[2023] 14 S.C.R. 144 : 2023 INSC 962

C. ANIL CHANDRAN
v.
M.K. RAGHAVAN AND OTHERS

(Civil Appeal No. 8915 of 2012)

October 30, 2023

[HIMA KOHLI AND RAJESH BINDAL*, JJ.]

Issue for consideration:

Appellant was aggrieved by the order dated 14.03.2005, passed by the Chief Engineer, Irrigation and Administration vide which the private respondents No. 1 to 4, 7 and 8 were given seniority from back date.

Service Law – In the writ petition filed by the private respondents in the year 2004, the High Court directed for consideration of their cases of promotion in the quota reserved for their category – The matter was considered by the Chief Engineer and disposed of vide order dated 14.03.2005 and after condsidering the representations, promotion as Assistant Engineer was granted w.e.f 01.08.1993 – Thereafter in an another writ petition filed by the appellant, order dated 14.03.2005 was set aside by the single judge of the High Court, however in the writ appeal, the Division Bench of the High Court held that anti-dating of the promotion of the private respondents was not adversely affecting the appellant – Therefore, the order dated 14.03.2005 passed by the Chief Engineer was restored – Propriety:

Held: In the case in hand, the seniority list as such was not challenged by the private respondents – They only made representations for correction of their dates of promotion as Assistant Engineer, which was finally accepted by the State on 14.03.2005 – No case made out for interferance in the instant appeal for the reason that the appellant has not been able to demonstrate that for the purpose of promotion from the post of Assistant Engineer to that of Assistant Executive Engineer, he was likely to be affected by ante-dating the date of promotion of the private respondents as separate quotas had been prescribed for promotion to the next higher post for the

* Author

categories of Graduate Engineers and Diploma Holders – The 2010 Rules have been placed on record by the appellant along with IA No. 02 of 2017 in terms whereof separate quotas have been prescribed for Degree Holders and Diploma Holders in the ratio of 8:2 – The appellant undisputedly falls in the category of Graduate Engineer, whereas the private respondents fall in the category of Diploma Holders – Both are different streams with different quotas. [Paras 19, 20]

Vinod Prasad Raturi & Ors. vs. Union of India & Ors., **2021 INSC 157 – referred to.**

R.M. Ramual vs. State of Himachal Pradesh & Ors. **(1989) 1 SCC 285: [1988] 3 Suppl. SCR 1009 – held inapplicable.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.8915 of 2012.

From the Judgment and Order dated 27.06.2011 of the High Court of Kerala at Ernakulam in WA No.1563 of 2010.

Dr. K. P. Kylasanatha Pillay, Sr. Adv., A. Venayagam Balan, Gaurav Pal, Kiritkumar Govindlal Sheth, Ashray Behura, Deepak Parashar, Prakhar Singh, Advs. for the Appellant.

Jayanth Muth Raj, Sr. Adv., P. A. Noor Muhamed, Nishe Rajen Shonker, Mrs. Anu K Joy, Alim Anvar, Abraham Mathew, Advs. for the respondents.

The Judgments of the Court were delivered by

RAJESH BINDAL, J.

1. Challenge in the present appeal is to the order in a Writ Appeal[1] passed by the Division Bench of the High Court[2] by which the judgment of the learned Single Judge passed in W.P. No. 36424 of 2005, was set aside.

1 Writ Appeal No. 1563 of 2010, decided on 27.06.2011
2 High Court of Kerala

2. Challenge in the W.P. filed by the appellant was to the order dated 14.03.2005, passed by the Chief Engineer, Irrigation and Administration, Thiruvananthapuram *vide* which the private-respondents No. 1 to 4, 7 and 8 were given seniority from back date.

