

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/08/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

WRIT PETITION Nos.41292 of 2002

and

WP.42019 of 2002, 42023,42039,
42480,43051 and 45382 OF 2002

AND

WPMP.NO.61121 of 2002

and

WPMP.No.63421 of 2003

1. The Government of Tamil Nadu,
represented by its Secretary to Govt.,
Home Department,
Secretariat, Chennai 9.

2. The Director General of Police,
Kamarajar Salai,
Chennai 4.

3. The Superintendent of Police,
Erode. . . Petitioners

-Vs-

1. G.A. Kannaiyan
2. P. Paramasivam
3. K.M. Rajendran
4. K. Ramamurthy
5. S. Kamal Basha
6. V. Marichamy
7. P. Manoharan
8. V. Ravindran
9. M.J. Moses
10. G.Rajan
11. I. Jayachandran
12. C. Kuppan
13. Ramasamy
14. Dhanaraj
15. Muniappan
16. William

17. Subramanian(Ty.S.I) HC577/P Anthiyur Crime
18. Jeyabal
19. Kandasamy (Ty.S.I.)HC.587/P Erode Control Room
20. Duraisamy, HC 770/P Modakurichi
21. Mohammed Hanifa
22. Shanmugam
23. Duraisamy, HC 1064/P Kundadam
24. Balakrishnan
25. Kandasamy HC 827, Erode South Traffic
26. Chendoor Pandian,
27. Subramanian, HC 406/P Sathy
28. Dhanapal
29. Kolandasamy
30. Sadayappan
31. Thangaraj
32. Markaraj
33. Rakianan
34. Subramanian
35. Narayanasamy
36. Samuel

37. The Registrar,
Tamilnadu Administrative Tribunal,
Chennai. . . Respondents

Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioners : Mr.P.S. Sivashanmuga Sundaram
in all WPs
Addl. Govt. Pleader

For Respondents : Mr.R. Thyagarajan
in all WPs Senior Counsel for
Mr.M. Muthappan

:COMMON JUDGMENT

P.K. MISRA, J

All these writ petitions have been filed by the Government of Tamil Nadu and the Director General of Police against the common order dated 10.4.2002 passed by the Tamil Nadu Administrative Tribunal in O.A.No.2087 of 1992 and other connected Original Applications.

2. To appreciate the questions raised in the present writ petitions it is necessary to notice the facts in their historical perspective, in some detail.

More than three decades back, the Government of Tamil Nadu issued G.O.Ms.No.1154 dated 26.4.1971 sanctioning creation of 1000 posts of Grade I

Police Constables to be filled up by direct recruitment from persons having SSLC qualification and further upgrading 1100 existing Police Constables from Grade II into Grade I Constables to provide promotion to Grade I of the existing Constables who possess SSLC qualification. The method of selection by direct recruitment and by promotion were also indicated in the said G.O.. Subsequently, by G.O.Ms.No.2500 dated 14.9.1971, the Government again sanctioned for conversion of 1000 posts of Police Constable Gr.II into Police Constable Gr.I to be filled up by senior constables, who do not possess SSLC qualification. Thereafter, the Government issued a Notification in G.O.Ms.No.1258 dated 9.5.1973 containing Adhoc Rules to be applied to the holders of temporary posts of Grade I Constables with retrospective effect from 26.4.1971. Rule 3 of the aforesaid Adhoc Rules provided for appointment by direct recruitment or by recruitment by transfer from the Tamil Nadu Special Police Subordinate Service and by promotion from among the holders of the posts of Constables in Category 8 as follows :-

- (a) Senior Promotion: Promotion of senior Police Constables Grade I based on seniority, good record of service and suitability.
- (b) Junior Promotion: Promotion of Police Constables Grade II who though junior in service, are having SSLC qualification.

Rule 9 of the said Rules provided for seniority, which is as follows :-

9. Seniority:-

The interse-seniority Police Constables Grade I selected through the three methods will be as follows:-

- 1. Senior Promotees
- 2. Junior Promotees
- 3. Direct recruits

Personnel selected under senior promotion/junior promotion shall maintain their pre-existing seniority as Police Constables, Grade II in the seniority as Police Constables, Grade I. The seniority of direct recruits shall be fixed with reference to the marks obtained by them in the final examinations in the training school. Among those who have secured the same marks at the final examination, the senior in age shall be placed above his next junior in age.

