
(1996) 09 MAD CK 0080
In the Madras High Court

Suthanthiramurthy and Others

APPELLANT

Vs

The Secretary to Government, Environment and Forest
Department and Ex-Officio, Chairman, Tamil Nadu Forest
Plantation Corporation Ltd. and Others

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

Citation : (1997) 1 MLJ 403

Hon'ble Judges : S.M. Abdul Wahab, J

Bench : Single Bench

Judgement

S.M. Abdul Wahab, J.—The writ petition is for certiorarified mandamus for quashing the order of the second respondent in Ref. No.

12589/84/B1 dated 26.3.1985 and Ref. No. 12589/84/E dated 6.5.1986 and to direct the second respondent to consider the claim of the

petitioners for promotion as superintendents on the basis of their seniority in the feeder category or length of their service.

2. The case of the petitioners are as follows:- The petitioners were working as assistants in the service of the first respondents. Their services were

lent to the second respondent corporation. The petitioners as well as the respondents 3 to 10 were temporarily promoted as assistants and junior

accountants. After the said temporary promotion, the Board passed a resolution on 22.6.1982 to prescribe Account Test, Departmental Test etc.,

as a pre-requisite qualifications for the purpose of promotion as Assistants and Junior Accountants. Since the petitioners and respondents 3 to 10

were already promoted, time was given to them for passing the tests before 31.12.1984. Respondents 3 to 10 have passed the tests, but the

petitioners failed to pass the tests before 31.12.1984. On 26.8.1985 time limit

was extended for acquiring additional qualification upto

31.12.1985. The petitioners acquired the qualifications before 31.12.1985. On 6.5.1985 the second respondent regularised the service of the

petitioners and the respondents 3 to 10. While doing so, he placed the petitioners below respondents 3 to 10. The petitioners joined the service of

the second respondent long before the respondents 3 to 10. In the meeting on 15.3.1985, the Corporation passed a resolution to the effect that the

assistants who had requisite qualification before the relevant date were regularised by the Managing Director and the seniority of these assistance

to be fixed in accordance with the combined seniority of individuals in the feeder category. However, with reference to the petitioners, seniority of

the feeder category was totally ignored.

3. Petitioners also complain about the failure of the corporation to follow the ratio 4:1 in giving promotion, to the junior assistants and typists and

steno-typists. The petitioners represented to the Chairman on 15.3.1989 for refixing the seniority again and a representation was made to the

Managing Director on 13.9.1990. The failure on the part of the first respondent to refix the seniority of the petitioners inspite of the representation

is illegal and arbitrary. Since further delay would result in loss and hardship, they have chosen to move this Court. The seniority in their service must

be based on the length of service. It cannot depend upon the acquiring qualifications. The second respondent is yet to prepare a panel of assistants

for promotion as Superintendents. The petitioners apprehend they would be excluded in such panel. Hence, their case must be dealt with

emergently.

4. A common counter-affidavit has been filed by respondents 1 and 2. It is stated that in the formative stage, the second respondent corporation

had no rules or regulations governing promotion. The writ petitioners and respondents 3 to 10 were promoted as assistants on temporary basis.

On 25.6.1984 the Board passed a resolution prescribing qualification for assistants. They were given time upto 31.12.1984; respondents 3 to 10

qualified before that date. In the 63rd Board meeting the Board resolved that the temporary assistants who were not qualified themselves would

have been reverted but taking a sympathetic view granted conditional extension of time upto 31.12.1985. A specific condition was imposed that

they will have to take the seniority after those were fully qualified before 31.12.1985. In view of the above resolution, the order of the Managing

Director dated 26.3.1985 was passed. In the said proceedings the seniority was fixed taking into account the conditions imposed supra. The writ

petitioners cannot maintain this writ petition. The impugned order was passed five years back. One K. Periyiah, the third respondent had earned

another promotion as Superintendent from September, 1989. The allegations that the ratio 4:1 was not followed is incorrect. Therefore, the writ

petition deserves to be dismissed.

5. Respondents 4 to 6 have filed their counter-affidavit individually. The impugned order was passed on 26.3.1985 and on 6.5.1986. The

petitioners have waited for more than five years which lapse cannot be excused. Further the third respondent was promoted as factory assistant by

order dated 16.9.1986. He has also been promoted as Superintendent on 7.11.1989. The third respondent is seniority to all the petitioners even in

the feeder category. The writ petition has to be dismissed on the ground of laches. Rule 57 of the Tamil Nadu Forest Plantation Corporation Staff

Regulation provides for an appeal within two months. The said remedy has not been availed of. The extension was granted only in favour of the

petitioners. Therefore they cannot complain about the promotion given to the third respondent and others. The ratio has been maintained. The third

respondent has denied the allegations referring to the various allegations contained in the affidavit filed in support of the writ petition and prays the

writ petition to be dismissed. Similarly, respondents 5 and 6 have also reiterated the allegations contained in the counter-affidavit of the third

respondent. The fifth respondent was promoted as factory accountant from the post of Junior Accountants, on 7.11.1989. He was waiting for next

promotion as superintendent. While so, the writ petition was filed and injunction was obtained. The date of appointment in the feeder category of

the first respondent is 13.12.1974. While so, the date of appointment of the petitioners 1,2 and 4 were after the said date. The sixth respondent

has also stated about the laches in filing the writ petition, while he was waiting for promotion, the writ petition has been filed and interim orders

have been obtained. This respondent acquired qualification prescribed before 31.12.1984. It is not correct to state that the petitioners are senior to

the respondents 3 to 10. Since the 6th respondent and other respondents have passed the tests earlier, the Board was justified in regularising them and placing them above.

