

A.Chandrasekaran Vs. the Special Commissioner of Treasury

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Court : Chennai

Decided On : Feb-29-2012

Judge : K.Ravichandra Baabu, J.

Appeal No. : W.P.(MD)No. 9949 of 2009 And W.P.(MD)No.11615 of 2009 and M.P(MD)No.1 of 2009

Appellant : A.Chandrasekaran

Respondent : The Special Commissioner of Treasury

Advocate for Def. : Mr.B.Pugalendhi, Adv.

Advocate for Pet/Ap. : Mr.S.Govindan, Adv.

Judgement :

Prayer

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the recording relating to the impugned order passed by the second respondent in R.C.No.14335/07/A2 dated 23.09.2009 and quash the same and consequently direct the second respondent to regularize the petitioner in the category of Junior Assistant and fix the pay scale for the same.

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the recording relating to the impugned

proceedings in R.C.No.14335/07/A2 dated 23.09.2009 passed by the respondent herein and to quash the same as illegal and to direct the respondent to regularize the service of the petitioner as Junior Assistant with all consequential benefits.

COMMON ORDER

1. The prayer in the writ petition in W.P(MD)No.9949 of 2009, is challenging the order passed by the second respondent dated 23.09.2009 and consequently seeking for a direction to the second respondent to regularize the pension in the category of Junior Assistant and fix the pay scale.

2. The prayer in the writ petition in W.P(MD)No.11615 of 2009, is challenging the order passed by the respondent dated 23.09.2009 and consequently seeking for a direction to regularize the service of the petitioner as Junior Assistant with all consequential benefits.

3. The case of the petitioners is that they were appointed as Office Assistants on 09.03.1988 and 07.02.1986 respectively at the Office of the third respondent in W.P(MD)No.9949 of 2009 and the respondent in W.P(MD)No.11615 of 2009 respectively, duly sponsored through the District Employment Exchange. Thereafter, the first petitioner was promoted as Record Clerk on 14.07.2004. Further, the petitioners were promoted as Junior Assistants on 18.10.2006 and in such capacity, the petitioners were working without any complaint and with unblemished record. It is stated by the petitioners that though they were promoted as Junior Assistant, they were not paid the salary as Junior Assistants. On the other hand, they are getting the salary payable to the post of Record Clerk. In spite of repeated representations given by the petitioners, the second respondent failed to regularize the service of the petitioners as Junior Assistant and pay the salary payable to the said post. It is also stated by the petitioners that in pursuant to their promotion as Junior Assistant, they have also been given a computer training. The petitioners had also passed the Tamil Nadu Government Office Manual Test and Account Test(Part II) as well as Treasuries and Accounts Departmental Test. While the petitioners were working as Junior Assistants for more than three years, the second respondent passed the impugned order on 23.09.2009 reverting the petitioners to the post of Record Clerk and Office Assistant respectively from the

post of Junior Assistant on the ground that the petitioners' promotion made under Rule 3(g) of Special Rules for Tamil Nadu Ministerial Services, was more than 25% of the estimated vacancies. The said order passed by the third respondent is challenged by the petitioners on several grounds including the violation of principles of natural justice.

4. This Court ordered notice of motion on 07.10.2009 and 13.11.2009 respectively. The respondents on notice entered appearance and filed the counter affidavits.

5. It is contended by the respondents that the petitioners were given promotion as Junior Assistant on 25.10.2006, by recruitment, by transfer as per the provisions contemplated under Rule 3(g) of Special Rules for Tamil Nadu Ministerial Services. As per the above said rules, provisions for appointment to the post of Junior Assistant may be made by recruitment by transfer from the lower categories from other services carrying time scale of pay by not exceeding 25% of the estimated vacancy of the particular panel year. While the estimated vacancies for the said panel year of 2006 was only '4', the appointments made to the post of Junior Assistant including the petitioners exceeded the said '4' vacancies and on the other hand 12 persons were appointed. Consequently, the petitioners were reverted to the old post of Record Clerk and Office Assistant respectively, by the impugned order dated 23.09.2009.

