

(2019) 03 CAL CK 0111

In the Calcutta High Court

Case No : Wp. Central Tribunal (WP.CT) No. 177 Of 2018

V.Subbaraj And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Citation : (2019) 03 CAL CK 0111

Hon'ble Judges : Sahidullah Munsh, J; Biswajit Basu, J

Bench : Division Bench

Advocate : K.Vijay Kumar, V.D.Sivabalan, Gopala Binnu Kumar

Final Decision : Disposed Off

Judgement

Sahidullah Munshi, J

The private respondent herein Shri. K. Raj Kumar filed Original Application being OA No. 351/1621 of 2017 before the learned Central Administrative Tribunal, Calcutta Bench, inter alia, praying for the following reliefs:-

"(a) To rectify and/or modify the provisional seniority list of Assistant Engineer (Civil) of APWD as on 01.06.2017 which was published vide impugned office memorandum dated 5th July, 2017 and to assign the petitioner appropriate seniority list in light of the decision made by the Hon'ble Tribunal dated 30.09.2015 in O.A. No. 70/AN/2011 and in the light made by the Division Bench of the Hon'ble High Court in WPCT No. 188 of 2016 vide order dated 10th June, 2016 and in the light of another order passed by the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair dated 14th June, 2016 in WPCT No. 221 of 2016 and to give all consequential benefits including the ad hoc payment.

(b) To pass an appropriate order to rectify and/or modify the impugned office memorandum dated 13.09.2017 by which the impugned final seniority list to the post of Assistant Engineer (Civil) of APWD as on 01.06.2017 has been published by the Chief Engineer, APWD without considering the objection submitted by the

applicant vide his representation dated 01.08.2017 and 25.09.2017 which is absolutely illegal and arbitrary and further direct the Chief Engineer to rectify the seniority position of the applicant by modifying the final seniority list as on 01.06.2017 in accordance with the judgement and order passed by the Hon'ble Tribunal dated 30.09.2015 in OA No. 70/AN/2013 and order dated 04.04.2017 in OA No. 78/AN/2011 to rectify the original position of the applicant in the said seniority list along with all consequential benefits accordingly.

(c) To pass an appropriate order by directing upon the respondent authority to regularize the ad hoc service rendered by the applicant to the post of Assistant Engineer (Civil) as per direction of the Hon'ble Tribunal affirmed by the Hon'ble High Court and to assign you applicant's appropriate seniority in terms of the aforesaid decision of the Hon'ble High Court as well as of this Hon'ble Tribunal along with all consequential benefits."

The said original application came up for consideration before the Tribunal wherein an interim order was passed on 22.11.2017 and thereby the learned Tribunal directed the respondents not to take any action in pursuance of the final seniority list of Assistant Engineer (Civil), APWD published vide office memorandum dated 13.09.2017 till next date.

It appears that the private respondent i.e. the applicant in OA No. 351/1621 of 2017 filed a contempt petition being CPC/351/23/2018 alleging that the respondents failed to comply with the order dated 22.11.2017 of the Tribunal. By issuing an order on 08.01.2018 by the Deputy Secretary (PWD) to the following effect:-

"The Hon'ble Lt. Governor, A&N Islands is pleased to assign the Current-Duty-Charge of Executive Engineer (Civil) of APWD to the following Assistant Engineers (Civil) with immediate effect:-

1. Shri. K Devaraju
2. Shri. V.Subbaraj
3. Shri. Pradeep Prasad
4. Shri. GD Rajan

However, the above officers will neither be eligible for any financial benefit for the post of Executive Engineer (Civil) nor their services rendered on Current-Duty-Charge will be counted towards seniority for regular promotion."

It appears that while entertaining the contempt application and passing an order dated 13.07.2018 learned Members Central Administrative Tribunal while holding that the order passed by Tribunal was interfered with by disturbing the seniority list which was directed to be stayed, the tribunal gave liberty to the respondent to revoke their order dated 08.01.2018, which the petitioner is aggrieved by.

While making submissions Mr. Vijay Kumar learned advocate appearing for the

writ petitioners submits that the order dated 22.11.2017 is an interim order passed by the Tribunal at the instance of K. Raj Kumar who filed the original application No. OA 351/1621 of 2017. He fairly submits that he does not wish to continue his challenge against the said order dated 22.11.2017 which will be subject to result of the final outcome of the said original application. He submits that his client is really aggrieved by the order dated 13.07.2018. We find that in a contempt proceeding the Tribunal gave liberty to the respondents to revoke their order dated 08.01.2018, completely over sighting that there is no scope to pass a new order in a contempt proceeding. Record reveals that the petitioners were holding the post of Executive Engineer (Civil) on Current-Duty-Charge and after passing of the order dated 13.07.2018 by the Tribunal the authority was taking steps to revert the petitioners. Therefore, according to the petitioner, the private respondent with an ill motive filed the original application without adding the writ petitioner in the said original application whose interest is directly affected therein if the original application is allowed in favour of K. Raj Kumar.

We are satisfied that the petitioners have genuine grievance inasmuch as the Tribunal cannot take away the rights of the petitioners behind their back in order to secure the interim order which was passed on 22.11.2017 where the present petitioner were not parties. It is also agitated before this Court by the petitioners that in view of the earlier decisions of the tribunal and of this Hon'ble Court the prayer which was made by the private respondent in the aforesaid original application no relief could be made available as, according to the petitioner, stood barred by the principle of res judicata. However, we are not going to decide at the moment this dispute whether the original application is maintainable in its present form or not. We find from the record that the original application being OA No. 351/1621 of 2017 is pending and the present petitioners being not parties can be allowed to intervene in the said original application if they apply for doing so before the Tribunal. We hereby grant such leave to the petitioner for being added as party. But at the same time we are of the opinion that the provisional seniority list of Assistant Engineer (Civil) which was published earlier or the order which has been issued on 08.01.2018 whereby the petitioner Shri. V.Subbaraj has been benefited in any manner cannot be upset to protect the petitioners interest in original application without making a detailed inquiry into the rights of the petitioners in the aforesaid OA No. 351/1621 of 2017 vis-à-vis the rights of the writ petitioner, V. Subbaraj. We also hold that if the Tribunal holds any official to be guilty of contempt for any alleged violation of its order the Tribunal can deal the said official appropriately, but while doing so a right accrued to V.Subbaraj, the writ petitioner cannot be taken away without the original application being finally adjudicated upon in his presence. Therefore, we modify the order dated 13.06.2018 being annexure P4 at page 99 of this application by holding that the Tribunal was incompetent to give liberty to the respondents to revoke their order dated 08.01.2018 passed by the Deputy Secretary (PWD) in F.No. 2-40/2016-PWD-1 so far as the writ petitioner V.Subbaraj is concerned. The contempt proceeding otherwise be maintained and

proceeded with as the Tribunal deems it proper. We give liberty to the writ petitioner to take appropriate steps for being added as a party in original application being OA No. 351/1621 of 2017 and we also give him liberty to make appropriate submission before the Tribunal. We request the Tribunal to dispose of the OA No. 351/1621 of 2017 at an early date.

The writ petition being WPCT No. 177 of 2018 is disposed of accordingly.