3. Learned senior counsel for the appellant submitted that the appellant was appointed as Overseer Grade-III in the Irrigation Department *vide* G.O. (Rt.) No. 276/89/Co-op dated 16.06.1989, on compassionate basis. As the appellant was an Engineering Graduate, he represented to the Government for appointment as Assistant Engineer (Mechanical). His representation was rejected. O.P. No. 7647 of 1991 was filed praying for setting aside of the order of rejection of his representation with a further prayer that he should be appointed as Assistant Engineer with retrospective effect, from the date he was appointed as Overseer Grade-III. *Vide* judgment dated 02.07.1992, the High Court directed the respondents therein to appoint the appellant as Assistant Engineer instead of Overseer Grade-III from the date he is appointed on that post. The aforesaid judgment of the learned Single Judge of the High Court was challenged by the State by filing an intra-court appeal[3]. The same was disposed of on 03.09.1994, directing the Government to appoint the appellant as Assistant Engineer against the existing vacancy or on the next arising vacancy. He further directed that the appellant was to be given seniority in the cadre of Assistant Engineer from the date of his appointment as such. In compliance to the aforesaid judgment of the High Court, the appellant was appointed as Assistant Engineer (Mechanical) in the Irrigation Department *vide* G.O. (M.S.) No. 31/95/Co-op dated 01.03.1995.

4. The private-respondents who joined service as Overseer Grade-I and were holding the qualification of Diploma were promoted as Assistant Engineer (Mechanical) with effect from 15.03.1995 and 18.03.1995. The next higher promotion from the post of Assistant Engineer is that of Assistant Executive Engineer, which is stated to be filled up as per the 2010 Rules.[4]

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3 Writ Appeal No. 1013 of 1992

4 The Kerala Irrigation Engineering Service Special Rules, 2010

5. It was further argued that the Chief Engineer[5] *vide* order dated 26.04.1996, published the first provisional seniority list of Assistant Engineers (Mechanical) as on 01.03.1996. It was directed to be circulated to all concerned and they were given liberty to file objections if any, within 15 days. In the seniority list, the name of appellant finds mention at Sr. No. 35 whereas that of the private-respondent Nos. 4 to 8 were at Sr. No. 37 to 41, respectively. The date of joining of the appellant as Assistant Engineer (Mechanical) has been shown as 01.03.1995 whereas that of private-respondents Nos. 4 to 8 was shown as 18.03.1995, 15.03.1995, 15.03.1995, 15.03.1995 and 15.03.1995, respectively. The respondent No. 3 was not shown in the seniority list. The private respondents did not file any objection to the aforesaid tentative seniority list. *Vide* order dated 18.10.1997, the respondent No. 2 circulated another provisional seniority list of the Assistant Engineers (Mechanical) as on 01.09.1997. After considering the objections raised by the affected persons, final seniority list of Assistant Engineers (Mechanical) was circulated by the respondent No. 3 *vide* order dated 22.11.2001 for the period from 01.04.1990 to 31.12.1998. It was clearly mentioned in the communication that the same superseded all previous seniority lists published for the period in this regard. The aforesaid seniority list was prepared category wise, namely the Graduate Engineer, Diploma Holders and Certificate Holders. It was for the reason that for the next higher promotion, there were quotas meant for different feeder cadres. The appellant was shown at Sr. No. 37 in the category of Graduate Engineers and his date of promotion as such, was shown as 01.03.1995. The respondents No.1 to 4 were shown at Sr. No. 9 to 12 in the list of Diploma Holders with their date of promotion as 15.03.1995. The private respondents did not have any grievance with the aforesaid seniority list as the same was never challenged by them.

6. The cases of the Assistant Engineers coming from three different categories namely Graduate Engineer, Diploma Holders and Certificate Holders were to be considered for further promotion as Assistant Executive Engineer. The Chief Engineer *vide* letter dated 02.04.2003 addressed to all the Chief Engineers, Executive Engineers

5 Chief Engineer, Irrigation and Administration, Thiruvananthapuram

and Assistant Executive Engineers called for a list of 20 senior most Assistant Engineers for furnishing their confidential reports in Form-II B, for the last three years from 01.01.2000 to 31.12.2002 along with their service details. The information was required for the purpose of consideration of their cases for next higher promotion to the post of Assistant Executive Engineer. The matter was to be placed before the Departmental Promotion Committee. In the aforesaid list, there were 20 Assistant Engineers (Mechanical). From the list of Degree Holders, the name of the appellant was mentioned at Sl. No. 18. From the list of Diploma Holders, the candidates mentioned at Sl. No. 4 to 7 were shown at Sl. No. 2 to 4 and 20, respectively.

