

(2011) 10 MAD CK 0196

In the Madras High Court

Case No : Writ Petition (MD) No's. 3481, 2785, 1102, 4085, 14746 of 2010, 1579, 1580 of 2011 and 1797 of 2010, M.P. (MD) No's. 1, 2, 3, 4 of 2010, 2 of 2011, 2, 3 of 2010, 1, 2 of 2010, 1 of 2010, 1, 2 of 2010, 1, 1 of 2011 and 2 of 2010

T. Mathavan and Others

APPELLANT

Vs

The Principal Secretary and Commissioner of Revenue
Administration, Chepauk, Chennai-5 and Others etc. etc.

RESPONDENT

Date of Decision : 11-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 142, 16, 19(1)
Penal Code, 1860 (IPC) — Section 124A

Citation : (2011) 10 MAD CK 0196

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T. Lajapathi Roy in W.P. MD No. 3481/2010, W.P. MD Nos. 2785, 1102 and 4085/2010, W.P. MD Nos. 1579 and 1580/2011, W.P. MD No. 1797/2010 Mr. V. Panneerselvam for M/s. C.s. Associates, for the Appellant; M. Govindan Special Government Pleader for Respondents 1 to3 in W.P. (MD) No. 3481/2010, W.P. (MD) Nos. 2785, 1102 and 4085/2010, for Respondents 2 to4 in W.P. (MD) No. 14746/2010, in W.P. (MD) Nos. 1579 and 1580/2011, for Respondents 1 to 6 in W.P. (MD) No. 1797/2010, No Appearance for Respondent No. 4 in W.P. (MD) No. 3481/2010, Mr. V. Panneerselvam for M/s. C.s. Associates for Respondent No. 5 in W.P. (MD) No. 3481/2010, IN W.P. (MD) Nos. 2785, 1102 and 4085/2010, in W.P. (MD) Nos.1579 and 1580/2011, in W.P. (MD) No. 1797/2010, Mr. D. Venkatesh for Respondent No. 1 in W.P. (MD) No. 14746/2010, Mr. T. Lajapathi Roy for Respondents 5 and 6 in W.P. (MD) No. 14746/2010, for the Respondent

Final Decision : Dismissed

Judgement

Honorable Mr. Justice K. Chandru

1. In these batch of Writ Petitions, the petitioners are directly recruited Assistants holding posts in the Revenue Department. In W.P. (MD) No. 1797 of

2010, the petitioners have come forward with a prayer seeking for a declaration declaring that the Special Rules for the Tamil Nadu Revenue Subordination Service in respect of Annexure III in item II as illegal and seek for a direction to modify the rule. They have also given two options to the State Government to modify the rule, in essence, the petitioners, who are holding the post of Assistants and who also completed the training as a Firka Revenue Inspector for two years, are eligible for being promoted to the post of Deputy Tahsildars, but wanted the eligibility service of five years as Assistants to be reduced to four years to enable them to get appointed by transfer to the new service into the post of Deputy Tahsildar. They also wanted the first available vacancy to be given to them.

2. In W.P. (MD) No. 4085/2010, the petitioner has sought for a Mandamus, directing the third respondent to send him for police training before 30.04.2010 so as to enable him to become eligible to be included in the panel for Tahsildars for the year 2010.

3. In W.P. (MD) Nos. 1579 and 1580 of 2011, the petitioners have sought for a Mandamus, directing the first respondent to send them for Magisterial Training.

4. In the other Writ Petitions, the directly recruited Assistants seek to challenge the panel prepared by the District Collector, pursuant to the judgment of the Supreme Court in Civil Appeal No. 2251 of 2009 and other cases, dated 08.04.2009. The said judgment has been reported in M. Rathinaswami and Others etc. Vs. State of Tamil Nadu and Others etc.,

5. The grievance projected in those Writ Petitions was that the District Collector has no right to undo the earlier panel, in which the names of the petitioners have been included and the judgment of the Supreme Court cannot be made use of for undoing the earlier panel prepared, in essence, the petitioners wanted to contend that M. Rathinaswami's case (cited supra) should have a prospective effect and should not affect the earlier panel prepared by the Revenue Department in the respective District.

6. The second contention was that before altering the panel and bringing persons from down below the list to the top of the list, no notice was given. The petitioners have made certain persons as contesting respondents and also one C. Ravichandran, who was working as a Zonal Deputy Tahsildar, Taluk Office, Karur, got himself impleaded in all these Writ Petitions.

