

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 08.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.19611 of 2015

1 P.Karunakaran
2 D.Balakrishnan ... petitioners
versus

1 Government of Puducherry
Repd. by its Chief Secretary Beach Line
Road Puducherry.
2 The Special Secretary
Department of Personnel and Administrative
Reforms (Personnel Wing) Beach Line Road
Puducherry.
3 The Central Administrative
Tribunal Chennai Bench By its Registrar
High Court Buildings Chennai-104. ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records in O.A.97/2012 dated 7.11.2013 and Review Application No.67/2014 dated 22.1.2015 against O.A.97/2012 on the file of the 3rd respondent and quash the same and consequently direct respondents 1 & 2 to consider the case of the petitioners for induction to selection Grade by taking into account the first Proviso to Rule 30 of PCS rules and also the procedure followed by them in the 1999 DPC.

For petitioners : Mr.J.Srinivasa Mohan

For Respondents : Mr.R.Syed Musthafa, Spl.G.P.
For respondents 1 and 2

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O R D E R

(made by K.K.SASIDHARAN, J.)

The petitioners earlier filed a Writ Petition in W.P.No.321 of 2014 challenging the order in O.A.No.97 of 2012 on the file of Central Administrative Tribunal. The Writ Petition was dismissed as withdrawn with liberty to file a review application. Thereafter, the petitioners filed review

application before the Tribunal. The review application was dismissed on the ground that there is no error apparent on the face of the record.

2. The petitioners have come up with this Writ Petition once again to challenge the order in O.A.No.97 of 2012 and the subsequent order dated 22 January 2015 in Review Application No.67 of 2014.

3. The learned counsel for the petitioners contended that the Tribunal failed to consider the basic fact that the proviso cannot override the main provision and as such, a wrong interpretation was given to the rule. According to the learned counsel, the Government have not filled the posts as per seniority and the same was pointed out by placing reliance on the minutes of the Departmental Promotion Committee held on 4 February 1999. Even then the Tribunal dismissed the original application and the subsequent review application.

4. We have also heard the learned Special Government Pleader for the Union Territory of Puducherry.

5. The petitioners filed original application in O.A.No.97 of 2012 to call for the records of the Special Secretary, Department of Personnel and Administrative Reforms in its order dated 23 November 2011 and after quashing the said proceedings, to grant them benefits by operation of Rule 30(2) in the matter of promotion to selection Grade from the year 1996 onwards on account of their completion of 8 years of required service. The original application was filed on the strength of the Rule 30(1) of the Puducherry Civil Service Rules relating to seniority. The petitioners contended that seniority referred to under Rule 30(1) is for the propose of promotion and is relatable only to services viz., 8 years of services in Grade II and that the rule does not link seniority with any other service or Grade. In short, the petitioners contended that seniority referred to in the Rule can be linked only to 8 years of service rendered in an equivalent or duty post, and a person's in Grade II having rendered in an equivalent post is entitled to count that service for the purpose of calculating 8 years under Rule 30(2). It was further contended that proviso being an exception to the main provision, the seniority referred to therein cannot be equated or related to seniority referred to under Rule 30(1).

6. The Central Administrative Tribunal by order dated 7 November 2013, dismissed the original application.

7. The petitioners challenged the order dated 7 November 2013 in O.A.No.97 of 2012 before the Division Bench in

W.P.No.321 of 2014. The Writ Petition was dismissed as not pressed, with liberty to file review application. The Tribunal dismissed the review application on the ground that there is no error apparent on the face of the record.

8. The petitioners have now come up with this Writ Petition challenging not only the order in the review application, but even the very order dated 7 November 2013 in O.A.No.97 of 2012. There is no question of entertaining the Writ Petition against the order dated 7 November 2013 on account of the order dated 9 October 2014 in W.P.No.321 of 2014. Even if liberty is given by the High Court to file review application, still, the petitioners have no right to file a fresh Writ Petition challenging the very order in the original application, after the dismissal of the review application.

9. The Tribunal was correct in its observation that there is no error apparent on the face of the record so as to exercise the review jurisdiction. The petitioners wanted rehearing of the entire matter. The scope of review application is totally different. The Tribunal therefore rightly dismissed the review application. We do not find any error or illegality in the order passed by the Tribunal so as to exercise the power of judicial review.

10. In the upshot, we dismiss the Writ Petition. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Chief Secretary
Government of Puducherry
Beach Line Road
Puducherry.

2 The Special Secretary
Department of Personnel and Administrative
Reforms (Personnel Wing) Beach Line Road
Puducherry.

3 The Registrar
Central Administrative Tribunal,
Chennai Bench,
High Court Buildings Chennai-104.

+1 cc to M/s.J.Srinivasa Mohan Advocate sr 8337

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