09.1984;

(3) Candidates appointed after 25.06.1984 under various methods of recruitment/appointment, including recruitment by transfer of service on promotion and appointment made under compassionate grounds."

11. It is not the case of the appellants/petitioners that any challenge has been made either to the Government Order in G.O. Ms. No.548, Personnel & Administrative Reforms (Per-J) Dept., dated 10.06.1987, or the Government Order, in G.O. (2D) No.250, Revenue Department dated 26.5.2009. The above two Government Orders deal with the procedure to be followed in fixing the inter se seniority between the various groups of persons appointed. Such being the case, there is no rhyme or reason for the appellants to come before this Court and plead that the seniority as was fixed three decades ago should be followed, when such is not the factual position, which has been stated above.

12. Further, it is not out of record to mention that the appellants having not challenged either Government Order in G.O. Ms. No.548, Personnel & Administrative Reforms (Per-J) Dept., dated 10.06.1987, or the Government Order, in G.O. (2D) No.250, Revenue Department dated 26.5.2009, are estopped from making the claim for fixation of seniority as per the proceedings in IC&DIC Proceedings No.166008/BB2/1993 dated 28.01.2000, more so when the said proceedings has erroneously been drawn without adhering to the instructions of the Government issued vide G.O. Ms. No.548, Personnel & Administrative Reforms (Per-I) Dept., dated 10.06.1987. Learned single Judge, after thorough examination of the various Government Orders produced before the Court coupled with the cut-off date of 25.6.1984, having held that except for two petitioners, viz., respondents 5 and 6 herein, who have been appointed prior to the cut-off date of 25.6.1984, the other petitioners are not entitled to the relief sought for, they having been appointed much later to the cut-off date, the said order, in the considered view of this Court cannot be termed to be perverse and does not call for any interference at the hands of this Court.

13. In the light of the discussion made above, this Court finds no infirmity in the order passed by the learned single Judge and, accordingly, the writ appeal is dismissed confirming the order passed by the learned single Judge.

Consequently, connected miscellaneous petitions are closed. However, in the circumstances of the case, there shall be no order as to costs.