7. It was further argued that in the year 2004, a writ petition[6] was filed by the private-respondents in which directions were issued by the High Court for consideration of their cases for promotion in the quota reserved for their category. The matter was considered by the Chief Engineer and disposed of *vide* order dated 14.03.2005. While considering the representations and referring to the relevant Rules, the Chief Engineer directed that K.K. Subramanian, K.S. Badarudeen, M.K.Raghavan, K.Sureshan, C.Satheesan and K.K. Chandrababu be granted promotion as Assistant Engineers with effect from 01.08.1993. However, it was clarified that they will not be paid any arrears on account of date of re-assignment of date of promotion, though they will be eligible for fixation of pay.

8. It was further argued that the private respondents knew that with the order passed in the aforesaid writ petition filed by them, the appellant will be adversely affected, hence, they had impleaded him as a party but the fact remains that he was never served with any notice of the writ petition. Before even re-assigning the date of promotion of the private-respondents from a back date, which had adversely affected the chances of promotion of the appellant, he was not afforded any opportunity of hearing by the Chief Engineer.

9. Immediately after the appellant came to know about the passing of the aforesaid order dated 14.03.2005, he filed a writ petition[6] before the High Court challenging the aforesaid order. The learned Single

6 Writ Petition (Civil) No. 37212 of 2004- (E) (M.K. Raghavan, Assistant Engineer III vs. State of Kerala) Decided on 21.12.2004.

Judge allowed the writ petition opining that the seniority list of the Assistant Engineer, as was circulated on 22.11.2001, was the final seniority list, which was never challenged by the private-respondents 1 to 4, 7 and 8. The same could not have been reopened to the prejudice of the appellant without even notice to him. Hence, the same was set aside and a direction was issued for re-assigning the seniority to the appellant.

10. Aggrieved by the aforesaid order passed by the learned Single Judge, the respondents No.1 to 4 preferred writ appeal. The same was allowed by the Division Bench of the High Court holding that with anti-dating of the promotion of the private respondents from different dates in the year 1995, to 01.08.1993, the appellant was not adversely affected. The order passed by the learned Single Judge was set aside by the Division Bench. The order of the Chief Engineer dated 14.03.2005 was restored. It is the aforesaid order which is impugned in the present appeal.

11. In the aforesaid factual matrix narrated by learned counsel for the petitioner, the contention is that the private respondents never filed any objections to the seniority list of Assistant Engineers as circulated 2-3 times between 1996-1997. When the final seniority list was circulated on 22.11.2001, even then the same was not challenged within a reasonable time. The issue was sought to be raised more than three years later. That too by challenging the final seniority list, when service records of the eligible candidates for promotion from the post of Assistant Engineer to Executive Engineer was called for.

12. Further argument was that the private respondents knew that with the change in the date of their promotion, the appellant was likely to be affected, hence, they had impleaded him as a respondent in the writ petition[6] filed initially. However, the High Court did not grant any opportunity to the appellant to put forth his stand. A direction was issued by the High Court for considering the representation of the private respondents. Even the Chief Engineer to whom the direction was given, was not the competent authority for dealing with any such representation. Learned counsel referred to Rule 27-B of the Kerala State and Subordinate Services Rules, 1958 to submit that such a representation could only be made to the Government and not to the Chief Engineer. Further, the Chief Engineer had also not

granted any opportunity of hearing to the appellant before passing the order dated 14.03.2005. Change in the date of the promotion of the private respondents from Overseer Grade-I to Assistant Engineer, had adversely affected the promotional prospects of the appellant. He further argued that the direction of the High Court was merely for consideration of the representation of the private respondents and not to grant any relief to them. In case the claim was belated, the same could have been rejected. At present only C. Satheesan – Respondent no.3 is in service. All others have retired, including the appellant. Reliance was placed upon the judgement of this Court in **Vinod Prasad Raturi & Ors. vs. Union of India & Ors., 2021 INSC 157.**

