

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10.07.2017

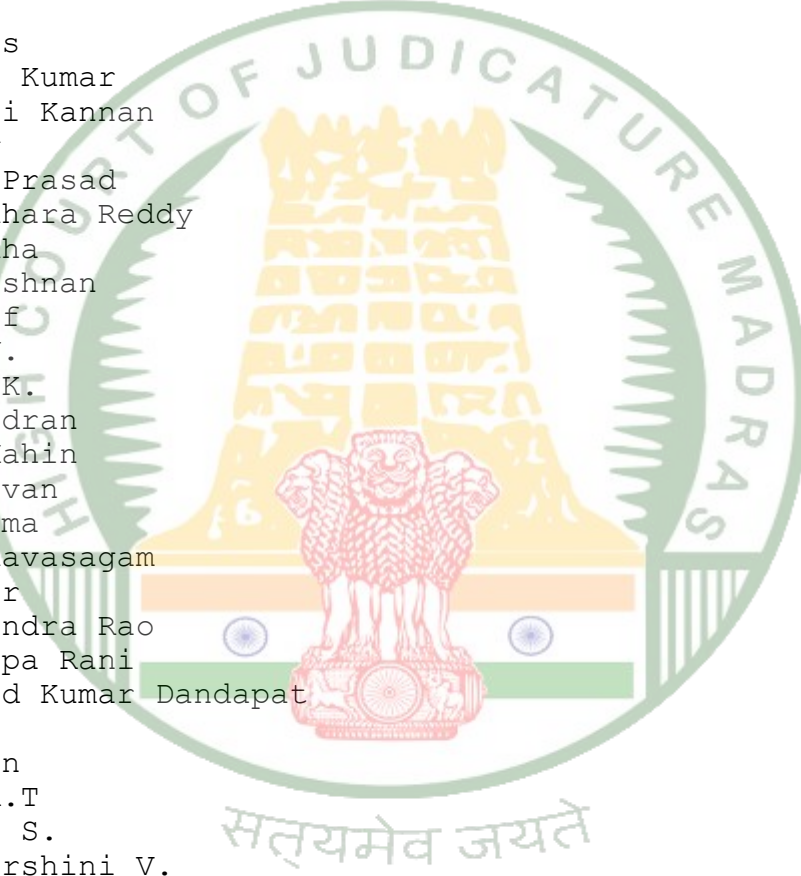
CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.16699 of 2013

1. Airports Authority Employees Union,
rep. by its Regional Secretary

2. G.Ramadoss
3. T.Senthil Kumar
4. R.Thamarai Kannan
5. S.Stanley
6. S.S.Rama Prasad
7. K.Jayasekhara Reddy
8. D.Sasirekha
9. A.Jayakrishnan
10. M.K.Harif
11. Arun P.V.
12. Beena K.K.
13. M.Raveendran
14. I.Syed Mahin
15. J.Elangovan
16. C.D.Sharma
17. B.Manickavasagam
18. M.Diwakar
19. D.Ragavendra Rao
20. M.Swaropa Rani
21. Prahallad Kumar Dandapat
22. K.Mohan
23. E.Ganesan
24. Rajesh R.T
25. Aiswarya S.
26. Priyadharshini V.
27. Muhammed Riyas A.
28. S.Gopal
29. Sampath G.
30. M.Selvaraj
31. K.Shyam Sundar
32. V.Pattabi
33. Ramesh Kumar K.
34. E.Nagarajan
35. D.Anitha Rajalakshmi
36. K.Sathiya Narayanan
37. B.Sakthidaran
38. A.Anandavalli
39. G.Soundarajan
40. N.Venu



WEB COPY

.. Petitioners

versus

Airports Authority of India,
rep. by its Regional Executive Director,
Regional Headquarters,
Southern Region,
Chennai Airport,
Chennai-600 027.

.. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the respondent to upgrade the petitioner Nos.2 to 40 who have joined during April 2008 as Junior Assistant (Office)-NE4 to the post of Assistant (Office)-NE5 from the date of their joining and grant all the consequential monetary and other benefits on that basis.

For petitioners: Mr.K.Balan Haridass
For respondent : Mr.Vijay Narayan, SC
for Mr.R. Parthiban

ORDER

The present writ petition has been filed, seeking the following relief:

"Issue Writ of Writ of Mandamus, to upgrade the petitioner Nos.2 to 40 who have joined during April 2008 as Junior Assistant (Office)-NE4 to the post of Assistant (Office)-NE5 from the date of their joining and grant all the consequential monetary and other benefits on that basis."