6. According to the respondents, as the impugned orders were passed in accordance with the provisions contemplated, there is no violation of principles of natural justice as contended by the petitioners. It is further stated by the respondents that such petitioners' service as Junior Assistants was not regularized and no promotional benefits were given to them especially when the petitioners were given the irregular promotion. Therefore, the reversion order made on 23.09.2009 by the second respondent is perfectly valid.

7. The learned Counsel appearing for the petitioners argued that the promotion given to the petitioners as Junior Assistant was, admittedly, not based on misrepresentation or fraud played by the petitioners. Moreover, when the respondents having promoted the petitioners and allowed them to continue in the promotional post for more than three years, they are not entitled to revert the

petitioners merely on the ground that total number of promoted posts exceeded 25% of the estimated vacancies during the panel year.

8. The learned Counsel for the petitioners also contended that Rule 3(g) of Special Rules for Tamil Nadu Ministerial Services, quoted by the second respondent in its impugned order is not applicable to the petitioners' case, as it applies only to the candidates from other services namely the other departments. It is further argued by the learned Counsel for the petitioners that when the order of promotion was made by the second respondent, they have considered the petitioners as fully qualified to the said post and consequently, they made the promotion to the post of Junior Assistant. He further argued that above all, the impugned orders were passed without affording an opportunity of hearing to the petitioners, as admittedly no notice was served on them before passing the impugned order. In support of his contention, learned Counsel for the petitioners relied on the following decisions: a) 2007 WLR 1012(V.Usha -vs-The Director of Town Panchayat, Kuralagam, Madras -108 and others)

b)(2006) 3 MLJ 532(S.Ganapathy -vs- Commissioner of Commercial Taxes, Chennai and another)

c)2008 2 SCC 750(Union of India and another -vs- Narendra Singh) d)(2011) 4 MLJ 469(R.Muthukrishnan -vs- Registrar of Cooperative Societies Chennai-10 and others)

e)(2006) 1 MLJ 590(R.Mohan -vs- Special Commissioner and Commissioner for Revenue Administration, Chennai and another) f)(2001) 3 SCC 328(Dhi Nath Chaudhary and others-vs- Aahi Kumar)

9. Per contra, the learned Additional Government Pleader appearing for the respondents argued that the promotion given to the petitioners was not according to the rules as it exceeded 20% of the estimated vacancy of the particular panel year. He also relied on Rule 3(g) of Special Rules for Tamil Nadu Ministerial Services, to substantiate his contention that the promotion of the petitioners to the post of Junior Assistant was made exceeding the 20% of the estimated vacancies for the particular panel year while only four posts were permitted at that time for

promotion as Junior Assistants. Therefore, the promotion of the petitioners was irregular one and consequently, the impugned order passed on 23.09.2009 is perfectly valid.

10. The learned Additional Government Pleader relied on Rule 35 (f) of the Tamil Nadu Ministerial State and Subordinate Services, and argued that such rules permit rectification of mistake and therefore, the second respondent has passed the impugned order and thereby rectified the mistake committed earlier.

11. Heard the learned Counsel for the respective parties.

12. The points for consideration in this case are:- (1)Whether the petitioners having been promoted to the post of Junior Assistants can be reverted after a period of three years solely on the reason that their promotion was irregular and exceeded 20% of the estimated vacancies for the particular panel year? and

(2)Whether the second respondent is entitled to pass the impugned order of reversion reverting the petitioners from the post of Junior Assistant to the post of Record Clerk and Officer Assistant respectively without following the principles of natural justice?

