

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

WRIT PETITION Nos. 6005 and 34679 of 2011

COMMON ORDER: (*Per VRS,J*)

Both these writ petitions arise out of two different orders passed by the Central Administrative Tribunal, at the instance of two rival claimants to the post of Junior Engineer Grade-II.

2. Heard Mr. R.S. Murthy, learned counsel appearing for the East Coast Railway, Mr. D.V. Rao, learned counsel appearing for one of the rival claimants and Mr. T. Vijay Hanuman Singh, learned counsel appearing for the other claimant.

3. On 08.07.2005, a notification was issued for selection to the post of Junior Grade Grade-II as against the 25% quota reserved for Intermediate Apprentice. 12 vacancies were notified, out of which, 10 were to be un-reserved, one intended for Scheduled Castes and one intended for Scheduled Tribes.

4. A panel was prepared on 06.07.2006. In the panel, the name of one Mr.G.V.Ramana, who is the 1st respondent in W.P.No.6005 of 2011, was included. He had joined the East Coast Railway by representing that he belonged to the Scheduled Tribes. His community status certificate had already become the subject matter of

a series of litigation, the entire history of which need not be repeated for the purpose of the present case.

5. Aggrieved by the inclusion of the name of Mr.G.V.Ramana (1st respondent in W.P.No.6005 of 2011), one Mr.A.Malli Babu, who is the petitioner in W.P.No.34679 of 2011, made a representation on 03.03.2008. According to Mr.A.Malli Babu, the Divisional Personnel Officer made an endorsement in hand on his representation to the following effect:

“Case may be processed for amendment of panel”

6. Finding that the panel was not amended by removing the name of Mr.G.V.Ramana and by including his own name, Mr.A.Malli Babu filed an application in O.A.No.78 of 2009 on the file of the Central Administrative Tribunal.

7. During the pendency of the said application, the Divisional Railway Manager passed an order, dated 10.10.2009, deleting the name of Mr.G.V.Ramana from the panel for promotion. Therefore, challenging the said order, Mr.G.V.Ramana filed an application in O.A.No.440 of 2010 on the file of the Central Administrative Tribunal.

8. Since the claim made by Mr.A.Malli Babu in O.A.No.78 of 2009 and the claim made by Mr.G.V.Ramana in O.A.No.440 of 2010,

ran counter to each other, the Tribunal could have taken up both the applications for disposal together. Alternatively, the Tribunal could have taken up the applications in the chronological order. But, the Tribunal took up both the applications separately on the same day. By an order, dated 03.11.2010, the Tribunal first allowed the application, O.A.No.440 of 2010 filed by Mr.G.V.Ramana, holding that so long as the community certificate issued to Mr.G.V.Ramana way back in 1978 had not been cancelled, he was entitled to all the benefits including that of promotion.

9. After so allowing O.A.No.440 of 2010 in favour of Mr.G.V.Ramana, the Tribunal dismissed O.A.No.78 of 2009 filed by Mr.A.Malli Babu, by an order, dated 03.11.2010, on the only ground that the moment Mr.G.V.Ramana succeeded, the claim of Mr.A.Malli Babu would not stand.

10. Aggrieved by the order passed in favour of Mr.G.V.Ramana, the East Coast Railway has come up with a writ petition in W.P.No.6005 of 2011. Aggrieved by the dismissal of his own application, Mr.A. Malli Babu has come up with a writ petition in W.P.No.34679 of 2011.

11. Since the fate of W.P.No.34679 of 2011 depends upon the fate of the other writ petition, we shall take up W.P.No.6005 of 2011 first.

12. The short ground, on which the East Coast Railway has come up with W.P.No.6005 of 2011, is that the 1st respondent therein, namely, Mr.G.V.Ramana, had already suffered an order in O.A.No.79 of 1998 and that, therefore, so long as the said order of the Tribunal remains in force, Mr.G.V.Ramana cannot seek any further benefits. In order to test the correctness of the contention, we shall have a look at the order passed in O.A.No.79 of 1998.

13. It is seen from the order passed in O.A.No.79 of 1998 that the Tribunal directed Mr.G.V.Ramana to secure a fresh community certificate from the competent authority, within a fixed timeframe. It will be useful to extract the order of the Tribunal, dated 14.07.1999, passed in O.A.No.79 of 1998, which reads as follows:

“In the result, the following directions are given:

- a) The applicant shall be directed to produce the proper caste certificate from the competent authority of the State Government within a period of 8 months from the date of receipt of a copy of this order.*
- b) In the meantime, the applicant shall be promoted as TXR provisionally subject to the production of the caste certificate by him within a period of 8 months.*
- c) If the applicant produces the caste certificate in the prescribed format acceptable to the Railway Administration, then he should be deemed to have been promoted as TXR from the date his junior was promoted in the empanelled list.*
- d) In case the applicant fails to produce the caste certificate within the stipulated time, then he stands reverted to the post of Highly Skilled Grade-II.”*

14. It may be true that once a person obtains a community certificate from an authority, who was competent at the time of the issue of the certificate, the same person cannot be asked to repeatedly get community certificates. The only option open to an employer, in cases where the genuineness of the community certificate is suspected, is to refer the certificate for scrutiny by the State Level or District Level Committees, as per the law laid down by the Supreme Court.

