

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.700 of 2019

1.R.Ramasamy
2.S.Muniraj
3.M.Kaveri

... Appellants/Petitioners 1,2 & 4

vs.

1.Government of Tamil Nadu,
Represented by Secretary to Government,
Rural Development Department,
Secretariat, Chennai - 600 009.

2.The Director of Rural Development,
Chennai - 600 015.

3.The District Collector,
Dharmapuri.

.... Respondents/Respondents

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent,
against the order made in W.P.No.2342 of 2007 (O.A.No.5818 of
2001), dated 15.03.2012.

Prayer in W.P.2342 of 2007:

This Petition came to be numbered by transfer at O.A.No.5818
of 2001 from the file of the Tamil Nadu Administrative Tribunal,
praying this Court to issue a Writ of Certiorari calling for
the records of the 3rd respondent Reference issued in
Na.Ka.No.100413/2000/K1 dated 9.1.2001 quash the same and issue
direction to the respondents herein to implement the orders
passed by the government in G.O.(4D) No.54 Rural Welfare
Department dt.1.7.92 and grant all consequential service and
monetary benefits including higher pensionary benefits.

For Appellants : Mr.D.Baskar

For Respondents: Mr.P.S.Sivashanmugasundaram
Special Government Pleader.

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR, J)

Instant writ appeal is filed against the order made in W.P.No.2342 of 2007 (O.A.No.5818 of 2001), dated 15.03.2012, by which the writ court disposed of the petition.

2. Short facts leading to the appeal are that the appellants joined service in the year 1964, as Rural Welfare Officers, Grade - II, in the composite Dharmapuri District Rural Development Department Unit. Consequent to the creation of separate Dharmapuri District in 1965, certain Rural Welfare Officers, Grade II, who were officers fully qualified for promotion as Rural Welfare Officers, Grade I, but were not promoted for administrative reasons, preferred appeal to Government.

3. Thereafter, the Government have passed G.O.Ms.No.1437, Rural Development Department, dated 12.09.1978, promoting them as RWO's and Grade I, with retrospective effect from June 1967.

4. As against the same, some preferred W.P.No.448 of 1979, etc., cases and vide order dated 23.01.1980, this Court allowed the writ petition and refixed the seniority with retrospective effect from 1967. G.O.Ms.No.1437, dated 12.09.1978 was set aside, in so far as the petitioners therein alone is concerned.

5. Appellants herein and 4 others, made representation for refixation of their seniority, in the post of Extension Officers, as on 01.06.1979 and the same was recommended to the Government by the District Collector, Dharmapuri District/the 3rd respondent herein, by his letter dated 19.09.1988.

6. Government have issued G.O.(4D) No.54, Rural Development Department, dated 01.07.1997, allowing claim of the appellants and others. According to the said G.O., seniority of the appellants and others have to be revised from the level of R.W.O.s Grade I to B.D.O.s with all consequential benefits, but the same was not implemented by the District Collector, Dharmapuri District/the 3rd respondent herein.

7. In this regard, appellants made representation to the 3rd respondent, but the same was rejected by the 3rd respondent, dated 09.01.2001. Thereafter, appellants have filed O.A.No.5818 of 2001 before the Tamil Nadu Administrative Tribunal. It was transferred to the file of this Court and renumbered as W.P.No.2342 of 2007.

8. After hearing the learned counsel for the parties, vide order dated 15.03.2012 in W.P.No.2342 of 2007 (O.A.No.5818 of 2001), Writ Court, has passed the following order:-

"The petitioners have invoked the writ jurisdiction of this Court with a prayer for issuance of writ in the nature of Certiorari, to call for the records of the third respondent Reference issued vide Na.Ka.No.100413/2000/k1 dated 09.01.2001, and quash it and further to issue a direction to the respondents to implement the orders passed by the Government in G.O. (4D) No.54, Rural Welfare Department, dated 01.07.1992 with all consequential service and monetary benefits, including higher pensionary benefits.

2. The challenge in this writ petition is to the re-fixation of seniority. It is not disputed that even at the time of filing of writ petition, the petitioners had retired from service. With the passage of time, the prayer made in the writ petition has been rendered infructuous.

3. The writ petition is therefore disposed of, as infructuous."

9. Being aggrieved by the same, instant writ appeal is filed on the following grounds:-

"(i) Writ Court has failed to consider in a proper perspective the contentions of the appellants and erred in holding that the prayer in the writ petition had been rendered infructuous.

(ii) Writ Court ought to have seen that the accrued rights of the appellants with regard to their seniority cannot be denied or held to be infructuous on account of passage of time despite their retirement from service. Having admitted the Original Application/Writ Petition in the year 2001 and keeping it on file till 2012, the Writ Court ought to have considered the contentions of the appellants on merits and passed a reasoned order.