2. The first petitioner is a registered Trade Union. The petitioners 2 to 40 are working in Airports Authority of India, the respondent herein. Originally, 130 personnel were working in different offices of the respondent throughout India as Assistants (Office), whose services came to be terminated. The termination was the subject matter of the challenge before the High Court of Delhi. By order, dated 30.4.2007 in W.P.(C) No.18661-65 of 2004, the Delhi High Court passed order, directing the authority to fill up 50% of the available vacancies by holding appropriate tests/interview in respect of Group C and D post for the persons whose services came to be terminated and remaining 50% of posts to be recruited by direct recruitment. In pursuance of the direction of the Delhi High Court, an advertisement was issued in Employment News Edition dated 18-24th August 2007. In the said advertisement, apart from other posts, the respondent has also advertised and invited applications for the posts of Junior Assistant (Office). The pay scale of Junior Assistant at that point of time stood as 5500-10060 which is classified as NE-4. The petitioners 2 to 40, pursuant to the advertisement for appointment of posts of Junior Assistant (Office), applied and ultimately got selected and

appointed during April, 2008. According to the petitioners, after being appointed into the service, they came to know that the posts for which, the respondents wanted to fill up the posts of Assistant (Office) which carried higher pay scale of Rs.5800-10960 and the same was classified as NE-5. As stated above, the termination of the employees which gave rise to filing of the Writ Petition before the Delhi High Court by the employees who were holding the post of Junior Assistant (office) and the present advertisement was issued in pursuant to the directions issued by the Delhi High Court and therefore, the induction has to take place at the level of NE-5 post, namely, Assistant (Office). However, the petitioners had been recruited in the lower grade post, i.e. Junior Assistant (Office) which is NE-4. The petitioners claimed that they are fully qualified to be appointed as Assistants (Office) NE-5.

3. On completion of two years of service as Junior Assistants, all the petitioners had been upgraded as Assistants (Office) during April-May 2010. According to the petitioners, they ought to have been appointed as Assistants from the date of their original appointment and not after completion of two years as Junior Assistants (NE-4). The petitioners' case is that the Recruitment Rules prescribed the mode of appointment for the post of Junior Assistant (Office) only by way of Employment Assistance Scheme (Compassionate Appointment) for which, no selection process was involved and therefore, the intention of the authority was to recruit the persons only in the post of Assistant (Office) (NE-5), however, unjustly, the petitioners were recruited as Junior Assistants (Office)-NE-4 by subjecting them to appear for selection, which was meant for recruitment of posts of Assistant (Office) (NE-5). In the said circumstances, the petitioners were before this Court, seeking appropriate relief.

4. Mr.K.Balan Haridass, learned counsel appearing for the petitioners would strongly contend that by recruiting the petitioners as Junior Assistants (Office) initially in 2008, the respondent had clearly violated the Recruitment Rules which admittedly provide for filling up of posts of Junior Assistants only by way of resorting to the Employment Assistance Scheme (Compassionate Appointment) and therefore, the filling up of vacancies by direct recruitment from the open market by adopting the selection method is contrary to the Recruitment Rules and therefore, the petitioners ought to have been treated and appointed as Assistants (Office) (NE-5) from the date of their original appointment. According to the learned counsel, although the advertisement did call for the applications to fill up the posts of Junior Assistant (Office) (NE-4), the internal communication issued by the competent authority was in fact, wanted to fill up only 50 posts of Assistant (office)-NE-5. According to the learned counsel, in similar situation, the respondent had called for sponsoring candidates for the posts of Assistant (Steno) and recruited three personnel as Assistants

(Steno) thereafter. Subsequently, they noticed that their intention was only to fill up of posts of Senior Assistant (Steno) and after noticing the mistake, they passed order on 28.5.2009 by placing the said three personnel in the posts of Senior Assistant (Steno) and fixed their pay scale in the said post from the date of their original appointment. According to the learned counsel, the same yard stick is required to be applied in the present case as well.

5. Shri Balan Haridass, learned counsel for the petitioners would further contend that the petitioners not only suffered monetary loss in view of their initial recruitment in the lower post, but also suffered seniority loss and further career progression in consequent to that. According to the learned counsel, the appointment which had taken place to the posts of Assistant (office) during the period between 2008-2010, those persons who were benefited by such appointment directly as Assistants, have been shown as seniors to the petitioners, in which event, the petitioners' would be ranked juniors to those persons and their promotions would be drastically affected. In the said circumstances, the petitioners would pray for grant of the relief as sought for in the writ petition.

6. Upon notice, Mr. Vijay Narayan, learned senior counsel appearing for the respondent, at the outset, would vehemently contend that the petitioners are very much aware of the open advertisement issued by the respondent in which, the posts of Junior Assistant (Office) alone were notified along with various other posts, not the posts of Assistant. Knowing fully well, the petitioners responded to the advertisement and got themselves appeared for selection and selected in the said post. Having been selected for the said appointment in the year 2008 and having been upgraded to the posts of Assistant in 2010, the petitioners cannot agitate the issue in 2013.

