

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.02.2016

Delivered on : 17.02.2016

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.3503 of 2015
and M.P.Nos.1, 2 and 3 of 2015

P.Subburaj

.. Petitioner

Vs.

- 1.The Chief Secretary,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.
- 2.The Principal Secretary to Government,
Cooperation, Food and
Consumer Protection Department,
Member-Selection Committee-Cum competent
Authority, Fort St.George,
Chennai-600 009.
- 3.The Secretary to Government,
Law Department,
Member-Selection Committee,
Fort St.George, Chennai-600 009.
- 4.The Hon'ble State President,
Chairman-Selection Committee,
State Consumer Disputes Redressal Commission,
Frazer Bridge Road, Park Town,
Chennai-600 003.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents herein to consider the candidature of the petitioner, for re-appointment as the President, District Consumer Disputes Redressal Forum, Madurai or President of any other 5 vacancies which is lying vacant in the District Consumer Disputes Redressal Fora in the State of Tamilnadu, in compliance of provisions of Section 10(2) of the Consumer Protection Act, 1986 and for such other reliefs.

For Petitioner : Mr.P.Subburaj/Petitioner-in-person

For Respondents: Mr.L.P.Shanmugasundaram,
Special Government Pleader
for R1 to R4

O R D E R

The petitioner, who was the Former President of District Consumer Disputes Redressal Forum, Madurai and other places, has filed this writ petition praying for issuance of a Writ of Mandamus directing the respondents herein to consider his candidature and re-appoint him as the President of District Consumer Disputes Redressal Forum, Madurai or President of any other Consumer Disputes Redressal Forums for which 5 vacancies are available in compliance of the provisions of Section 10(2) of the Consumer Protection Act, 1986 [in short 'CP Act'].

2. The petitioner, in the affidavit filed in support of this writ petition, has averred as follows:

2.1. The petitioner was enrolled as an Advocate before the Bar Council of Tamil Nadu on 11.11.1987 with Enrollment No.663/1987 and gained 18 years of experience in the Bar and was appointed as the President of the District Consumer Disputes Redressal Forum, Madurai on 31.10.2005 directly from the Bar. According to the petitioner, the post of District Consumer Disputes Redressal Forum is a District Judge Cadre Post and on his appointment, he was drawing a basic salary of Rs.16,750/- per month and after serving for 9 months in Madurai, he was transferred to Namakkal on 13.07.2006 and was also put in-charge of District Consumer Disputes Redressal Forum, Karur and Dindigul Districts and he had disposed of several cases on merits.

2.2. It is stated by the petitioner that the post of the President of District Consumer Disputes Redressal Forum is a tenure post for a period of five years, which according to him is a retirement post and if a District Judge completed his service up to sixty years of age, he will be given five years or sixty five years whichever is earlier and though he has completed his full five years term in that capacity on 30.10.2010 and inspite of many representations submitted, praying for his reappointment to the said post, it was not done so. Therefore, he filed W.P.No.9356/2011 against the respondents 2 to 4 herein, praying for issuance of a Writ of Mandamus directing the respondents to consider his application for re-appointment dated 14.10.2010 and re-appoint him as the President of Consumer Disputes Redressal Forum as per the proviso to Section 10(2) of the CP Act. On behalf of the first

respondent, counter affidavit has been filed in the said writ petition. This Court, vide order dated 29.07.2011, has taken note of the stand of the first respondent in the counter affidavit that only if serving or retired District Judges are not available, Advocates can be considered for the post of President of the District Fora and also the Circular of the National Consumer Disputes Redressal Commission, New Delhi dated 17.05.2011 and also taking note of the fact that the petitioner's claim was also not considered by the Selection Committee for the post of President of the District Forum at Namakkal, though he attended the interview, has dismissed the writ petition.

2.3. It is further stated by the petitioner that the Model Code of Conduct came into being between 01.03.2011 and 20.05.2011 on account of General Election to the Tamil Nadu Legislative Assembly and though the name of one Mr.Xavier, who was a District Judge, was unanimously recommended by the Selection Committee, the selection was ordered to be done afresh and accordingly applications were invited for filling up the post of District Consumer Disputes Redressal Forum, Madurai and the petitioner has applied for the same and though interview was fixed on 30.09.2011, it was acknowledged and once again vide Notification No.3/2011 dated 04.11.2011, fresh applications were invited for filling up the said post.

