
(2014) 09 MAD CK 0070

In the Madras High Court

Case No : W.P.(MD) No. 3291 of 2013 and M.P.(MD)Nos. 1 and 2 of 2013

Z. Rahmathulla

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Citation : (2014) 09 MAD CK 0070

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Judgement

K.K. Sasidharan, J.—The revision of seniority after a considerable period and that too, at the instance of those who have joined the service long after the petitioner made him to file this Writ Petition.

THE BACKGROUND:

2. The petitioner was appointed as Junior Assistant on 01 September, 1983. It was a compassionate appointment. His services were regularised with effect from 01 September, 1983. Respondents 5 to 9 joined the service on the basis of the examination conducted by the Tamil Nadu Public Service Commission in the month of November, 1983. Their services were regularised in the year 1985. The second respondent earlier prepared a combined seniority list of Junior Assistant and Typist, by proceedings dated 02 February, 1994. The petitioner was placed at serial No. 110, whereas respondents 5 to 9 were placed at serial Nos. 118-A, 122, 127, 148 and 153-B respectively. Subsequently, while preparing the list for the post of Assistant, the petitioner was placed at serial No. 1697. Respondents 5 to 9 were placed at serial Nos. 1705, 1707, 1711, 1721 and 1725 respectively. Even in respect of the post of Superintendent, the petitioner was placed above respondents 5 to 9. He was placed at serial No. 673 and respondents 5 to 9 were placed at serial Nos. 680, 682, 685, 687 and 690 respectively. The petitioner was promoted to the post of Assistant Director in the year 2008, taking into account his seniority.

3. The Government have issued an order in G.O. Ms.No.951, Personnel and Administrative Reforms Department, dated 14 September, 1984, which provides that seniority should be fixed by considering the date of appointment. The said Government Order also indicates that it would not apply to persons who have already been appointed and it would come into force from the date of its publication in the Government Gazette.

4. While so, the Government issued an order in G.O(D)No.81, Micro, Small and Medium Enterprises (E11-1) Department, dated 15 June, 2012, whereby and whereunder, the second respondent was empowered to revise the orders issued for fixation of seniority among Junior Assistants and Typists appointed by various methods from 1983 onwards. The said Government Order and the consequential action revising the seniority by the second respondent are challenged in this Writ Petition.

5. The Joint Secretary to Government, Micro, Small and Medium Enterprises Department, Secretariat, Chennai-9 filed a counter-affidavit in answer to the contentions raised in the affidavit filed in support of the Writ Petition. According to the Government, seniority among the persons appointed through three different methods of appointment requires to be determined. The Government issued an order in G.O.(2D)No.250, dated 26 May, 2000, wherein it has been directed that the seniority among the three different types of appointees shall be fixed, taking into account the Tamil Nadu Public Service Commission 1983 candidates (as per commission seniority), special absorption candidates and candidates appointed under various methods including Recruitment by Transfer and appointment made under compassionate ground. According to the Government, the seniority of the petitioner was re- fixed below the 1983 batch of Tamil Nadu Public Service Commission Direct Recruits in accordance with the Government Order and as such, there is no merit in the Writ Petition.

6. Respondents 5 to 9 failed to appear before this Court, in spite of receiving summons. Their names are printed in the cause-list.

SUBMISSIONS:

7. The learned counsel for the petitioner contended that the employees, who were appointed long after the appointment of the petitioner, were shown above him. According to the learned counsel, it is not open to the Government to unsettle the seniority settled long back and as such, the impugned Government Order and the related order passed by the second respondent are liable to be set aside.

8. The learned Government Advocate justified the impugned Government Order and the consequential order passed by the second respondent.

ANALYSIS:

9. The petitioner was appointed as early as on 01 September, 1983 as Junior Assistant. The counter-affidavit filed by the Joint Secretary to Government

contains the details regarding the seniority fixed earlier. The Department prepared a combined seniority list, on the strength of the Government Order in G.O. Ms.No.417, Personnel and Administrative Reforms (Per- B) Department, dated 01 December, 1993. It was a combined seniority list of Junior Assistants and Typists. The seniority list dated 02 February, 1994 shows that the petitioner is placed at serial No. 110. Respondents 5 to 9 were placed at serial Nos. 137, 122, 126, 140 and 176 respectively. Subsequently, another seniority list was published on 28 January, 2000. The petitioner was placed at serial No. 110. Respondents 5 to 9 were placed at serial Nos. 118A, 122, 127, 148 and 153B. It was long after and that too, based on the subsequent Government Order in G.O(D)No.81, Micro, Small and Medium Enterprises (E11-1) Department, dated 15 June, 2012, seniority was changed, whereby and whereunder the petitioner was placed at serial No. 152. Respondents 5 to 9 were placed at serial Nos. 109,112,119, 135 and 140 respectively.

10. The documents available on record very clearly show that all these respondents were placed above long after the appointment of the petitioner. Respondents 1 to 4, without any regard to the settled seniority, unsettled it on a fine morning without any basis. The Government order, relaxing Rule 38 of General Rules for Tamil Nadu State and Subordinate Service Rules, is in the nature of a guideline. There was no intelligible criteria followed by the Government in the matter of fixing the seniority. The petitioner is, therefore, perfectly correct in his contention that by way of the impugned Government Order, settled seniority is unsettled long after.

11. The interest of the petitioner could be protected even without quashing the impugned Government Order. In fact, this Court has also adopted a similar line, while considering the grievances made by the petitioners in W.P. No.26943 of 2012. This Court has made it clear that those who have joined after 25 June, 1984 cannot claim seniority over others who joined earlier.

RESULT:

12. In the result, the impugned seniority lists are set aside and the matter is remitted to the Industries Commissioner and Director of Industries and Commerce.

DIRECTION:

13. The Industries Commissioner and Director of Industries and Commerce is directed to consider the matter afresh and restore the seniority of the petitioner, taking into account his date of joining service. Such exercise shall be completed, within a period of three months from the date of receipt of a copy of this order.

14. The Writ Petition is allowed to the extent indicated above. Consequently, the connected miscellaneous petitions are closed. No costs.