(iii) Writ Court ought to have considered the fact that G.O.(4D) No.54, Rural Development Department, dated 01.07.1992, seniority of the appellants from the level of Rural Welfare Officer, Grade - I, to that of Block Development Officer/Dy. BDO has to be refixed and all consequential service and monetary benefits, including higher pensionary benefits have to be granted to them and this order has not been set aside by any court and hence there cannot be any impediment for the 3rd respondent who is a subordinate to Government to implement the said G.O., in the case of the appellants.

(iv) Writ Court ought to have further seen that as long as the said government order is in force and has not been set aside by any court, or stayed by any court the 3rd respondent is duty bound to implement the same in letter and spirit and to grant the consequential benefits to the appellants, especially have been agitating for the same from the year 1992 and there is no lapse on their part and who no employer has raised any objections. The fact that the 3rd respondent has sent proposals to Government to cancel the G.O., dated 01.07.1992 cannot be a ground to deny the benefits of the said G.O., unless it is cancelled in accordance with law.

(v) Writ Court has failed to consider that a perusal of G.O.(4D).No.54, dated 01.07.1992, clearly reveals that the order of this Court setting aside the G.O.Ms.No.1437, RD Department, dated 12.09.1978, had been taken into consideration by the government and the same has also been brought to the notice of the Government by the respondents 2 and 3 and hence the contention of the 3rd respondent that the order of this Court was not brought to the notice of the Government while passing G.O.(4D) No.54, dated 01.07.1992 is utterly false.

(vi) Even assuming without admitting that the fact of setting aside the order in G.O.Ms.No.1437, RD Department, dated 12.09.1978 by this Court was not brought to the notice of Government before passing the order in G.O. (4D) No.54, dated 01.07.1992, it is settled law the appellants should not be penalized for the lapses on the part of administration, which the Writ Court has failed to consider.

(vii) Writ Court ought to have considered the fact the order in W.P.No.448 of 1979, dated 23.01.1980,

setting aside, G.O. Ms. No. 1437 RD Department, dated 12.09.1978 would apply to the Petitioner J.Soundaramoorthy alone, as has been stated in the order itself and it cannot be applied to the appellants herein.

(viii) Writ Court ought to have seen that having considered all aspects of the case and having been fully satisfied that the appellants herein are entitled to refixation of seniority and consequential benefits and having made the appellants to entertain the legitimate expectation that the service and monetary benefits on refixation of their seniority would be granted in due course, the respondents are estopped from contending to the contrary after long lapse of 9 years and denying the benefits of G.O. by the doctrine of promissory estoppel and thereby making the appellants to suffer huge monetary loss, mental agony and hardship and disabling them from leading a peaceful retired life at this very old age.

(ix) The 3rd Respondent having recommended on 19.09.1988 for refixation of seniority of the appellants and having received the favourable order, the very same 3rd respondent had delayed the implementation of the G.O., dated 01.07.1992 till the retirement of the appellants at last expressing inability on 01.01.2001 to implement the same for the reasons which are not sustainable in law."

10. Heard the learned counsel for the parties and perused the materials available on record.

11. Government have issued G.O.(4D).No.54, Rural Development (E-2) Department, dated 01.07.1992, for refixation of Seniority, in the integrated Seniority List of Extension Officers, which reads thus:-

GOVERNMENT OF TAMIL NADU

ABSTRACT

Establishment - Dharmapuri District -
Thiru.R.Ramasamy, Extension Officer - and six others'
joint appeal - Refixation of Seniority in the
integrated Seniority List of Extension Officers -
Orders issued.

Rural Development (E-2) Department

G.O.(4D) No.54

Dated 01.07.1992

Read:

- 1) Thiru.R.Ramasamy, Extension Officer and Six others, Joint Appeal.
- 2) Letter No.140563/87/K, dated 19.9.88 and 7.2.92.
- 3) Letter No.101230/88/23 dated 7.8.89 and 20.5.91 of Commissioner of Rural Development, Chennai - 108.

ORDER:

Thiru.R.Ramasamy and 6 others Rural Welfare Officers, attached to Dharmapuri District, in their letter first cited have submitted appeal to the Government, stating that in the Seniority List of Rural Welfare Officers, Grade I, their juniors Thiru.C.Jayavel and J.Sebastiappan, have been assigned seniority above person and hence under the integrated seniority list as on 1.6.79 prepared under single service Rules for Extension Officers, their seniority should be refixed.

2) The District Collector, Dharmapuri, in his letter second cited, has stated that while Dharmapuri District was separated in the year 1965 from Salem District, the number of vacant posts in the category of R.W.O.s., Grade I, was not properly identified and hence certain candidates in the cadre of RWOs., Grade II though possessed the eligibility for the post of RWO and Grade I, were not promoted as RWOs., and I, and hence they submitted appeal to the Government and the Government issued orders in G.O.Ms. and 1437, Rural Development Department, dated 12.09.1978, by which 18 Rural Welfare Officers, Grade II were ordered to be promoted as RWOs., Grade I with retrospective effect from 6/67; that pursuant to this G.O.18, Rural Welfare Officers, Grade II, were promoted as Rural Welfare Officers, Grade I, with retrospective effect from June 1967, on that basis 13 others moved the court and obtained orders to promote them as RWOs., Grade I, with retrospective effect from June 1967, that there 7 appellants had not made any appeal prior to this and hence, their claim may be accepted and orders issued fixing their seniority as on 01.06.79 in the Rural Development also has stated in the reference 3rd cited that the claims of these appellants are justified and has recommended to the Government for refixation of their seniority.

