

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

The Hon'ble Sri Justice V. RAMASUBRAMANIAN
and
The Hon'ble Sri Justice M. GANGA RAO

WRIT PETITION No.12968 OF 2017

Between:

K. Anantha Padmaja aged about 50 years,
W/ o. P. H. M. V. Narayana Sarma,
Occ: Superintendent of Central Excise,
O/ o. Commissioner of Customs, Central Excise and Service Tax,
Hyderabad-I, Commissionerate, Hyderabad,
R/ o. Flat No.403 Vishnu Vardhan Abode,
Bagh Amberpet, Hyderabad and others.

...Petitioners

Vs.

Union of India, Rep. by the Secretary to Government,
Ministry of Finance, Department of Revenue,
North Block, New Delhi and others.

a.. Respondents

For Petitioners : J. Sudheer

For Respondents : Sri K. Lakshman
(Assistant Solicitor General)
Sri Siva
Sri N. Vijay
Sri M. V. J. K. Kumar

Sr. Standing Counsel for CEO-Ser-
Tax.

HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.12968 OF 2017

ORDER: (per V. Ramasubramanian, J)

Not satisfied with an interim order passed by the Central Administrative Tribunal during the pendency of an original application, persons employed as Superintendents or Inspectors of Central Excise, have come up with the above writ petition.

2. Heard Mr. J. Sudheer, learned counsel for the petitioners, Mr. MVJK Kumar, learned Senior Standing Counsel appearing for the Department, Mr. Siva learned counsel for the unofficial respondents and Mr. N. Vijay, learned counsel appearing for the newly impleaded parties.

3. The petitioners in this writ petition, filed an Original Application in O.A. No.1225 of 2016, on the file of the Central Administrative Tribunal challenging two proceedings 27.07.2016 and 08.11.2016, by which the official respondents sought to review the promotions already granted and to re-fix the seniority, purportedly in pursuance of a judgment rendered by the Bombay Bench of the Central Administrative Tribunal. Pending disposal of the OA, the petitioners sought an interim suspension of the impugned proceedings dated 27.07.2016 and 08.11.2016.

4. Finding that the proceedings impugned before the Tribunal, purportedly in implementation of the judgment of the Bombay Bench of the Central Administrative Tribunal, may run in conflict with a decision of this Court and also finding that few other Benches of the same Tribunal had granted stay of the very same proceedings, a Hyderabad

Bench of the Central Administrative Tribunal also granted an interim stay in the first instance on 16.12.2016.

5. When the stay was extended subsequently, it appears that the Tribunal granted extension till filing of the counter affidavit.

6. On 08.03.2017, a petition for vacating the interim stay filed at the instance of the Government came up for hearing before the Tribunal. It was at that time that all the parties before the Tribunal woke up to the reality that the extension of the interim order was only until the respondents filed a reply statement. Therefore, the Tribunal passed an order on 08.03.2017 that the stay had already expired on 02.02.2017, when the reply statement was filed and that therefore, no extension can be granted on 08.03.2017 post-o-facto.

7. Though we do not think that what the Tribunal did on 08.03.2017 could be said to be correct, we are today not dealing with a challenge to the order dated 08.03.2017. As a matter of fact, the petitioners could have challenged this order dated 08.03.2017, but they failed to do so. On the contrary, the petitioners filed a Miscellaneous Application in M.A. No.215 of 2017 for a direction to the respondents to maintain *status-quo*. In other words, after committing the first mistake of not challenging the order dated 08.03.2017 by which the Tribunal refused to extend the interim order, the petitioners committed the second mistake of seeking an interim order of *status-quo*. It must be pointed out that once the Tribunal refused to extend an interim stay, the very same prayer cannot take a different avatar, by simply coming up with a second application for maintaining *status quo*. Additionally, a prayer for *status quo*, would only be a dilution of the original prayer for interim stay.

8. Nevertheless, the Tribunal granted an interim order of *status-quo* on 27.03.2017, which appears to be a Monday. Thereafter, the petitioners were confronted with a spate of proceedings dated 25.03.2017 by which review DPCs were convened, notional promotions were granted and seniority was attempted to be altered.

