

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.03.2015

DATE OF DECISION: 16.03.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI

and

THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A. No.795 of 2014

1. The Chairman and Managing Director
National Insurance Company Ltd.
No.2, Middleton Street
Kolkotta 700 071

2. The Chief Regional Manager
National Insurance Company Ltd.
No.684 Trichy Road
Coimbatore

vs.

A. Sundaram

... Appellants
(Respondents)

... Respondent
(Petitioner)

Writ Appeal filed under Clause 15 of the Letters Patent
challenging the order dated 18.03.2014 passed in W.P. No.25951 of
2010.

W.P. No.25951 of 2010:

Writ Petition under the Section 226 of the Constitution of India
seeking a Writ of Certiorarified Mandamus, calling for the records of
the 2nd respondent in and by his proceeding No.CBRO/PERS/WG/BPN/2010
dated 3.2.2010 and quash the same and direct the respondents to give
Notional Promotion to the petitioner in the post of Record Clerk from
the date on which his juniors were promoted along with consequential
seniority in the post of Assistant and with all monetary benefits in
the Respondents Insurance Company.

For appellants : Mr. V. Karthic
for M/s. T.S. Gopalan & Co.

For respondent : Mr. V. Bharathidasan

JUDGMENT

SATISH K. AGNIHOTRI, J.

The instant appeal arises from the order dated 18.03.2014 passed in W.P. No.25951 of 2010, which was filed by the respondent herein.

2. For the sake of brevity, clarity and convenience, the parties are referred to as per their arraignment in the instant appeal.

3. The facts as projected by the respondent are that he was initially appointed as a Sub-Staff on 26.06.1986 in the Divisional Office of the appellant Insurance Company at Salem. The next avenue of promotion is to the post of Record Clerk. The Sub-Staff has to pass the departmental test for being eligible for consideration for promotion to the post of Record Clerk. The respondent, admittedly, appeared in the departmental test successfully for promotion to the cadre of Record Clerk, held on 7th and 8th June 1990, as is evident from the notice dated 08.06.1990 of the appellants. Despite passing the departmental test, the respondent was not promoted as Record Clerk, when, according to him, a number of juniors in the lower post were promoted in the year 1991. The respondent was ultimately promoted on 05.10.1998, after more than 5 of his juniors were promoted as Record Clerk. The respondent submitted a representation on 08.07.1991 to the Branch Secretary, Tamil Nadu General Insurance Employees Union, Salem, for promoting him to the post of Record Clerk. It transpires that on 01.06.1994, the Senior Divisional Manager wrote to M.R.O. Madras, requesting to examine the case of the respondent being an eligible candidate for promotion against a RC vacancy at Sankagiri. The respondent was granted thereafter promotion on 05.10.1998. The respondent, again, made a representation dated 09.05.1997, signed on 09.05.1999, to consider his case for promotion as Record Clerk. The respondent again kept quiet and made one more representation on 30.03.2007 to consider his 8 years of service for the next grade promotion, as he cleared the departmental examination in 1990, but, was not promoted for about 8 years. Thus, the said seniority be granted to him for consideration to the next grade promotion.

4. It appears that the respondent has come up with a writ petition being W.P. No.13383 of 2009 earlier, seeking a direction to the appellants to grant notional promotion to the post of Record

Clerk from the date his juniors were promoted, along with consequential seniority in the post of Assistant, with all monetary benefits.

5. A learned Single Judge of this Court disposed of the said writ petition on 16.07.2009, directing the appellants to consider the respondent's representations dated 08.07.1991, 09.05.1997 and 30.03.2007, which resulted in passing of the order dated 03.02.2010 by the second appellant, whereunder, the said representations were rejected. Thus, the instant writ petition.

6. Before the Writ Court, the appellants filed a counter affidavit stating that the promotion to the cadre of Record Clerk, Class III category, is considered centrewise. The centre is controlled by a particular division. The employees are entitled to be considered against the general category vacancy or the reserved category vacancy, depending on their status. An employee would be eligible to be considered for a vacancy that arises in his centre alone and not in any other centre. Finally, ranking of the selected employees is prepared after adding the average of marks in Confidential Report. The promotion to the post of Record Clerk is based on seniority (40%), qualification (30%) and work record-confidential report (30%). The qualification envisages grant of 30 marks for passing Secondary School Certificate or High School with English/Hindi as a subject, 20 marks for passing SSC without Hindi/English as a subject and 10 marks to those who passed VIII standard.