7. When the matter came up before this Court, it was strongly contended by the official respondents as well as the impleaded respondent that the Writ Petitions are misconceived and the petitioners are not entitled to contend contrary to the ratio laid down by the Supreme court in respect of the very same rule and in essence, they cannot get any order contrary to the directions issued by the Supreme Court. A reference was also made to the orders passed in respect of similar Writ Petitions filed by similarly placed persons in other revenue districts.

8. Taking the first contention viz., that whether the petitioners have any vested right to be kept in the panel and whether the District Collector was right in recasting the panel, the question has to be answered in the light of the directions issued by the Supreme Court. It must be noted that the Supreme Court dealt with an appeal against the judgment of the Division Bench in W.P.No.27173 of 2003, dated 10.09.2005, in which, the Division Bench held that the existing rule giving preference to the directly recruited Assistants and getting them on the top of the seniority list over the rank promotees was valid. The aggrieved promotees went to the Supreme Court. The Supreme Court held that the Government can make a discrimination, even though if the persons holding the post either by direct recruitment or by promotion or in the same cadre, but are having different educational qualifications. But, at the same time, the Supreme Court was informed that many of the rank promotees have got graduation and some of them are also post graduates. Therefore, the Supreme Court held that in such cases if the criteria for promotion was based upon graduation, then even the graduate rank promotees also should be considered for further promotion. Otherwise, it will result in discrimination and the rule will be violative of Articles 14 and 16 of the Constitution of India. Therefore, the Supreme Court read down the rule to accommodate the rank promotees also to be considered for the purpose of further promotion as Deputy Tahsildars by transfer from Ministerial service to the Revenue Subordinate service.

9. In M. Rathinaswami's case cited supra, at paragraph No. 26 to 32, the Supreme Court observed as follows:

26. Whether graduate degree is a sufficient basis for classification for promotion vis-?-vis non-graduates, and whether such classification has rational relation to the nature of duties of a Deputy Tahsildar, is, in our opinion for the State Government to decide, and not the Court. Hence, we uphold the validity of the impugned Rule to the extent that it gives preference to the directly recruited Assistants over the promoted Assistants who are non-graduates.

27. However, we cannot find any rational basis for giving preference to the direct recruits over those promotee Assistants who are graduates, since the very basis for the distinction sought to be drawn by the respondents is that the direct recruits are graduates and hence intellectually superior to non-graduates. Hence we have to read down the impugned rule in order to save it from becoming violative of Articles 14 and 16 of the Constitution.

28. It is well settled that to save a statutory provision from the vice of unconstitutionality sometimes a restricted or extended interpretation of the statute has to be given. This is because it is a well-settled principle of interpretation that the Court should make every effort to save a statute from becoming unconstitutional. If on giving one interpretation the statute becomes unconstitutional and on another interpretation it will be constitutional, then the Court should prefer the latter on the ground that the legislature is presumed not to have intended to have exceeded its jurisdiction.

29. Sometimes to uphold the constitutional validity the statutory provision has to be read down. Thus, in *Umayal Achi v. Lakshmi Achi*, the Federal Court was considering the validity of the Hindu Women's Right to Property Act, 1937. In order to uphold the constitutional validity of the Act, the Federal Court held the Act intra vires by construing the word "property" as meaning "property other than agricultural land". This restricted interpretation of the word "property" had to be given otherwise the Act would have become unconstitutional.

30. Similarly, in *Kedar Nath Singh v. State of Bihar*⁶ this Court had to construe Section 124-A of the Penal Code which relates to the offence of sedition which makes a person punishable who "by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law". This Court gave a restricted interpretation to the aforesaid words so that they apply only to acts involving intention or tendency to create disorder or disturbance of law and order or incitement to violence. This was done to avoid the provisions becoming violative of Article 19(1) (a) of the Constitution which provides for freedom of speech and expression.

31. Several other decisions on the point have been given in Justice G.P. Singh's *Principles of Statutory Interpretation* (7th Edn., 1999, pp. 414-17).

32. For the reasons given above these appeals are partly allowed and the impugned judgment is partly set aside, and it is held that the impugned rule so far as it places directly recruited Assistants above the promotees for promotion as Deputy Tahsildar shall only apply to those promotees who are non-graduates, but it is inapplicable to those promotees who are graduates.

