

(2011) 03 MAD CK 0136

In the Madras High Court

Case No : Writ Petition No"s. 29664 to 29666 and 28964 to 28966 of 2010, 1490 to 1494 of 2011 and M.P. No"s. 1 to 1 of 2010 and 1 to 1 of 2011

Su. Gangaatharan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 10

Citation : (2011) 03 MAD CK 0136

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Venkatachalapathy, SC for M. Sriram, for the Appellant; S. Sivashanmugam, G.A., for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard Mr. Venkatachalapathy, learned Senior Counsel for Mr. M. Sriram appearing for the Petitioner and Mr. S.

Sivashanmugam, learned Government Advocate appearing for the Respondents.

2. The Petitioners herein are working in Public Works Department. The present writ petitions are filed seeking direction to the Respondents to fix

the seniority of the Petitioners from the date of original appointment made during 1984 without reference to the serial number assigned by Tamil

Nadu Public Service Commission.

3. The case of the Petitioners were that they were graduate in Engineering and they were joined as Assistant Engineer in Public Works Department

during 1984 under 10(a)(i) of Tamil Nadu State and Subordinate Service Rules. The post of Assistant Engineer will have to be filled up either by

direct recruitment or by transfer from other posts belonging to the Tamil Nadu Engineer Service and the method of direct recruitment is by calling

the applications by the Head of the department through employment exchange as well as TNPSC. Vacancies notified by the Public Works

Department were not filled up then and there and there was no direct recruitment from 1983 to 1986 for the said post. Though the Petitioners

were appointed under Rule 10(a)(i), they were holding regular post with substantial capacity. Hence, the Petitioners' services were sought to be

regularised through TNPSC by direct recruitment under the Tamil Nadu Engineering Service. Thereafter, their services were regularised and by the

order of TNPSC, they were deemed to have been appointed during 1984 to 1986. The Service Commission after selection, had assigned seniority

and they were given posting order prescribing the period of probation for holding the regular post of Assistant Engineer. Subsequently, they were

completed their probation period and they became permanent member of the Service Commission. Thereafter, during 2004, by G.O. Ms. No.

423, Public Works (A1) Department, dated 29.7.2004, they were further promoted to the post of Assistant Executive Engineers. During this

period, the Petitioners never questioned their regular appointment in the post of Assistant Engineer made by TNPSC in the year 1986. Though it is

claimed that their association has made representation for regularisation from the date of initial appointment, it is clear that the Government has

passed any order in this regard. Though the Petitioners have been working in the regular post of Assistant Engineer on the basis of seniority

assigned by TNPSC, they woke up after 24 years and have come forward with the present writ petitions seeking direction to the Respondents to

regularise their services with retrospective effect from the date of their initial appointment made under Rule 10(a)(i) of General Rules.

4. It is fairly submitted that none of the Petitioners has made representation individually. Mr. Venkatachalapathy, learned senior counsel for the

Petitioners contended that there is no bar in the Government appointment then to regularise the service from the date of original entry as there was

no direct recruitment for the said post during 1983 to 1986 and the Petitioners having been appointed through proper channel, have been holding

the regular post with substantive capacity. Even the subsequent proceeding of the Service Commission on the question of adhoc appointment will

not apply to the case of the Petitioners. In this context, the learned senior counsel placed reliance on the judgment of the Supreme Court reported

in *R. Hariharan and Others Vs. K. Balachandran Nair and Others*, for the purpose of showing that adhoc appointment followed by regularisation

and if a person appointed is acquiring necessary qualifications, there is no impediment to regularise his service from the date of joining and if any

regularisation is made, it will be in accordance with Kerala Public Service Commission (Additional Functions) Act.

5. The learned Senior counsel has referred to the judgment of the Supreme Court in *Pawan Pratap Singh and Ors. v. Reevan Singh and Ors.*

reported in CDJ 2011 SC 119 for contending that seniority can be granted from back date and if it is based on valid qualification, there is no

irregularity on the same and however, no seniority can be reckoned from the date of occurrence of vacancy and if it is direct recruitment, who

cannot claim from the date of occurrence of a vacancy and can claim seniority from the date of his regular appointment. Therefore, taking

inspiration of the same, the learned senior counsel for the Petitioner submitted that the Petitioners have been appointed during 1984 and

discharging their functions and there was no direct recruitment during the said period and hence, their demand was justified.

6. The learned senior counsel for the Petitioners has also referred to the judgment of the Supreme Court in *S. Sumnyan and Others Vs. Limi Niri*

and Others, for the purpose of contending that the date of appointment can be made as the date of regularization and regularisation of the services

of a person, whose initial appointment although not in accordance with the prescribed procedure, but later on approved by an authority having

power and jurisdiction to do so, would always relate back to the dates of their initial appointment. In this context, the learned senior counsel

appearing for the Petitioners seeks appropriate direction to the Respondents.

