
(2011) 08 MAD CK 0456

In the Madras High Court

Case No : Writ Petition No. 21937 of 2009 and M.P. No's. 1 to 3 of 2009

Seema Scaria

APPELLANT

Vs

The Tamilnadu Public Service Commission

RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14(1), 14(2), 14(3)

Constitution of India, 1950 — Article 12, 309, 311, 311(1)

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 2(14), 5A

Citation : (2011) 08 MAD CK 0456

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : C.T. Murugappan, for the Appellant; C.N.G. Niraimathi for RR1 and 2, for the Respondent

Final Decision : Allowed

Judgement

The Honourable Mr. Justice K. Chandru

1. The Petitioner has filed the present writ petition seeking to challenge an order dated 22.10.2009 issued by the second Respondent and after setting aside the same seeks for a direction to select and appoint the Petitioner for the post of Accounts Officer, Class III in the Tamilnadu State Treasury and Accounts Services for the year 2007-08.

2. The writ petition was admitted on 26.10.2009. Pending the writ petition, this Court directed the Petitioner to attend the oral interview. But it was stated that such a direction will be subject to the result of the main writ petition. Further, a direction was also given in M.P. No. 1 of 2009 directing the Respondent TNPSC to keep one post of Accounts Officer in Class III kept vacant. In the application for interim stay, only notice was ordered. On notice from this Court, the Respondents have filed a counter affidavit, dated Nil (2010).

3. It is seen from the records that the Petitioner was working in the Bharat

Sanchar Nigam Limited (BSNL), (a Government of India owned company) as a Junior Accounts Officer. She joined as a trainee on 3.11.2003 and was granted appointment on 9.2.2004. She was also confirmed in the said post on 9.2.2006. The Petitioner on coming to know that the State Government is recruiting for the post of Accounts Officer Class III in the Tamilnadu State Treasury and Accounts Services, had applied for the said post and wrote the examination held on 3.5.2009. She was provisionally selected for attending the interview. She was one among the 23 candidates. The interview was to be held on 27.10.2009. Even before she could attend the interview, she had received the impugned communication stating that she was not qualified to apply for the said post in the light of Rule 2(14) of the Tamil Nadu State and Subordinate Service Rules, which reads as follows:

(14)A candidate is said to be "recruited direct" to a service, class, category or post when, in case his first appointment thereto has to be made in consultation with the Commission, on the date of its notification inviting applications for the recruitment and in any other case, at the time of his first appointment thereto, he is not in the service of the Government of India or the Government of a State-

Provided that for the purposes of this definition a person shall be deemed to be not in the service of the Government of India or the Government of a State

(i)If a period of five years has not elapsed since his first appointment to a service of the Government of India or the Government of a State; or

(ii)If he belongs to the Scheduled Castes, Scheduled Tribes or Backward Classes:

Therefore, she was informed that since she was working in the BSNL which is a Central Government undertaking and hence she was not eligible to attend the selection process. This fact was also indicated in the Commission's notification No. 182, dated 9.1.2009. Note No. 3 of Rule 5A of the notification reads as follows:

Notwithstanding anything contained in para 2 (d) of the "Instructions, etc. to candidates", persons who are in regular service under the Government of Tamil Nadu on 09.01.2009 may also apply even if a period of five years has elapsed since their first appointment under the Government of Tamil Nadu.

4. Paragraph 2(d) of the instructions referred to therein is a reproduction of Rule 2(14) of the Tamil Nadu State and Subordinate Service Rules. Therefore appointment with BSNL is considered to be a disqualification.

5. In the counter affidavit in justification of the stand that the BSNL is the department of Union Government, it was stated in paragraphs 8 and 9 as follows:

8....it is submitted that the B.S.N.L. (Bharat Sanchar Nigam Limited) though incorporation in the year 2000 was founded in the 19th century and was till the recent past, a department of the Union Government (viz. Department of Telecommunication) under the Ministry of Communications headed by a cabinet

Minister. Further, it is a state owned telecommunication enterprise (owned by the Government of India) and the policies of the enterprise are shaped and influenced by the Ministry of Communications, Government of India e.g. the auction and allocation of Second Generation (2 G) and Third Generation (3 G) spectrum to different service providers.

9....Hence, for all practical purposes, the services put in by the petitioner in BSNL in whose website the Government of India are referred to as "owner(s) of BSNL" vide [http://en.Wikipedia.org/wiki/Bharat Sanchar Nigam Limited](http://en.Wikipedia.org/wiki/Bharat_Sanchar_Nigam_Limited)), come under the services of the Union of India.

6. It was contended that it is for the State to frame appropriate rules and the court cannot decide the wisdom behind making the rules. In essence it was contended that the employment in BSNL will amount to a service under the Central Government. Therefore, by the statutory rules, the Petitioner was excluded from entering into the post for which she had applied and that she was disqualified from writing the examination.

7. It may be true that the BSNL being a wholly owned Government of India company can be a State or an instrumentality of the State under Article 12 of the Constitution. But that is not a decisive test to hold that an employment in a Government owned company is also an employment under the services of the Government of India. The test to be determined is whether a person is holding a "civil post" under the Government of India or under the Government of a State and whether it will be a service constituted under Article 309 read with Article 311 of the Constitution.