3. After carefully examining this issue, the Government excepts the recommendation of the District Collector, Dharmapuri and orders refixation of Seniority of the Appellants in the cadre of RWOs., Grade I as on 1.6.79 under Single Service Rules.

Name Present Seniority No. Seniority to be fixed.

1.Thiru.C.Jayavelu	62	62	
2.Thiru.R.Ramasamy	138 (Appellant)	63	
3.Thiru.S.Muniraj	141 (Appellant)	64	
4.Thiru.B.Chinnasamay	142 (Appellant)	65	
5.Thiru.J.Sebastiapan	63	66	
6.Thiru.M.Kaveri	143 (Appellant)	67	
7.Thiru.P.Krishnan	147 (Appellant)	68	
8.Thiru.R.Mehboobkhan	148 (Appellant)	69	
9.Thiru.v.Raghupathi Raj	154 (Appellant)	79	

4. The Director of Rural Development is requested to issue appropriate orders in this regard.

(By order of the Government)

Sd/-.,
Secretary to Government.

12. Though the appellants have sought for the consequential service and monetary benefits, including higher pensionary benefits, based on G.O.(4D).No.54, Rural Development (E-2) Department, dated 01.07.1992, even at the time of filing of the writ petition, the appellants had retired from service and the writ court clearly observed that with the passage of time, the prayer made in the writ petition, has become infructuous. By revision of seniority, appellants cannot claim higher benefits. Besides, appellants have not impleaded the parties who are likely to be affected if seniority to be revised. For non-joinder of parties, writ petition is liable to be dismissed. Few decisions on this aspect are considered,

13. In Prabodh Verma v. State of U.P. reported in 1984 (4) SCC 251 the Hon'ble Supreme Court has held as follows:

"20. The real question before us, therefore, is the correctness of the decision of the High Court in the Sangh's case. Before we address ourselves to this question, we would like to point out that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects. The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of

Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties-not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties. "

50.To summarize our conclusions:

(1) A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.

(2) The Allahabad High Court ought not to have proceeded to hear and dispose of Civil Miscellaneous Writ No. 9174 of 1978 – Uttar Pradesh Madhyamik Shikshak Sangh v. State of Uttar Pradesh [1979 All LJ 178] – without insisting upon the reserve pool teachers being made respondents to that writ petition or at least some of them being made respondents thereto in a representative capacity as the number of the reserve pool teachers was too large and, had the petitioners refused to do so, to dismiss that writ petition for non-joinder of necessary parties."

14. In K.H. Siraj vs High Court Of Kerala & Ors , reported in 2006 (6) SCC 395, the Hon'ble Supreme Court has observed as under.

"The writ petitions have also to fall on the ground of absence of necessary parties in the party array. Though the appellants/petitioners contend that they are only challenging the list to a limited extent, acceptance of their contention will result in a total re-arrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list of 70. It was, therefore, imperative that all the candidates in the select list should have been impleaded as parties to the writ petitions as otherwise they will be affected without being heard. Publication in the newspaper does not cure this defect. There are only a specified definite number of candidates who had to be impleaded namely, 70. It is not as if there are a large unspecified number of people to be affected. In such cases, resort cannot be made to Rule 148 of the Kerala High Court Rules. That Rule can be applied only when very large number of candidates are involved and it may be not able to pin point those candidates with details. In our view, the writ petitions have to fail for non-joinder of necessary parties also.

15. Similarly, in *Ishwar Singh v. Kuldip Singh* reported in 1995 Supp (1) SCC 179, the Hon'ble Supreme Court observed as under.

"4. It is not disputed by the learned counsel for the parties that except Ishwar Singh, no other selected candidate was impleaded before the High Court. The selection and the appointments have been quashed entirely at their back. It is further stated that even Ishwar Singh, one of the selected candidates, who was a party, had not been served and as such was not heard by the High Court. We are of the view that the High Court was not justified in hearing the writ petition in the absence of the selected candidates especially when they had already been appointed. We, therefore, set aside the judgment of the High Court dated December 8, 1992 and send the case back for fresh decision after notice to the parties. The appeals are allowed in the above terms. No costs. "

16. Therefore, even on merits, case of the appellants cannot be entertained. In the light of the above discussion and decisions, writ appeal is dismissed. No Costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dm
To

1.Secretary to Government,
Government of Tamil Nadu,
Rural Development Department,
Secretariat, Chennai - 600 009.

2.The Director of Rural Development,
Chennai - 600 015.

3.The District Collector,
Dharmapuri.

+1cc to the Government Pleader Sr.79691

+2cc to Mr.R.Thamarai Selvan, Advocate Sr.78800

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