

(2010) 06 MAD CK 0195
In the Madras High Court
Case No : Writ Petition No. 10323 of 2008

T. Dhanraju

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 09-06-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1)

Citation : (2010) 06 MAD CK 0195

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : Karthik, for the Appellant; P. Subramanian, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

R. Subbiah, J.—Challenging the impugned Letter No. 17689/H2/2007-6 dated 24.03.2008 passed by the 1st respondent, the petitioner has come forward with the present writ petition and also for a direction to promote the petitioner as District Registrar from the date his junior, reserved candidate was promoted, with all consequential benefits.

2. The case of the petitioner, in brief, is as follows: The petitioner joined the Registration Department as Junior Assistant on 01.03.1974 and thereafter, he was promoted as Assistant. The next higher post is Sub-Registrar Grade-II, which is being filled up by both direct recruitment as well as by recruitment by transfer. The then existing Special Rules for Tamil Nadu Registration Subordinate Service, prescribed eight years of service including two years as Assistant, as one of the qualifications for consideration for appointment as Sub-Registrar, Grade-II by recruitment by transfer. The petitioner had completed two years of service as Assistant on 18.07.1979 and completed 8 years of total service on 28.02.1982.

3. According to the petitioner, he was eligible to be empanelled for promotion to

the post of Sub-Registrar, Grade-II for the year 1982-83 itself. Subsequently, while effecting the promotion to the post of Sub-Registrar, Grade-II, the seniority in the grade of Assistant was taken into consideration by the authorities and not in the grade of Junior Assistant. This led to a situation where a person who had entered service much earlier as Junior Assistant was not considered inasmuch as his date of promotion as Assistant was much later. In these circumstances, a similarly situated person filed O.A. No. 392 of 1989 before the Tamil Nadu Administrative Tribunal, seeking a direction for inclusion of his name in the list of Sub-Registrars Grade-II prepared for the year 1975-83 on the basis of his seniority in the post of Junior Assistant, wherein the Tribunal, by its order dated 27.08.1993, directed the respondents to consider persons for promotion on the basis of combined seniority of Junior Assistants and other eligible categories. Against the said order, an SLP was filed by the Government and the same was dismissed and consequently, the order in the said O.A. was implemented vide G.O.Ms. No. 350 dated 31.10.1994. Following the same, various original applications were filed by the similarly situated persons, who were not considered on the basis of their seniority in the post of Assistant, before the Tribunal and the same were allowed, by relying upon the earlier order passed in O.A. No. 392 of 1989 and the writ petitions filed against the same were dismissed by this Court.

4. Subsequently, the 1st respondent, by G.O.(3D) No. 2, Commercial Taxes and Registration (H2) Department, dated 12.03.2007, decided to extend the benefit of the order in O.A. No. 392 of 1989 to all similarly situated persons and by virtue of the said G.O., the petitioner's date of promotion as Sub-Registrar Grade-II and Sub-Registrar Grade-I would be preponed, but the said G.O. is yet to be implemented. Now, the present writ petition is filed by the petitioner to direct the respondents to apply the principle for determining seniority between general category candidates and reserved category candidates, as laid down in the judgment reported in *Ajit Singh Januja and others Vs. State of Punjab and others*, while implementing the said G.O. dated 12.03.2007. The reason for seeking such a prayer by the petitioner is as follows:

The petitioner belongs to the general category. While promotions are effected to the post of Sub-Registrar Grade-II, communal reservation is followed. By applying such rules of reservation, members of the reserved community are given accelerated promotion ahead of seniors belonging to the general category. When the senior general category candidates get promoted, he automatically retains his seniority over his junior reserved category candidates despite the fact that the latter was promoted much earlier on the basis of communal reservation. This principle was laid down by the Hon'ble Supreme Court in *Ajit Singh Januja and others Vs. State of Punjab and others*, which is known as "catch up" rule.

