

A. Senthil Kumar and Others Vs. the Principal Secretary to Government, Cooperation, Food and Consumer Protection Department and Others

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Court : Chennai

Decided On : Nov-19-2012

Reported in : 2013(1)MLJ125

Judge : K. Chandru

Appeal No. : W.P.Nos.26513 of 2010 and 12727 of 2012 and M.P.Nos.1 and 2 of 2010, 1 to 4 of 2012

Appellant : A. Senthil Kumar and Others

Respondent : The Principal Secretary to Government, Cooperation, Food and Consumer Protection Department and Others

Advocate for Pet/Ap. : For the Petitioners: R. Yashod Vardhan, SC for P. Solomon Francis, L.S.M. Hasan Fizal, Advocates. For the Respondents: R1 to R4, P.S. Sivashanmugasundaram, AGP, R5, M. Devendran, Standing Counsel, R6, M.K. Subramanian, Spl.P.P, R8, 12, 19, 27 & 30, Ms. C.

Judgement :

(W.P.No.26513 of 2010 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records of proceedings of G.O.Ms.No.27, Finance (BPE) Department, dated 24.1.2007 clause (ix) and (x) and G.O.Ms.No.239, Agriculture (A.V.) Department, dated

14.10.2010 and quash the same insofar as it is against the petitioners and consequently direct the respondents 1 and 6 to prepare the seniority list of Junior Assistants and Assistants from 2000 to 2010.

W.P.No.12727 of 2012 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus to direct the respondents to implement the Government order in G.O.Ms.No.239, Agriculture (OS) Department, dated 14.10.2010 issued with the concurrence of the respondents and the proceedings bearing No.A1/42008/2008, dated 22.10.2010, No.A1/42008/2008-I, dated 21.01.2011 and No.A1/42008/2008-II, dated 21.01.2011 passed by the 4th respondent and consequently to treat the petitioners as regular, permanent employees of civil supplies and consumer protection department, regularize the petitioners' services, pay the petitioners' salary as applicable to permanent, regular Government servants in the cadres of Assistants and Junior Assistants, grant all service and monetary benefits, including promotions from the date of the petitioners' entry into civil supplies and consumer protection department within a time frame fixed by the court.)

COMMON ORDER

The first writ petition (W.P.No.26513 of 2010) is filed by 10 persons, who are working in the office of the Commissioner of Civil Supplies and Consumer Protection, Chepauk, seeking to challenge G.O.Ms.No.27, Finance Department, dated 24.1.2007 and paragraphs 9 and 10 and also G.O.Ms.No.239, Agriculture Department, dated 14.10.2010 and after setting aside the same insofar as it is against the petitioners, seeks for a direction to the respondents 1 and 6 to prepare the seniority list of Junior Assistants and Assistants from the year 2000 to 2010. In the said writ petition, notice of motion was ordered on 24.11.2010. Pending notice of motion, no interim order was granted in favour of the petitioners.

2. However, one Ranjan and 14 others have filed W.P.No.12727 of 2012, who are also employed in the very same office, seeking for a direction to the respondents to implement G.O.Ms.No.239, Agriculture Department, dated 14.10.2010 as well as the consequential proceedings dated 22.10.2010, 21.01.2011 and 21.01.2011 passed by the Commissioner, Department of Civil Supplies and Consumer

Protection, so as to treat the petitioners as regular and permanent employees of the department and regularize their services, pay salary to the petitioners as applicable to the permanent regular Government servants in the cadre of Assistants and Junior Assistants and to grant all service and monetary benefits including promotions from the date of the petitioners' entry into the department within a time frame. This writ petition when it came up on 22.04.2012, the learned Government Advocate took notice. Subsequently it was directed to be posted along with the earlier writ petition. Thus both matters were clubbed together and posted before this court by an order of the Hon'ble Chief Justice dated 07.11.2012.

3. Heard the arguments of Mr.R.Yashod Vardhan, learned Senior counsel for Mr.P.Solomon Francis, learned counsel for the petitioners in W.P.No.26513 of 2010, Mr.L.S.M.Hasan Fizal, learned counsel for the petitioners in W.P.No.12727 of 2012, Mr.P.S.Sivashanmuga Sundaram, learned Additional Government Pleader for official respondents, Mr.M.K.Subramanian, learned Special Government Pleader for the Commissioner, 6th respondent in W.P.No.26513 of 2010 and 4th respondent in W.P.No.12727 of 2012, Mr.M.Devendran, learned counsel for the TNPSC and Ms.C.Uma, learned counsel for respondents 8,12,19,27 and 30 in W.P.No.26513 of 2010.

