

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.7259 OF 2003

ORDER:

This writ petition under Article 226 of the Constitution of India seeking a direction in the nature of writ of Mandamus against the respondents to appoint the petitioner as Bill-Collector with effect from 29.08.1981 the date on which his juniors/colleagues have been appointed as Bill Collectors with all consequential and attendant benefits including promotion to the post of Sub-Inspector of Bill Collector in obedience of the judgment dated 21.03.1991 in W.P.No.18825 of 1988, confirmed the same by order dated 09.10.1996 in W.A.No.645 of 1991, declaring the action of the respondents as illegal, arbitrary and discriminatory.

Later, the petitioner amended the petition seeking a relief of declaration that the proceedings in Lr.No.SE/OP/North/Hyd/ADM.A2/D.No.1386/2012, dated 04.02.2012 issued by the 2nd respondent without proper consideration as illegal, arbitrary and discriminatory and set aside the same.

It is alleged that the petitioner joined as Helper on temporary basis initially, later absorbed in regular service and discharged his duties as effectively as possible. As he was denied promotion, filed W.P.No.18825 of 1988, which was allowed by this Court by order dated 21.03.1991 and confirmed the same in W.A.No.645 of 1991 dated 09.10.1996.

In the order dated 21.03.1981 passed in W.P.No.18825 of 1988 the following direction was issued to the respondents:

“On a consideration of all these aspects, I am of the opinion that the petitioner is entitled to succeed in the writ petition with a more positive direction to the respondents, than was given earlier in the two writ petitions which he had filed, because the attitude of the Board on these occasions manifests an anxiety not to grant him any relief. I, therefore direct that the Petitioner shall be absorbed as a helper with reference to the dates on which S/Sri Mallesham and Chandraiah who were petitioners in W.P.3224/82 were appointed as Helpers in the Board, in accordance with the then existing orders and without regard to the qualifications which were introduced on 04.01.1984. As is evident from the recitals contained in the order dt.11.5.1984, he would have been absorbed into proper posts in the first instance and later posts suitable to his qualifications. There will therefore be a direction that the petitioner shall be appointed as a Bill Collector from the Category of Helpers in accordance with the qualifications for such appointment as prevailed prior to the instructions of the Board dt.4.1.1984. This direction shall be given effect to within a period not exceeding six weeks from today. On such appointment as Helper and Bill Collector, petitioner will be entitled to count the service with effect from the respective dates and have notional increments in the scale of salary applicable to him, without any monetary benefit for the above period. The Board is free to fix his rank in the seniority list with due notice to all persons who are likely to be affected. I allow the writ petition with costs including advocate's fee of Rs.500/-.”

Despite confirmation of the above said order in W.A.No.645 of 1991 by order dated 09.10.1996, it was not implemented and no action has been taken till the date of filing the writ petition initially and during the pendency of the writ petition, a memo in Lr.No.SE/OP/North/Hyd/ADM.A2/D.No.1386/2012, dated 04.02.2012 was issued without

considering any of the contentions raised by the petitioner in the representations. Hence, sought for the aforesaid direction.

Respondents filed counter-affidavit while admitting about the joining of the petitioner initially as helper reiterating the contentions urged before this court in W.P.No.18825 of 1988 and mainly contended that the writ petitioner in pursuance of the direction issued by this Court in interim direction in W.P.M.P.No.24176 of 1988 in W.P.No.18825 of 1988, filed a Contempt Case No.436 of 1989 under Sections 10 to 12 of Contempt of Court Act alleging that the officials of the respondent disobeyed the order of this Court passed in WPMP.No.24176 of 1988 in W.P.No.18825 of 1988. Upon hearing the arguments of both counsel, the Court held that as the petitioner is a Matriculate, he is not eligible for appointment as Bill Collector. Therefore, the Court while disposing of the Contempt Case concluded that "it cannot be said that the respondents had disobeyed the order of this Court. Therefore, the contempt case is dismissed. No order as to costs." Consequent to dismissal of contempt case No.436 of 1989, the petitioner filed contempt case appeal in SR.No.77156 of 1989 in C.C.No.436 of 1989 and the same was dismissed at the stage of admission.

