

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3379 of 2019
and C.M.P.No.21665 of 2019

1.The Agricultural Production Commissioner
and Secretary to Government,
Agriculture Department,
Fort St.George,
Chennai-9.

2.The Secretary to Government,
Personnel & Administrative
Reforms Department,
Fort St.George,
Chennai-9

3.The Director of Agriculture,
Chepauk,
Chennai-5

.. Appellants

-vs-

R.Samboshini
Telephone Operator (SplGr.)
Director of Agriculture,
Chepauk, Chennai-600 005

... Respondent

Appeal filed under Clause 15 of the Letters Patent against the order dated 15.04.2019 passed in W.P.No.28952 of 2015 on the file of this Court.

Prayer in WP.28952 of 2015: Petition filed under Article 226 of the constitution of India to issue Writ of Certiorarified Mandamus to call for the records relating to Government Letter No.27841/AA4(1)/2014-6 Dated 12.5.2015 Agriculture (AA4) Department, Secretariat, Chennai-9 issued by the Agricultural Production Commissioner and Secretary to Government, Agriculture

Department, Chennai-9, quash the same and upgrade the Petitioner scale and promote the petitioner to the post of Senior Supervisor as done in the case of similarly placed person, and pass such further or other order or orders as this Hon'ble Court may deem and fit and necessary and thus render justice.

For Appellants : Mr.V.Jayaprakash Narayanan,
Government Pleader
For Respondent : Ms.Sridevi

JUDGMENT

(Judgment of the Court was delivered by SUBRAMONIUM PRASAD, J.)

The instant writ appeal is directed against the order, dated 15.04.2019, passed by the learned Single Judge in W.P.No.28952 of 2015.

2.The writ petition is one for issuance of a writ of certiorarified mandamus to call for the records relating to Government Letter No.27841/AA4(1)/2014-6, dated 12.05.2015, Agriculture (AA4) Department, Secretariat, Chennai-9, issued by the Agricultural Production Commissioner and Secretary to Government, Agricultural Department, Chennai-9 and to quash the same and upgrade the scale of pay of the writ petitioner and promote her to the post of Senior Supervisor, as done in the case of similarly placed person.

3.The case of the writ petitioner/respondent is that she was appointed as Telephone Director at the Office of Director of Agriculture, Chennai. There was no avenue of promotion for the post of Telephone Operator. However, for the Telephone Operators, working in the Secretariat, there was an avenue of promoting them to the post of Telephone Supervisors. The writ petitioner states that in an identical case, pertaining to one R.V.Deenadayalan, a judgment has been passed by this Court in W.A.No.1188 of 2009, dated 15.07.2010, whereby this Court directed the said R.V.Deenadayalan to be promoted as Telephone Supervisor. The writ petitioner, therefore states that since her case is identically placed to that of R.V.Deenadayalan, the same benefit be given to her as well.

4.The respondents in the writ petition have filed a counter affidavit stating that Order in favour of Sri.R.V.Deenadayalan was passed purely on humanitarian grounds and therefore, the same cannot be treated as a precedent.

5.The learned Single Judge, after elaborately quoting for the judgment, dated 15.07.2010, in W.A.No.1188 of 2009, found that the writ petitioner is entitled to the same benefit, which was given to R.V.Deenadayalan.

6.Heard the learned counsel for both sides.

7.Mr.V.Jayaprakash Narayanan, the learned Government Pleader appearing for the appellants would contend that the facts of the instant case is entirely different from the case of the said R.V.Deenadayalan. He placed reliance on G.O.(Ms) No.11, dated 14.01.2011, wherein, the Government has stated that the Government had decided to promote the said R.V.Deenadayalan as Senior Supervisor, by upgrading the post of Telephone Operator, in view of the order of the High Court. The Government Order further states that this should be treated as a special case on humanitarian grounds.

8.The learned Government Pleader contends that since the said R.V.Deenadayalan was given the benefit of promotion only on humanitarian grounds, the same cannot be made applicable to the case of the writ petitioner.

9.We are not able to accept the above contention of the learned Government Pleader. The judgment dated 15.7.2010, passed in W.A.No.1188 of 2009, has been extensively reproduced in the impugned order. There is nothing to indicate that this Court felt that the said R.V.Deenadayalan should be given a special preferential treatment. In fact in W.A.No.1188 of 2009, the Division Bench of this Court, in paragraph No.9 of the judgment, has observed as under:

"9. Therefore, applying the above said principle to the facts of this case and in the absence of the respondents bringing to the notice of this Court the difference in the duties and responsibilities discharged by the Telephone Operators working in the Secretariat and the persons working in the Agriculture Department, we are unable to agree with the order passed by the first respondent dated 04.10.2002. Accordingly, the said order is set aside. Consequently, the order under challenge is liable to be set aside and it is accordingly set aside."

10.The Government Order, which treats the case of Sri.R.V.Deenadayalan as a special case and that promotion is being given on a humanitarian ground, is completely contrary to the judgment of this Court and is erroneous.

11.The learned Government Pleader, thereafter, contended that it was not brought to the notice of the Division Bench Government Order in G.O.Ms.No.26, Personnel and Administrative Reform (G) Department, dated 23.1.1995. He would state that under the said circumstances, Telephone Operators working in Tamil Nadu Secretariat alone were promoted to Senior Supervisors and the said Government Order cannot be extended to the other Departments.

12.To rebut the argument that the case of Sri.R.V.Deenadayalan must be applied to every one similarly situated, because the Government did not challenge the said judgment, the learned Government Pleader has placed reliance on paragraph No.26 of the judgment of the Hon'ble Supreme Court of India in the case of Col.B.J.AKKARA (RETD) VS. GOVERNMENT OF INDIA AND OTHERS [(2006) 11 SUPREME COURT CASES 709], in and by which the Hon'ble Supreme Court has observed as under:

"26.The said observations apply to this case. A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realized, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a 'pick and choose' method only to exclude petitioners on account of malafides or ulterior motives. Be that as it may. On the facts and circumstances, neither the principle of res judicata nor the principle of estoppel is attracted. The Administrative Law principles of legitimate expectation or fairness in action are also not attracted. Therefore, the fact that in some cases the validity of the circular dated

29.10.1999 (corresponding to the Defence Ministry circular dated 11.9.2001) has been upheld and that decision has attained finality will not come in the way of State defending or enforcing its circular dated 11.9.2001".

13. On a perusal of the grounds of appeal, we find that no factual foundation has been placed in the memorandum of appeal as to why G.O.Ms.No.26, dated 23.1.1995, was not brought to the knowledge of the Court. Nothing was also brought on record to show what would be the financial implication if such benefit is extended to all other Telephone Operators in other Departments. Nothing has been stated as to what precluded the state Government from not challenging the said judgment in W.A.No.1188 of 2009.

14. In the absence of any such materials, the argument of the learned Government Pleader cannot be accepted. In any event, it is informed to this Court that the respondent/writ petitioner has already retired from service and only notional promotion and other benefits were given to the respondent. In view of the above, the order of the learned single Judge does not call for any interference. The Writ Appeal, therefore, is dismissed. No costs. Connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

msk

To

1. The Agricultural Production Commissioner,
and Secretary to Government,
Agricultural Department,
Fort St. George, Chennai-9.

2. The Secretary to Government
Personnel & Administrative Reforms Department,
Fort St. George, Chennai-9.

3. The Director of Agriculture,
Chepauk, Chennai-5.

+1cc to M/s.G.Sridevi, Advocate SR.95066

+1cc to the Government Pleader SR.94651

W.A.No.3379 of 2019

KK(CO)

CB(16/12/2019)