4. It is admitted of the petitioners in W.P.No.12727 of 2012 that they were all initially employed for the Tamil Nadu Cooperative Oilseeds Growers Federation Ltd. (for short TANCOF). When the TANCOF was wound up, they asked for absorption of their services in the agricultural department as regular Government servants and that they filed a writ petition in W.P.No.26056 of 2004. The said writ petition was dismissed as not maintainable by an order dated 13.09.2004. Subsequently, the Government had passed a general Government Order with reference to the employees who were appointed in the Public Sector undertakings or in the cooperative institutions and subsequently deputed to an another public sector undertaking or the Government department. The said G.O.Ms.No.27, Finance (BPE) Department, dated 24.01.2007 had prescribed terms and conditions for permanent absorption. Paragraphs 3(ix) and (x) of the Government Order reads as follows :

"(ix) The employees of State Public Sector Undertakings / Cooperatives working on deputation / Contract with the other state Public Sector Undertakings / Government Departments may be considered for permanent absorption only after they completed two years of service in the foreign body. It is also clarified that the permanent absorption in the SPSUs, Government Departments will take effect from the date from which they are continuously working in the foreign body on deputation/ contract.

(x)Wherever relaxation of rules other than educational qualification are involved, the Administrative Department will consider the permanent absorption on merit of each case in consultation with the Finance (BPE) Department and P&AR; Department and pass necessary orders."

5. On the basis of the said G.O., persons from TANCOF have requested to be considered for absorption as they were working for the TANCOF for several years. After correspondence, the Government had issued G.O.Ms.No.239, Agricultural Department, dated 14.10.2010 absorbing the workers and permanently appointed them in the Government services. It was stated in paragraph 7 of the G.O., that the petitioners were subjected to three conditions mentioned in the G.O. They can be absorbed permanently as Assistants in the Department. The condition No.1 was that if persons who are already working in the department, the persons who came from the TANCOF will be considered as junior most. Secondly, from the time when they were appointed, within two years they will have to pass the necessary department test and if they do not pass the test, they will be reduced in rank. Thirdly, they were also directed to go for a civil services training in Bavanisagar institute.

6. Based on the G.O., the Commissioner for Civil Supplies, Food and Consumer Protection Department had issued an order on 22.12.2010 absorbing the petitioners imposing the conditions as found in the G.O. Thereafter on 21.01.2011, regularization order was issued based on the date of joining. On 21.01.2011, the seniority list of persons were issued from the year 1999-2007. The petitioners had earlier preferred a writ petition being W.P.No.28056 of 2004 seeking for absorption of the petitioners as regular government servants with retrospective effect from the

date on which their juniors were absorbed. That writ petition was dismissed. Thereafter, the petitioners preferred W.A.No.3824 of 2004. A division bench of this court by an order dated 28.01.2011 had closed the writ appeal. In paragraph 4, the division bench had observed as follows :

"4. The Special Government Pleader appearing for the respondents submits that the Government in G.O.(Ms)No.27, Finance (BPE) Department, dated 24.1.2007 has passed order with regard to the permanent absorption of the employees in the foreign bodies accepting the recommendation of the Secretaries Committee on Public Enterprises (Scope). It is the further submission of the learned Special Government Pleader that the Government in G.O.Ms.No.239, Agriculture Department, dated 14.10.2010 absorbed 27 persons including some of the appellants herein."

It was thereafter, the petitioners after having got absorbed seeking for pay fixation from the date on which they joined the service and thereafter filed the present writ petition.

7. In the counter affidavit filed in the first writ petition, the State Government contended that the writ petitions were pre-mature. Only after finalization of the seniority, the status of the petitioners can be ascertained and the the respondents 7 to 32 will be placed at the appropriate place in the seniority. G.O.Ms.No.239, Agriculture Department, dated 14.10.2010 in unambiguous and enforceable. The persons who were absorbed were from the year 1999 to 2010. There is no conflict between the two G.Os, which are sought to be quashed. On completion of the absorption process, the seniority in the cadre of Assistants and Junior Assistants from the year 1999 to 2010 will be revised.

8. In the light of the above, both writ petitions are clearly not maintainable. On one hand, the petitioners in W.P.No.26513 of 2010 cannot challenge the G.O issued by the Government in absorbing the staff who were deputed from TANCOF and they also cannot challenge their being made regular employees of the department. The only question regarding seniority is squarely covered by G.O.Ms.No.239, Agriculture Department, dated 14.10.2010. Their apprehension that the demand of the absorbed employees to have seniority from the date of entry into the service

will be accepted by the Government cannot be countenanced, since G.O.Ms.No.239, while granting them the benefit of absorption also takes care of the larger question of seniority as noted above. While paragraph 7(iii) of the Government order provided for permanent appointment of assistants from the absorbed employees, condition No.1 clearly states that in such event, they will be made juniors in the seniority list.

9. It was also stated in the counter affidavit that no seniority has been finalized as on date of the counter affidavit, i.e., 18.05.2012 and that the permanent absorption of TANCOF employees will not work against the petitioner and that no prejudice will be caused to them. The other stand was that no separate seniority lists can be maintained between absorbed staff and for direct appointees also has to be noted. Ultimately, when the combined seniority list is finalized as per the Government Order and granting absorption, the question of any grievances of the two groups will arise. Until such time, as there is no challenge to the absorption and grant of permanency, the seniority issue need not be gone into at this stage. But it is made clear that the official respondents while finalizing the seniority will strictly keep their arrangement of seniority in terms of G.O.Ms.No.239, Agriculture Department, dated 14.10.2010.

10. In the light of the above observations, both writ petitions will stand dismissed. No costs. Consequently connected miscellaneous petitions stand closed.

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