15. But unfortunately, Mr.G.V.Ramana has allowed the order of the Tribunal in O.A.No.79 of 1998 to attain finality. Therefore, despite the law being in his favour, Mr.G.V.Ramana has allowed events to overtake his rights by the order of the Tribunal, dated 14.07.1999, passed in the said application.

16. The contention of the learned counsel for Mr.G.V.Ramana is that unfortunately, the combined State of Andhra Pradesh took a policy decision not to issue any community certificate to persons claiming to belong to Benthoriya community, and that this has come in the way of his complying with the order of the Tribunal in O.A.No.79 of 1998. We have come across other cases where it was brought to our notice that after 2007 or 2009, the Government stopped issuing community certificates to persons, who belonged to Benthoriya community. Therefore, the inability on the part of

Mr.G.V.Ramana to obtain a fresh community certificate, irrespective of whether there is a legal obligation or not, cannot be put against him in the circumstances.

17. But, the impossibility of performance can be taken advantage of by Mr.G.V.Ramana only to the extent of retaining the benefits of employment and whatever he has secured until then. After the order of the Tribunal, dated 14.07.1999, which he has accepted and allowed to attain finality, Mr.Mr.G.V.Ramana could not have sought further promotion, on the basis of the very same community certificate. Since this aspect has been overlooked by the Tribunal, the writ petition, W.P.No.6005 of 2011, deserves to be allowed and the order of the Tribunal is liable to be set aside. Accordingly, W.P.No.6005 of 2011 is allowed and the order of the Tribunal, dated 03.11.2010, passed in O.A.No.440 of 2010, is set aside. However, the Railway Administration shall have in mind the principles of law on the legal issues that we have indicated above, so that till any finality is reached, the appointment of Mr.G.V.Ramana itself is not thrown to jeopardy.

18. Now that we have allowed W.P.No.6005 of 2011, the next writ petition has to be automatically considered on its own merits. According to the petitioner in W.P.No.34679 of 2011, he was the next candidate in the order of merit among the Scheduled Castes, who is

entitled to be included in the panel, once Mr.G.V.Ramana goes out of the panel.

19. But, the contentions of the learned counsel for the East Coast Railway are two-fold, namely, (a) that a panel once made is valid only for a period of two years, and (b) that in any case, there is a more meritorious candidate than Mr.A.Malli Babu and that, therefore, Mr.A.Malli Babu cannot score a march over a more meritorious candidate.

20. The first contention is liable to be rejected, for the reason that within two years of the preparation of the panel, the Divisional Personnel Officer recommended an amendment of the panel on 03.03.2008 itself. When the inclusion of the name of a person in a panel is in question, the life expectancy of the panel cannot be put against a person, whose rights are pending adjudication. It is true that the original application, O.A.No.78 of 2009, was not filed within two years of the date of the panel, namely, 06.07.2006. But, within two years, a representation was made and the representation was accepted on 03.03.2008. Yet another aspect is that it was only by an order, dated 10.10.2009, passed after three years and three months of the preparation of the panel that the incumbent in the panel went out of the panel. Therefore, the right for a person to come into such a place would crystallize only on 10.10.2009, and in respect of such a person,

the life expectancy of a panel cannot be put against him. Therefore, the first contention of the learned counsel for the Railway Administration is liable to be rejected both on chronology and on law.

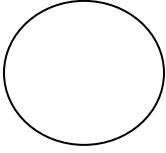
21. Insofar as the second contention is concerned, we are not adjudicating upon who was meritorious and who was less meritorious. If there was a person, who was more meritorious than Mr.A.Malli Babu even among Scheduled Tribes, who participated in the same selection, at least that person should be included in the panel. Therefore, with the above observation, W.P.No.34679 of 2011 is disposed of, directing the Railway Administration to include the more meritorious person among the Scheduled Tribes in the said panel in the place of Mr.G.V.Ramana, but making it clear that the benefits will be prospective and not retrospective.

Consequently, miscellaneous petitions if any pending in the writ petitions shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

M.S.K. JAISWAL, J

7th December, 2016
cbs



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(Allowed & Disposed of)

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