
(2013) 06 MAD CK 0247

In the Madras High Court

Case No : Writ Petition No. 5509 of 2005

V. Mani

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 06-06-2013

Acts Referred:

Citation : (2013) LabIC 4536

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : L. Chandrakumar and T. Dhanyakumar, for the Appellant; N. Srinivasan, Addl. Govt. Pleader, for the Respondent

Judgement

T. Raja, J.—The petitioner herein seeks for issuance of a writ of certiorarified mandamus to call for the records relating to the proceedings, dated 03.05.2004, made in Letter No. 23118/Pani. 3(1)/2004-5 on the file of the first respondent, quash the same and further direct the 1st respondent to amend suitably G.O. Ms. 159, Personnel & Administrative Reforms Dept., D/- 27.6.1994, to include the physically handicapped persons also for further promotion or appointment by transfer of service and also further direct the 4th respondent to include the name of the petitioner in the panel for the year 2000 relating to the list of Deputy Tahsildar under Physically Handicapped Quota and give promotion to him as Deputy Tahsildar with all consequential benefits. Mr. L. Chandrakumar, learned counsel appearing for the petitioner, would submit that the petitioner, who is physically handicapped and working as Assistant in the Revenue Divisional Office, Dharmapuri, is qualified for the promotional post of Deputy Tahsildar either under the Physically Handicapped Quota as per G.O. Ms. No. 159/P & A.R. Dept., dated 27.06.1994 or under the Backward Class (BC) Category. But unfortunately, his name was not included in the approved list of Deputy Tahsildars of Dharmapuri District for the year 2000. Even though he has 20 years of unblemished record of service, without there being any punishment in the service nor any charge memo issued or pending against him, the first respondent

rejected his representation to include his name. Such rejection is not only against G.O.Ms. No. 159, dated 27-06-1994, which gives details as to how reservation is to be done for the blind, deaf and orthopaedically handicapped persons under each category but also goes against the decision, dated 20.07.2011, rendered by this Court in W.P. No. 4482 of 2011 (T) (A. Rajamanickam v. State of T.N. and two others), wherein, this Court, while dealing with similar issue, referred to Rule 6 of the Special Rules for T.N. Revenue Subordinate Services and held that, in the matter of appointment to the post of Deputy Tahsildar, Rule 22 of the T.N. State and Subordinate Service Rules viz., General Rules, should be applied and that there should be reservation for physically handicapped persons also. It was concluded in the said decision that the authorities should have granted reservation for physically handicapped persons also while making appointments to the post of Deputy Tahsildar by appointment by transfer from various services. On that basis, learned counsel contended that the present impugned order is arbitrary and an outcome of colourable exercise of power, for, the respondents purposely failed to give effect to G.O. Ms. No. 159 which is squarely applicable to the case of the petitioner. Moreover, when the Government has issued orders granting some reservation for physically handicapped persons, whatever be the method and mode of recruitment, the respondents ought to look into the intention behind which the order came to be passed. According to the learned counsel, the respondents failed to note that the Government has followed the communal rotation in initial appointment in all the Departments but after appointment, communal rotation has not been followed. For all these reasons, he prayed for setting aside the impugned order.

2. A detailed counter-affidavit has been filed by the respondents. Mr. N. Srinivasan, learned Additional Government Pleader, would submit that the writ petition is devoid of any merit for the reason that the post of Assistant comes under the Tamil Nadu Ministerial Services whereas the post of Deputy Tahsildar falls under the purview of the Tamil Nadu Revenue Subordinate Service. Moreover, when these two posts viz., Feeder Category and Promotional post, are separate and distinct categories, the appointment of Deputy Tahsildars is made only by transfer from one service to another service viz., from Ministerial Service to the T.N. Revenue Subordinate Service by following the rule of reservation under Rule 22(d) of the General Rules for T.N. State and Subordinate Services and not by Direct recruitment. Hence, the petitioner being a BC candidate and although having physical disability, his name was rightly not considered for recruitment by transfer as Deputy Tahsildar for the simple reason that the concession granted in G.O. Ms. No. 159 dated 27.06.1994 is limited to the cases of direct recruitment only. Further, in the Revenue Department, appointment to the post of Deputy Tahsildar is made only by recruitment by transfer and not by direct recruitment, therefore, the claim by the petitioner that 1% reservation given to the physically handicapped persons was not applied by including the petitioner's name in the approved list is wholly misconceived. It is further stated

