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W.P. No.2069 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 14.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR. JUSTICE P.B.BALAJI

W.P. No.2069 of 2006
and WPMP.No.2355 of 2006

1. Union of India,
Rep. by
The Commissioner of Central Excise-I
121, M.G.Road,
Chennai 600 034.
2. The Commissioner of Central Excise-I
Nandanam,
Chennai 600 035.
3. The Commissioner of Central Excise-I
121, M.G.Road,
Chennai 600 034.

.. Petitioners

Versus

1. The Registrar,
Central Administrative Tribunal,
City Civil Court Buildings,
Chennai 600 104.
2. A.Radha Sankara Bharathi,
Inspector of Central Excise.
69/3, C.R. Quarters,
Anna Nagar-West, Chennai -40.
3. N.Natarajan



W.P. No.2069 of 2006

4. K.Suresh Kumar
5. K.V.Jayashree
6. N.Uma Maheshwaran
7. K.P.Balaji
8. S.P.Chandrasekar
9. R.Savithri
- 10.S.Sundararajan
- 11.S.Vijayalakshmi
- 12.C.Hariharaputtran
- 13.K.Victor Thangaraj
- 14.P.K.Muralidharan
15. D.Vellaichamy
16. S.Renuka
17. J.Mythili
18. K.Akila
19. R.Govindaraj
20. S.Ramakrishnan
21. Uma Ramesh
22. A.Pachiappan
23. V.Selvam
24. S.Bhuvaneswai
25. R.Sudha
26. M.Poonguzhai
27. G.Dhanasekaran (PH)
28. I.Davi (PH)
29. J.Rajaram
30. Selvaraju
31. K.Ramesh Babu
32. S.Sivakumar
33. D.Sridhar
34. R.Murthy
35. T.A.Vijayakumar
36. R.Elangovan
37. R.Jagannathan
- 38.K.Krishnan
- 39.M.Ganesan

.. Respondents



W.P. No.2069 of 2006

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari, calling for the records of the first respondent vide order passed in O.A.No.686/1998, dated 09.09.2004 and quash the same.

For petitioner : Mr.V.Sundareswaran

For respondents

for R1 : Tribunal

for RR2 to 6 : Mr.Akbar Row

for RR7,9,10, 16 to 18,
20, 21, 23, 25, 26, 28, 34, 35 : Batta with petition due.

for RR8, 11, 12, 13, 14, 15, 19,
22, 24, 29, 30, 31, 32, 33,
36, 37, 38 : No Appearance

for RR27 & 39 : died

ORDER

(The Order of the Court was made by D.KRISHNAKUMAR, J)

This petition has been filed to quash the order passed by the first respondent dated 09.09.2004.



W.P. No.2069 of 2006

2. According to the petitioners, the respondents 2 to 6 joined the petitioner/Department as Lower Division Clerk (LDC) in the year 1983-1984 and by virtue of seniority, they were promoted to the grade of Upper Division Clerk (UDC) in the year 1990 after qualifying themselves in the Departmental Exam. The seniority of the aforesaid respondents was fixed as on 01.01.1993, vide C.A.No.II/34/6/93-Estt., dated 27.09.1993 and they were placed at S.Nos.671, 677, 687, 698 and 722 respectively.

3. The respondents 2 to 6 are promotees in the year 1990. The respondents 7 to 38 were selected in the year 1988 through the Competitive Examination conducted by the Staff Selection Commission (SSC) and they were appointed between 1989 and 1991. The respondents 2 to 6 are now claiming that as per the order dated 27.06.1996, their seniority was revised as on 01.01.1996 and the juniors, who are far below them, have been placed above them.

4. According to the petitioners, as per the Official Memorandum, dated 16.03.1982, issued by the petitioner/Department, when a panel is



W.P. No.2069 of 2006

prepared for more than one calendar year, the year of first appointment made from the selected list prepared by the Department Promotion Committee (DPC) should be the recruitment year for all officers in the panel. Likewise, the Direct Recruit candidates, who were sponsored by Staff Selection Commission (SSC) in a year but joined in the subsequent years, should be placed along with the candidates joined in the sponsored year.

5. It is further stated that as per the instructions of SSC, the seniority of the candidates should be fixed on the basis of ranks in respect of the candidates in the examination and not on the basis of their date of joining. It is further stated that the candidates nominated from the reserve list, if any, in a particular year, will be placed en-block below to those nominated from the main list of the same exam. The respondents 7 to 39, who are impleaded as respondents in the Original Application before the Tribunal, were sponsored from the reserve list of the 1998 exam and their seniority along with the candidates sponsored in the main list, had been fixed after rotation of vacancy between Direct Recruits and Promotees in the ratio 1:1.



W.P. No.2069 of 2006

WEB COPY

6. Earlier, seniority in the cadre of UDCs as on 01.01.1985, had been revised by implementing Tribunal's judgment, in T.A.Nos.173-174/86 and O.A.Nos.140-142/85. Subsequently, a review cell was formed to review the said seniority list. Accordingly, the revised seniority list as on 01.01.1996 in the grade of UDCs was fixed by the petitioner/Department. In the above process, the seniority of the respondents 2 to 6 herein have been revised and the direct recruits, who joined the Department in the year 1990-91, have been placed above the promotees, who are the respondents 2 to 6. Being aggrieved by the same, the respondents 2 to 6 moved the CAT in O.A.No.686 of 1998 with the prayer to set aside the revised seniority dated 01.01.1996 and restore the pre-revised seniority list. The CAT allowed the said application and set aside the said seniority list. Challenging the same, the petitioners filed WP.No.2514/2001 and this Court vide order dated 05.02.2004, held as follows:

"3. We therefore set aside the impugned order of the Tribunal and remit the matter back to the Tribunal to consider the matter afresh in accordance with law. We also give liberty to the parties to file further pleadings and further documents, if



W.P. No.2069 of 2006

any on which they wish to rely. As the petitioners before us are persons who will be affected by the decision of the Tribunal in this matter, had not been made parties to the original petition, we direct the applicant before the Tribunal to implead the petitioners before us as parties to that application."

