

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P.No.5150 of 2016
and

WMP.Nos.4520 of 2016 and 10231 of 2017

1. The Union of India
rep. by its Commissioner,
The Central Provident Fund Commissioner,
Employees Provident Fund Organisation,
Head Office Bhavishya Nidhi Bhavan,
No.14, Bikaji Cama Place,
New Delhi - 110 066.
2. The Additional Central Provident
Fund Commissioner (TN&KR)
EPF Organisation,
The State Office,
37, Royapettah High Road,
Chennai - 14. ... Petitioners

vs.

1. The Central Administrative Tribunal,
rep. by its Registrar,
City Civil Court Building,
High Court Campus,
Chennai.

2. Alagammal A.
3. Angayarkani T.
4. Dharmaraj N.
5. Esakki Velu S.V.
6. Harun Sithik S.
7. Ilango C.
8. Jeevi Harini K.
9. Kanagavalli R.
10. Maria Antony Frank J.
11. Meenakshi S.

12.Meenakshi Sundaram B.
13.Muthu Meenakshi M.
14.Muthulakshmi K.
15.Muthulogeswari V.
16.Muthuraman N.
17.Prabhu Shankar K.
18.Rajeswari M.
19.Rajan V.P.
20.Rajavalli N.
21.Rejeswari Singh
22.Rajkumar R.
23.Senthil T.
24.Brammah Subbiah S.
25.B.B.Srinivasan
26.Suba Chitra B.
27.Subbu Lakshmi S.
28.Sujatha J.
29.Sunil Kumar B.
30.Suresh Babu TR
31.Swarnigirinathan E.
32.Syed Mohideen A
33.Valarmathi Essakkiammal I.
34.Vidyasagar Prabhu C.Surya
35.Visalakshi VS
36.Viswanathan
37.Anantharaman S.
38.S.Yuvaraj
39.S.Anitha
40.N.Ganesan
41.N.Malarvizhi
42.M.Padmavathi
43.M.Valarmathi
44.C.Mony
45.A.Rajendran

... Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records of the first respondent in O.A.No.1467 of 2011 dated 11.03.2015 and quash the same.

For Petitioners : Mr.V.Vijay Shankar
Standing Counsel

For R2 to R45 : Mr.L.Chandrakumar for
Mr.R.Priyakumar
R1- Tribunal

ORDER

(Order of the Court was made by HULUVADI G. RAMESH, J.)

Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

2. Challenging the correctness of the order passed by the first respondent viz., Central Administrative Tribunal, Madras Bench, Chennai (for brevity, 'the Tribunal'), the Union of India and another, who are the respondents 1 and 2 in the Original Application in O.A.No.1467 of 2011, have preferred the present writ petition before this Court.

3. The respondents 2 to 37 have filed the aforesaid Original Application, stating that they are the first batch of directly recruited Social Security Assistants (for short, 'SSA'), after Employee Provident Fund (Social Security Assistant) Recruitment Rules, 2003 came into effect and they were appointed in June 2006, after undergoing a written examination held on 28.03.2004, besides skill test and interview. During the interregnum period, around 310 LDCs were promoted and appointed as SSAs in the month of November 2005, after qualifying in the skill test and were placed above the direct recruits in the seniority list published on 11.05.2010 by the second petitioner. According to them, the seniority list published by the second petitioner is not in accordance with Employees' Provident Fund Organisation (Social Security Assistant) Recruitment Rules, 2003 and it affects the promotional prospects of the direct recruits.

4. Before the Tribunal, the petitioners have stated that the direct recruits approached the Tribunal with a delay of 164 days in filing the aforesaid Original Application; the relative seniority among the direct recruits and the promotees from LDC to SSA has been fixed in the ratio of 6:1 in the final seniority list duly following the EPF Staff (Fixation of Seniority) Regulations 1989; after circulating the draft seniority list of SSA as on 31.12.2009 and inviting objections/suggestions and upon considering the same, the final seniority list was published on 11.05.2010; and the promotees who were in service for several years are no way inferior to the direct recruits, as they have been appointed/promoted on passing the required skill test only.

5. After evaluating the rival submissions, the Tribunal, following the judgment of the Hon'ble Supreme Court in 1996 (1) SLI (SC) 113 (Kuldeep Chand v. Union of India and

others) was of the view that the delay in challenging the seniority list after rejection of representation of an employee, should not stand in the way of entertaining the writ petition. Thereafter, the Tribunal placed reliance on the judgment of the Hon'ble Supreme Court in Civil Appeal No.7514-7515 of 2005 decided on 27.11.2012 in the case of N.R.Parmar v. Union of India and others and held thus:

"The issue in the instant OA is covered by the judgment of the Hon'ble Supreme Court in Parmar's case (supra) in which the Hon'ble Supreme Court has clearly laid down the law that there is no room for any doubt that 'rotation of quotas' principle would be fully applicable and modification/amendment in the manner of determination of inter-se seniority between direct recruits and promotees will be governed by DOPT's OMs dated 7.02.1986 and 3.07.1986. The law having been laid down by the Hon'ble Supreme Court, therefore, leaves the controversy at rest. As regards retrospective application of the aforesaid circular dated 04.03.2014, it is clear that the law laid down by the Hon'ble Supreme Court in Parmar's case (supra) will apply in view of the judgment in the case of General Manager, Uttranchal Jal Sansthan Vs. Laxmi Devi & Others [2009(2) SCC (L&S) 304], wherein the Hon'ble Supreme Court ruled that unless a judgment is specifically stated to be prospective in application, it shall be retrospective."

6.Holding so, by the impugned order, the Tribunal disposed of the aforesaid Original Application, directing the petitioners to re-examine the case in the light of the legal position and observations made by the Hon'ble Supreme Court in Civil Appeal No.7514-7515 of 2005 decided on 27.11.2012 in the case of N.R.Parmar v. Union of India and others and take a decision on the claim of the respondents 2 to 37 and communicate the same in the form of speaking and reasoned order within 4 months from the date of receipt of a copy of the order.

7.Admittedly, the process of appointment to the direct recruits to the post of SSA was delayed. In the mean while, the LDCs were given promotion to the post of SSA and were placed above the direct recruits in the seniority list published by the second respondent. Such being the factual position, we do not find any infirmity or illegality in the order so passed by the first respondent Tribunal, as the

Hon'ble Supreme Court in N.R.Parmar's case (cited supra) has in unequivocal terms held that if recruitment process for a particular stream is initiated in a particular year, but gets delayed and is completed in a subsequent year, then persons participating in the recruitment process should not be allowed to suffer as regards their seniority.

8. Accordingly, the writ petition stands dismissed and the order passed by the first respondent Tribunal is hereby confirmed. The petitioners are directed to comply with the order of the Tribunal within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
Central Administrative Tribunal,
City Civil Court Building,
High Court Campus, Chennai.

+1cc to Mr.R.Priyakumar, Advocate, S.R.No.88234

+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.88632

सत्यमेव जयते

W.P.No.5150 of 2016

MR (CO)

CS/30.01.2018

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