that the petitioner has been working as Assistant in the Ministerial Service and his appeal in this regard was considered and dismissed by passing a reasoned rejection order dated 20.12.2001, as against which, a revision petition was filed before the first respondent, who also rejected the revision on 28.04.2004 on the same ground. Aggrieved by that, the petitioner has wrongly come to this Court despite knowing well that the above said G.O. would apply only to the cases of direct recruitment and not to recruitment by transfer. While replying to the arguments advanced by the learned counsel for the petitioner on the basis of the decision of this Court dated 20.07.2011 passed in W.P. No. 4482 of 2007 (T) (referred to above), learned Additional Government Pleader would refer to the ratio laid down by a Division Bench of this Court on 28.02.2005 in W.P. Nos. 11296 to 11298/03 & 28787/04 (Registration Department S.C./S.T. and MBC Employees General Welfare Sangam, Chennai v. S. Chandrasekar and three others) to the effect that reservation is not permissible in promotion and therefore, the impugned order is held to be absolutely maintainable. On that basis, he prayed for dismissal of the writ petition.

3. I have carefully considered the rival submissions advanced on either side. Admittedly, the petitioner has put in 20 years of service as Assistant and that he passed all the requisite departmental examinations for consideration of his name against the post of Deputy Tahsildar. He belongs to BC category and he is also a physically handicapped person. However, it cannot be lost sight of that the post of Deputy Tahsildar comes under T.N. Revenue Subordinate Services whereas the post of Assistant falls under the T.N. Ministerial service. Hence, both the services are distinct and separate categories. Of course, while dealing with an identical case, as pointed out by the learned counsel for the petitioner, a learned single Judge of this Court, in W.P. No. 4482 of 2007 (T) - Order dated 20.07.2011, held that as per Rule-6 of the Special Rules, there should be reservation for physically handicapped persons and, looking in that perspective, it may be said that the petitioner is entitled to succeed, for, the appointment to the post of Deputy Tahsildar is by recruitment by transfer from various services including T.N. Ministerial Service and nowhere it is stated that the Deputy Tahsildar post is filled by way of promotion. However, with due respect to the said ratio, it must be pointed out here that the core issue involved viz., as to whether reservation will apply to promotions in the case of a B.C. candidate, was not considered in that decision. Further, now, the said issue is no longer a res integra in the light of the Division Bench decision dated 28.02.2005 (referred above) wherein it has been answered beyond any iota of doubt by holding that though reservation is applicable at the initial appointment, the same is not applicable to the case of promotion or recruitment by transfer. In this context, it is more pertinent to extract relevant portions from the said Judgment,

11. The subject-matter of the dispute relates to promoting Assistants to the post of Assistant Commercial Tax Officer/Sub-Registrar Grade II/Deputy Tahsildar. It is the grievance of the applicants before the Tribunal that by wrong approach and interpretation of the Government by applying reservation for the promotional

posts, their juniors were promoted to the above mentioned promotional posts and they were deprived of the same. The pith and substance of the grievance of the applicants is that though reservation is applicable at the initial appointment, the same is not applicable to in the case of promotion or recruitment by transfer.

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13.

.....The Mandal Commission submitted its report and Government of India has chosen to adopt and as a follow up action issued various Government Orders. Those Government Orders providing reservation and appointment in public offices in favour of Backward communities is a subject-matter of litigation before the Supreme Court in Indira Sawhney Vs. Union of India, . Since the judgment in the Mandal Commission is a land mark judgment in the field of "reservation", it is useful to refer the principles and directions issued in the said judgment. The following conclusion/observation of the Supreme Court are relevant.

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309. In whichever post that a member of a backward class is appointed, reservation provisions are attracted at the stage of his initial appointment and not subsequently. Further promotions must be governed by common rules applicable to all employees of the respective grades.

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Question No. 7:

Whether Clause (4) of Article 16 provides reservation only in the matter of initial appointments/direct recruitment or does it contemplate and provide for reservations being made in the matter of promotion as well?

827. We find it difficult to agree with the view in Rangachari that Article 16(4) contemplates or permits reservation in promotions as well.

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Therefore, in the case on hand, the "recruitment by transfer" in all these cases in the same Department is deemed to be the "promotion" and for which the rules of reservation does not apply.

Under these circumstances, we are in entire agreement with the conclusion arrived at by the Tribunal and do not find any merit in these petitions. Consequently, the writ petitions fail and the same are dismissed.

In the light of the above Division Bench decision which clearly shows that

recruitment by transfer is nothing but only promotion for which rules of reservation does not apply, the entire edifice of the petitioner's case falls to ground and hence, the writ petition is liable to be dismissed. Consequently, writ petition fails and it is dismissed, however, there will be no order as to costs.