N. Saravanan Vs. the Government of Tamil Nadu, Represented by Its Secretary, Commercial Taxes and Registration Department and Another

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Court : Chennai Madurai

Decided On : Sep-14-2012

Judge : Vinod K. Sharma

Appeal No. : W.P.(MD) No.4876 of 2011 & W.P.(MD) No.4877 of 2011

Appellant : N. Saravanan

Respondent : The Government of Tamil Nadu, Represented by Its Secretary, Commercial Taxes and Registration Department and Another

Advocate for Pet/Ap. : For the Petitioner: T. Lajapathi Roy, Advocate. For the Respondents: M. Govindan, Special Government Pleader.

Judgement :

(Prayers: W.P.(MD)No.4876 of 2011 Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned communication in Letter No.8544/A2/2010-2, dated 23.07.2010 on the file of the respondent No.1 and the subsequent communication in Ref.No.P2/30313/2007 dated 09.08.2010 on the file of the Respondent No.2 and quash the same as illegal and consequently to direct the respondents to include the petitioner in the list of Assistant Commercial Tax Officer for the year 2004 with all service benefits retrospectively.

W.P.(MD)No.4877 of 2011: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration, declaring the Rule 6(d) of the Tamil Nadu Commercial Taxes Subordinate Service Rules as inapplicable to the candidates directly recruited as Assistants in the office of the Commissioner of Commercial Taxes, like the petitioner, while being considered for promotion to the post of Assistant Commercial Tax Officer and consequently to direct the respondents to include the petitioner in the list of Assistant Commercial Tax Officer for the year 2004 with all service benefits retrospectively.)

Common Order

1. This common order shall dispose of W.P.(MD)Nos.4876 and 4877 of 2011.

2. For the sake of brevity, the facts are taken from W.P.(MD)No.4876 of 2011.

3. The petitioner was appointed, as Direct Assistant in the Tamil Nadu Ministerial Service, by the Tamil Nadu Public Service Commission, and posted in the office of the Commissioner of Commercial Taxes, Chepauk, Chennai. The petitioner joined, as Assistant directly in the respondent's office on the forenoon of 28.09.2001, and, stands promoted, as Assistant Commercial Tax Officer as per the panel year 2008.

4. It is the case of the petitioner, that combined list for the year 2004 was drawn, wherein name of the petitioner was not included, though his immediate junior Thiru. M. Aushiq Hussian was included in the panel, though the petitioner was fully eligible, as the petitioner had completed two years of service as Assistant, on the afternoon of 27.09.2003, within a continuous period of three years. The petitioner had a total service of two years five months and three days as on 01.03.2004, i.e., the crucial date for the drawal of panel, for the post of Assistant Commercial Tax Officer for the year 2004.

5. It is submitted, that the name of the petitioner was not included in view of Rule 6(d) of the Tamil Nadu Commercial Taxes Subordinate Service, which prescribes that a candidate, for promotion, to the post of Assistant Commercial Tax Officer, by recruitment by transfer of service should have a total service of 6 years (8 years

in the case of non-graduates) inclusive 2 years as Assistant. Therefore, it is evident from the Rules, that this qualification pertains to Assistants, who were promoted from the post of Junior Assistants / Typists. The total service of 6/8 years, therefore includes the services rendered in lower category as Junior Assistant / Typist.

6. The submission of the petitioner is, that Rule 6(d) of the Tamil Nadu Commercial Taxes Subordinate Service, is not applicable, to the case of the petitioner, as the petitioner was directly recruited Assistant, therefore falls in separate category, Group II services.

7. The petitioner filed a representation dated 25.05.2007, for inclusion of his name in the panel of Assistant Commercial Tax Officer on par with his juniors. The representation was forwarded to the first respondent, being competent authority to relax the Rules.

8. The petitioner, thereafter, sent another representation dated 22.08.2008, pointing out, that similar issue of seniority, which was in force in the Revenue Department, dealing with seniority between transferees in the Tamil Nadu Revenue Subordinate Service, and the direct recruited Deputy Collector for being considered for promotion, to the post of District Revenue Officer.

9. The petitioner sent second representation on 22.08.2008 based on the decision of the Hon'ble Supreme Court in Civil Appeal Nos.1608 and 1609 of 1990, dealing with the dispute of seniority in the Revenue Department between transferees in the Tamil Nadu Revenue Subordinate Service, and the directly recruited Deputy Collector, for promotion to the post of District Revenue Officer.