2.4. It is the stand of the petitioner that though W.P.No.9356 of 2011 came to be dismissed after taking note of the Circular dated 17.05.2011 sent by the National Consumer Disputes Redressal Commission, New Delhi, it is not a mandatory one and it is merely a request and since during the period for which the Circular was issued, he was functioning as the President of District Consumer Disputes Redressal Forum, selected directly from the Bar, is not coming under the cadre of Advocates and therefore, on that ground also, his request for re-appointment for another term of 5 years should have been considered.

2.5. It is further stated that once again Notification No.2/2013 was issued on 16.07.2013 as well as Notification No.3/2013 dated 16.07.2013 came to be issued for filling up the posts of the President of District Consumer Disputes Redressal Forum in Madurai, Dindigul, Chengalpattu, Tirunelveli, Tuticorin and Thiruvavarur and another Notification No.4/2013 dated 07.08.2013 was issued for Nilgiris, Sivagangai & Ramanathapuram and Karur Fora. Though the petitioner has submitted applications and made attempts to get him selected, he was unsuccessful. The petitioner also expressed grievance that since he belongs to Scheduled Caste community, he has been treated indifferently and in any event, reservations should have

been provided while filling up the post of the President of District Consumer Disputes Redressal Forum.

2.6. The petitioner also filed W.P.No.23742/2013, by impleading the respondents herein as well as the Principal Secretary to the Hon'ble Chief Minister of Tamil Nadu as well as the Director General of Police, Chennai praying for issuance of a Writ of Mandamus directing the respondents to appoint him as the President for Madurai or in any one of the other five Forums, namely Dindigul, Chengalpattu, Tirunelveli, Thiruvavur and Tuticorin in terms of notification No.4/2013 and this Court, vide order dated 26.08.2013 made in M.P.No.1 of 2013 in W.P.No.23742 of 2013, has directed the Selection Committee to consider the claim of the petitioner for re-appointment by applying reservation as per Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the service under the State within the Reservation for the Scheduled Castes) Act, 2009 and the Rules framed therein and also in terms of first proviso to Section 10(2) of the CP Act. The petitioner, alleging non-compliance of the said order, has filed Contempt Petition in Cont.P.No.9646 of 2014 and this Court has taken note of the Minutes of the Selection Committee held on 03.09.2013 and having found that he was not selected, as he was not suitable in holding the post, has dismissed the Sub-Application as well as closed the Contempt Petition, granting liberty to the petitioner to challenge his non-selection, if he is so advised.

2.7. Thus, the grievance expressed by the petitioner is that though he is qualified in M.A., M.Phil., B.L., [P.hd.] and put in five years of hard and sincere service and rendered very many quality judgments, his claim for re-appointment for another term of five years in terms of first proviso to Section 10(2) of the CP Act has been deliberately overlooked and hence, came forward to file this writ petition for the above said relief.

3. On behalf of the second respondent, a counter affidavit has been filed stating as follows:

3.1. The petitioner, on completion of the term of five years, has submitted an application on 04.10.2010 to consider his claim for re-appointment as President of the District Consumer Disputes Redressal Forum and he cannot claim such appointment as a matter of right as no right of re-appointment is vested with him and W.P.No.23742 of 2013 filed in that regard is still pending adjudication. The second respondent would further contend that insofar as the claim of the petitioner that he has disposed of very many cases, it is stated that his duty is to dispose of cases and he cannot claim it as an achievement

on his part. It is further stated by the second respondent in respect of petitioner's non-selection that the Selection Committee duly considered his claim and he was not selected on merits and it is also the stand of the second respondent that Communal Roaster System is not applicable to the post of President of the District Consumer Disputes Redressal Forum and his claim for re-appointment to the said post, is wholly unsustainable.

3.2. The petitioner, once again applied for the post of President in terms of Notification No.1/2014 and the Selection Committee has interviewed all the applicants including the petitioner and based on the recommendations, vacancies to the post of President in the District Consumer Disputes Redressal Forums in Thiruchirappalli, Tirunelveli, Theni, Nagercoil, Srivilliputhur and Perambalur were filled up in terms of G.O. (Ms).No.34, Cooperation, Food and Consumer Protection Department, dated 02.03.2015 issued by the second respondent and it has been once again reiterated that the claim of the petitioner for reappointment is without any legal basis and there is no provision for consideration of his claim in terms of Section 10(2) of the CP Act and hence, prays for dismissal of this writ petition.

4. The petitioner, who appeared as Party-in-Person, made the following submissions:

4.1. Section 2(jj) of the CP Act defines "member" and it includes President and member of the National Commission or a State Commission or a District Forum, as the case may be.

