

(2013) 09 MAD CK 0050

In the Madras High Court

Case No : Writ Petition No. 24535 of 2013 and M.P. No. 1 of 2013

Union of India

APPELLANT

Vs

S. Subramani and The Registrar

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2013) 7 MLJ 524 : (2013) WritLR 1010

Hon'ble Judges : N. Paul Vasanthakumar, J;M.M. Sundresh, J

Bench : Division Bench

Advocate : R. Sureshkumar, for the Appellant;

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—This writ petition is filed by the Postal Department of Government of India, challenging the order made in O.A.

No. 1311 of 2010, dated 30.11.2012, giving direction to regularise the services of the first respondent herein as postman against clear vacant

post, with protection of seniority, with effect from 17.8.1995, within a period of four weeks from the date of receipt of copy of that order. The

brief facts necessary for disposal of this writ petition are as follows:

(a) First respondent's father B. Savadamuthu, while working as Postman, died in harness on 7.9.1994 and considering the indigent circumstances

of the family, the Postal Department provided employment to the first respondent on compassionate ground by relaxing the Recruitment Rules and

appointed him as postman on 17.8.1995 in Dindigul Division. Now the first respondent is working as postman at Balasubramaniam Pudur Sub

Post Office. He has put in more than 18 years of service and initially his name was kept in waiting list Sl. No. 6 (for regular postman).

(b) The first respondent submitted representation for appointing him as regular postman, for which he was informed that his name will be

considered when his turn comes. Due to the said assurance, the first respondent did not approach the Central Administrative Tribunal seeking

remedy and awaited for regular appointment with the fond hope that he would be appointed as Postman on regular basis.

(c) According to the first respondent, some of the similarly placed candidates, appointed on compassionate ground, approached the Central

Administrative Tribunal, Madras Bench, and the Tribunal allowed their claim, against which the petitioners herein filed W.P. No. 38990 of 2002

etc., before this Court and the said writ petitions were dismissed by the Division Bench of this Court by Judgment dated 13.6.2007, upholding the

order of the Central Administrative Tribunal.

(d) After the said order was passed, the first respondent submitted representation to appoint him on regular basis and he was again informed that

his name was kept in the waiting list at Sl. No. 6 and about 600 approved candidates are kept in the waiting list. He was further informed that

special leave petitions were filed against the order of this Court and decisions in the said SLPs are awaited. The said reply was given to the first

respondent on 6.12.2007 by the Director of Postal Services, Headquarters. SLPs were disposed of on 30.7.2010 by recording the statement that

the petitioners herein were willing to accommodate the respondents in the SLPs on regular basis and the question of law raised in the SLPs was left

open.

(e) It is the contention of the first respondent herein that the petitioners submitted a list of candidates containing 202 names and failed to include the

names of other approved candidates for regular appointments, including the name of the first respondent. Some juniors of the first respondent were

also included in the list and their services were regularised.

(f) First respondent's service having not been regularised even after continuous service of more than 15 years, he was forced to file O.A. No.

1311 of 2010, praying for a direction to the petitioners to regularise the service of the first respondent as Postman against a clear vacant post, with

protection of seniority with effect from 17.8.1995.

(g) The said application was contested by the petitioners herein stating that only

5% of vacancies under direct recruitment quota can be filled based on the guidelines issued by the Department of Personnel and Training in O.M. No. 42012/2000-Estt(D), dated 24.11.2000, and relaxation of 5% limit for making appointment on compassionate grounds was not permissible.

(h) By letter dated 8.2.2001, the postal Directorate directed discontinuance of waiting list of approved candidates for compassionate appointment with a direction to wait listed candidates to give their willingness for consideration by other Ministries, and further stated that in future only 5% vacancies falling under direct recruitment quota in Group "C" and "D" posts would be considered.

(i) The order in SLP which was filed against the order of this High Court, confirming the order of the Tribunal, wherein the petitioners have shown leniency to 239 respondents, who were working in the department as on 27.10.2009. Based the said judgment only orders for regularisation of the respondents therein, who were working as on 27.10.2009, was issued by the petitioner Department on 30.8.2010. The first respondent herein was not a respondent in the said SLPs and therefore his regularisation is not permissible as per the order of the Honourable Supreme Court.

(j) The first respondent was offered appointment in GDS post and he was not willing to accept the said offer. The concession given to 202 candidates, who were parties in the SLPs was on one time measure, which cannot be taken as a precedent for seeking regularisation/absorption of the first respondent. The list of persons, whose services were regularised and their dates from which appointment is to be regularised, is also filed along with typed set of papers, wherein persons appointed from 1995 to 2003 finds a place.

