

(2011) 10 MAD CK 0193

In the Madras High Court

Case No : Writ Petition No. 7613 of 2007 (T) O.A. No. 3693 to 3695 of 2007

V. Muthurani

APPELLANT

Vs

The District Collector, Ramnad District Ramnad and The
Commissioner, Thirupullani Panchayat Union

RESPONDENT

Date of Decision : 11-10-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 309

Citation : (2011) 10 MAD CK 0193

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : R. Muthukannan, for the Appellant; V. Subbiah (Spl. G.P.) for R1 Mr. P.S. Jayakumar for R2, for the Respondent

Judgement

Honorable Mr. Justice D. Hariparanthaman

1. The petitioners are employed as conductress in various Panchayat Union Schools in Thirupullani Panchayat Union, Ramanathapuram District. They are employed as conductress from 1975. They were regularized in service in 1985 on completion of 10 years of service.

2. The grievance of the petitioners is that in their entire career they do not have any promotional avenues. They joined as conductress and have to retire as conductress. Though G.O. No. 189 Rural Development Department dated 10.06.1997 provides 10% reservation for the post of Office Assistant, Record Clerk, Night Watchman etc., in the matter of promotion to the post of Junior Assistant, the conductress are not given such promotional chance. According to the petitioners, the scale of pay of conductress and the scale of pay of the Office Assistant, is one and the same. The petitioners have sought direction to the respondents to consider them for promotion to the post of Junior Assistant.

3. The 2nd respondent has filed counter affidavit refuting the allegations. It is stated that the Rules do not provide for promotion from the post of conductress

to the post of Junior Assistant, as claimed in the writ petitions. Hence the petitioners could not seek promotion to the post of Junior Assistant.

4. The learned counsel for the petitioners, submits that though the petitioners have no right to seek promotion, they have right to be considered therefore. It is submitted that the Courts could issue proper direction in this regard, when there is no avenue of promotion at all. The learned counsel has heavily relied upon the judgment in Food Corporation of India and Others Vs. Parashotam Das Bansal and Others, .

5. On the other hand the learned counsel for the respondents submits that in the absence of any Rules providing for promotion, the petitioners are not entitled to seek promotion to the post of Junior Assistant.

6. Heard both sides.

7. The petitioners have been in employment in the post of conductress for the past 36 years, and the same is not disputed. It is also represented that there is no avenue for promotion to the post of conductress. According to the respondents, since no Rule provides for promotion, they are helpless, in the case of the petitioners.

8. It is also a fact that the petitioners have not made the Government as a party to the writ petitions, when the Government is the authority to frame Rules, under Article 309 of the Constitution, or under the relevant statute and to create avenues for promotion.

9. Therefore, this Court is not inclined to grant the relief as prayed for in the writ petition directing the respondents to consider the petitioners for the post of Junior Assistants. If such direction is given, then that could go against the existing Statutory Rules. However, the 1st respondent could take necessary steps in the light of the decision of the Apex Court in Food Corporation of India and Others Vs. Parashotam Das Bansal and Others, by taking up the matter with the Government for providing promotional avenues for the conductress, since there is no chance for promotion to any post in their entire career.

10. Para 10 to 14 of the aforesaid judgment are extracted hereunder;

10. This Court in O.Z. Hussain (Dr.) v. Union of India¹ opined: (SCC pp. 691-92, para 7)

7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical "A" Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the

obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the "A" category scientists in the non-medical wing of the Directorate.

11. The question also came up for consideration in *Ujagar Prints (III) v. Union of India*² and *Council of Scientific and Industrial Research v. K.G.S. Bhatt*³. In the latter decision, this Court held: (SCC pp. 638-39, para 9)

9. ... It is often said and indeed, adroitly, an organization public or private does not "hire a hand" but engages or employs a whole man. The person is recruited by an organization not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organization. It is an incentive for personnel development as well. (See *Principles of Personnel Management* by Flipo Edwin B., 4th Edn., p. 246.) Every management must provide realistic opportunities for promising employees to move upward. "The organization that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors." (See *Personnel Management* by Dr. Udai Pareek, p. 277.) There cannot be any modern management much less any career planning, manpower development, management development, etc. which is not related to a system of promotions.

12. When employees are denied an opportunity of promotion for long years (in this case 30 years) on the ground that they fell within a category of employees excluded from promotional prospect, the superior court will have the jurisdiction to issue necessary direction.

13. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a superior court of the country.

14. This Court in *State of Tripura v. K.K. Roy*⁴, upon taking into consideration some of the earlier decisions of this Court, held: (SCC pp. 67-68, para 6)

6. It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its

constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion, he cannot resile there from. It is not a case where the principles of estoppels or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India/Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the Scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. When questioned, the learned counsel appearing on behalf of the appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not introduced by the appellant like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the appellant should have followed the said principle.

11. The Apex Court has categorically held in para 13 of the aforesaid judgment that if there is no channel of promotion in respect of a particular group of employees, resulting in stagnation over the years, the superior courts although may not issue any direction as to in which manner a scheme should be formulated, could issue direction to make scheme providing promotion.

12. While declining to grant the relief as prayed for by the petitioners, the 1st respondent is directed to send necessary proposals to the Government of Tamilnadu to grant at least one promotional avenue to the post of Conductress, as in the case of Office Assistants, Record Clerks and others, in the light of the judgment of the Apex Court, referred to above, within a period of 12 weeks from the date of receipt of a copy of this order.

With the above observation, the writ petitions are disposed of. No Costs.