4.2. Section 10 speaks about Composition of the District Forum and as per sub-section(2) "Every member of the District Forum shall hold office for a term of five years or up to the age of sixty-five years, whichever is earlier;

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee.

4.3. Rule 2(f) of the Tamil Nadu Consumer Protection Rules, 1988 defines "President" and it means the President of the State Commission or District Forum as the case may be.

4.4. Since the appointment to the post of President for District Forum is to be made amongst either the sitting or retired District Judges, his appointment as the President of the District Consumer Disputes Redressal Forum from among Lawyers can be equated to the post of District Judge Entry Level and since he has rendered meritorious service for five years between 31.10.2005 to 30.10.2010, by virtue of First Proviso to Section 10(2) of the CP Act, he is entitled to be recommended as the President of the District Forum and in fact, the post of the President of the District Consumer Disputes Redressal Forum is still vacant and he is to be considered for reappointment to the said post.

4.5. The Consumer Protection (Amendment) Bill in Bill No.127 of 2011 was introduced in the Parliament and one of the amendments sought to be introduced is the introduction of Second Proviso, namely "Provided further that a person appointed as President of the District Forum shall also be eligible for reappointment in the manner provided in Sub-section 1A. Provided also the Selection Committee shall take into consideration the observations of Performance Appraisal Report, if any, made by the President of the said Commission in respect of the President or member of the District Forum being considered for re-appointment and in the light of the amendment sought to be made, as stated above, the petitioner is entitled to be recommended for another period of five years as the President of the District Consumer Forum.

4.6. As per the provisions of the Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the service under the State within the Reservation for the Scheduled Castes) Act, 2009 referred to supra, 16% of appointment of posts reserved for Scheduled Castes shall be offered to Arunthathiyars and since he was the only candidate belonging to Arunthathiyar Community, he should have been recommended to the said post and prays for appropriate orders.

5. In response to the said submission, Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the respondents would submit that the petitioner is under the impression that he has acted as "District Judge Entry Level", being the President of the District Consumer Disputes Redressal Forum and he cannot claim so for the reason

that he was not directly selected as District Judge Entry Level and in accordance with the Tamil Nadu State Judicial Service (Cadre & Recruitment) Rules, 2007. It is the further submission of the learned Special Government Pleader that first proviso to Section 10(2) of the CP Act would be applicable to a member only and is not applicable to the President of District Consumer Disputes Redressal Forum. Insofar as the alternate submission made by the petitioner/party-in-person that by virtue of the provisions of the Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the service under the State within the Reservation for the Scheduled Castes) Act, 2009, he should have been appointed as the President of the District Consumer Disputes Redressal Forum, it is the submission of the learned Special Government Pleader that appointment of the petitioner as President of the District Consumer Redressal Forum is a contractual appointment and no reservation is applicable and drawn the attention of this Court to Rule 12(2) of the Tamil Nadu Pension Rules, 1978. Lastly it is contended by the learned Special Government Pleader that the petitioner was permitted to participate in the selection process and the Selection Committee appraised his performance and found him that he is not eligible to be appointed as President of the District Consumer Disputes Redressal Forum and admittedly no challenge has been made to his non-selection. It is also submitted that W.P.No.23742/2013 filed for the very same relief is pending disposal and as such, the petitioner cannot maintain this writ petition for the very same relief and prays for dismissal of this writ petition with costs. The learned Special Government Pleader, in support of his submissions, has placed reliance upon the decisions in Gural Singh Rampura v. State of Punjab and Others [CWP No.5478 of 2006 dated 01.05.2006], R.Thangapandian v. The Commissioner of Hindu Religious and Charitable Endowment Board, Chennai and Another [CDJ 2011 MHC 1203- DB] and Gajanan Narayan Desai v. President, Consumer Disputes Redressal Commission, Maharashtra and Others [II (2003) CPJ 297 (DB)].

6. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

7. The following questions arises for determination:

(i) Whether the petitioner/party-in-person is eligible for re-appointment as the President of the District Consumer Disputes Redressal Forum?

(ii) Whether reservation in terms of Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the

service under the State within the Reservation for the Scheduled Castes) Act, 2009 is applicable to the post of President of the District Consumer Disputes Redressal Forum?

(iii) To what relief, the petitioner/party-in-person is entitled?

