IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

WP(C).No. 35233 of 2007 (Z)

OA 486/2004 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER/APPLICANT:

K.A.SANTHOSH KUMAR, AGED 42 YEARS,
S/O. AMBUJAKSHAN NAIR, OFFICE SUPERINTENDENT
OFFICE OF THE COMMISSIONER OF INCOME TAX(CENTRAL)
KOCHI, RESIDING AT C-43, INCOME TAX QUARTERS
PANAMPILLY NAGAR, KOCHI-36.

BY ADV. SRI.R.SREERAJ

RESPONDENTS/RESPONDENTS:
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1. UNION OF INDIA REPRESENTED BY
   ITS SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF
   REVENUE, NEW DELHI.

2. THE CENTRAL BOARD OF DIRECT TAXES,
   NORTH BLOCK, NEW DELHI, REPRESENTED BY
   ITS CHAIRMAN.

3. THE CHIEF COMMISSIONER OF INCOME TAX,
   C.R. BUILDING, I.S. PRESS ROAD, COCHIN.

R1-R3 BY SRI.N.NAGARESH, ASG OF INDIA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 35233 of 2007 (Z)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE FINAL ORDER DT.24.5.06 IN OA.486/04 OF CAT, ERNAKULAM BENCH.

P2: TRUE COPY OF OM F NO.48/1/2001-AF/DOMS/141 DT.4.6.01 ISSUED BY THE DEPARTMENT OF REVENUE, CENTRAL BOARD OF DIRECT TAXES.

P3 TO: P3(B) TRUE COPY OF ORDERS F NO.11/ESTT/14/CC/CON/2000-01 DT.4.7.01, F NO.11/ESTT/14/CC/CON/2001-02 DT.29.11.01 AND F NO.11/ESTT/3/CC/CHN/CON / 2001-02 DT.28.12.01.

P4: TRUE COPY OF OA.486/04 ALONG WITH ANNEXURES.

P5: TRUE COPY OF THE STATEMENT FILED BY THE RESPONDENTS IN ANSWER TO THE CONTENTIONS IN THE OA.

P6: TRUE COPY OF THE REJOINDER FILED BY THE PETITIONER.

P7: TRUE COPY OF THE REPLY TO THE REJOINDER FILED BY THE RESPONDENTS

RESPONDENTS' EXHIBITS: NIL

OKB

//TRUE COPY//

P.A. TO JUDGE

C.R.

THOTTATHIL B. RADHAKRISHNAN & K.HARILAL, JJ.

W.P.(C) No.35233 of 2007

Dated this the 9th day of January, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

We have heard the learned counsel for the petitioner and the learned Assistant Solicitor General.

2. This writ petition is filed invoking Article 227 of the Constitution of India challenging the dismissal of an original application filed before the Central Administrative Tribunal, Ernakulam Bench under the provisions of the Administrative Tribunals Act, 1985.

3. The petitioner was a Tax Assistant at the relevant time. The issue projected was an anomaly while restructuring the Income Tax Department as part of a massive induction of information technology. Though initially an original application was filed before the Tribunal in 2001, in 2003 that original application was got disposed of by merely obtaining an order directing the consideration of a representation. That

representation was considered and the Chairman, CBDT communicated the decision to the Chief Commissioner of Income Tax, Kochi. On the basis of that, memorandum dated 12/9/2003 was issued recording the decision on the representation. It is relevant to quote the following portion of the decision of the Chairman, CBDT, as available and quoted in Annexure-I in Ext.P4 original application:

> "The issue raised in the representation has been considered on merits. The restructuring of the Income Tax Department was carried out during the year 2000-2001 with the primary objective of realigning of functions of the Department in the context of massive induction of information technology. It was envisaged that consequent to extensive use of information technology, some existing functions of LDCs and UDCs will be done away with and LDCs and UDCs will be required to do Data Entry work on computers. It was in this context that two new designations of Tax Assistant and Sr.Tax Assistant have been created (Tax Assistant Rs.4000-6000 and Sr. Tax Assistant Rs.5000-8000) and the posts of UDCs, Head Clerks/Assistant and DEO grade-A, B and C merged with the posts of Tax Assistant and Sr. Tax Assistant.