7. Shri Vijay Narayan, learned senior counsel would also vehemently contend that the respondent decided to fill up the vacancies of NE-4 level posts, viz., Junior Assistants (Office) with relaxed standards to fill up the terminated employees in compliance of the direction of the Delhi High Court, it was decided to fill up the remaining vacancies also with the same relaxed standards at NE-4 level posts. In substance, the learned senior counsel would contend that the petitioners herein were subjected to the selection procedure by adopting the relaxed standards. In the said circumstances, the advertisement prescribed one pay scale below the regular scale of pay and the petitioners having taken benefit of relaxed standard, cannot turn around and complain about their selection and appointment. As regards the contention put forth by the petitioners that the posts of Junior Assistants (Office) is meant to be filled up through Employment Assistance Scheme (Compassionate Appointment), he would submit that the said posts were also filled up among the qualified departmental candidates from the

feeder grades of Group-D employees in NE-3 level where 20% quota has been fixed for the appointment to the post of Junior Assistant (NE-4) level. He would once again reiterate the fact that the qualification prescribed for Junior Assistant and the Assistant is different as indicated in the counter, which is extracted below:

Junior Assistant (O) (NE-4) under Employment Assistance Scheme: Age: No age limit - Graduate + 30/25 wpm typing speed;

Assistant (Office) (NE-5) under Direct Recruitment: Age: 30 years relaxable for SC/ST/OBC/PH/Ex-servicemen. Qualification: Graduate with typing speed 40 wpm with computer knowledge with 2 years relevant experience in the concerned discipline."

8. Once the petitioners have been subjected to relaxed qualification as applicable to the post of Junior Assistant (NE-4), they cannot stake their claim for the appointment to higher post in respect of which, higher qualification is prescribed for which, the petitioners are not admittedly subjected to selection.

9. The learned senior counsel would also contend that the recruitment and the qualification and other criteria prescribed for appointment to the post of Junior Assistant (NE-4) under the Employment Assistance Scheme (Compassionate Appointment) and under direct recruitment, it is different, distinct and not comparable. He would submit that under Employment Assistance Scheme (Compassionate Appointment), no experience and computer knowledge is required and generally, such recruitment under Employment Assistance Scheme (Compassionate Appointment) is done on the basis of relaxed standards of eligibility criteria including which, written statement, etc., In the said circumstances, he would pray that the writ petition lacks merit and substance and the same deserves to be dismissed.

10. In reply to the submissions made by the learned senior counsel appearing for the respondents, Shri Balan Haridass would submit that by communication dated 3.5.2010 addressed to the Regional Executive Director, Airports Authority of India, Southern Region, wherein, he was directed to clarify under what circumstances, the induction at the level of NE-4 had taken place in 2008. Therefore, he would bolster his argument saying that the original intention was to recruit the persons at the level of NE-5 and therefore, the petitioners cannot be unjustly denied their due position on their recruitment. He would also draw the attention of this Court to some of the correspondence exchanged between the authorities to show that the action initiated for recruitment of persons at the relevant time only for the purpose of Assistant (Office) and not Junior Assistant and therefore, the advertisement which called for filling up of

the posts of Junior Assistant in the Employment News Edition dated 18-24th of August 2007, cannot be a valid advertisement as regards the induction of the petitioners as Junior Assistants at NE-4 level. He would also submit that as regards the prescribing the technical qualification of typing speed is no more valid in view of the introduction of computers wherein, qualifying standard was almost the same as between the Junior Assistant and the Assistant.

11. Per contra, the learned senior counsel would contend that the appointment orders issued to the petitioners in 2008 clearly laid down the terms and conditions of the appointment as Junior Assistants and the petitioners having accepted the appointment consciously, cannot ask for appointment to the higher post for which post, the advertisement was never issued. The claim and rights of the parties can be appreciated only within the frame work of the advertisement in response to which only, the petitioners were called for, got selected and appointed. Moreover, the learned senior counsel would contend that the posts which are covered under the said advertisement only pertains to Southern Region and in regard to other regions, namely, northern, western, eastern and northern-eastern regions, there were hundreds of posts which came to be filled up only at the level of Junior Assistant (NE-4) and all of them except Southern Region, have accepted their appointments and working without any demur. Therefore, since the present Writ Petition being a speculative litigation, without any substance whatsoever, the learned senior counsel for the respondent, urge for dismissal of the same.

12. This Court has given its anxious consideration to the rival submissions of the learned counsels, perused the materials and pleadings placed before this Court.