7. However, Mr. S. Sivashanmugham, learned Government Advocate appearing for the Respondents submits that no seniority can be fixed dehors

the statutory Rules. He referring to Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules, contended that once the recruitment is

made and position is assigned by TNPSC, the same cannot be altered and the alteration if any, will be made following the rules. The learned

Government Advocate also referring to Rule 35(aa) of the same Rules, stated that it is applicable only for the purpose of fixing inter-se-seniority,

where the recruitment is by more than one method of recruitment. In this context, the question of considering the case of the Petitioners will not arise.

8. It is relevant to extract Rules 35 (a) and 35(f) of the Tamil Nadu State and Subordinate Service Rules, which read as follows:

35(a) The seniority of a person in a service, class or category or grade shall unless he has been reduced to a lower rank as a punishment be

determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other

Appointing Authority, as the case may be, subject to the rule of reservation where it applies. The date of commencement of his probation shall be

the date on which he joins duty irrespective of his seniority.

35(f) Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within

a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of

order fixing the seniority, as the case may be. Any application received after the said period of three years, shall be summarily rejected. This shall

not, however, be applicable to cases of rectifying orders, resulting from mistake of facts.

After referring to the above said rules, the learned Government Advocate also contended that the Petitioners cannot seek direction after 24 years

and their claim is clearly barred by limitation as prescribed under the relevant rules. It is further contended by him that the case of the Petitioners

cannot be considered and the same can be rejected on the question of latches. In this context, even in the judgment reported in S. Sumnyan and

Others Vs. Limi Niri and Others, cited by the learned senior counsel for the Petitioner, the Supreme Court at para 37 and 38 has observed as

follows:

37. It is, thus, clearly established that Respondent 1 was inducted into government service by a separate mode of recruitment than that of the

Appellants and therefore, their cases cannot be equated. The statement of the Government of Arunachal Pradesh that the provisional seniority lists

were regularly published by the Public Works Department Secretariat from time to time since 1990 to 1999, with ample time being given to the

incumbents to reply against any anomaly in the seniority list and that Respondent 1 never submitted any representation in that regard is not

disputed. Respondent 1, therefore had challenged the established seniority position after about 10 years and that too without challenging the basic

and the fundamental orders of giving the Appellants the benefit of regularized service from their initial date of appointment as Assistant Engineers.

38. The challenge appears to us to be belated and in the regard we would endorse the same view as expressed by this Court in L. Chandrakishore

Singh v. State of Manipur which is extracted herein below: (SCC p. 303, para 15)

15. It is now well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is

shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service

for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is

approved after on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and

the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard, we fortify our

view by the judgment of this Court in G.P. Doval v. Govt. of U.P.

9. Regarding the question of regular appointment as pleaded by the learned senior counsel, in the very same judgment referred to above, the

Supreme Court referring the earlier judgment in K. Madalaimuthu case, relating to the issue of recruitment under Rule 10(a)(i)(1), held at para 40

and 41 as follows:

40. The aforesaid decision was rendered in a fact situation which is altogether different from the present one and this would be apparent on a bare

perusal of the said decision. In K. Madalaimuthu Case the recruitment of the Respondents therein was admittedly dehors the relevant recruitment

rules inasmuch as the said recruitment was particularly made under Rule 10(a)(i)(1) of the Tamil Nadu State and Subordinate Services Rules,

1955. The said provision is extracted herein below for a proper appreciation of the situation:

10(a)(i)(1). Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with the said Rules.

41. It is clear from the judgment in K. Madalaimuthu case, that the Respondents therein had been appointed under Rule 10(a)(i)(1) which provides for recruitment's in emergent circumstances and allows the appointing authority to make appointments otherwise than in accordance with the said Rules. It was in this context that this Court held that the Respondents therein will get benefit of their seniority only from the date they were regularised in the cadre to which they had been appointed.

Therefore, the contention of the Petitioners that it is regular appointment cannot be countenanced by this Court. In respect of very same State

Service, the Supreme Court had an occasion to consider the claim of seniority made belatedly in the judgment in M.P. Palanisamy and Others Vs.

A. Krishnan and Others, . In that case, the Supreme Court held that the claim of seniority made even after 6 years is belated one and the same is hit by delay and latches and the revival should be declined by the court.

10. In the circumstances that the petitioners having kept the issue alive by moving at appropriate stage, have made an attempt for revival after two decades, in the absence of any legal claim in their favour, this court is not inclined to entertain the writ petitions. Hence, the writ petitions stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.