Subsequently, the Government issued G.O.Ms.No.2401 dated 8.10.1974. Paragraph I of that G.O., provided :-

I. The inter-se-seniority of Police Constables, Grade I selected under three methods viz., by direct recruitment, by senior promotion and by junior promotion on various dates so far and up to 30.09.1973, be fixed in the following order, irrespective of their dates of appointment.

- (i) All Police Constables in the B and C lists of Head Constables in the order as in these lists;
- (ii) All Police Constables in the Station Writers/ Circle Writers lists as on 14.09.1971 appointed under senior promotion/junior promotion in the order as in these lists;
- (iii) All Police Constables not on the Station Writer/ Circle Writer

lists appointed as Police Constable Grade I under senior promotion in the order as in the senior promotion lists;

- (iv) All Police Constables Grade I appointed under Junior promotion in the order as in the junior promotion list; and
- (v) All Police Constables Grade I appointed directly in the order of seniority as determined by the rules already prescribed.

Paragraph II of the said G.O., was to the following effect:-

II. From 1.10.1973 onwards, all police constables should take seniority from the date of their regular appointment irrespective of whether by direct recruitment or senior promotion or junior promotion.

Following the aforesaid G.Os., by D.O.No.375/79/45648/A1/77 dated 26.2.1979, an inter-se-seniority list of Grade-I Police Constables was prepared by the Superintendent of Police, Trichirapalli. Similar lists were prepared by different Superintendents of Police in different places at or about same time. At that stage, two writ petitions, namely W.P.Nos.3014 of 1979 and 4872 of 1979, were filed by two directly recruited Gr.I Constables, who had been appointed on 1.2.1972, claiming that the provision contained in the Adhoc Rules treating the senior promotees and junior promotees to the post of Gr.I constables from among the Gr.II constables as senior to direct recruits, even though appointed after the recruitment of such directly recruited constables, were discriminatory and violative of Articles 14 and 16 of the Constitution. The aforesaid two writ petitions were considered by a learned single Judge of this Court and both the writ petitions were dismissed by judgment dated 13.9.1982. Thereafter, the matter remained in doldrums until 1992, when O.A.No.2087 of 1992 was filed by several direct recruited Grade-I Constables. Subsequently, other connected OAs were filed in the year 1996 or 1997, as the case may be, by several other directly recruited Grade-I Constables. The main prayer in the aforesaid Original Applications were to declare Rule 9 of the Adhoc Rules as ultra vires and to refix the seniority of the directly recruited Grade I Constables above the promoted Grade-I Constables with reference to the date of their first appointment.

3. The main contention in the Original Applications were to the effect that as per the normal rules of service jurisprudence, the direct recruits could not have been placed below the promotees who were given promotion at the later stage and by virtue of Rule 9 the directly recruited police constables have been discriminated.

4. In the counter affidavit filed on behalf of the present writ petitioners, who were the contesting respondents in those O.As., it was contended that similar question relating to seniority of direct recruits vis-a-vis promotees had already been decided by the High Court in W.P.Nos.3014 and 4872 of 1979. It was further contended that since the question of seniority in the cadre of Grade-I Constables had been finalised long back, the O.As were barred by limitation as well as hit by the principle of laches and acquiescence. The present petitioners had also sought to justify the grant of seniority to the promotees above the direct recruits.

5. The Tribunal in a common judgment, relying upon several decisions of the Supreme Court to the effect that seniority of a person should be based upon the date of entry into service, directed that the applicants should be treated as seniors to the promoted Grade-I constables. It was further observed that Rule 9 of the Adhoc Rules was illegal and arbitrary.

6. Regarding the earlier decision of the High Court, the Tribunal observed :-

13. The contention that the High Court has already rejected the claim of similarly placed persons cannot stand. No evidence is available to show that the applicants were parties to the said proceedings before the High Court. Now it is also stated that when another group of Grade II Police Constables were appointed/promoted, to the cadre of Grade I Police Constable, their seniority has been fixed based on their entry into service as Grade I Police Constables, by amending Rule 9.

