

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.3.2015

CORAM

THE HONBLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

Writ Petition No.31301 of 2014
and
M.P.No.1 of 2015

V.Kasinathan

... Petitioner

Vs.

1. The Registrar
The Central Administrative Tribunal
Chennai Bench, Chennai.
2. The Director General
ESI Corporation, Hqrs. Office
Panchdeep Bhawan, CIG Road, New Delhi 110 002.
3. The Chairman
Standing Committee, ESIC & Secretary
Ministry of Labour and Employment
Government of India, Shram Shakti Bhawan
Rafi Marg, New Delhi 110 001.
4. Union of India, Through the Secretary
Department of Personnel and Training
Ministry of Personal, Public Grievances and Pensions
North Block, New Delhi 110 001.
5. Union of India, Through the Chairman
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi 110 069.
6. Ratnesh Kumar Gautam
7. Nar Singh
8. Renuka Prasad T
9. Merrymel George

10.Pranay Sinha
11.Anil Kumar Sahu
12.Mathews M.K.M.M
13.K.G.Suresh

... Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records in connection with the impugned order dated 16.4.2014 passed by the first respondent in O.A.No.763/2012 and quash the same and consequently, direct the second respondent to fix the seniority of the petitioner by considering the consolidated order dated 11.11.2010 as the date of announcement of the selection of the petitioner is earlier to the result of the respondents 6 to 13.

For Petitioner : Dr.R.Sampath Kumar
For Respondents 1, 4 & 5 : Mr.Su.Srinivasan
Asst. Solicitor General of India
For Respondents 2 & 3 : Mr.T.N.C.Koushik
For Mr.P.Chandrasekar
For Respondents 6 to 13 : Mr.Syed Jaffar Ahmed

O R D E R

(Made by V.Ramasubramanian,J)

Aggrieved by the dismissal of his application by the Central Administrative Tribunal seeking fixation of seniority over and above the contesting respondents, the petitioner is before us.

2. Heard Dr.R.Sampath Kumar, learned counsel for the petitioner, Mr.Su.Srinivasan, learned Assistant Solicitor General for the first respondent, Mr.T.N.C.Koushik, learned counsel for respondents 2 and 3 and Mr.Syed Jaffar Ahmed, learned counsel for respondents 6 to 13.

3. The Employees State Insurance Corporation appears to have different categories of the post of Deputy Director. One such category is Deputy Director (Administration/Instruction/Training). Direct recruitment to the said post is by way of written examination followed by interview. Another category of the post of Deputy Director is Deputy Director (Finance). Direct recruitment to the said post is only by the method of viva-voce.

4. It appears that by two different proceedings, the Department made requisition to the Union Public Service Commission to conduct a selection for direct recruitment to the post of Deputy Director (Administration) as well as to the post of Deputy Director (Finance). The Union Public Service Commission published advertisements separately and conducted the process of selection independently for both posts. Ultimately, the petitioner was selected for appointment to the post of Deputy Director (Finance) and the respondents 6 to 13 herein were selected for appointment as Deputy Directors in other wings. Since the date of initiation of the process and the date of completion of the process of selection are relevant for our purpose, they are presented in a tabular form as given by the respondent Corporation in the counter affidavit filed by them.

Events	Deputy Director (Admn./Ins/Trg.)	Deputy Director (Finance)
Date of requisition to UPSC	28/11/2000	11/01/01
Date of publication of advertisement by UPSC	20/04/2001	12/05/01
Date of UPSC letter forwarding panel of candidates	17/09/2002	20/03/2002

5. It appears that the respondent-Corporation placed all persons who were appointed as Deputy Directors in different wings, as seniors en bloc, to all persons appointed as Deputy Director (Finance), on the sole ground that the process of selection was initiated for the former posts, earlier than the process of recruitment for the latter posts. The petitioner went before the Central Administrative Tribunal, Madras Bench, in O.A.No.419 of 2009 questioning the inter se seniority. But, the said application was dismissed by an order dated 24.12.2010.

6. Without challenging the aforesaid order of the Tribunal, the petitioner filed a second application in O.A.No.763 of 2012. The said application was dismissed by the Tribunal by an order dated 16.4.2014, forcing the petitioner to come up with the above writ petition.

7. At the outset, the primary question raised by the petitioner as to whether the date of initiation of the process of selection, could form the basis for fixation of seniority, may not enure any benefit to the petitioner. This is, in view of the fact that even after the completion of the process of selection for appointment to the post of Deputy Director (Finance), the petitioner took his own

time, almost a year, to join duty. Originally, the petitioner appears to have made a representation for giving him a posting in Chennai. This was despite the instructions given to him in the offer of appointment to join duty within two months, with a threat that the offer may lapse after two months. One more reason why the petitioner wanted to postpone the date of joining duty, as reflected in his representation dated 26.3.2002 was that at the time of his recruitment, he had completed 18 years and 8 months of service in the Railways and that if he was allowed to complete 20 years of service, he would become eligible for complimentary passes for travel in the Railways.