7. Pursuant to the order of this Court, the respondents 2 to 6 impleaded the affected parties in the said O.A. The Tribunal once again after going through the entire materials, allowed the application, by order dated 09.09.2004, holding that the respondents had prepared the seniority list based on the clarification issued by the Department of Personnel Training, New Delhi (DOP&T) in 1982, instead of the guidelines given in the D O P & T letter, dated 07.02.1986. Challenging the same, the present Writ Petition has been filed by the Department.

8. The learned counsel for the petitioner stated that the contention of the petitioner has not been properly considered by the Tribunal, as the petitioner had followed the earlier order of the Tribunal in O.A.No.140-142 of 1985, dated 30.06.1987 while fixing seniority. He, further submitted that



W.P. No.2069 of 2006

except the fourth respondent, other respondents, viz., 3 to 6 have retired from service. Hence, he seeks to set aside the impugned order of the Tribunal.

9. The learned counsel appearing for the respondents 2 to 6 strongly objected the above submission and submitted that the Tribunal has rightly come to the conclusion based on the guidelines issued by the Ministry of Personnel, Public Grievances Pensions, Department of Personnel and Training, dated 07.02.1986. The respondents 2 to 6 are entitled to be placed in the seniority list as per the rota-quota rule in the ratio of 1:1.

10. Heard the learned counsel for the petitioners/Department and the learned counsel for the respondents 2 to 6 and perused the materials available on record.

11. The point involved in this Writ Petition is as to whether the respondents 2 to 6 are entitled to be placed in appropriate place as per the guidelines in O.M. dated 07.02.1986 Department, New Delhi.



W.P. No.2069 of 2006

WEB COPY

12. According to the petitioners, they have followed the guidelines issued by the Department of Personal Training, New Delhi, and by order dated 27.06.1986, the seniority was fixed as on 01.01.1996. The relevant paragraphs of the said guidelines reads as follows:

"5. With a view to curbing any tendency of under-reporting/suppressing the vacancies to be notified to the concerned authorities for direct recruitment, it is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding the share falling to the promotion quota based on the corresponding figure notified for direct recruitment would be treated only as ad hoc promotees.

...

7. These orders shall take effect from 1st March 1986. Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these orders



W.P. No.2069 of 2006

either by way direct recruitment or promotion, seniority will continue to be determined in accordance with the principles in force prior to the issue of this O.M."

13. The respondents 2 to 6 challenged the revised seniority list, which was fixed by the above said order dated 27.06.1996, by filing O.A.No.686 of 1998 before the Tribunal and it was allowed by the Tribunal. Challenging the order of the Tribunal, the aggrieved parties filed Writ Petition in WP.No.2514 of 2001, in which, this Court, vide order dated 05.02.2004, set aside the order of the Tribunal on the ground that necessary parties were not impleaded and a direction was issued to implead them. Following the direction, the aggrieved persons are impleaded. Subsequently, the Tribunal by order dated, 09.09.2004, directed the petitioner/Department to complete the exercise of revision of seniority in accordance with Rules. The above order is challenged in the present Writ Petition.

14. In similar circumstances, earlier, the Tribunal, in OA Nos.140 to 142 of 1985, had issued a direction to the petitioner/Department to re-draw the seniority in accordance with the guidelines given in the OM of the



W.P. No.2069 of 2006

Department of Personnel and Training, dated 07.02.1986. However, the petitioner/Department has fixed the seniority based on the clarification issued by the DOP & T, which is perverse.

15. At this juncture, the learned counsel for the petitioners/Department contended that notice has not been served on some of the respondents. However, the Tribunal, while disposing of O.A.No.686 of 1998 on 09.09.2004, has recorded that, after putting the parties on notice, the O.A. was heard again. Hence, the above contention of the petitioner does not merit consideration.

16. We have carefully considered the submissions of both sides and also the grounds raised in the Writ Petition. It is seen that the petitioner/Department has prepared the revised seniority list without following the guidelines issued on 07.02.1986. Further, except the fourth respondent, respondents 2, 3 5 and 6 have retired. Therefore, there is no warrant of interference in the impugned order of the Tribunal. In such circumstances, this Court passes the following order:



W.P. No.2069 of 2006

WEB COPY

i) Insofar as respondents 2,3,5 and 6, who have retired from service, they are entitled for notional monetary benefits for the purpose of pension, but they are not entitled for arrears.

ii) Insofar as the fourth respondent is concerned, who is still in service, he is entitled for notional promotion as well as all the monetary benefits and other service benefits in accordance with law.

(iii) The petitioner/Department shall complete the above process within a period of twelve weeks from the date of receipt of a copy of this order.

17. With the above observations and direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J] [P.B.B., J.]
14.07.2023

Speaking order: Yes/No
Index : Yes/No
pvs



W.P. No.2069 of 2006

To

WEB COPY

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2. A.Radha Sankara Bharathi,
Inspector of Central Excise.
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W.P. No.2069 of 2006

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W.P. No.2069 of 2006

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