7. Learned counsel appearing for the writ petitioners has contended that the question relating to seniority among the directly recruited Grade-I Constables and promoted Grade-I Constables, as per the provision then available, had already been decided by the High Court in W.P.Nos.3014 and 4872 of 1979 and the Tribunal should not have come to any different conclusion on the said aspect. It is further submitted that merely because the Rules have been subsequently amended, which provided for fixation of seniority of the direct recruits and the promotees from the date of their appointment, it has no relevance to the question raised that as per the existing Rules, seniority had already been fixed. Learned counsel has also submitted that the Tribunal has committed a grave illegality in not considering the question of delay/laches.

8. Such question relating to delay/laches may be considered first. The cause of action for the applicants before the Tribunal arose when the Rules provided for giving seniority to the promotees above the direct recruits. This was way back in 1973. It is not disputed that thereafter the seniority list in the different districts issued by the respective Superintendent of Police between 1976 and 1979 was prepared. Some of the affected directly recruited persons have filed writ petitions in the year 1979 which were rejected in 1982. The other affected directly recruited constables have except making sporadic representations now and then, kept quiet for about 10 years after the writ petitions were dismissed by the High Court. Thereafter, for the first time in 1992, few persons filed O.A.No.2087 of 1992 and four to five years thereafter, other O.As were filed. It is true that some of the applicants have referred to the subsequent promotion to Head Constable as cause of action, but such a plea cannot be countenanced because in fact all the applicants were raising the question of seniority in the rank of Grade-I constable which had been finalised in 1979 or even before that on the basis of the Rules made in 1973. It is obvious that the applicants had accepted the fact that the promotees recruited prior to 1973 were treated as senior to the direct recruits recruited before 1.10.1973. It is of course true that after 1.10.1973 seniority is to be reckoned on the basis of actual appointment irrespective of the method of selection, that is to say, whether

by direct recruitment or by promotion. However, the fact remains that so far as the direct recruits prior to 1.10.1973 were concerned, the promotees were placed above the direct recruits irrespective of their date of recruitment by virtue of Rule 9 and G.O.Ms.No.2401 dated 8.10.1974 and such factor had been practically accepted by all concerned, obviously because of the dismissal of two writ petitions filed by some of the direct recruits. Whatever may be the reason, such directly recruited Grade-I Constables cannot get over the principle of acquiescence and their O.As were hit by the principle of laches. This aspect has been totally lost sight of by the Tribunal. The question of laches/acquiescence always assumes greater importance in the matter of seniority as it is well known in the service jurisprudence that the question of seniority should not be allowed to be agitated long after the event as such a course is likely to unsettle the settled position.

9. It is pointed out by the learned Senior Counsel for the contesting respondents that some of the affected parties had made representations even in the year 1977 and 1978, and such representations were rejected only in May, 1991 and thereafter, the Original Applications were filed in 1992 and as such, there was no delay in moving the Administrative Tribunal.

10. Law is well settled that simply by making a representation and keeping quiet for a long period, cannot have the effect of overcoming the hurdle of laches. So long as the Rules made in 1973 held the field, making of such representations, was in fact without any real purpose. Neither the Superintendents of Police nor even the Director General of Police had any discretion in the matter, as the Rules made in 1973 clearly stipulated that irrespective of the date of appointment, promotees would be senior to the direct recruits who had been recruited before such Rules were enacted. The directly recruited Gr-I constables have right to challenge the validity of such Rules within a reasonable period. Fixation of seniority of Grade-I constables on the basis of the Rules was merely consequential in nature. Representations were made when on the basis of such seniority list Gr.I constables were promoted as Head Constables. Validity of the Rules could have been challenged by those who are likely to be affected by such Rules. As a matter of fact, some of them had challenged the validity of the Rules, but unfortunately the writ petitions were rejected. By making individual representations subsequently at the time when others are promoted as Head Constables, cannot come to the help of those persons. At any rate, after making such representations, they could not have waited for an indefinite period and they could have come to the Court after waiting for a reasonable period and not for a decade or so. Rejection of the representation by the Director General of Police in the year 1991 on the ground that the question had already been decided in the writ petition, cannot be taken as a fresh starting point of cause of action for the affected Constables who were in fact affected by the enactment of the Rules in 1973 itself and not in 1991 when the representations were wily-nilly rejected.