8. Unfortunately, without making the offer of appointment to lapse, the respondent-Corporation allowed a free time for the petitioner and eventually, after conducting medical examination in September 2002, allowed him to join duty on 10.3.2003. Interestingly, the petitioner himself appears to have dragged on the matter without joining duty, on one more ground, namely that he had requested the parent department, namely the Railways, for extension of the lien, over the post held by him, during the period of probation after appointment to the post of Deputy Director (Finance). Therefore, this is actually the case of a person who wanted to have the cake and eat it too. Therefore, the claim for seniority was rightly rejected by the respondents.

9. The Tribunal rejected the claim also on one more ground. The petitioner had earlier filed O.A.No.419 of 2009. The same was rejected and the rejection had attained finality.

10. However, Dr.R.Sampath Kumar, learned counsel for the petitioner attempted to distinguish the order passed by the Tribunal in his first application by contending that the same arose out of the office memorandum dated 03.3.2008 and that in as much as the said office memorandum had already gone, there was no bar for second application.

11. In order to appreciate the said contention, it is necessary to have a look at the actual prayer made by the petitioner in his first application O.A.No.419 of 2009. It reads as follows:

"It is prayed that the Hon'ble Tribunal may kindly quash the seniority list finalised on 9.5.2008 and direct the respondent 2 to adhere to the instructions of the DOPT issued on 3.3.2008 and revise the seniority list accordingly by placing the applicant at S.No.95 instead of at S.No.113 of the seniority list at A-3."

12. Despite the fact that the foundation for the first application filed by the petitioner was the DOPT Memorandum dated 03.3.2008, what the petitioner prayed for in his application was quashing of the seniority list and the fixation of seniority over and above the very same respondents, who are respondents 6 to 13 herein. Therefore, merely because the foundation for his claim had changed in the second application, the petitioner cannot get over the difficulty posed by the principle of res judicata.

13. Adding one more issue to his agony, the petitioner has not even made a mention about the dismissal of O.A.No.419 of 2009 in his application O.A.No.763 of 2012. Therefore, both on technical grounds and on merits, the Tribunal was right in rejecting the claim of the petitioner. Hence, we find no merits in the writ petition. Therefore, the writ petition is dismissed. No costs. Consequently, M.P.No.1 of 2015 is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpl

To

1. The Registrar
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Department of Personnel and Training
Ministry of Personal,
Public Grievances and Pensions
North Block,
New Delhi 110 001.

5. The Chairman,
Union of India,
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi 110 069.

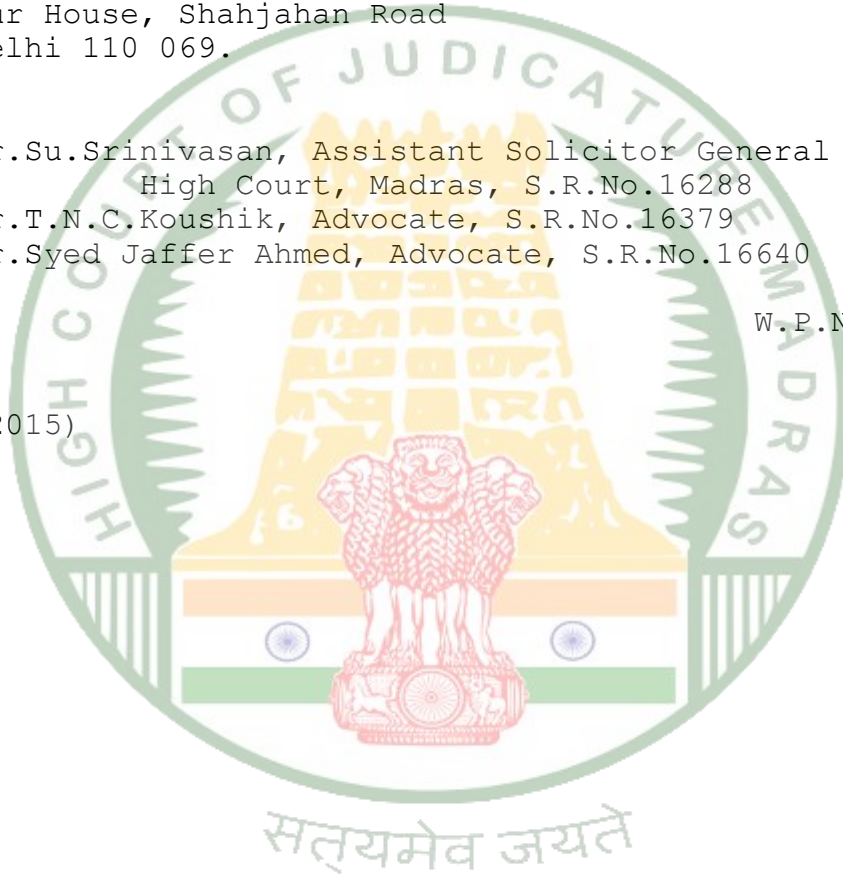
+1cc to Mr.Su.Srinivasan, Assistant Solicitor General of India,
High Court, Madras, S.R.No.16288

+1cc to Mr.T.N.C.Koushik, Advocate, S.R.No.16379

+1cc to Mr.Syed Jaffer Ahmed, Advocate, S.R.No.16640

W.P.No.31301 of 2014.

GR(CO)
CA(15/04/2015)



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