7. According to the appellants, the vacancy position in the Salem Centre from 1991 to 1998 for the post of Record Clerk is as follows:

S.No.	Ranking List	Vacancy Position	Remarks
1	28.06.1991	General - 7 SC-1 ST - 1	The name of the petitioner appeared in Contingency List (SC), but the contingency list was not cleared.
2	29.05.1992	General - 3 SC-0 ST-1	The name of the petitioner appeared in Contingency List (Gen.) but the contingency list was not cleared.
3	23.07.1993	No vacancy	No vacancy was declared/

S.No.	Ranking List	Vacancy Position	Remarks
4	30.06.1994	ST-1	As there was no vacancy declared in General and SC categories, the petitioner's candidature was not considered for promotion.
5	30.06.1995	ST-1	As there was no vacancy declared in General and SC categories, the petitioner's candidature was not considered for promotion.
6	28.06.1996	ST-1	As there was no vacancy declared in General and SC categories, the petitioner's candidature was not considered for promotion.
7	30.06.1997	ST-1	As there was no vacancy declared in General and SC categories, the petitioner's candidature was not considered for promotion.
8	18.09.1998	ST-1 (Interchangeable with SC category as per Government of India guidelines)	As the ST vacancy declared was interchangeable as advised by Head Office, one vacancy declared for ST was shifted to SC and the petitioner was granted promotion to the cadre of Record Clerk.

8. It is submitted by Mr. V. Karthic, learned counsel appearing for the appellants that the third report of the National Commission for Scheduled Castes and Scheduled Tribes (for short "the Commission"), which was submitted for approval to the President of India under covering letter dated 02.02.1998, recommends for interchange of vacancy reserved for Scheduled Caste and Scheduled Tribe, in Clause 6.14. The recommendation of the Commission was accepted and brought into force in the year 1998. Under the said recommendation, if a vacancy reserved for Scheduled Castes and Scheduled Tribes could not be filled up by a Scheduled Caste / Scheduled Tribe candidate for whom it is reserved even in the third recruitment year of carry forward, the vacancy was to be exchanged

between these communities, i.e., a Scheduled Caste candidate can be considered for a vacancy reserved for Scheduled Tribe and vice versa. There was a Scheduled Tribe vacancy from the year 1994 till 1997, which could not be filled up due to non-availability of an eligible candidate in the category. Thus, the same was converted to Scheduled Caste category in the year 1998 and the respondent, belonging to Scheduled Caste community, was promoted to the cadre of Record Clerk in 1998. There was no vacancy available against the Scheduled Caste category after 1992 till 1998.

9. Further, according to the learned counsel appearing for the appellants, the contention of the respondent that some employees junior to him were promoted prior to him, is not correct as the list of successful employees in the departmental test for promotion was not on the basis of merit, but, on the basis of their roll numbers in seriatim. Thus, on the basis of the list, it cannot be held that the respondent's juniors were considered and promoted. It is also the case of the appellants that the respondent has not pointed out the names of his juniors who have been allegedly promoted and also not impleaded them as party respondents. Thus, for want of proper impleadment, the writ petition ought to have been dismissed. In the year 1991, there was a vacancy each for SC and ST category. Mr. K. Muthusamy, a person who belonged to the SC category and who is senior to the petitioner in Salem Centre, was promoted. In the ST category, Mr. C. Kuppusamy was promoted. There has been no vacancy in the SC category from 1992 to 1998. However, due to the vacancy of the ST category being interchanged with the SC category in 1998, as there was no eligible candidate in the ST category, the respondent was offered promotion in 1998.

10. The learned Single Judge, having examined all the facts of the case and also after considering the submissions of the learned counsel appearing for the parties, held as under:

"18 As observed earlier, since the candidates who have superseded the petitioner have not been impleaded as respondents in the writ petition, the petitioner cannot canvass a case that he should be placed above those persons who were promoted in 1990/1991. Therefore, this Court is inclined to accept the case of the petitioner that his case ought to have been considered in the Scheduled Tribe vacancy which remained vacant from 1992.

21 For all the above reasons, this Court holds that the petitioner is eligible to be considered and promoted to the post of Record Clerk from 1994 onwards in the Scheduled Tribe vacancy which remained vacant from 1992 onwards.

In the result, the impugned order dated 03.02.2010 passed by the second respondent is set aside and the writ petition is allowed and the respondents are directed to promote the petitioner notionally, to the post of Record Clerk with effect from 1994 in the Scheduled Tribe vacancy which remained vacant since 1992 and consequently, grant all other benefits which shall accrue to the petitioner, based on such notional promotion. Such exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order. No costs. Connected Miscellaneous Petition is closed."