It is true that the Court allowed W.P.No.18825 of 1988 on 21.03.1991. Consequent to the disposal of the writ petition, the petitioner was appointed as Helper with retrospective effect from 27.08.1983 taking into consideration

his qualifications including Technical qualifications. He has accepted the post of Helper and joined duty as Helper. Thereafter, he had also accepted three fold promotions in O & M category from the post of Helper to Line Inspector. The contention of petitioner appears that since he was appointed in the Board services with retrospective effect he is eligible for appointment as Bill Collector as per the rules existing as on that date. The contention of the petitioner is not acceptable since the requisite qualifications of Graduation for the post of Lower Division Clerk/Revenue Cahier have been prescribed with effect from 01.05.1982. Even it is to be considered that the petitioner was appointed with retrospective effect from 27.08.1983 when the requisite qualifications for the post of Bill Collector was only SSC, his case has to be reviewed with reference to the vacancies existing as on that day and the seniority of the Ex-casual labour existing as on that date. The petitioner was ranked at 47 and the casual labour up to the seniority No.39 were considered. Even then his case would not have come up for consideration as on that day. He is governed by the Amended Rules and Regulations which are issued from time to time and any appointment made subsequent to the amendments issued to the service regulations are applicable to all the employees whose cases are coming up for consideration for appointment or promotion to any category.

Respondents further contended that since the petitioner has been appointed in the Board Services in pursuance to the Court directions and the petitioner has accepted the post of Helper and subsequent promotions without any protest or refusal, it cannot be said that the respondents have not taken any action on the Court directions. As such there is no in-action on the part of the respondents amount to Ex-facie contempt and in view of the dismissal of contempt case, the petitioner is not entitled to seek a writ for implementation of the order passed in earlier writ and prayed for dismissal of the writ petition.

During hearing, Sri J.Sudheer, learned counsel appearing on behalf of Sri Satish Deshpande, learned counsel for the petitioner, contended that this Court can issue any direction within the limits of Constitution of India and when the respondents failed to implement the orders of this Court, certainly, this Court can issue a direction for implementing the orders passed in earlier writ and the powers of this Court under Article 226 of the Constitution of India are unlimited and placed reliance on judgments rendered in “***Shalini Shyam Shetty and another v. Rajendra Shankar Patil***”¹, “***State of Madhya Pradesh and others v. Visan Kumar Shiv Charan Lal***”², “***Jaidev Siddha (DR.) and others v. Jaiprakash Siddha and others***”³ and “***Air India Statutory***

¹ (2010) 8 SCC 329

² (2008) 15 SCC 233

³ 2007 (3) M.P.L.J. 595

Corporation etc., v. United Labour Union and others, etc.,⁴

Whereas Sri R.Vinod Reddy, learned standing counsel for the respondents, contended that a writ cannot be issued for implementation of the order passed in earlier writ petition, at best the remedy available to the petitioner is to file a contempt case, which he has already filed and the same was dismissed. He further contended that in view of the retirement of the petitioner, no direction can be issued at this stage and the writ petitioner himself absorbed as helper in pursuance of the directions issued by this Court and the petitioner accepted the same without any demur and thereby the petitioner is not entitled to claim his initial appointment as Bill-Collector after lapse of so many years and placed reliance on the judgments rendered in “**State of Uttar Pradesh and Others v. Arvind Kumar Srivastava and others⁵**”, “**New Delhi Municipal Council v. Pan Singh and others⁶**”, “**M.Nagabhushana v. State of Karnataka and others⁷**” and prayed for dismissal of the petition.

On consideration of the rival contentions and on perusing the material available on record, the point that arises for consideration is follows:

(1) Whether a direction be given against the respondents to appoint the petitioner as Bill-

⁴ AIR 1997 SC 645

⁵ (2015) 1 SCC 347

⁶ (2007) 9 SCC 278

⁷ (2011) 3 SCC 408

Collector with effect from 29.08.1981 in pursuance of the orders passed by this Court in W.P.No.18825 of 1988, confirmed in W.A.No.645 of 1991 and the memo issued in Lr.No.SE/OP/North/Hyd/ADM.A2/D.No.1386/2012, dated 04.02.2012 be declared as illegal and arbitrary?