10. Once the Supreme Court reads down the law, then it is binding on all the Subordinates under Article 141 of the Constitution of India. Therefore, the District Collector is bound to enforce the order, in terms of Article 142 of the Constitution of India and there is no other option. It is not as if the Supreme Court made any further direction that the panels, which are already prepared on the basis of the impugned rule, will be held intact and that only for future, the constitutionally read down rule will be applicable. No doubt, the Supreme Court has power to make any judgment applicable prospectively, in the light of the peculiar power vested under Article 142. But in the absence of the Supreme Court itself stating so, this Court cannot read between the lines and find favorable points in favour of the petitioners.

11. In this regard, it is relevant to refer to a Larger Bench judgment of the Supreme Court, in which, the doctrine of prospective overruling was analyzed. In *I.C. Golak Nath and Others Vs. State of Punjab and Another*, , in paragraph Nos.51 and 52, it was observed as follows:

51. Our Constitution does not expressly or by necessary implication speak against the doctrine of prospective overruling. Indeed, Articles 32, 141 and 142 are couched in such wide and elastic terms as to enable this Court to formulate legal

doctrines to meet the ends of justice. The only limitation thereon is reason, restraint and injustice. Under Article 32, for the enforcement of the fundamental rights the Supreme Court has the power to issue suitable directions or orders or writs. Article 141 says that the law declared by the Supreme Court shall be binding on all courts; and Article 142 enables it in the exercise of its jurisdiction to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. These articles are designedly made comprehensive to enable the Supreme Court to declare law and to give such directions or pass such orders as are necessary to do complete justice. The expression "declared" is wider than the words "found or made." To declare is to announce opinion. Indeed, the latter involves the process, while the former expresses result. Interpretation, ascertainment and evolution are parts of the process, while that interpreted, ascertained or evolved is declared as law. The law declared by the Supreme Court is the law of the land. If so, we do not see any acceptable reason why it, in declaring the law in supersession of the law declared by it earlier, could not restrict the operation of the law as declared to future and save the transactions, whether statutory or otherwise that were effected on the basis of the earlier law. To deny this power to the Supreme Court on the basis of some outmoded theory that the Court only finds law but does not make it is to make ineffective the powerful instrument of justice placed in the hands of the highest judiciary of this country.

52. As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest Court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its "earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.

12. A close reading of the judgment of the Supreme Court will make it clear that but for the Supreme Court reading down the rule, the rule itself would have become unconstitutional and violative of Articles 14 and 16 of the Constitution of India. Therefore, the directly recruited Assistants, who have lost the main battle before the Supreme Court, cannot institute the proceedings before this Court to re-write the decision of the Supreme Court in these proceedings. Hence, the contention made by the respondents that the Writ Petitions are clear abuse of process of Court is well founded.

13. Further, the fact that the petitioners names were found in the earlier panel, which panel itself was prepared on the basis of the rule, which was read down by the Supreme Court, does not exist any more and any preservation of such panel will be indirect conflict with the reasoning given by the Supreme Court.

Therefore, the District Collector in recasting the panel and giving effect to the order of the Supreme Court is legal and proper and the same does not call for any interference.

14. The other argument that their names have been removed without notices also cannot stand for the reason that the Supreme Court has laid down the law, which is a public declaration of the legal position and once the law laid down by the Supreme Court under Article 141 becomes final, the necessary corollary is that all authorities must execute the order under Article 142 and in such cases, there is no further hearing in the matter, in essence, a person, who got his name included in the panel on the basis of an invalid rule, does not have any vested right to keep his name in the panel.

15. In fact, in a similar context, the Supreme Court, vide its judgment in A.K. Bhatnagar and Others Vs. Union of India (UOI) and Others, , cautioned the State and Central Governments to strictly adhere to the rules in respect of matters covered by the rules and acting in a manner contrary to the rules creates problem and dislocation and, therefore, the serious view of the lapses committed by the Government was taken in paragraph No. 13 of the said judgment, in which, the Supreme Court had observed as follows:

13. On more than one occasion this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules.

Therefore, if the impugned orders came to be passed, in the light of the Supreme Court's order, no one can be heard to contend that the order must be struck down on the grounds, which are untenable both in law and facts.

16. The question as to whether a person who gets his name included in a panel has a vested right came to be considered by the Supreme Court in Aryavrat Gramin Bank v. Vijay Shankar Shukla reported in 2007 (12) SCC 413. In that case, the Supreme Court held that merely because a person's name is included in the panel or select list does not confer any legal right for being appointed. In paragraph No. 21, it was observed as follows:

21. It is now a trite law that only because a person has been selected and his name finds place in the select list, the same by itself does not confer any legal right on him to be appointed. It is also trite that ordinarily a superior court in exercise of its power of judicial review would not interfere with the right to make appointment by an employer unless its action or inaction is found to be wholly

arbitrary so as to offend Article 14 of the Constitution of India.