Hence, the petitioner made a detailed representation on 07.04.2007 for early implementation of G.O. dated 12.03.2007 and also to follow the law laid down by the Hon'ble Supreme Court. Since the same was not considered, the petitioner

filed W.P. No. 24302 of 2007, in which a direction was given by this Court to the 1st respondent to consider the petitioner's representation within six weeks. Pursuant to the same, the 1st respondent passed the impugned order dated 24.03.2008, rejecting the representation made by the petitioner for re-fixing his seniority and consequential promotion. Aggrieved over the same, the present writ petition is filed.

5. When the matter was taken up for consideration, the learned Counsel for the petitioner made an elaborate argument by relying upon the judgment of the Hon'ble Supreme Court in *Ajit Singh Januja and others Vs. State of Punjab and others*, and further submitted that the seniority between reserved category candidates and general category candidates in the promoted category will continue to be covered by their original position, namely, with reference to their inter-se seniority in the lower grade irrespective of the date of promotion. Though the petitioner had joined the service as Junior Assistant on 01.03.1974, he was promoted as Sub-Registrar Grade-II on 01.02.1990 and Sub-Registrar Grade-I in on 11.11.1997; but his junior Syed Azizullah, who belongs to the Backward class community was promoted as Sub-Registrar Grade-II in 1986 itself by applying the communal roster point system and further promoted as Sub-Registrar Grade-I in 1996 itself. Similarly, another candidate, viz., Vijayalakshmi, who joined as Junior Assistant on 11.03.1974 was promoted as Sub-Registrar Grade-II, Sub-Registrar Grade-I and District Register on 02.02.2001 itself due to her accelerated promotion by virtue of reservation. But as per the judgment of the Hon'ble Supreme Court (cited supra), the senior general category candidates, who reached the promotional post subsequent to their juniors on reaching the promotion, the seniority has to be maintained above their juniors, who had been promoted earlier. If the said ratio is applied, the seniority of the petitioner, who is from general category, has to be placed over and above his juniors on reaching the promotional post of Sub-Registrar Grade-II. Thereafter, from the post of Sub-Registrar Grade-II, no further accelerated promotion could be given to the juniors. Hence, by applying the said ratio, promotion has to be given to the petitioner from the date his junior reserved candidate was promoted, with consequential benefits.

6. Per contra, the learned Additional Government Pleader submitted that when the amendment to Article 16 came into effect from 17th June, 1995, incorporating Clause 4A to Article 16, reservation in the matter of promotion was permitted for a period of five years in the case of Backward class communities from the date of judgment delivered in *Indra Sawhney v. Union of India* (1992) Supp. (3) SCR 217 : AIR 1992 SC 3682 i.e. from 16.11.1992 to 15.11.1997. So far as the petitioner is concerned, he was promoted as Sub-Registrar Grade-II by transfer on 01.02.1990 and further promoted as Sub-Registrar Grade-I on 11.11.1997. As the Supreme Court of India upheld all panels drawn following the rule of reservation prior to 16.11.1992 and permitted to follow the same up to 15.11.1997 and as the petitioner got promotion prior to 15.11.1997, the judgment cited will not be applicable to his case.

7. I have heard the learned Counsel appearing on either side and perused the materials available on record.

8. It is the submission of the learned Counsel for the petitioner that by the rule of reservation for reserved category candidates, the OBC category candidates are entitled for accelerated promotion up to the post of Sub-Registrar Grade-II and not accelerated consequential seniority. Once a person from general category reaches the promotional post at the level of Sub-Registrar Grade-II, he has to be placed over and above the juniors, who were promoted earlier by applying the rule of reservation. In support of this contention, the learned Counsel for the petitioner has also relied upon the judgments reported in *Jatinder Pal Singh and Others Vs. State of Punjab*, and *Ajit Singh and Others Vs. The State of Punjab and Others*, .

9. Per contra, it is the contention of the respondents that pursuant to the judgment delivered in *Indra Sawhney's* case, the Parliament amended Article 16 by the 77th amendment of Constitution, which came into force from 17.06.1995, incorporating Clause 4A to Article 16. As per the said amendment, the reservation in the matter of promotion was permitted for the Backward class community for a period of five years from the date of judgment i.e. from 16.11.1992 to 15.11.1997. Since the petitioner was promoted prior to 15.11.1997, the judgment delivered in the case of *Ajith Singh* will not be applicable to this case.

