

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.03.2017

Delivered on : 06.04.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.21064 of 2016

Dr.S.Vasudevan

...Petitioner

vs.

1.Union of India represented by
The Union Territory of Puducherry
Through its Chief Secretary,
Government of Puducherry,
Puducherry.

2.The Secretary,
Health and Family Welfare Department,
Government of Puducherry,
Puducherry.

3.The Director of Health and
Family Welfare Services,
Government of Puducherry,
Puducherry.

4.The Central Administrative Tribunal,
Additional Bench at Madras,
represented by its Registrar, Chennai.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying a writ of Certiorarified Mandamus, calling for the records on the file of the 4th respondent relating to the impugned order dated 7.9.2012 in O.A.No.178 of 2010 and quash the same and consequently allow the O.A.No.178 of 2010 on the file of the 4th respondent.

For Petitioner : Mr.Bharathachakravathy for
M/s.Sai Bharath and Ilan

For Respondents 1to3: Mr.R.Syed Mustafa
Spl.Govt.Pleader (P)

O R D E R

K.K. SASIDHARAN, J.

The Division Bench of this Court by order dated 17 March 2004 in the writ petition in W.P.No.4718 of 2001 directed the Government of Union Territory of Puducherry, to consider the case of the petitioner for promotion to the post of Junior Specialists Grade II in Urology as of March 1996 and grant him appropriate benefits notwithstanding his appointment as Junior Specialist Grade II in the year 2000 as per new Recruitment Rules. The Government of Puducherry and the Central Administrative Tribunal misconstrued the said order and denied the petitioner the fruits of the litigation and made him to run from pillar to post.

Brief Facts:

2. The Original Application filed by the petitioner in O.A.No.178 of 2010 claiming promotion as Junior Specialist (Urology) with effect from September 1995 with consequential fitment as Specialist Grade II (Senior Scale) in Urology with effect from 15 February 1996 and further promotion as Specialist Grade I with effect from 15 February 2002 with all attendant benefits after setting aside the Office Memorandum dated 16 July 2009 was negatived by the Central Administrative Tribunal, primarily on the ground that there was no challenge to the method of recruitment to the post of Specialist Grade II (Senior Scale). The participation of the petitioner in the selection process undertaken by the Union Public Service Commission for appointment as a direct recruit was the other ground weighed with the Tribunal to negative the claim.

Submissions:

3. The learned counsel for the petitioner contended that even in the earlier writ petition, the factum of giving appointment to the petitioner as per the new Rules was an issue. The Division Bench in spite of knowledge with regard to the appointment given to the petitioner under the new recruitment rules directed the Puducherry administration to consider his case for promotion. The Tribunal, without understanding the scope of the order, dismissed the original application again on the ground of subsequent events, more particularly, undergoing selection process for appointment. The learned counsel contended that the petitioner is entitled to be considered for promotion, pursuant to the order dated 17 March 2004 in W.P.No.4718 of 2001.

4. The learned Special Government Pleader representing the Union Territory of Puducherry supported the order passed by the Tribunal. According to the learned Special Government Pleader, the petitioner was given appointment under the new Rules. He was subsequently given further promotion again under the new Rules. The Tribunal was therefore perfectly correct in dismissing the Original Application.

Discussion:

5. This is a classic case as to how the State is contributing to the Himalayan arrears in Courts by denying relief to its employees even after issuing direction by the Courts time and again.

6. The petitioner joined the Department of Health and Family Welfare Services, Puducherry as Assistant Surgeon on 19 January 1989. It was a regular appointment made through Union Public Service Commission. The petitioner completed Post Graduation in Eurology. Even though one post was available to promote the petitioner as Junior Specialist (Eurology) as per the then existing recruitment Rules, follow up action was not taken by the Government of Puducherry. The petitioner was not given promotion, in spite of availability of post and the Rules permitting such promotion.

7. While so, the Government decided to change over to the Central Health Services (CHS) pattern of time bound promotion, as per order dated 15 February 1996. As per this pattern, the Medical officers are divided as Specialist and General Duty Sub cadre. The Medical Officers were directly recruited at entry level and they were given further promotion time bound without linkage to vacancy, keeping the total number of posts constant on each side.

8. The Government of Puducherry issued an order in G.O.Ms.No.32 dated 5 November 1996, placing all the Medical officers appropriately in the respective Sub cadre. The petitioner was later placed as Senior Medical Officer in the General Duty Sub cadre. Though the petitioner was eligible for appointment to the post of Junior Specialist (Eurology), he was not given the benefit of such appointment.