Question No.1

8. As per the definition of Section 2(jj) of the CP Act, a "member" includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be and Rule 2(f) of the Tamil Nadu Consumer Protection Rules, 1988 defines "President" and it means the President of the State Commission or District Forum as the case may be. It is the primordial submission of the petitioner/party-in-person that since the definition "member" includes the President of the District Consumer Disputes Redressal Forum also, he is eligible to be re-appointed for another term of 5 years as the President of District Consumer Disputes Redressal Forum or up to the age of 65 years in accordance with First Proviso to Section 10(2) of the Act. In the considered opinion of the Court, the said submission lacks merit and substance for the following reasons.

9. Section 10(2) of the CP Act was amended with effect from 15.03.2003, by Act No.62/2002. The Judgment reported in Gajanan Narayan Desai v. President, Consumer Disputes Redressal Commission, Maharashtra and Others [II (2003) CPJ 297 (DB)] was delivered on 17.01.2002 and as per old/earlier provision, every member of the District Forum shall hold the office for a period of five years or up to the age of 65 years whichever is earlier and shall not be eligible for re-appointment and the contention put forward by the petitioner/party-in-person is that he is eligible for re-appointment and it was rejected on the basis of the existing provision and in para 6 of the order, the Hon'ble Supreme Court observed that it is for the Parliament to consider as to whether Section 10(2) needs to be amended and existing members is to be made eligible for re-appointment. It is the submission of the petitioner/party-in-person that when Bill No.127 of 2011, namely Consumer Protection (Amendment) 2011, was introduced, wherein suggestion has been made that person appointed as the President of the District Forum shall also be eligible for re-appointment in the manner provided in sub-section 1A of Section 10 and therefore, he is to be re-appointed as the President for another term of 5 years or up to the age of 65 years whichever is earlier. Unfortunately, amendment sought to be introduced in Bill No.127/2011 has not been passed by the Parliament and what was passed/amended was with regard to eligibility for re-appointment of a member only for another term of five years or up to the age of 65 years and not the President

of the District Consumer Disputes Redressal Forum and unless and until the amendment introduced fructifies into the Act, the claim of the petitioner cannot be considered.

10. Similar issue arose for consideration before the Division Bench of Punjab and Haryana High Court in Gural Singh Rampura v. State of Punjab and Others [CWP No.5478 of 2006 dated 01.05.2006] wherein the Hon'ble Mr. Justice J.S. Khehar [as the Hon'ble Judge then was] who authored the Judgment, after exhaustively dealing with Section 10 of the CP Act, held that "reappointment is permissible only against the office/post of the "members" of the District Consumer Forums, and not, for the office/post of "Presidents" of the District Consumer Forums".

11. Similar contention put forward by the petitioner/party-in-person that the definition of Member under Section 2(jj) of the Act has been advanced before the Division Bench of the Punjab and Haryana High Court and it was repelled by observing that first proviso to Section 10(2) refers to reappointment only for those who fulfill the qualifications mentioned under Clause (b) of Sub-section (1) of Section 10 of the CP Act and instant appointment pertains only to members of District Consumer Disputes Redressal Forum because clause (b) of Sub-section (1) of Section 10 of the CP Act lays down qualification and other conditions of eligibility only for members of the District Consumer Forums.

12. In the considered opinion of the Court, the above cited judgment is squarely applicable to the facts of this case and in the light of the ratio laid down in the said judgment, claim for re-appointment under first proviso to Section 10(2) of the Act is available/applicable only to a member and not for the post of President of the District Consumer Disputes Redressal Forum. It is also the claim of the petitioner that since he was appointed as President of the District Consumer Disputes Redressal Forum directly from the bar, he is to be considered as District Judge, Entry Level or equivalent to the said post. The said submission is also liable to be rejected for the reason that Rule 5 of the Tamil Nadu State Judicial Service (Cadre & Recruitment) Rules, 2007 provides for Method of Appointment, Qualification and Age of the Senior Civil Judge, District Judge Entry Level, District Judge Selection Grade and Super Time Scale and it is not even the case of the petitioner that he has undergone the said selection process and appointed as District Judge, Entry Level.

13. The petitioner, on an earlier occasion, filed a writ petition in W.P.No.9356 of 2011 for the similar relief and it was rejected on 29.07.2011 and no further challenge has been made to the said order. The petitioner made one more attempt by filing W.P.No.23742/2013 for the same relief and it is still pending and though there was a direction to consider his claim

under the Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the service under the State within the Reservation for the Scheduled Castes) Act, 2009 and alleging non-compliance, he filed Cont.P.No.9646/2014 and the contempt petition was closed taking note of the fact that he was unsuccessful in the selection process and liberty was granted to him to challenge his non-selection. However, once again the petitioner came forward to file this writ petition for issuance of a Writ of Mandamus merely praying for the very same relief and admittedly, did not challenge his non-selection.