10. In order to appreciate the submissions made on either side, it is necessary to look into the dictum laid down in *Ajit Singh and Others Vs. The State of Punjab and Others*, and the relevant paragraphs are extracted hereunder:

38. It must be noted that whenever a reserved candidate goes for recruitment at the initial level (say Level 1), he is not going through the normal process of selection which is applied to a general candidate but gets appointment to a post reserved for his group. That is what is meant by "reservation". That is the effect of "reservation".

39. Now in a case where the reserved candidate has not opted to contest on his merit but has opted for the reserved post, if a roster is set at Level 1 for promotion of the reserved candidate at various roster points to Level 2, the reserved candidate, if he is otherwise at the end of the merit list, goes to Level 2 without competing with general candidates and he goes up by a large number of places. In a roster with 100 places, if the roster points are 8, 16, 24 etc. at each of these points the reserved candidate if he is at the end of the merit list, gets promotion to Level 2 by side-stepping several general candidates. That is the effect of the roster-point promotion.

....

50. In the light of the above discussion, the proper balancing of the rights, in our view, will be as follows:

51. The general candidates who are senior at Assistants' level (Level 2) and who have reached Superintendent Grade II (Level 3) before the reserved candidate moved to Level 4 (Superintendent Grade I), will have to be treated as senior at Level 3 also (Superintendent Grade II) and it is on that basis that promotion to the post of Level 4 must be made, upon first considering the cases of the senior general candidates at Level 3. If the cases of the senior general candidates who have reached Level 3 though at a later point of time, are not first considered for promotion to Level 4, and if the roster-point promotee at Level 3 is treated senior and promoted to Level 4, there will be violation of Articles 14 and 16(1) of the Constitution of India. Such a promotion and the seniority at Level 4 has to be reviewed after the decision of *Ajit Singh* AIR 1996 SC 1196 : AIR 1996 WD 1189 : 1996 Lab IC 1030. But if a reserved category candidate is otherwise eligible and posts are available for promotion to Level 4, they cannot be denied right to be considered for promotion to Level 4, merely because erstwhile seniors at the entry levels have not reached Level 3. What we have stated above accords, in fact, with what was actually stated in *Ajit Singh*. In that case, N.P. Singh, J. observed (P.731) (of SCC) : (at Pp. 1207 of AIR 1998 SCW 1207 of AIR and 1039 of Lab IC):

It also cannot be overlooked that for the first promotion from the basic grade, there was no occasion to examine their merit and suitability for promotion.

11. A reading of the said judgment throws light on the issue involved in the writ petition. From the said judgment, it is clear that if the cases of the senior general candidates who have reached Level 3 though at a later point of time, are not considered for promotion to Level 4, and if the roster point promotee at Level 3 is treated senior and promoted to Level 4, there will be violation of Articles 14 and 16(1) of the constitution of India. If the said ratio is applied to the present case, it could be seen that after reaching the post of Sub-Registrar Grade-II, the candidate from senior general category, who reached the post of Sub-Registrar Grade-II subsequent to his junior, has to be placed over and above his junior, who joined the promotional post earlier in view of accelerated promotion.

12. With regard to the submission made by the learned Additional Government Pleader that the dictum laid down in *Ajith Singh's* case cannot be made applicable to the facts of this case since the promotion of Sub-Registrar Grade-I was given to the petitioner prior to 15.11.197 i.e. within the period of five years from the date of judgment in *Indra Sawhney's* case, I am not inclined to accept the same, because the actual issue involved in the present case is, after reaching the higher promotional post, whether any further accelerated promotion would be given to the juniors by applying the communal roster system, so far as the Backward class community candidates are concerned, by placing the juniors above the senior general category candidates. The dictum laid down in *Ajith Singh's* case clearly says that, such a promotion, by placing the roster point promotee above the senior general category candidate, will be violative of Articles 14 and 16(1) of the Constitution of India. As contended by the learned

Counsel for the petitioner, there would be only accelerated promotion, but not accelerated seniority. Therefore, in my considered opinion, the relief sought for by the petitioner has to be allowed.

Accordingly, the writ petition is allowed and the impugned order dated 24.03.2008 is set aside. No costs.