9. The petitioner was given promotion on proforma basis as Specialist Grade II Junior Scale in Surgery in accordance with the old system with effect from 15.02.1995. The petitioner was later placed as Specialist Grade II Junior Scale in Surgery in the CHS pattern with effect from 15.02.1995.

10. The Government of Pondicherry framed Pondicherry Health Services (Allopathy) Rules, 1998, vide G.O.Ms.No.53 dated 18 September 1998. The Rules provide for Initial Constitution, whereby and where under, the Medical Officers who were appointed on regular basis were placed in the corresponding Sub-cadre in the new system.

11. Since the name of the petitioner was not considered for appointment to the post of Super Specialist in Eurology, he filed original application in O.A.No.331 of 1999. The Original Application was dismissed on account of the subsequent events relating to the selection of the petitioner in the post of Specialist Grade II as per the new Recruitment Rules. The order passed by the Tribunal in O.A.No.331 of 2009 was challenged before the High Court in W.P.No.4718 of 2012. The High Court directed the Puducherry Administration to consider the case of the petitioner for promotion under the then existing rules, notwithstanding his subsequent appointment through UPSC.

12. Even after the direction given by the Division Bench in W.P.No.4718 of 2001, the petitioner was not given promotion. The petitioner therefore filed O.A.No.178 of 2010. The Tribunal without making an attempt to consider the direction given by the Division Bench in W.P.No.4718 of 2001 once again rejected the case of the petitioner for the very same reason given by the Tribunal in its order in O.A.No.331 of 1999, which was not appreciated by the High Court in the connected writ petition in W.P.No.4718 of 2001.

13. The following observation made by the Division Bench in the order dated 17 March 2004 in W.P.No.4718 of 2001 alone would be sufficient to allow this writ petition:-

"8. Petitioner's right here is a right to be considered for appointment, a consideration which did not take place at all even though his case should have been made prior to the introduction of amendment to the rules, in the year 1998. Had his case been considered, according to the petitioner, he would have been selected and promoted as he was admittedly the senior most in the field. By reason of the non consideration on account of inaction, he has been deprived of the opportunity to enter the new cadre at a higher level as Junior Specialist Grade II.

10. Petitioner, therefore, is entitled to the relief by way of a direction to the respondent to consider the case of the petitioner for promotion to Junior Specialists Grade II in Urology as of March 1996 when the petitioner obtained the certificate with regard to the Post Graduate

qualification in Urology. If the petitioner is considered and, after such consideration is selected he shall be given the appropriate benefits and shall be entitled to enter into the new service at that level.

11. It is necessary to note her that the petitioner had, in the year 2000, been selected and appointed as Junior Specialist Grade II in the Senior Scale by way of direct recruitment under the new recruitment rules. The benefit that the petitioner would receive by reason of the direction now given is, therefore, for the period from 1996 to the year 2000."

14. The Government of Puducherry has no case that the order dated 17 March 2004 in W.P.No.4718 of 2001 was taken up before the Hon'ble Supreme Court. The direction given by the Division Bench in W.P.No.4718 of 2001 has become final. The Government of Puducherry is therefore bound to consider the case of the petitioner for promotion under the then existing rules, notwithstanding the appointment given to him subsequently through UPSC. The Tribunal failed to address the issues raised by the petitioner in the Original Application and thereby, made the petitioner to approach this Court once again to redress his grievances. We are therefore of the view that the order passed by the Tribunal is liable to be set aside.

15. The order dated 7 September 2012 is set aside. The original application filed by the petitioner in O.A.No.178 of 2010 is allowed. The second respondent is directed to consider the case of the petitioner for promotion in the light of the order dated 17 March 2004 in W.P.No.4718 of 2001. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

16. In the up shot, we allow the writ petition. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

svki

To

1.

The Chief Secretary,
Union Territory of Puducherry
Government of Puducherry,
Puducherry.

2.The Secretary,

Health and Family Welfare Department,
Government of Puducherry,
Puducherry.

3.The Director of Health and Family Welfare Services,
Government of Puducherry,
Puducherry.

4.The Registrar

The Central Administrative Tribunal,
Additional Bench at Madras
Chennai.

+ 1 cc to M/s. Sai Bharath & Ilan, Advocate SR.20798

W.P.No.21064 of 2016

AA(CO)
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