
(2011) 01 MAD CK 0281

In the Madras High Court

Case No : Writ Petition No. 24277 of 2010

S.M. Deenadayalan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0281

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : S. Viswanathan, for J. Rajmohan, for the Appellant; T.R. Senthilkumar, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—The Petitioner has filed the present writ petition seeking a Mandamus, directing the Respondents to consider the application of the Petitioner dated 22.04.2010, for appointment as Senior Standing Counsel for handling of Indirect Taxation cases before the Hon'ble High Court, Madras, as per the merit list recommended by the Fifth Respondent Committee dated 15.02.2008, without conducting a fresh evaluation procedure.

2. In pursuance to a letter sent by the Respondents the Additional Commissioner of Customs, Chief Commissioner's Office, Customs House, Chennai, to the Madras High Court Bar Association requesting to sponsor the names of the eligible advocates for selection of Senior/Junior Standing Counsels for the Post of Senior Standing Counsels and Post of Junior Standing Counsels to represent the cases relating to Indirect Taxation before the Hon'ble High Courts/Other Judicial Bodies, sufficient number of candidates were not forwarded. Therefore, an advertisement was given in the leading newspapers on 10.01.2008 and on 11.01.2008 calling for eligible candidates to apply for the Post of Senior Standing Counsels and Post of Junior Standing Counsels to represent the cases relating to Indirect Taxation before the Hon'ble High Courts.

3. In response to the said advertisement, 85 applications were received and out of the 85 candidates, 66 candidates were short-listed for personal interview. Finally, the Selection Committee selected 9 Senior Standing Counsel and 5 Junior Standing Counsel along with 3 Additional names for Senior Standing Counsels and Junior Standing Counsels respectively in the waiting list. Thereafter, the same was also forwarded by the 5th Respondent, The Chief Commissioner of Customs & Excise Chairman of the Committee constituted for the Selection of Senior/Junior Central Government Standing Counsel to appear in High Court, Chennai to the 3rd Respondent, The Member, Board of Revenue (Law & Justice) on 15.02.2008, recommending the said names to the Board for appointment of Senior and Junior Standing Counsels for indirect taxes in Chennai. Out of the 9 candidates for the post of Senior Standing Counsels in the order of merit, the Petitioner's name figured as No. 3 in the order of merit.

4. Thereafter at the time of finalising the list, the Petitioner's name alone was not considered for the post of Senior Standing Counsel. Having seen that his name was not found in the list of selected candidates, the Petitioner has come forward to challenge the order dated 06.11.2008 issued by the 3rd Respondent as arbitrary, unreasonable and violative of the established procedure for selection of Standing Counsels.

5. The learned Counsel appearing for the Petitioner while assailing the impugned order has submitted that the Respondents on their own came forward to fill up the vacancies caused in the panel constituted and to meet out the enormous workload of cases and after notifying the requisite number of qualified candidates who are having a considerable standing in the bar to the post of Senior as well as Junior Standing Counsels to handle the taxation matters, the Petitioner was found one of the meritorious candidates by them in as much as when the Petitioner after complying all the necessary formalities, participated in the interview and he was also considered by the Board as one of the meritorious candidates since he is already serving as a Special Public Prosecutor in the High Court. Moreover, the record shows that the Petitioner's name was recommended by the Chief Commissioner of Customs & Excise for the panel. But even after the recommendation made by the Chief Commissioner of Customs & Excise, for empanelment, the Board had not appointed the Petitioner for the said post for which he was selected by the Selection Committee. Thereafter, the Petitioner also sent letters to the Hon'ble Finance Minister, New Delhi, chairman, Central Board of Excise and Customs, new Delhi and Chief Commissioner of Customs, Chennai to consider his name in the vacant post specifically mentioning that if for any reason, the Respondents are of the view that the Petitioner's holding the post of Special Public Prosecutor is in any manner going to be a stumbling block, he offered to resign his post from the post of Special Public Prosecutor with a condition that he should be given appointment as Senior Standing Counsel for the Customs and Central Excise Department as found in the Selection List No. 3.

6. Ironically, even thereafter, he has not received any communication. Therefore,

it was further contended that when the Petitioner was finally found selected and he was also shown as a successful candidate in the selection list at No. 3 in the order of merit, the Respondents cannot arbitrarily decline to post the Petitioner to the post of Senior Standing Counsel. On that basis the learned Counsel appearing for the Petitioner sought for Writ of Mandamus to be issued directing the Respondents to consider the application of the Petitioner dated 22.04.2010, for appointment as Senior Standing Counsel for handling of Indirect Taxation cases before the Hon''ble High Court, Madras, as per the merit list recommended by the Fifth Respondent Committee dated 15.02.2008, without conducting a fresh evaluation procedure.

7. Counter was also filed. A close perusal of the counter affidavit does not indicate any other disqualification against the candidature of the Petitioner except saying that when the selection list was prepared, the name of the Petitioner did not figure as he is also holding the post of Special Public Prosecutor.

8. The stand taken by the Respondents for not appointing the Petitioner to the post of Senior Standing Counsel is absolutely un-sustainable for the reason that the very selection process clearly indicates that the Respondents wanted an experienced and distinguished lawyer to handle the tax matters in the High Court and other legal bodies. When the Petitioner at the time of applying for the post of Senior Standing Counsel was holding the post of Special Public Prosecutor, the notification never mentioned that the person who is holding any other post like the Special Public Prosecutor would be disqualified for being selected to the said post. When the notification at the time of calling for suitable candidate for the said post has not specifically mentioned for any disqualification, then it will be too late for the Respondents to deny the benefit of appointing to the said post, that too, after the Petitioner's name was selected successfully, by the Respondents.

9. Even in my considered view, the Petitioner has been holding the post of Special Public Prosecutor in the High Court which shows that he is more qualified and more meritorious than any other candidates selected by them. It was further brought to the notice of this Court that from paragraph 11 of the counter, the Ministry in their letter dated 09.03.2010 had specifically mentioned that "the advocates whose name were not considered earlier may apply afresh". It shows that the Petitioner has to apply afresh for consideration as per the Ministry's direction. But this in anyway cannot disqualify the Petitioner when he was already found Selected by the selection Committee. When the list prepared by the Selection Committee clearly shows the name of the Petitioner in Serial No. 3 in the order of merit, I find no justification at all to withhold his appointment.

10. Therefore, I am of the considered opinion that the prayer of the Petitioner has to be allowed by directing the Respondents to appoint him as Senior Standing Counsel as per the merit list. Accordingly, this Court directs to issue the Writ of Mandamus directing the Respondents to appoint the Petitioner as Senior Standing Counsel, as he was already found selected as shown in Serial No. 3 in

the list prepared by the 5th Respondent forthwith.

11. Accordingly, the writ petition is allowed. No costs.