IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

Review Application No.68 of 2004
in W.A.No.731 of 1999

1.The Oil & Natural Gas Commission,
Rep. by its Chairman, Dehradun,
U.P.State.

2.The Regional Director,
Southern Region, Business Centre,
Oil & Natural Gas Commission,
Thalamuthu Natarajan Building,
Egmore, Chennai-600 008.

3.The General Manager (P& A),
Southern Region Business Centre,
ONGC., Chennai-8. ..Petitioners

Versus

Arul Anand
A-G-3, Guru Raghavendra Apartments,
I Main Road, Thillai Ganga Nagar,
Chennai-600 061. ..Respondent

Review Application is filed under Order XLVII Rule 1 of CPC., read with Section 144 of C.P.C., to review the order passed in W.A.No.731 of 1999 dated 10.12.2003 passed by this Court.

For Petitioners :: Mr.K.Vijayan for
M/s King & Partridge

For Respondent :: Mr.N.G.R.Prasad for
Row & Reddy

O R D E R

(Order of Court was made by M.M.Sundresh.J.,)

Challenging the proceedings dated 17.07.1989, by which, the application made by the respondent dated 26.05.1989 seeking relaxation of experience for promotion was rejected based upon the letters dated 17.02.1989 and 19.04.1989, a writ petition in W.P.No.13797 of 1990 was filed. The learned single Judge has dismissed the writ petition which was reversed by the Division Bench in W.A.No.731 of 1999 dated 10.12.2003.

2. The Division Bench of this Court, while allowing W.A.No.731 of 1999 on 10.12.2003, held that the policy adopted by the petitioners dated 19.04.1989 giving benefit of relaxation based on a fortuitous circumstance

of junior joining is violative of Article 14 of the Constitution of India. Accordingly, the writ appeal was allowed with a direction to the petitioners to consider the case of the respondent for promotion.

3. Though the writ appeal was allowed as early as on 10.12.2003, it has not been given effect to till date. The petitioners duly filed the review application on 03.02.2004. From thereon, the matter has been adjourned from time to time till 19.4.2006. It once again surfaced on 30.06.2009. On that date, it was directed to be posted on 02.07.2009 and once again it was adjourned to 07.07.2009. For more than four years, the petitioners have not evinced any interest to get the case posted. On a routine enquiry, pendency of the petition was taken note of and thereafter, it is posted for hearing.

4. The learned counsel appearing for the petitioners submitted that they have not been given an opportunity to defend the policy decision. The Court has gone into the validity of the policy decision without even a prayer sought for. The recruitment list of persons selected along with the respondent as Assistant Marine Radio Operator was

confined to Southern Region only. Therefore, the order passed requires to be reviewed.

5. Per contra, the learned counsel appearing for the respondent submitted that the appointment order was not issued simultaneously. The selected candidates were issued with the appointment orders one by one. The decision has been rendered on merits. The petitioners have been given sufficient opportunities. Inspite of the order having been passed in the year 2003, the same has not been given effect taking umbrage under the review petition. What the petitioners seek in this review petition is in fact rehearing, which is impermissible in law.

6. A perusal of the order passed by this Court would show that both sides have been heard at length. The impugned order has been passed based upon the policy decision taken. Submissions have been made on the policy decision adopted by the petitioners. After hearing both sides, this Court came to the conclusion that the policy decision was violative of Article 14 of the Constitution of India. Therefore, we are of the considered view that the ground case of the petitioners that they have

not been given an opportunity to defend the policy decision does not hold water. There need not be any specific prayer and on the contrary, the case as a whole will have to be seen, which was done accordingly by this Court.

7. Coming to the second submission, that the recruitment list was confined to Southern Region alone, the same cannot also be looked into at this stage. Even if it is true, the petitioners were aware of such position. It is not, as if, they have unearthed a new ground and thereafter filed this review petition. Further more, the Division Bench was concerned with the policy adopted and the application of it to the post of the respondent. As the policy was not found in consonance with Article 14 of the Constitution of India, it was set aside. As rightly submitted by the learned counsel appearing for the respondent, an application for review cannot partake the character of rehearing. We do not find any error apparent in the eye of law warranting interference. Accordingly, the Review Application stands dismissed. No costs.

(S.K.K.,CJ.) (M.M.S.,J.)

25.02.2015

Index:Yes/No

The Hon'ble The Chief Justice
and
M.M.Sundresh, J.

(raa)

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