13. In this case, admittedly, the petitioners were originally appointed as Office Assistants on 09.03.1988 and 07.12.1986 respectively. After working in such capacity for more than 16 years, the petitioner in W.P(MD)No.9949 of 2009 was promoted as Record Clerk on 14.07.2004. After working in such capacity for more than two years, without any complaint, the said petitioner was promoted to the post of Junior Assistant on 18.10.2006. Likewise the petitioner in W.P(MD)No.11615 of 2009 was also promoted to the post of Junior Assistant on 18.10.2006 after he worked as Office Assistant for more than twenty years. Even after such promotion as Junior Assistant, the petitioners were working for more than three years in that capacity. It is not the case of the respondents that the petitioners are lacking any requisite qualification to the post of Junior Assistant. It is also not the case of the respondents that the petitioners had misrepresented or played fraud on the Department for getting such promotion. The only reason assigned in the impugned order is that the promotion to the post of Junior

Assistant under Rule 3(g) of Special Rules for Tamil Nadu Ministerial Services, has to be made only on the estimated vacancies on the current year and past vacancies should not be taken into account and therefore should not exceed 20% of the estimated vacancies in each of the categories in that panel year. Therefore, the second respondent reverted the petitioners on the sole ground that the estimated vacancies for the year 2006 was only '4' and the petitioners' appointment along with the others had exceeded the said '4' vacancies. Apart from this, the second respondent has not stated any other the reasons for reverting the petitioners to the post of Record Clerk and Office Assistant respectively.

14. A bare perusal of the impugned order shows that even according to the second respondent, the promotion given to the petitioners was only irregular and not illegal. At any event, when the petitioners were not at fault and the promotion given to them was not on misrepresentation or fraud played by them, the respondents 1 and 2 are not entitled to penalise the petitioners, that too, after a period of three years by reverting them to the post of Record Clerk and Office Assistant respectively.

15. At this juncture, it is useful to refer the decision made by this Court in R.Mohan -vs- Special Commissioner and Commissioner for Revenue Administration, Chennai and another reported in (2006) 1 M.L.J 590 and in paragraph '5' it is held as follows:

5. I have heard the learned Counsel on either side. The decision in A.R.Maruthappan and others -vs- The Commissioner and Secretary to Government, Education Department, Fort St.George, Madras and others, W.P.No.6605 of 1988 dated 18.11.1996 and the Supreme Court decision cited supra squarely apply to the facts of this case. Petitioner having been appointed in the year 1973, assuming his appointment is irregular, following the proposition laid down in the Supreme Court in the above cited decision, I hold that in this case only a formal ratification is required, but instead, the reversion order now made is totally unwarranted. The irregular appointment, if it is ratified, will definitely confer a right on the petitioner to get his appointment ratified from the date of initial appointment. Therefore, the impugned order is liable to be set aside.

16. In a decision reported in (2001) 3 SCC 328 in the matter of Buddhi Nath Chaudhary -vs- Abahi Kumar and others, the Honourable Supreme Court has held in paragraph '6' as follows:

6. ...We have extended equitable considerations to such selected candidates who have worked in the post for a long period, but the contesting respondents do not come in that class. The effect of our conclusion is that appointments made long back pursuant to a selection need not be disturbed. Such a view can be derived from several decisions of this Court including the decisions in Ram Sarup -vs- State of Haryana, District Collector & Chairman, Vizianagaram Social Welfare Residential School Society -v- M.Tripura Sundari Devi and H.C. Puttaswamy -vs- Hon'ble Chief Justice of Karnataka High Court, Bangalore. Therefore, we must let the matters lie where they are.

17. From the reading of above case laws, it could be seen that the second respondent is not entitled to revert the petitioners after a lapse of three years even such promotion is an irregular one. The Honourable Supreme Court has also held in the aforesaid decisions that the appointments made long back pursuant to the selection need not be disturbed.

18. That apart, as I have already discussed, the petitioners had not misrepresented any facts or played fraud while getting the order of promotion. Therefore, the respondents are not entitled to revert the petitioners merely because such promotion is an irregular one. In this connection, it is useful to refer the decision reported in (2006) 3 MLJ 532 in the matter of S.Ganapathy -v- The Commissioner of Commercial Taxes, Chennai and Another, wherein at paragraphs 15 and 17 it is held as follows:

15. The law is well settled in this aspect. Normally, when an official has been conferred with the benefit of promotion as well as with the pay scale and the same has been enjoyed for a considerable period, it is not open to the authority later to decide against him, on the basis that a mistake has been committed by giving promotion or pay fixation. That was decided by the Division Bench of this Court in D.Palavesamuthu -vs- Tamil Nadu Administrative Tribunal represented by its Registrar Chennai and others 2006(1) MLJ 143. The Hon'ble Division Bench of

this Court while placing reliance on the judgment of the Apex Court in Sahib Ram - v- State of Haryana AIR 1995 SCW 1780: 1905 Supp(1)SCC 18 has laid down the dictum as follows:

Even if it is accepted for argument sake that salary of the petitioner is fixed in a wrong scale of pay, it is the fault committed by the Department and their Officers, for which the petitioner should not be penalised after a lapse of number of years that too after retirement of the petitioner

17. In this case also, it can never be said that there was any misrepresentation on the part of the petitioner or any suppression made by him. As stated earlier, the order of promotion dated 07.07.2000 is legal, since the order of promotion in respect of many candidates were considered on merits.

19. From the reading of the above said judgment, it could be seen that when an employee is given the benefit of promotion and he has also been permitted to enjoy the said benefit for a considerable time, the authorities are not entitled to decide against such promotion on the basis that mistakes have been committed while granting the promotion to such employee that too when such mistake is procedural one and not with regard to the qualification.

20. While coming to the next point with regard to violation of principles of natural justice, it is an admitted case of the respondents that they have not issued any show cause notice to the petitioners before passing the impugned order. On the other hand, it is the contention of the respondents that as the very promotion itself was made irregularly against the rules, there need not be any enquiry or hearing of the petitioners by following the principles of natural justice.

21. I do not agree with the contention raised by the respondents. When the order of reversion admittedly affects the interests of the petitioners both monetary wise and status wise, such an order cannot be passed behind the back of the petitioners and without providing them an opportunity of hearing. Therefore, by not following the principles of natural justice, the impugned order passed by the second respondent does not have a leg to stand before the scrutiny of this Court.

22. At this juncture, it is also useful to refer to the decision rendered by the learned Judge in 2007 WLR 1012 in the matter of V.Usha -vs- The Director of Town Panchayat, Kuralagam, Madras -108 and others referred supra, wherein the learned Judge has quashed the order of reversion on the ground that the impugned orders were passed without giving notice. The Honourable Supreme Court in a judgment reported in (2008) 2 SCC 750 in the matter of Union of India and another -vs- Narendra Singh has held in paragraphs 33 and 34 as follows:

33.As observed by us, statutory rules provide for passing of departmental examination and the authorities were right in not relaxing the said condition and no fault can be found with the authorities in insisting for the requirement of law. In the circumstances, the action of the authorities of correcting the mistake cannot be faulted.

34. True it is that before such an action is taken and a person is actually reversed he must be given an opportunity to show cause why the proposed action should not be taken. He may be able to satisfy the authorities that there was no such mistake. But even otherwise, principles of natural justice and fair play require giving of such opportunity to him.

23. Though the learned Additional Government Pleader relied on 35(f) of the Tamil Nadu State and Subordinate Services Rules, to contend that the authority has got power to rectify the mistake. The reading of the said rules only shows that applications for revision of seniority of a person in a service shall be made to the appointing authority within a period of three years. The said rule also says that the same shall not be applicable to the case of rectifying the orders resulting from the mistake of fact.

24.I failed to understand as to how the said rule is applicable to the present case on hand as admittedly there is no mistake of fact committed by the petitioners. On the other hand, it is only an irregular appointment on the sole reason that it exceeds 20% of the estimated vacancies. Therefore, the contention of the learned Additional Government Pleader is totally unacceptable.

25. Considering all these facts and circumstances as well as the case laws discussed as stated above, I am of the firm view that the impugned orders passed by the second respondent in both cases are totally illegal and unsustainable and consequently, the same are liable to be set aside and accordingly they are set aside. These writ petitions are allowed and the second respondent is directed to regularize the petitioners in the category of Junior Assistant and fix the pay scale within a period of six weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous petition is closed. No costs.

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