P O I N T:

Undisputedly, the petitioner filed W.P.No.18825 of 1988 and by order dated 21.03.1991 the said writ petition was allowed with certain directions. Aggrieved by the order of this Court, respondents filed W.A.No.645 of 1991, which ended in dismissal and the order in W.P.No.18825 of 1988 attained finality. Hence, the respondents have to implement the orders issued by this Court in W.P.No.18825 of 1988 with effect from 29.08.1981 as a Bill Collector from the Category of Helpers in accordance with the qualifications for such appointment as prevailed prior to the instructions of the Board dt.4.1.1984. On such appointment as Helper and Bill Collector, petitioner will be entitled to count the service with effect from the respective dates and notional increments in the scale of salary applicable to him, without any monetary benefit for the above period. The respondents did not implement the orders passed by this Court in W.P.No.18825 of 1988. Later, he submitted several representations (56 in No.), but the respondents by memo dated 04.02.2012 rejected the representations denying his initial appointment as Bill-

Collector as he was not qualified for such appointment as per Board Instructions.

A bare look at the operative portion of the order, it is evident that the respondents were directed to appoint the petitioner as Bill-Collector from the category of Helper in accordance with the qualifications for such appointment as was prevailing prior to instructions of the Board dated 04.01.1984 and in the next sentence it is made clear that on such appointment as Helper and Bill Collector, the petitioner will be entitled to count the service with effect from the respective dates and have notional increments in the scale of salary applicable to him, without any monetary benefit for the above period. There is a little confusion in the operative portion of the order, at one stage a direction was issued to the respondents to appoint the petitioner as Bill Collector from the category of Helpers in accordance with the qualifications for such appointment as prevailed prior to the instructions of the Board dated 04.01.1984, but at later point, it appears a direction was issued to the respondents to appoint the petitioner as Helper and Bill Collector with consequential attendant benefits.

In any view of the matter, it is contention of the petitioner that he is entitled for appointment as Bill-Collector and consequential promotions from time to time, but the respondents did not implement the order passed in W.P.No.18825 of 1988, confirmed in W.A.No.645 of 1991 and

issued a memo dated 04.02.2012 rejecting the petitioner's representation for appointment as Bill-Collector as he was not qualified as on the cut of date fixed vide instructions of the Board dated 04.01.1984. A close scrutiny of the memo issued by the respondents and the order passed by this Court in the W.P.No.18825 of 1988 revealed that a positive direction was issued to the respondents to appoint the petitioner based on his qualifications prior to issue of instructions by the Board. Therefore, he was appointed as Helper and later accepted 3 lines of promotions and retired in the cadre of Line Inspector on attaining the age of superannuation. Therefore, the petitioner is not entitled to claim any relief in the present writ petition.

In any view of the matter, a direction was issued and in pursuance of the direction, memo was issued since the petitioner was not qualified person, he is not entitled for appointment as Bill-Collector. Strangely, the writ petition was filed initially questioning the action of the respondents in not implementing the orders issued by this Court in W.P.No.18825 of 1988, but to issue of memo rejecting his representations to appoint him as Bill-Collector, the affidavit was amended appropriately claiming relief of declaration that the memo in Lr.No.SE/OP/North/Hyd/ADM.A2/ D.No.1386/ 2012, dated 04.02.2012 is arbitrary and illegal vide orders of this Court.

In fact the petitioner is entitled to amend the petition, which is a pleading within the meaning of Order VI Rule 1 of Code of Civil Procedure (for short, hereinafter, referred to as "C.P.C."), which includes plaint and written statement. Since it is an inclusive definition, the petition can also be included impliedly. Thus, at best the petitioner is entitled to amend the petition, but not the affidavit since the affidavit is governed by Order XIX of C.P.C. Rule 1 thereof permits the proof of fact by filing an affidavit and empowered the Court to pass order based on the affidavit. The affidavit is only a statement of fact or law of the deponent on affirmation made before the competent officer, who attested the affidavit and such statement cannot be amended by adopting the procedure under Section 151 of C.P.C. or Order VI Rule 17 of C.P.C. At best the petitioner is entitled to amend the petition filed under Article 226 of the Constitution of India by adding additional relief to declare the memo dated 04.02.2012 but not the affidavit. If the petition is amended, the petitioner can seek permission from the Court to file an additional affidavit i.e. additional statement of facts or law of the petitioner made before the competent officer, who attested the affidavit. Instead of following such procedure, a novel procedure has been adopted by the petitioner to amend the affidavit itself i.e. statement made before the competent officer on affirmation. Thus, the procedure adopted by the petitioner is not in accordance with law.