14. Therefore, Question No.(i) is answered in negative against the petitioner/party-in-person.

Question No.(ii)

15. It is the alternative plea of the petitioner/party-in-person that Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the service under the State within the Reservation for the Scheduled Castes) Act, 2009 is applicable to him and as such, by virtue of reservation provided to people belonging to Arunthathiyar Community under Rule 4, his name ought to have been recommended as the President of the District Consumer Disputes Redressal Forum.

16. Rule 12 of the Tamil Nadu Pension Rules, 1978 deals with conditions subject to which service qualifies for pension and it is relevant to extract Sub-rule (2) to Rule 12:

(2). For the purposes of sub-rule (1) the expression "service" means service under the Government and paid by the Government from the Consolidated Fund of the State, or a local fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government."

17. Admittedly, the post of the President of a Consumer Disputes Redressal Forum is a non-pensionable establishment, unless such service is treated as qualifying service by the Government. The Circular dated 17.05.2011 sent by the National Consumer Disputes Redressal Commission, New Delhi, which has been extracted in the order dated 29.07.2011 made in W.P.No.9356/2011 filed by the petitioner/party-in-person also suggests that appointment of Lawyer as a President of District Consumer Disputes Forum will create more problems and therefore,

as a matter of policy, appointments shall be made only from retired and sitting Judges, whose honesty and integrity are beyond doubt. The learned Judge, while dismissing the W.P.No.9356/2011, also observed that the said Circular was put to challenge in a batch of writ petitions in W.P.Nos.15364, 14248, 15401 of 1999 and 11680 of 2006 and all those writ petitions were dismissed.

18. In the decision in R.Thangapandian v. The Commissioner of Hindu Religious and Charitable Endowment Board, Chennai and Another [CDJ 2011 MHC 1203- DB], challenge was made to the notification for filling up the vacancies of Assistant Civil Engineers etc., with a further direction directing the Commissioner of Hindu Religious and Charitable Endowment Board, Chennai to earmark the exact vacancies for Scheduled Castes and Scheduled Tribes community and to fill up the same in a fair and transparent manner and also fill up the existing vacancies by communal roaster. The Division Bench of this Court has taken note of the Special Rules and found that in the absence of providing reservation in the Special Rules, the petitioner cannot blame the second respondent for not reserving any seat for SC & ST candidates or to any other category and Article 16 (4) of the Constitution of India is an enabling provision to the State Government to reserve posts and also taken into consideration the decisions of the Hon'ble Supreme Court of India in Dr.Gulshan Prakash v. State of Haryana [(2010) 1 SCC 477] and Ajit Singh (II) v. State of Punjab [(1999) 7 SCC 209].

19. Admittedly, the post of the President of District Consumer Disputes Redressal Forum cannot be termed as a service and it is a service in a non-pensionable establishment and it has not been treated as qualifying service by the Government and therefore, the petitioner cannot claim any right by virtue of the provisions of Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the service under the State within the Reservation for the Scheduled Castes) Act, 2009, though he belongs to Hindu Scheduled Caste Arunthathiyar community. However, it is always open to the State Government to provide reservation in accordance with the above cited two decisions of the Hon'ble Supreme Court of India relied on by the Division Bench of this Court in R.Thangapandian case (cited supra) as well as the decisions in M.Nagaraj v. Union of India [(2006) 8 SCC 212] and Himachal Pradesh Scheduled Tribes Employees Federation and Others v. Himachal Pradesh Samanaya Varg Karamchari Kalyan Mahasangh and Others [(2013) 10 SCC 308] and this Court is not expressing any opinion in that regard.

20. Therefore, Question No.(ii) is answered in negative against the petitioner.

Question No.3

21. In the light of the discussions made above, this Court is of the considered view that the petitioner is not entitled to any relief and therefore, Question No.(iii) is answered accordingly.

22. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Chief Secretary,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
- 2.The Principal Secretary to Government,
Cooperation, Food and
Consumer Protection Department,
Member-Selection Committee-Cum competent Authority,
Fort St.George, Chennai-600 009.
- 3.The Secretary to Government,
Law Department,
Member-Selection Committee,
Fort St.George, Chennai-600 009.
- 4.The Hon'ble State President,
Chairman-Selection Committee,
State Consumer Disputes Redressal Commission,
Frazer Bridge Road, Park Town,
Chennai-600 003.

W.P.No.3503 of 2015

tej(CO)
srg(19/02/2016)