11. The submissions of Mr. V. Bharathidasan, learned counsel for the respondent, are in two fold. Firstly, the respondent passed the departmental test for promotion vide notice dated 08.06.1990. The other persons who passed the departmental test subsequently vide notice dated 19.06.1991 were considered and promoted earlier. As such, those candidates who could pass the departmental test in the year 1991 for consideration for promotion to the post of Record Clerk were juniors to the respondent. Secondly, last part of Clause 6.14 of the third report of the Commission provides that in the case of promotion by selection from Group "C" to Group "B" within Group "B" and from Group "B" to the lowest rung of Group "A", vacancies can be exchanged between Scheduled Castes and Scheduled Tribes in the same year of recruitment, as carry forward of reservation is not permitted in such cases. This is a case of promotion and as such, if any candidate was available in the year 1992 from Scheduled Tribe category, the vacancy ought to have been converted for Scheduled Caste reservation and the respondent could have been promoted against the said vacancy to the post of Record Clerk. Thus, the learned Single Judge is right in directing the appellants to promote the respondent against Scheduled Tribe vacancy from 1994.

12. We have given careful consideration to the submissions advanced by the learned counsel appearing for the parties and also perused the pleadings and documents appended thereto.

13. We now proceed to examine the real controversy in issue which arose from rejection of the representations dated 08.07.1991, 09.05.1997 and 30.03.2007 by order dated 03.02.2010, which was the subject matter of challenge in the writ petition.

14. The first representation dated 08.07.1991 seeks promotion in general and not to any particular post. The second representation dated 09.05.1997, signed on 09.05.1999, itself creates a doubt as to

how the representation of the year 1997, was signed in the year 1999. Even otherwise, the representation seeks promotion as Record Clerk at least, this year, i.e., 1997 or 1999. According to the appellants, pursuant to this representation, the respondent was promoted to the post of Record Clerk on 05.10.1998. Thus, the respondent's request stood satisfied. The subsequent representation dated 30.03.2007 seeks consideration of 8 years of the respondent's service to fix seniority for further promotion. Needless to state that in March 2007, the respondent was already working in the post of Record Clerk. The communication dated 03.02.2010 impugned in the writ petition, which states that no rule has been violated in the promotional exercise for the years 1994-1998, rejected the said representations. Thus, at no point of time, the respondent has made a request to grant him promotion with effect from either 1992 or 1994. The learned Single Judge erred in directing the appellants to promote the respondent notionally, with effect from 1994, with other benefits.

15. So far as conversion of Scheduled Tribe vacancy to the Scheduled Caste category after 1992 is concerned, the Commission, as explained hereinabove, sent the recommendation under covering letter dated 02.02.1998 to the President of India. Obviously, the recommendation could have been accepted after the said date only and as such, the second part of Clause 6.14 which provides for exchange of vacancy between Scheduled Caste and Scheduled Tribe, in case of promotion by selection in the same year, was not available and as such, the Scheduled Tribe vacancy could not have been converted to Scheduled Caste category before 1998.

16. Resultantly, we are of the considered view that the Writ Court fell in error in issuing a direction to the appellants to appoint the respondent against the Scheduled Tribe vacancy in 1994.

17. The next question for consideration before us is as to whether the respondent's juniors were promoted after having passed the departmental test, before the respondent. Clause 25 of the Promotion Policy for Officers of the appellant Insurance Company deals with promotion to the cadre of Record Clerk. The employees are required to pass the departmental test. After passing the departmental test with 50% marks, they will be considered for selection for promotion based on seniority, work record and qualifications. The appellants, in their counter affidavit, had clearly stated that promotion to the post of Record Clerk is based on seniority (40%), qualification (30%) and work record-confidential report (30%). The qualification envisages grant of 30 marks for passing Secondary School Certificate or High School with English/Hindi as a subject, 20 marks for passing SSC without

Hindi/English as a subject and 10 marks to those who passed VIII standard.

18. In view of the aforestated criteria for selection which are not disputed by the respondent, the contention of the respondent that the employees who passed the departmental test in the year 1991 were juniors and they were wrongly promoted before him, does not merit acceptance and is accordingly rejected.

19. The last contention of the learned counsel for the appellants that the writ petition ought to have been rejected at the admission stage itself when the respondent has not impleaded the so-called juniors who, according to him, were promoted before him, as party respondents, merits acceptance. No relief displacing other officers/employees could be granted without impleading them and without affording an opportunity of hearing to them.

20. For the reasons and analysis made hereinabove, we set aside the impugned order dated 18.03.2014 passed by the Writ Court, dismiss the writ petition and allow the writ appeal. No costs.

Sd/-
Assistant Registrar

//True Copy//

CAD

Sub Assistant Registrar

To

1. The Chairman and Managing Director
National Insurance Company Ltd.
No.2, Middleton Street
Kolkotta 700 071
2. The Chief Regional Manager
National Insurance Company Ltd.
No.684 Trichy Road
Coimbatore

+1cc to Mr.V.Bharathi, Advocate, S.R.No.14943
+1cc to M/s.T.S.Gopalan & Co., Advocate, S.R.No.14465

W.A. No.795 of 2014

PVR(CO)
CA(24/03/2015)