13. At the outset, it ought to be noted that as rightly contended by the learned senior counsel appearing for the respondent that the very appointment of the petitioners is in consequence to the advertisement issued in Employment News Edition dated 18-24th August, 2007 and the same was very clear that the recruitment was only at the level of Junior Assistant (NE-4) for which, petitioners had submitted their applications and got themselves ultimately selected and appointed. Moreover, after completion of two years, the petitioners had been admittedly upgraded to the posts of Assistants (NE-5). Having accepted the appointment without any protest in 2008, the petitioners cannot be allowed to raise the issue that their appointment at the level of Junior Assistant (NE-4) was not proper, that too after a lapse of five years, in 2013. A feeble attempt was made by the petitioners that only after entering the service in the respondent authority, they came to know about their incorrect appointment, does not carry much conviction since they were appointed as early as in 2008 and the Writ Petition was filed only in 2013. The contention of the learned

senior counsel has considerable force that the petitioners were subjected to selection by relaxed standards even for appointment at NE-4 level, i.e. Junior Assistant, there is no cause of action for the petitioners to complain about their non-recruitment against the post of Assistant (Office). Even otherwise, it ought to be seen that the qualifications as indicated in the order prescribed for recruitment to the post of Junior Assistant and Assistant are different and therefore, their ultimate recruitment as Junior Assistants is only on the basis of their qualification and selection against the said posts.

14. This Court has also gone through the appointment letters issued to the petitioners 2 to 40 and found that the appointment letters clearly refer that the order of appointment is only against the post of Junior Assistant. The petitioners, having accepted the appointment letters, cannot, later on, be allowed to assail the same on the stated grounds. The learned senior counsel appearing for the respondents would also put forth a valid explanation against the contention raised by the learned counsel for the petitioners that the recruitment to the post of Junior Assistant (NE-4) level is only done under the Employment Assistance Scheme (Compassionate Appointment). The contention regarding this aspect has considerable force that the entire recruitment process was initiated only on the basis of the orders passed by the Delhi High Court and the selection was conducted by relaxing the normal standards. Therefore, the authorities felt that while applying the relaxed standards, the persons to be recruited must be from the lower post for which, the selection is done and the petitioners were selected. Moreover, it is also brought to this Court's attention that apart from filling of vacancies through Employment Assistance Scheme (Compassionate Appointment), the posts of Junior Assistant also be filled up from the feeder grades, namely, from NE-3 level with some percentage of quota, which was reserved for such appointment through promotion. As rightly contended by the learned senior counsel appearing for the respondents, the persons who came to be appointed like the persons in other regions, have accepted and have been working as such without raising any objections and therefore, the present grievance of the petitioners is completely misconceived and cannot be accepted as one of legitimate expectation and call for different treatment at the hands of the administration.

15. As regards the decisions relied upon by the learned counsel for the petitioners in support of his contentions, viz., 2010 (2) CTC 336 (Hari Ram & another versus State of Haryana and others) and 2013 Writ L.R.1010 (Union of India versus S.Subramani and another) are concerned, on going through the same, this Court is of the view that the said decisions would no way advance the case of the petitioners. In the first decision, this Court, after following several decisions of the Hon'ble Supreme Court, has held that similarly placed persons

should be treated equally without any discrimination. The Division Bench of this Court was of the view that the right to equality guaranteed by Article 14 of the Constitution should ensure equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. The said decision cannot be made applicable to the factual matrix of the present case since the petitioners were selected to the post of Junior Assistants after applying the relaxed standards in the matter of selection and appointment and therefore, they cannot compare with the direct recruited Assistants for whom, qualifications prescribed are different and higher. In the second decision, the Hon'ble Supreme Court has held that the similarly situated persons are entitled to similar treatment and different treatment would amount to discriminatory and violation of Article 14. The said decision was rendered in the contest of land acquisition proceedings, wherein, when the withdrawal from acquisition was resorted to in respect of a particular land by the government, the land owners who are similarly situated have right of similar treatment and they are also entitled to get their lands released from acquisition. Therefore, this said decision also cannot applied to the factual matrix of the present case.

In view of the above discussion and narrative, this Court has no hesitation in dismissing the Writ Petition. Accordingly, the Writ Petition is dismissed as devoid of merit and substance. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

suk
To

The Regional Executive Director,
Airports Authority of India,
Regional Headquarters,
Southern Region, Chennai Airport,
Chennai-600 027.

+ 1 cc to Mr.Balan Haridas, Advocate SR.48225
+ 1 cc to Mr.R. Parthiban, Advocate Sr.47597

W.P.NO.16699 OF 2013

CS-IV(CO)
EU(18/09/2017)