(1999) 02 SC CK 0041

In the Supreme Court Of India

Case No : C.A. No. 1454 of 1987 with S.L.P. (C) No. 9189/87, 9114/87 and 12013/87

State of Tamil Nadu APPELLANT

Vs

S. Sunderaraj and Others RESPONDENT

Date of Decision : 10-02-1999

Acts Referred:

Citation : (1999) AIRSCW 4758 : (1999) 4 SCALE 416

Hon'ble Judges : R. C. Lahoti, J;M. Srinivasan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. In Civil Appeal No. 1454/87

2. This is an unfortunate litigation in which the dispute relating to seniority of persons who were appointed as Assistant Commercial Tax Officers as early as in 1972, 1973 and 1974 is yet to be resolved. It is not necessary to repeat all the facts which led to the litigation. Suffice it to say that the provisional seniority list published by the State Government in 1985 was the immediate cause of action of the present litigation. The petitioners before the High Court Challenged the said seniority list and claimed that the relevant rules for fixing the seniority had not been followed by the State Government in drafting the provisional seniority list. The High Court has considered the matter in detail and struck off the said provisional seniority list. The High Court laid down certain guidelines for drafting the seniority list. They are as follows :

1) Each year should be taken as a Unit for fixing the inter se seniority.

2) Persons not actually appointed in the year 1966 should not be included in 1966 year's list and that seniority should be determined with reference to the date of their joining as Joint Commercial Tax Officer, and

3) The date on which an Officer commences probation is the proper criterion for

fixing the inter se seniority.

4) If there are vacancies out of the required reservations of 40% in the permanent cadre of A.C.T.Os. for direct recruits, any appointment made either by transfer or by promotion cannot be utilised to fill up those vacancies. Such appointment being of a temporary character, whenever direct recruits are appointed through Public Service Commission, they being holders of permanent posts by direct recruitment, they have a right to be appointed to whatever posts that are taken out of the 40% posts reserved for direct recruitment.

2. The High Court ordered at the end of the judgment that on the basis of the earlier guide-lines set out in the judgment, the Assistant Commercial Tax Officers bearing S.Nos. 129-519 in the impugned seniority list could be placed above the writ petitioners who were direct recruits in inter se seniority list only if they had held the post substantively within the permanent cadre strength allotted to the particular category even before the writ petitioners commenced their probation.

3. In these appeals by the State Government, there is no quarrel regard to the guide-lines 1 to 4 quoted above. The dispute raised by the State government is with reference to the last direction given by the High Court with regard to the Assistant Commercial Tax Officers bearing S. Nos. 129 to 519 in the impugned seniority list. Specific objection is taken against the use of the expression "permanent cadre strength". It is contended that the cadre consists not only permanent posts but also temporary posts. It is argued by the learned counsel for the State Government that as regards the direct recruits, they were recruited only for permanent posts but with regard to the transferees from other services, they were appointed not only to permanent posts but also to temporary posts. It is the contention of the learned counsel that all these persons who are holding the temporary posts prior to the appointment of the writ petitioners should also to considered for the purpose of fixing the seniority and they should not be omitted out of consideration. Learned counsel for the State contended that temporary appointment to permanent post is different from regular appointment to a temporary post.

4. The argument is attractive. But in the records made available in this Court or in the High Court, there is nothing to show that the cadre strength was fixed by the Government in any particular year to comprise not only permanent posts but also temporary posts. The relevant discussion found in the judgment of the High Court on this aspect of the matter shows that the State Government did not place any record before the High Court to disprove the contention on behalf of the writ petitioners that the transferee appointees were appointed only under Rule 10(a)(1) or 39(a) of the General Rules. Those two Rules relate to temporary stop gap arrangements which can be made in cases of emergency. They are intended to meet an immediate necessity so that the administration may not suffer and in such cases, the appointments are not made in accordance with the Rules but they are made de hors the Rules. it is well settled and not in dispute that neither of the Rules confers any right on the appointee to claim seniority

over others who were regularly appointed though later in accordance with the relevant Rules.

5. The High Court has, in this connection, observed as follows :

Even though Mr. Peter Francis, learned counsel for the Petitioners argued that the transferee A.C.T.Os, who had been appointed over and above their quota must have been appointed either under Rule 10(a)(i) or 39(a) of the General Rules, we find that as the transferee were from the services of the Ministerial Service to a Subordinate Service, they should have been appointed only under the Rule 10(a)(1). This doubt has not been cleared on the side of the respondents as well. But that will not make any difference as the substance of Rule 10 and Rule 39 of the General Rules is the same, in the sense, the former applies to temporary appointment and the latter to temporary promotion. In view of the above, any appointment made, though all persons eligible or qualified by way of transfer in excess of their respective quota, would be otherwise than in accordance with the Rules.