10. In pursuance to the decision of the Hon'ble Supreme Court, the State of Tamil Nadu amended the Special Rules for the Tamil Nadu Revenue Subordinate Services, to remove the anomaly in the Rules prescribing a total period of service for the Promotees, by inserting Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules. The petitioner, in the second representation, prayed for applying the similar yardstick.

11. It is submitted, that the second respondent sent a communication dated 25.02.2009, seeking for the relaxation of the impugned Rule, in the case of the petitioner, since this Rule has resulted in the junior of the petitioner to be included in the panel year 2004, much ahead of the petitioner. The petitioner, again filed a representation dated 15.06.2009, for relaxation of Rule.

12. It is submitted, that the first respondent rejected the request of the petitioner, for relaxing Rule 6(d) of the Tamil Nadu Commercial Taxes Subordinate Service for the petitioner, in spite of the fact, that the second respondent sent a detailed representation for relaxing the Rule.

13. The petitioner, has challenged the impugned order of refusal, to relax the Rule to be violative of Articles 14 and 16 of the Constitution of India, as Rule 6(d) of the Tamil Nadu Commercial Taxes Subordinate Service when applied to the directly recruited Assistants in the office of the Commissioner of Commercial Taxes, violates Rule 35(a) and (aa) of the Tamil Nadu State and Subordinate Service Rules. That Rule 6(d) of the Tamil Nadu Commercial Taxes Subordinate Service is not applicable to the case of the petitioner, in view of decision of the Hon'ble Supreme Court in Civil Appeal Nos.1608 and 1609 of 1990 wherein the Rule of the Revenue Department, was struck down.

14. The learned counsel for the petitioner vehemently contended, that the impugned order dated 23.07.2010 deserves to be quashed, in view of the fact, that Rule 6(d) of the Tamil Nadu Commercial Taxes Subordinate Service cannot be sustained in law, in view of the Judgment of the Hon'ble Supreme Court in Civil Appeal Nos.1608 and 1609 of 1990.

15. The contention is totally mis-conceived. The petitioner, for the best reasons known, has not challenged the constitutional validity of Rule 6(d) of the Tamil Nadu Commercial Taxes Subordinate Service, and has only been making repeated requests, to relax Rule 6(d) of the Tamil Nadu Commercial Taxes Subordinate Service, to enable the petitioner, to get promotion.

16. The power to relax the Rule vests with the State Government, and it was for the Government, to exercise the discretion in favour of a person or class of

persons, to remove the hardship. The petitioner, cannot claim relaxation, as a matter of right. It was for the petitioner to challenge the constitutional validity of rule, which the petitioner has not chosen to even in this writ petition and only seeks relaxation of Rule.

17. This writ petition also suffers from vice of non-joinder of necessary parties. The petitioner has not impleaded alleged Juniors, as party while seeking promotion. In absence of juniors, being impleaded as parties, to challenge their promotion, the writ is not competent. This Court, can determine the right of the petitioner, for being promoted in preference to junior, if the junior is before the Court. It is prerogative of the employer, to fill up the number of posts, by promotion, and in case, the petitioner is to be promoted, then the promotion to the junior has to be set aside.

18. This Court, in exercise of writ jurisdiction, cannot create additional posts, for adjusting the petitioner.

19. This writ petition also suffers from delay and laches. It was for the petitioner, to challenge the promotion panel of the year 2004 immediately, but not in the year 2011 i.e., after seven years.

20. The mere filing of the representation, having no statutory force of law, is not a ground, to explain the delay.

21. As already observed above, even the representations of the petitioner were not to challenge the panel, but the petitioner only made repeated requests for relaxing Rule 6(d) of the Tamil Nadu Commercial Taxes Subordinate Service, to give him promotion. As stated earlier, the petitioner had no right, to seek relaxation of Rule, as it is the discretion of the State Government, to relax the Rules. The impugned order is refusing the request of petitioner to relax the Rules in favour of the petitioner.

22. The Judgment of the Hon'ble Supreme Court in Civil Appeal Nos.1608 and 1609 of 1990 cannot advance the case of the petitioner. The petitioner, for the reasons best known, has not placed on record the copy of the Judgment, on which

reliance has been placed, nor it was produced in the Court at the time of arguments.

No merits. "Dismissed".

No costs.