9. Therefore, the petitioners came up with yet another Miscellaneous Application in MA. No.234 of 2017 seeking suspension of the proceedings dated 25.03.2017. On this application, the Tribunal passed an order dated 04.04.2017. The relevant portion of the order dated 04.04.2017 around which the present controversy revolves reads as follows:

“ Heard.

MA 323/ 17 is filed by the original applicants seeking to amend the prayer of the O.A.

In the circumstances and in view of the submissions made by the respective counsels and in the interest of justice, MA 232/ 17 is allowed. Applicants counsel is directed to file amended memo of parties within one week after service on the other side counsels.

MA 233/ 17 is file by the original applicants seeking permission to bring additional issues/ grounds on record in the O.A.

In the circumstances and in view of the submissions made by the respective counsel sand in the interest of justice, MA 233/ 17 is allowed. Applicants counsel is directed to file amended copy of the O.A. within one week after service on the other side counsels.

MA 234/ 17 is also filed by the original applicants seeking to suspend the proceedings in Establishment Order and GO 13/ 17 dated 25.03.2017 as subject to the result of the OA.

In the circumstances and in view of the submissions made by the respective counsels and in the interest of justice, MA 234/ 17 is disposed of by making the said Establishment order No.13/ 17 dated 25.03.2017 as subject to the result of the OA.

The status quo order granted on 27.3.2017 is extended until further orders.

MA 237/ 17 is filed by the Respondent No.5 & 6 for vacate the status quo order granted on 27.3.2017. In view of the orders passed above, no further orders are necessary in this M.A. Accordingly, MA 37/ 17 is closed. MA 215/ 17 stands allowed as the status quo order granted on 27.3.2017 has been extended until further orders as above.

MA 84/ 2017 is closed in view of the above orders extending the status quo order passed on 27.3.2017.”

10. Contending that one portion of the order extracted above which makes the proceedings dated 25.03.2017 as merely subject to the result of the O.A., would not serve their purpose and that their seniority and promotion would get upset by the said order, the original applicants before the Tribunal have come up with the above writ petition.

11. Therefore, the one and only issue that we are supposed to decide in this maze of papers, is as to whether the Tribunal ought not to have observed that the proceedings dated 25.03.2017 will be subject to the result of the Original Application or not?

12. As we have pointed out earlier, the petitioners succeeded in getting an interim stay on 16.12.2016, of the original proceedings dated 27.07.2016 and 08.11.2016, by which the judgment of the Bombay Bench of the Tribunal was attempted to be implemented. The Interim order of stay was continued by the Tribunal till a reply was filed. Generally, such an extension of interim order may not be correct. This is in view of the fact that many times replies and counters are filed not on the date of hearing but in the interregnum, even in the Registry. Therefore, an interim order originally granted, cannot be made to lapse on the contingency of the respondents doing something in the Registry such as filing a reply or counter, without the case coming up before Court.

13. Nevertheless it has happened and the Tribunal, by an order dated 08.03.2017 refused to extend the stay order on the ground that the stay expired on 02.02.2017. The petitioners missed the bus in not challenging the said order dated 08.03.2017.

14. To compensate for the mis, the petitioners filed one Miscellaneous Application in MA. No.215 of 2017. Since they knew they could not ask for a fresh interim stay, they prayed for an interim order of *status quo* in M.A.No.215 of 2017. This application, to say the least

was not maintainable. Be that as it may, an interim order of *status quo* was granted. Now, that interim order of *status quo* has nevertheless been continued by, proceedings dated 04.04.2017, apart from holding that the proceedings dated 25.03.2017 will be subject to the result of the O.A. Therefore, we do not know which heavens are going to fall, by virtue of the impugned order of the Tribunal for us, to interfere. In the light of the facts that we have narrated above, we see no reason to interfere with the impugned order of the Tribunal. The interests of the petitioners are already protected by the continuance of *status quo* order which alone they wanted in M.A.215 of 2017.

15. Therefore, the writ petition is dismissed. However, since the Tribunal appears to have already spent sufficient time in hearing the warring groups on interlocutory applications, the Tribunal may be well advised to take up the main O.A. itself and decide it in one way or the other, preferably within a period of four (4) weeks.

16. Hence, the Writ Petition is closed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

November 09, 2017
KTL