

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2015

CORAM

THE HON'BLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR. JUSTICE T.MATHIVANAN

W.P. No.34500 of 2014
and
M.P.No.2 of 2014

Tamilarasan

... Petitioner

Vs.

- 1.The Chief Secretary to Government,
Chief Secretariat,
Government of Puducherry,
Goubert Avenue, Puducherry.
- 2.The Secretary to Government,
Home Department,
Goubert Avenue, Puducherry.
- 3.The Superintendent of Police,
Head Quarters,
Government of Puducherry,
Puducherry.
- 4.Inspector General of Police,
Puducherry.
- 5.The Deputy Inspector General
of Police, Puducherry.
- 6.The Senior Superintendent of
Police (Crime and Intelligence),
Puducherry.
- 7.The Senior Superintendent of
Police (Head Quarters),
Puducherry.
- 8.K.Babu

9.The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai.

... Respondents

Petition filed under Article 226 of The Constitution of India to issue a writ of certiorarified mandamus to call for the records pertaining to the order passed by the Central Administrative Tribunal Madras Bench in O.A.No.831 of 2011 dated 21.08.2012 and quash the consequential order of promotion dated 14.11.2013 granted to the 8th respondent as Sub Inspector of Police by the respondents 1 to 7 Union Territory Administration Puducherry and consider the case of the petitioner for the promotion to the post of Sub Inspector of Police as per the seniority list.

For Petitioner : Mr.P.Veeraraghavan

For Respondents : Mr.R.Syed Mustafa,
Spl. Govt. Pleader (P) for R1 to R7
Mr.Karthik for
M/s.Menon, Karthik & Mukundan for R8
R9 - Tribunal

ORDER

The petitioner, who is a third party to the application filed by the eighth respondent herein before the Central Administrative Tribunal, has come up with the above writ petition, challenging the order of the Tribunal granting relief to the eighth respondent.

2.Heard Mr.P.Veeraraghavan, learned counsel appearing for the petitioner, Mr.R.Syed Mustafa, learned Special Government Pleader (Service) appearing for the respondents 1 to 7 and Mr.Karthik, learned counsel appearing for the eighth respondent.

3.The eighth respondent herein filed an application in O.A.No.831 of 2011 on the file of the Central Administrative Tribunal Madras Bench, challenging an order dated 30.03.2011 by which promotions were made to the post of Sub Inspector of Police. He also sought a consequential direction to the respondents 1 to 7 to promote him to the post of Sub Inspector of Police, under the quota reserved for Scheduled Caste, on par with his junior by name Thambiran. The said application was allowed by the Tribunal by a final order dated 31.08.2012.

4.Contending that the said order was passed behind the back of persons who were not even impleaded in the Original Application, the petitioner who is the third party has come up with the above writ petition in the year 2014. But in the meantime, it appears

that the order of the Tribunal was implemented by the Government of Puducherry and it should be recorded that the Government of Puducherry is not aggrieved by the order of the Tribunal.

5.The main contention with which the petitioner has come up with the above writ petition is that the eighth respondent herein was actually promoted as an Assistant Sub Inspector of Police, as a General Category candidate and that taking advantage of such a promotion, he sought promotion to the next higher post of Sub Inspector of Police under the quota reserved for Scheduled Caste. According to the petitioner, he is a person belonging to the Scheduled Caste and that if the case of the eighth respondent is not considered under the quota reserved for Scheduled Caste, he would have come within the zone of consideration. Therefore, the petitioner contends that persons like him, who would have come within the zone of consideration, if the eighth respondent's case was not considered under the quota reserved for Scheduled Caste, ought to have been impleaded as a party to the main application. Since it was not done, the learned counsel for the petitioner submits that the order of the Tribunal is liable to be set aside.

6.We have carefully considered the submissions.

7.But fundamentally, there are two flaws in the contentions of the learned counsel for the petitioner. The first flaw is that the eighth respondent was originally appointed in the Police Department as a Police Constable on 06.01.1991 only under the quota reserved for Scheduled Caste. It is pertinent to note that though his appointment was on compassionate grounds, his father was considered only as a scheduled caste. Therefore, the fact that he was later promoted to the post of Assistant Sub Inspector of Police under the General Category on 24.08.2010, would not make him a General Category candidate. He continued and continues to be a Scheduled Caste candidate. So far, the Government has not treated him as a candidate who is not entitled to the benefits of reservation as a Scheduled Caste candidate. Therefore, the main plank of the argument of the petitioner that the eighth respondent having been promoted as General Category candidate to the feeder category post, is not entitled to seek the benefit for reservation to the next higher category, is not well founded.

8.The second flaw in the contention of the learned counsel for the petitioner is that the eighth respondent cited the case of one Thambiran, who belonged to the Scheduled Caste. The eighth respondent wanted to be promoted on par with the said Thambiran. The said Thambiran was the person who was next below in the order of seniority to the eighth respondent. While the eighth respondent was at Sl. No.27 with Seniority No.142, the said Thambiran was at Sl. No.28 with Seniority No.143. The writ petitioner herein was at Sl. No.36 with Seniority No.151. Therefore, he was not even in the zone of consideration. Hence the petitioner cannot be stated to be aggrieved by the order of the Tribunal.

9.It is next contended by the learned counsel for the petitioner that the eighth respondent was only a migrant and that therefore he was not entitled to seek the benefit of reservation as a Scheduled Caste candidate. But we do not think that the said contention can be raised by the writ petitioner. The eighth respondent was appointed in the quota reserved for Scheduled Caste and especially it was an appointment on compassionate grounds. The Government Order passed in G.O.Ms.No.11 dated 05.08.2005 to the effect that the benefit of reservation will apply only to the origins of Puducherry, was set aside by the Supreme Court in The Puducherry Scheduled Caste People Welfare Association vs. The Chief Secretary to Government ((2014) 9 SCC 236). The Supreme Court relied upon the expression "resident" contained in the presidential order of the year 1964. A Division Bench of this Court to which one of us was a party (VRSJ) had an occasion to consider the issue in detail in Review Application Nos.69 and 70 of 2015 in W.P.No.34971 of 2014.

10.So long as the Government has not chosen to treat the eighth respondent as a person not belonging to the Scheduled Caste or as a person not entitled to the benefits of reservation, it is not open to a third party like the petitioner to question the extension of the said benefits to the eighth respondent.

11.Once the above position is clear, a person who is far below in the seniority list is not entitled to challenge the relief granted to the eighth respondent by the Tribunal. We find no merits in the writ petition. Hence the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

सत्यमेव जयते

Sub Asst. Registrar

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To

1.The Chief Secretary to Government,
Chief Secretariat,
Government of Puducherry,
Goubert Avenue, Puducherry.

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Police (Head Quarters),
Puducherry.

8.The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai.

1 cc to Mr.Menon, Advocate, Sr. 30209

2 ccs to Mr.P.Veeraraghavanm Advocate, Sr. 30354, 30310

1 cc to Spl.Government Pleader, Sr. 30259

W.P.No.34500 of 2014

NM (CO)
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