8. The Supreme Court vide its judgment in *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, has held that employment under government corporation or public sector units are not entitled for protection under Article 311 of the Constitution. The following passages found in paragraphs 12 to 14 of the said judgment may be usefully reproduced below:

12. As far as the status of the Appellant is concerned, it must be stated that Mr Rao, Senior Advocate fairly conceded at the hearing of the appeal and the writ petition that the Appellant is not governed by Article 311 of the Constitution since he cannot be said to be "civil servant". In this connection, it will be profitable to refer to a decision of the Constitution Bench of this Court in *S.L. Agarwal (Dr.) v. G.M., Hindustan Steel Ltd.*³(*Hindustan Steel Ltd. I*). In that case, A was appointed as Assistant Surgeon by the Board of Directors of the Corporation for one year. After completion of the probation period, he was employed on contract basis and his services were terminated in accordance with the terms of the contract. He filed a writ petition in the High Court contending that his services were wrongly terminated which was violative of Article 311 of the Constitution. The Corporation contended that Article 311 was not applicable to him as he was employed by the Corporation and he neither belonged to civil service of the Union nor held a civil post under the Union.

13. Upholding the objection and considering the ambit and scope of Article 311, this Court held that an employee of a Corporation cannot be said to have held a "civil post" and, therefore, not entitled to protection of Article 311. According to the Court, the Corporation could not be said to be a "department of the Government" and employees of such Corporation were not employees under the Union. The Corporation has an independent existence and the Appellant was not entitled to invoke Article 311. *Hindustan Steel Ltd. (I)*³ has been followed by this Court in several cases. (See *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* 4, *Som Prakash Rekhi v. Union of India* 5, *A.L. Kalra v. Project & Equipment Corpn. of India Ltd.*⁶, *Tekraj Vasandi v. Union of India* 7, *Pyare Lal Sharma v. Managing Director* 8, *State Bank of India v. S. Vijaya Kumar* 9 and *Satinder Singh Arora v. State Bank of Patiala* 10.)

14. In view of the above pronouncements of this Court, there is no doubt that the Respondent Corporation is right in submitting that the Appellant cannot invoke Article 311 by describing him as holding "civil post" under the Union or a State. Article 311 of the Constitution, therefore, has no application to the facts of the case.

9. Even the employees of the statutory authorities are not protected under Article 311 as held by the Supreme Court in *Indu Shekhar Singh and Others Vs. State of U.P. and Others*, . The following passage found in paragraph 39 reads as follows:

"9... The statutory authorities, it is trite, are not and cannot be treated to be the departments of the Government. Their employees are governed by the rules applicable to them. Their services are not protected under Article 311 of the Constitution.

10. The same view was taken in *Rajasthan SRTC v. Gurudas Singh* reported in (2004) 13 SCC 418. The following passages found in paragraphs 6 to 10 may be usefully extracted below:

6. The foundation of the declaration for grant of relief so far as the Respondent is concerned is apparently founded on Article 311 of the Constitution. Sub-article (1) of Article 311 reads as follows: "311. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

7. A bare reading of the aforesaid provision in the Constitution shows that it is applicable only to a member of civil service or the Union or all-India service or civil service of a State or a person holding civil post under the Union or a State.

8. For the purpose of Article 12 the Corporation may be treated as an "authority" for the purpose of being subject to Part III of the Constitution.

9. In *Som Prakash Rekhi v. Union of India* 1 this Court categorically observed that *Bharat Petroleum Corporation Ltd.* was a limb of Government, an agency of

the State, a vicarious creature of the statute working on the wheels of the Acquisition Act. It was however held that the conclusion does not mean that for the purpose of Article 309 or otherwise, the aforesaid government company is a State and it was limited to Article 12 and Part III of the Constitution.

10. Judged in the light of the decisions of the two Constitution Bench decisions referred to above, the inevitable conclusion is that the Respondent was not entitled to protection under Article 311 of the Constitution. Article 311 occurs in Part XIV of the Constitution which deals with "Services under the Union and the States" and more specifically in Chapter I of that part which deals with "Services". The heading of the article reads "Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or State". The text of the article refers to members of civil services of the Union or an all-India service or a civil service or a civil post under the Union or a State. A Constitution Bench of this Court in *S.L. Agarwal (Dr.) v. G.M., Hindustan Steel Ltd.*² considered as to who are the persons entitled to the protection of Article 311. In *State of Assam v. Kanak Chandra Dutta*³ also applicable tests were indicated by a Constitution Bench.

Therefore, in the light of the above judgments of the Supreme Court, it can be certainly held that an employee of the BSNL is not under a service of the Central Government.

11. This issue can be looked into a different angle. When the Administrative Tribunals Act was enacted in the year 1985, provided for the administrative tribunals to deal with service matters of Government servants. u/s 14(1), service matters of the Central Government servant was directed to be heard by the Central Administrative Tribunals. All matters pending in the High Court relating to such issues were directed to be transferred to the Central Administrative Tribunal. Under Sections 14(2) and (3), the Central Government has power to notify any other employees working in any other local bodies or any Corporation to be covered by the provisions of the Administrative Tribunals Act. The Central Government by a notification u/s 14(3), dated 10.11.2008 brought the employment under the BSNL within the purview of the Central Administrative Tribunal. This will make it clear that the employees of the BSNL are not covered by Section 14(1) for the purpose of going before the Central Administrative Tribunal and only by the notification u/s 14(3), their employments were brought within the purview of the Administrative Tribunals Act. This is an additional fact to hold that the employees of the BSNL are not employees of the Central Government and they are not holding any civil post which alone can be excluded u/s 2(14) of the Tamil Nadu State and Subordinate Service Rules referred to above.

12. In view of the above, the impugned order of the Respondents stand set aside. The writ petition will stand allowed. Since the Petitioner has already come out successful in the selection process and also attended the interview by the directions of this Court and also that a post has been kept vacant pending result

in the writ petition, the Respondents are directed to pass an appropriate order and publish the result of the Petitioner. In case, if she comes out successful, the Respondents are directed to give appointment to the Petitioner in the post of Accounts Officer, Class III in the Tamil Nadu State Treasury and Accounts Services for the year 2007-08. No costs. Consequently connected miscellaneous petitions stand closed.