6. Learned Counsel for the petitioners contended that after extending the time for passing the tests there was no justification for imposing the condition. Since the petitioners have also passed the tests within the extended time of 31.12.85, the principle of earlier seniority in the feeder category must be adopted in the Assistant Cadre also. He has also contended that new qualifications have been prescribed only after giving promotions to the respondents 3 to 10. Therefore, any condition imposed can affect the future promotion to the next category.

7. Learned Counsel for the Corporation produced the extracts of the two resolutions. In the resolution dated 26.2.1982 there is no indication that in case of failure to pass the test before the end of 1984, the candidates who failed to pass would be penalised by way of placing them in lower ranks in the seniority list. The relevant portion is ""it was further decided that those hands who have already been temporarily promoted as assistants and Junior Assistants should pass the test before the end of 1984. It was further decided that no hand should be recruited directly as Assistant and for future recruitment to the post of Junior Assistant, Typewriting qualification be added."" In the absence of any indication that the failure to pass the tests would result in a disadvantage it will not be viewed as a serious one. Only in the second resolution dated 15.3.1985 it is stated that ""Their services will be regularised as and when they acquire the full qualification and they will take their place next below the persons who have acquired all the qualifications before 31.12.1984."" As stated above, if there was any indication in the earlier resolution that a penal consequence would follow for failure to pass the test, it would tantamount to a notice by implication to the petitioners. But in the absence of any indication a penalty imposed for their past conduct of not passing the test, it is in effect punishing a person without putting him on notice-. Natural justice demands that whenever a panel consequence is imposed, the persons likely to be affected should be put on notice. The condition imposed in the resolution dated 15.3.1985 cannot be isolated and viewed that it would be applicable only to the persons who fail to pass the test before 31.12.1985. But It affects

the persons who have already failed to pass the tests before 31.12.1984. To put it simply, it is like punishing a past act making it simply, it is like

punishing a past act making it punishable at a latest point of time. No panel provision can act retrospectively. It would lead to disastrous

consequences. Therefore, in my view, the condition is not only unreasonable but is also in violation of the principles of natural justice.

8. Learned Counsel for the respondents 4 to 6 contended that the writ petition itself is not maintainable since the same has been filed after a lapse

of five years. In paragraphs 14 and 16 of the affidavit filed in support of the writ petition, the petitioners have given some reasons. In 1985 itself

they have made representations to revise the seniority list. Therefore, it cannot be construed that extra-ordinary delay has been caused and on that

account, the writ petitioner should be rejected. It is also worthwhile to mention that the writ petition has been admitted in the year 1990. The

technical objection relating to laches can be scrutinised only at the threshold. If the petition is taken up on the file of this Court. It would tantamount

to an implied indication that the same will be considered. Therefore, the writ petition cannot be rejected without considering the merits of the case,

at the time of final hearing.

9. Another contention raised by the counsel for the respondents 3 to 6 is that a remedy of appeal provided under Regulations 57 and 58 are

available they have not chosen to resort to such a remedy. This technical objection also has to be rejected for the reason given by me earlier.

Another contention raised by the learned Counsel for the petitioners is that when time was given to pass to test to all assistants including the

petitioners and the respondents 4 to 10 have chosen to comply with the said conditions, they are entitled for better treatment and therefore placing

them above in the seniority list is justified. As stated earlier if there was any indication to the petitioners to the effect that those who passed the test

earlier or in time would be placed in higher ranks, the argument of the learned Counsel for the respondents 4 to 6 is acceptable. But in the absence

of such indication mere passing of the test cannot confer on them a better right. Passing of test is only a chance. Even persons who are very

intelligent and who prepare thoroughly some times are not able to appear for the test. However, if the, act of passing the test is specified as a

condition for conferring any benefit the same has to be taken seriously and the failure to take the test or pass test is at the risk of the persons

concerned and he has no right or basis for complaint. Therefore, the mere passing of the test by the respondents 4 to 10 cannot confer them a

better right. Yet another contention raised by the learned Counsel for the respondents 4 to 10 is that respondent No. 4 is senior to the petitioners,

admittedly, his seniority cannot be challenged. Even if the writ petition is allowed, he will definitely have his place above the petitioners, because

what the petitioners claim is seniority according to the seniority in the feeder category.

10. Learned Counsel for the corporation contended that the qualifications were prescribed on 24.6.1982 by a resolution of the corporation, the

resolution of itself has not been challenged. It is not the case of the respondent corporation that the resolution were given due publicity. In such

circumstances, I am not in a position to agree with the said contention. For the foregoing reasons, I am inclined to allow this Writ Petition. Hence,

the order of the second respondent in Ref. No. 12589/84 B1 dated 26.3.1985 and Rcf. No. 12589084/E dated 6.5.1986 are hereby quashed in

so far as they affect the petitioner. The respondents 1 and 2 herein are hereby directed to consider the claims of the petitioners for promotion as

superintendents on the basis of their seniority in the feeder cadre i.e., junior assistants. The Writ Petition is ordered accordingly. However, there

will be no order as to costs.