It is the case of the petitioner that he obtained the order in the W.P.No.18825 of 1988, which is not implemented and for implementation of the order issued by this Court in the writ petition, the writ petitioner is entitled to file contempt case to take necessary action against the respondents, who allegedly disobeyed the order of this Court, but the petitioner maintained silence throughout for more than 4 years and resorted to the present litigation by filing a fresh petition seeking a direction to implement the order passed by this Court, which is impermissible under law. Therefore, no direction can be issued to implement the orders passed in the other W.P.No.18825 of 1988 by exercising power of judicial review under Article 226 of the Constitution of India. When this Court issued a direction to appoint the petitioner as Bill-Collector from the cadre of Helper and extend all consequential attendant benefits, issuing any direction sought for by the petitioner in the present writ petition, amounts to granting the same relief. Therefore, no direction can be given either for implementation of the order of this Court or a direction as sought for by the petitioner to direct the respondents to appoint him as Bill-Collector.

Coming to the memo issued by the respondents dated 04.02.201, the respondents considered the order in the W.P.No.18825 of 1988 and concluded in paragraph No.10 that the petitioner's qualification was only SSC & ITI in Wireman trade and accordingly he was appointed as Helper

with effect from 27.08.1983 and even the order is clear that the direction was issued subject to the existing rules with regard to the qualification prior to 04.01.1984, on which date the Board issued instructions with regard to qualifications etc.

Therefore, the Memo issued by the respondents is contrary to the directions issued by this Court in W.P.No.18825 of 1988. In those circumstances, this Court can exercise power conferred on it under Article 226 of the Constitution of India in view of the law declared in “**Shalini Shyam Shetty and another v. Rajendra Shankar Patil**”, “**State of Madhya Pradesh and others v. Visan Kumar Shiv Charan Lal**”, “**Jaidev Siddha (DR.) and others v. Jaiprakash Siddha and others**” and “**Air India Statutory Corporation etc., v. United Labour Union and others, etc.,**” (referred supra).

Sri R.Vinod Reddy, learned standing counsel for the respondents, contended that due to delay and latches the petitioner is not entitled to seek any relief in the present writ petition.

No doubt, there is delay, but the delay in issuing memo is attributable to the respondents and the respondents cannot be allowed to take advantage of its own wrong or latches to deny the declaration of the memo dated 04.02.2012 as illegal and arbitrary. Therefore, the principles laid down in “**State of Uttar Pradesh and Others v. Arvind Kumar**

Srivastava and others", "***New Delhi Municipal Council v. Pan Singh and others***", "***M.Nagabhushana v. State of Karnataka and others***" is of no assistance of the respondents to deny the relief of declaration that the Memo dated 04.02.2012 as illegal.

In view of my foregoing discussion, the memo issued by the respondents dated 04.02.2012 is declared as arbitrary and illegal while declining to issue a positive direction to implement the order dated 21.03.1991 in W.P.No.18825 of 1988 or to direct the respondents to appoint the petitioner as Bill Collector with effect from 29.08.1981. Since such direction was already issued by this Court and if any direction is issued directing the respondents to appoint the petitioner as Bill-Collector in pursuance of the directions issued by this Court in W.P.No.18825 of 1988, it amounts to directing the respondent to implement the said order. Therefore, the petitioner is not entitled for any such positive direction against the respondents. Accordingly, the point is decided.

In the result, the writ petition is allowed in part declaring the Memo in Lr.No.SE/OP/North/Hyd/ADM.A2/D.No.1386/2012, dated 04.02.2012 as illegal and arbitrary while declining to issue a direction to the respondents to appoint the petitioner as Bill Collector with effect from 29.08.1981. No order as to costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:09.09.2016
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