(k) Accepting the contention raised by the first respondent who was applicant before the Tribunal, and taking into consideration the regularisation given to 202 persons who were working as on 27.10.2009, the Tribunal allowed the application and issued a direction to regularise the services of the first respondent as Postman against vacant post with protection of seniority with effect from 17.8.1995 and the said order was directed to be implemented within four weeks.

(l) As the petitioners have not shown any distinguishing feature in the case of the first respondent, when compared to the regularisation granted to

202 candidates as one time measure by applying equality of treatment, the petitioners have filed this writ petition contending that the Hon''ble Supreme Court having passed the final order stating that the orders passed by the Central Administrative Tribunal and by this Court shall not be treated as precedent for the purpose of any other case or cases that may be pending, the Tribunal was not justified in extending the benefit to the first respondent, who is not a party in the earlier proceeding, though he is a similarly situated person, is not valid; that by allowing the original application filed by the first respondent, the Tribunal has opened the flood gate, as there will be lot of persons numbering 600, whose names were kept in the waiting list for years together for want of vacancies; that the order passed by the Hon''ble Supreme Court having been passed in exercise of the power under Article 142 of the Constitution of India, no Government Authority or Court can violate or override the same; and that the order passed by the Tribunal is to be set aside.

2. The learned counsel appearing for the petitioners on the basis of the above averments placed his arguments. We have considered the said submissions.

3. It is not in dispute that the first respondent's father D. Savadamuthu died while in service as Postman, on 7.9.1994. The first respondent, as son of the said deceased D. Savadamuthu, applied for compassionate appointment on 11.10.1994 as his family was in indigent circumstance. His claim was considered and he was given appointment after fully satisfying the eligibility to get compassionate appointment, by order dated 17.8.1995 and he is serving as postman from the said date.

4. The first respondent requested for regularisation of his service by representation dated 18.2.2000, for which a reply was given by the petitioner department on 22.3.2000 stating that there are many approved candidates, approved earlier to his case, whose names were kept in the waiting list for appointment, for want of vacancy under RRR quota and he will get appointment as per his seniority in the waiting list and this will take time, and till such time his services will be utilised in leave/short term vacancies in Dindigul Division. On 25.7.2001 the Government of India, Ministry of Communication, Department of Posts took a decision regarding discontinuance of waiting list candidates approved for compassionate

appointments.

5. Some of the similarly placed persons, who were denied regularisation, approached the Central Administrative Tribunal and all the original

applications were allowed. The said orders were confirmed by the Division Bench of this Court. SLPs were filed and after grant of leave, civil

appeals were pending. During hearing of batch of Civil Appeal No. 7773/2007 etc., the Department filed an additional affidavit agreeing to

regularise 202 respondents in the Civil Appeals as one time measure, on the basis of the observation made by the Supreme Court while hearing the

appeals, with a condition that they shall not be entitled for payment of any arrears on account of regularisation, but their pay and pensionary

benefits will be protected. The said decision was taken by the petitioners despite the communication dated 25.7.2001, which is put against the first

respondent and other similarly placed persons.

6. On perusal of the said order in Civil Appeals dated 30.7.2010, it is evident that the department voluntarily filed an additional affidavit and came

forward to regularise 202 respondents, who were working in the department against short term/leave vacancies, with effect from their date of

appointment. All of them were appointed on compassionate ground. As the respondents in Civil Appeals were given relief to the satisfaction of the

Supreme Court, the Supreme Court thought fit to observe that the findings recorded by the Tribunal as well as by the High Court with regard to

the interpretation of the office memorandum and circulars are set aside and that finding and observation shall not be treated as precedent for the

purpose of any other cases that may be pending, and question of law, if any may be left open. Thus, it is clear that the Honourable Supreme Court

has not ordered that no other person, though similarly placed are not entitled to get similar relief. After the regularisation was granted to 202

candidates, who were similarly placed, though most of them were appointed on compassionate ground after the first respondent, and the said

orders having been issued on 30.8.2010, the first respondent who was not a party in the earlier OA/Writ Petition/Civil Appeal, filed original

application on 24.10.2010 without any further delay i.e., within three months from the date of the order granting regularisation.

7. The cause of action for filing the original application to the first respondent

arose only after the regularisation granted to similarly placed persons and to most of his juniors only on the basis that they were in service as on 27.10.2009. Thus, the Tribunal entertained the original application and passed an order to grant relief to the first respondent as he was similarly placed. The said order of the Tribunal is in accordance with the principle of treating equally placed persons in equal position, as guaranteed under Article 14 and 16 of the Constitution of India. Neither in the reply affidavit nor in the affidavit filed in support of this writ petition petitioners have shown any distinguishing factor to that of 202 candidates, who were granted regularisation on their volition, during pendency of the civil appeals before the Hon"ble Supreme Court.

8. The issue as to whether equally placed persons should be treated alike without any discrimination even in service matter is no longer *res integra*.