6. Again the High Court has pointed out that the transferees, who could not be accommodated in the quota reserved for them, could not claim seniority over direct recruits as and when such direct recruits are to replace them. After referring to the judgment of this Court in P.S. Mahal and Others Vs. Union of India (UOI) and Others, , the High Court observed that those officers who were temporarily promoted by transfer will have to step down as and when regular appointments by direct recruitment are made.

7. In this case, a tabular statement was placed before the High Court which is found in paragraph 4 of the judgment. It is evident from the said tabular statement that at the relevant time 40% of the substantive vacancies in the category of Assistant Commercial Tax Officers shall be filled in by direct recruitment. Out of the remaining 60%, 50% of substantive vacancies shall be filled in by confirmation of persons recruited by transfer from among the Assistants and Gujarathi knowing Assistants employed in the Commercial Taxes Department and 10% of substantive vacancies shall be filled in by transfer from among the Assistants and Superintendents working in the Sales Tax Appellate Tribunal, Assistants and Superintendents working in the Commercial Taxes Branch of the Board of Revenue and Assistants who have dealt with or dealing with the subject 'Commercial Taxes' in the Revenue Commercial Taxes and Religious Endowments Department of Secretariat.

8. One significant aspect is that in the tabular statement, reference is expressly made to "substantive vacancies". That indicates that what is referred to applies to permanent posts which are substantive posts and the vacancies thereto are substantive vacancies. As stated earlier, learned counsel has not produced before us any material to show that the cadre comprises both permanent and temporary posts. We have no reasons to differ from the view taken by the High Court. A chart has been produced before us by the learned counsel for the State

Government to show the cadre strength of Assistant Commercial Tax Officers in Commercial Taxes Department, Tamil Nadu from the year 1972 to 1997. In all those years there were 271 permanent posts. As against that in 1972, 422 posts are shown to be temporary and the total is 693. In 1997, 1080 posts are shown as temporary and the total is 1351. Significantly, no figures are given for the years 1973 and 1974 which are relevant in the present case. There is no reference whatsoever in the tabular statement to any G.O. or any other Rule which fixed the cadre strength as shown in the tabular statement. If there was such increase in the cadre strength from year to year there should have been different G.Os fixing such cadre strength. No such order had been produced before the High Court. As rightly contended by learned counsel for the respondents temporary appointment will not by themselves increase the cadre strength fixed already. We cannot act upon the tabular statement and proceed on the footing that the cadre consisted of both temporary and permanent posts. It should also be noted that the appellant has not produced even one order of appointment to temporary post by transfer from other service.

9. Learned counsel for the appellants has contended that the appointments by transfer did not exceed their quota of 60% and that they never intruded upon the quota of 40% intended for direct recruits. If the tabular statement in para 4 of the judgment under appeal is read in conjunction with hat is set out in paragraph 23 of the said judgment there is no doubt whatever that the High Court is right in using the expression 'permanent cadre strength'. It is only in relation to permanent posts in the cadre the seniority has to be fixed as there is no record in relation to the alleged temporary posts being within the cadre. It is advantageous to quota para 23 of the judgment of the High Court which reads as follows :

In the light of the discussion, the impugned seniority list of A.C.T.Os. has to be revised. It is seen from S.Nos. 129 to 519, the placements are given to transferee A.C.T.Os. belonging to either 50% reserved category. It follows from the principles now formulated that the A.C.T.Os. bearing S.Nos. 129 to 519 in the impugned seniority list can be placed above the petitioners in inter se seniority list only if they had held the post substantively within the permanent cadre strength allotted to the particular category even before the petitioners commenced their probation. Such of those who do not comply with the above requirement must be placed below the petitioners in the inter se seniority list.

10. We are entirely in agreement with the above view. There is no merit in the appeal. It is accordingly dismissed. No costs.

3. In SLP (C) No. 9189 of 1987

11. This petition is filed by one of the transferees/promotes and the arguments advanced on behalf of the petitioner are the same as those advanced by learned counsel for the State Government in Civil Appeal No. 1454 of 1987. No other material has been placed before us by the petitioner. Even the order of

appointment of the petitioner has not been placed before us to show that such appointment was made as regular appointment though to temporary post. There is no merit in this petition. The SLP is dismissed.

4. In SLP (C) No. 9114/87

12. This petition is filed by the State Government against another order passed by the High Court which followed the order passed in the earlier matter considered in Civil Appeal No. 1454/87. In view of the dismissal of Civil Appeal No. 1454/87, this SLP is dismissed.

5. In SLP (C) No. 12013/87

13. On request of learned counsel for both sides, thus SLP is taken on board along with the above matters, This is filed by two of the transferees/promotes. The contentions which are urged in the other matters are put forward in this petition also. there is no merit in this petition. The SLP is dismissed.