Hence, the contention raised in the other Writ Petitions is also liable to be rejected.

17. Coming to the question of challenge to the vires of the Rules made in W.P. (MD) No. 1797 of 2010, no Mandamus will lie in amending the Special rules framed under Article 309 of the Constitution of India. It must be noted that the Special Rules framed under Article 309 are legislative in character either for framing a new rule or for amending the existing rule, no direction can be issued. The Supreme Court and the Administrative Tribunals have been warned from issuing such directions or any advisory sermons to the executive, in the judgment in Mallikarjuna Rao and Others Vs. State of Andhra Pradesh and Others, and in paragraph Nos.10 and 12, it was observed as follows:

10. The observations of the High Court which have been made as the basis for its judgment by the Tribunal were only of advisory nature. The High Court was aware of its limitations under Article 226 of the Constitution of India and as such the learned Judge deliberately used the word "advisable" while making the observations. It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. Imagine the executive advising the judiciary in respect of its power of judicial review under the Constitution. We are bound to react scowling to any such advice.

11...

12. The Special Rules have been framed under Article 309 of the Constitution of India. The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India.

18. It must also be noted that that the very rule, which the petitioners want to seek for amendment itself, was under consideration before the Supreme Court in M. Rathinaswami's case (cited supra) and at that time, the direct recruit did not make any complaint or sought for any alteration of the length of service for being considered for posting them as Deputy Tahsildars by transfer from Ministerial service to the Revenue Subordinate service. In the present case, it is for the State Government to consider the relevant experience that is required for being transferred to the higher posts in a different service. In such circumstances, any attempt to seek for a direction to the State Government is clearly impermissible,

in the light of the judgment in Mallikarjuna Rao's case (cited supra).

19. When there are two sources, which are combined into a single cadre of Assistants, the petitioners still trained to retain their identity as direct recruits and sought for filling up the post on the first vacancy, as in effect seeking for a quota as well as rotational right for getting into the post. The Supreme Court, while excluding the claims of non-graduate promotee Assistants, has held that the graduate promotees are on par with the direct recruits and, therefore, the petitioners cannot seek for any appointment on the first vacancy on a priority basis, following the carried over vacancies.

20. Hence, there is no case made out to entertain anyone of the Writ Petitions and hence, W.P. (MD) Nos. 3481, 2785, 1102, 4085/ 2010, 1579, 1580/2011 and 1797 of 2010 stand dismissed.

21. The impleaded respondent C. Ravichandran, has filed a Writ Petition in W.P. (MD) No. 14746 of 2010 seeking to set aside the order dated 23.11.2010 issued by the Registrar General of this Court. After setting aside the same, he seeks for a direction to the official respondents to confer magisterial power on the petitioner so as to enable him to acquire the qualification for the post of Deputy Tahsildar. The impugned communication referred to in the Writ Petition is a notification issued by this Court conferring magisterial power on certain Deputy Tahsildars functioning at Karur. It is not clear as to why the petitioner wants to set aside the said order, insofar as it directs the fifth and sixth respondents who are reputed to go for magisterial training, which is the essential requirement for appointed to the post of Deputy Tahsildar. Insofar as the order impugned in this Writ Petition is concerned, the said order came to be passed only on the basis of the requisition made by the Revenue Department and the Courts do not play any further role in finding out the relative merits of candidates whose names were found in the impugned order. Whether the fifth and sixth respondents are eligible to go for training and after the completion of such training, whether they have got a vested right to get transferred to the post of Deputy Tahsildar is essentially a matter which has to be decided by the respective District Collectors.

22. On considering the entire matter and in the light of the order passed in the earlier Writ Petitions, there is no need to entertain the Writ Petition and grant the prayer sought for by the petitioner. It is suffice that the petitioner's grievance has been heard and redressed in the other Writ Petitions. It is for the District Collector to decide the panel and also the consequential training to be undergone by such persons whose names are included in the panel. Merely because certain persons have undergone magisterial training will not confer them any vested right to get themselves transferred to the post of Deputy Tahsildars, unless and until they are otherwise qualified to hold the post.

23. Hence, with the above observation, W.P. (MD) No. 14746 of 2010 is dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.