The following decisions can be cited to the said proposition:

(a) In *Prem Chand Somchand Shah and Another Vs. Union of India (UOI) and Another*, , the Hon"ble Supreme Court in paragraph 8 held thus,

8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its

aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike

both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even

amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the

differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left

out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question.

(b) In the decision reported in *State of Karnataka and Others Vs. N. Parameshwarappa and Others*, , in paragraph 8, it is held thus:

8. we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having

regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the

benefit, notwithstanding that they have not approached the court. We are in

equal agreement with the Division Bench in denying the payment of interest at compounded rates which, in our view, cannot be justified at all on the facts and circumstances of the case wherein a serious and genuine doubt existed about the applicability of the government order dated 30-3-1990, as raised in the proceedings.

(c) In Govind Ram Purohit Vs. Jagjiwan Chandra 1999 SCC (L & S) 788, in para 3, it has been held thus:

3. It was lastly contended by the learned counsel for the appellants that whereas the petition had been filed by only Respondent 1, the High Court while finally concluding the matter has given a direction to promote all those who were senior to the appellants even though they were not parties to the petition. Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the seniority-cum-merit rule. There was no point in waiting for each and every person to file a petition. Therefore, we do not see any reason why we should entertain such a technical plea when the High Court has done substantial justice to all concerned.

(Emphasis Supplied)

The above referred Supreme Court decisions were followed by one of us (NPVJ) in N.S. Balasubramanian and Others Vs. Food Corporation of India,) for extending the benefits even after voluntary retirement. The said order was challenged in W.A. No. 956/2006 and the same was dismissed on 30.10.2006 and S.L.P.(C) No. 677/2007 filed against the Division Bench order was also dismissed by the Hon"ble Supreme Court on 23.04.2007.

(d) In the decision reported in Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, the Supreme Court held that the policy of pick and choose in acquiring some parcels of land while leaving many other parcels of lands under Land Acquisition Act is discriminatory and violation of Article 14 of the Constitution of India.

(e) In the decision reported in Hari Ram and Another Vs. State of Haryana and Others, the Supreme Court held that if the Courts are not correcting the wrong action of the Government it may leave citizen with the belief that citizen is right in contacting right persons in the Government as if judicial proceedings are not efficacious.

(f) The principle stated in the above cited decision in Hari Ram's case was reiterated in the recent decision of the Supreme Court reported in Sham

Lal and Others Vs. State of Punjab and Others, .

(g) In the decision reported in State of Uttar Pradesh Vs. Dayanand Chakrawarty and Others, relying the decision reported in Prem Chand

Somchand Shah and Another Vs. Union of India (UOI) and Another, the Hon''ble Supreme Court held that there cannot be any discrimination in

treating equally placed persons on same footing, for all purposes.

(h) The Division Bench of this Court in the decision reported in Tamil Nadu Housing Board Vs. Mrs. Uma Maheswari Ramasamy and Others,

held that there must not be discrimination in land acquisition proceedings. Special Leave to Appeal CC Nos. 6063-6066 of 2012 filed against the

said judgment were dismissed by the Hon''ble Supreme Court on 13.4.2012.

9. In view of the above pronouncements, we hold that similarly placed persons are bound to be treated equally without discrimination, which is a

fundamental right guaranteed under Article 14 of the Constitution of India.

10. The learned counsel for the petitioner argued that the order passed by invoking the power exercised under Article 142 of the Constitution of

India, cannot be exercised by this Court. The Supreme Court in the decision reported in B.C. Chaturvedi Vs. Union of India and others, approved

the Full Bench judgment of the Orissa High Court reported in Krishna Chandra Pallai Vs. Union of India (UOI) and Another, and held that the

High Court being a Court of plenary jurisdiction, has inherent power to do complete justice between parties similar to Supreme Court's power

under Article 142 of the Constitution of India. In the decision reported in Union of India (UOI) and Others Vs. R. Reddappa and Another, the

Hon''ble Supreme Court held that once the Court is satisfied of injustice or arbitrariness, then the restrictions, self-imposed or statutory, stands

removed and no rule of technicality or exercise of power can stand in way of rendering justice. Giving equal treatment to similarly placed persons

without discrimination is the fundamental right guaranteed in the Constitution and the law Courts are bound to protect the said right.

11. Applying the said judgments to the facts of this case, and having regard to the undisputed fact that the first respondent was appointed in 1995

on compassionate ground due to the demise of his father, who was a postman

and he is continuing in service as on date for over 18 years, we are of the view that the Tribunal has rightly allowed the application filed by the first respondent. There is no merit in the writ petition and the same is dismissed in limine. It is made clear that the first respondent is to be regularised on the same terms and conditions on which the 202 similarly placed persons were granted regularisation by order dated 30.8.2010, within four weeks from the date of receipt of copy of this Order. Connected miscellaneous petition is also dismissed.