11. It is true that validity of a statutory rule or enactment can be challenged by any person affected, but such challenge should be made as expeditiously as possible by the person who is affected by such Rule. As

already indicated, in the present case, the Rule is relevant only for the purpose of deciding about the seniority of those persons who have been recruited prior to enactment of the Rules in 1973 and such Rule does not have any relevance for the subsequent employees who had been recruited after 1.10.1973.

12. On behalf of the petitioners strong reliance had been placed upon the judgment of the learned single Judge of this Court in W.P.Nos.3014 and 4872 of 1979 before the Tribunal. However, the Tribunal ignored such decision on the specious ground that the applicants before the Tribunal were not parties in the said writ petitions.

13. The decision of a competent court operates as res judicata between the parties to such decision. Viewed in the above angle, possibly the Tribunal was correct in observing that the applicants before the Tribunal were not parties in the two writ petitions which were dismissed by the High Court. However, the Tribunal failed to consider another important aspect in respect of a decision rendered by a Court of Record such as High Court or the Supreme Court. So far as the Supreme Court is concerned by virtue of Article 141 of the Constitution the decision rendered by the Supreme Court is binding on all the Courts and authorities in the country. Even though the decision of a High Court does not have the effect of such an exalted position, such decision is obviously binding on the Courts and the authorities within the particular State. It is obvious that a Tribunal constituted by a State within the territorial limits of the State is bound by a judicial decision of the High Court of the very same State. Whatever little doubt was entertainable on this aspect, presently, there is no scope for any doubt in such matter in view of the decision of the Supreme Court reported in AIR 1997 SC 1125 (L. CHANDRAKUMAR v. UNION OF INDIA AND OTHERS). The precedent value of the decision of the High Court could not have been wished away by the Tribunal by simply stating that the applicants before the Tribunal were not parties in the writ petitions.

14. Learned counsel appearing for the respondents (directly recruited Grade-I Constables) has submitted with some vehemence but less conviction that the decision of the learned single Judge rendered in W.P.NOs.3014 and 4872 of 1979 is not binding on the Division Bench. There is no doubt about the aforesaid position, but the question is whether the present Division Bench should embark upon an enquiry to find out whether the decision rendered by the learned single Judge in 1982 is correct or not. The question decided in the said case relates to the question of fixing seniority among the directly recruited Grade-I Constables and promoted Grade-I Constables prior to 1973. The interpretation of the Rule 9 and the validity of such Rule have no significance for the subsequent period since, as per the Rule applicable for the subsequent period, the question of seniority has to be reckoned on the basis of actual date of appointment. The question is only important in respect of what happened prior to issuance of G.O.Ms.No.12 58 dated 9.5.1973 relating to seniority. Since the question of seniority has been apparently accepted for several years, it would be most inopportune to revive the question after such a long lapse of time. May be if we would have been called upon to decide the question on a clean slate, we would have taken a different

view on the question of seniority, but since the question had been decided long before, the principle of stare decisis is applicable, and therefore, we do not propose to examine the question as to whether the said decision was decided rightly or wrongly, as in our opinion to come to a different conclusion at this distant point of time would seriously unsettle things which were settled long back.

15. For the aforesaid reasons, we are constrained to allow the writ petitions and quash the order passed by the Tribunal. Consequently, the connected pending miscellaneous petitions are closed. There would be no order as to costs.

(P.K.M.,J) (R.B.I.,J)
31-08-2004

Index : Yes / No
Internet: Yes / No
dpk

To

1. The Government of Tamil Nadu,
represented by its Secretary to Govt.,
Home Department,
Secretariat, Chennai 9.

2. The Director General of Police,
Kamarajar Salai,
Chennai 4.

3. The Superintendent of Police,
Erode.

4. The Registrar,
Tamilnadu Administrative Tribunal,
Chennai.

□