In so far as DEOs are concerned, DEOs Gr.A, B and C were promoted in their cadre in the year 2000-2001 as per existing Recruitment Rules and were merged in the cadre of Tax Assistant or Sr. Tax Assistant as the case may be, in the year 2001-2002 on the basis of the posts held by them in 2000-01. A similar opportunity was given to LDCs for promotion as UDCs (redesignated as Tax Assistant) and UDC for promotion as Head Clerk/Assistant (redesignated as Senior Tax Assistant) in 2000-01 prior to the merger of the ministerial and data entry cadres in 2001-02. There was no discrimination in the matter, either in favour of or against DEOs, LDCs, UDCs. All these categories were treated on the same footing.

The condition regarding passing of Ministerial Staff Examination has been applied uniformly and nobody has been discriminated against. For example, Upper Division Clerks and Data Entry Operators Grade 'A' working in the identical scale of pay and having passed the Ministerial Staff Examination are included in the feeder grade of Sr.Tax Assistant in 2001-02 and there is no special waiver for UDCs. Eligibility condition for promotion of pre-structuring Tax Assistants and Data Entry Operators Grade 'B' to the cadre of Sr.TaxAssistants are also identical.

> The instructions containing in Directorate of Income Tax (O&MS) letters dated 04-06-2001 and 19-07-2001 aim at re-designation, merger and redeployment of the existing staff. These instructions are applicable to various cadres and *inter-se* seniority has been fixed according to Rules. After having considered the matter carefully, Government is of the view that instructions issued by DOMS dated 04-06-2001 and 19-07-2001 are fair and equitable in terms of their applicability to various cadres and no injustice has been done to the petitioners. The representations of the above petitioners are disposed off accordingly, as being without merit."

4. The challenge by the petitioner before the Tribunal failed, as the Tribunal was of the view that the policy was itself not under challenge and no specific injustice has been pointed out. While the learned counsel for the petitioner points out the rejoinder filed before the Tribunal and says that relief No.2 in the original application before the Tribunal contained the specific claim for relief against the policy decision, we see that the said submissions are insufficient to interfere with the impugned decision of the Tribunal, in exercise of jurisdiction under Article 227 of the Constitution of India. We say so

because, the reasoning process, by which the representations have been disposed of following the decision of the Chairman, CBDT, is a rational and complete one, excluding any situation of inequity or injustice, which deserves to be taken cognizance of in this jurisdiction.

5. As is discernible from the aforequoted decision on the representation, the situation was as a result of the restructuring, which was necessitated owing to extensive use of information technology and massive induction of such technology required appropriate restructuring.

6. When restructuring of a department is carried out based on the institutional need to augment the productivity of that department aiming at proper governance attuned with the change of timer, it goes without saying that there is always a chance of certain surplusages or flying of the frills, which have to be excused from judicial review, because they are inexcusable administrative exigencies, where the prime requirement is the paramount public purpose sought to be achieved, rather than a critical examination on the basis of relative and comparable personal aspirations of individual employees, or even a group of them. If a rational and reasonable balance is struck in the modality adopted for restructuring, the judiciary would loathe interfere with such

process, primarily because such restructuring; including the manner in which the restructuring is to be done; is a matter purely in the realm of administration. That notwithstanding, as rightly noted by the learned Tribunal, no situation of injustice, even to any particular class of employees, was made out.

7. The challenge to the impugned restructuring and the order of the Tribunal, therefore, fails.

In the result, this writ petition is dismissed.

Sd/-
THOTTATHIL B. RADHAKRISHNAN, JUDGE

Sd/-
K.HARILAL, JUDGE

okb.

//true copy//

P.A. to Judge