13. On the other hand, learned counsel for the State submitted that the order passed by the Division Bench of the High Court which has been impugned by the appellant does not call for any interference by this Court. He further submitted that the State had merely complied with the direction issued by the High Court in the writ petition[6] filed by the private respondents. As there was an error in the calculation of quota for grant of promotion to the private respondents from the post of Overseer Grade-I to Assistant Engineer, the said error was corrected. The appellant was not going to suffer in any manner for the reason that for subsequent promotion to the post of Assistant Executive Engineer, there were separate quotas meant for the Engineering Graduates and Diploma Holders.

14. With reference to the argument of the appellant that the private respondents had not raised any objection regarding their placement in the seniority list, it was submitted that they had made numerous representations requesting for re-assignment of their date of promotion as Assistant Engineer. As their claim was found to be meritorious, Chief Engineer had only corrected the error. He relied upon the judgment of this Court in **R.M. Ramual vs. State of Himachal Pradesh & Ors. (1989) 1 SCC 285.**

15. Learned counsel for the respondent no.3 submitted that wrong benefit was granted to the appellant after he was appointed on compassionate basis in 1989. Three years later, he was directed to be appointed as Assistant Engineer which was a promotional post from the Overseer Grade-III. He further submitted that there are no

allegations by the appellant that respondent no.3 had not filed any representation against the seniority list. In fact, he had filed several representations which were not given due consideration. That is why a writ petition had to be filed. He referred to one such representation dated 26.03.1994 and also the admission made by the State in its counter affidavit filed before the High Court. He further submitted that the grant of promotion to the respondent no.3 along with other private respondents from a back date was nothing else but correction of the error. The next promotion to the post of Assistant Executive Engineer was not going to be affected. He relied upon a judgment of this Court in **R.M. Ramual's case (supra)** to submit that promotion can be given from back date and the seniority list can be challenged even after 11 years.

16. Heard learned counsel for the parties and perused the relevant referred records.

17. The fact that presently only the respondent No. 3 is in service and all others have retired, was not disputed by learned counsel for the parties at the time of hearing.

18. In our view, if the impugned order is examined on the principles laid down by this Court regarding a challenge laid to a seniority list, the same may not be legally sustainable The judgment of this Court in **R.M. Ramual's case (supra)** will not be applicable as it was a case on its own facts where this Court found that there was no unreasonable delay in challenging the seniority. In the said case, though the seniority list was prepared in 1971, however, on acceptance of the representation made by some of the employees later on, it was changed, as a consequence of which cause of action arose in favour of the appellant therein and reckoned from that date onwards, there was no unreasonable delay.

19. In the case in hand, the seniority list as such was not challenged by the private respondents. They only made representations for correction of their dates of promotion as Assistant Engineer, which was finally accepted by the State on 14.03.2005.

20. Be that as it may, even otherwise, we do not find that any case has been made out for interference in the present appeal for the reason that the appellant has not been able to demonstrate that for the

purpose of promotion from the post of Assistant Engineer to that of Assistant Executive Engineer, he was likely to be affected by ante-dating the date of promotion of the private respondents as separate quotas had been prescribed for promotion to the next higher post for the categories of Graduate Engineers and Diploma Holders. The 2010 Rules have been placed on record by the appellant along with IA No. 02 of 2017 in terms whereof separate quotas have been prescribed for Degree Holders and Diploma Holders in the ratio of 8:2. The appellant undisputedly falls in the category of Graduate Engineer, whereas the private respondents fall in the category of Diploma Holders. Both are different streams with different quotas.

21. The appeal is, accordingly, dismissed as meritless while leaving the parties to bear their own costs.

Headnotes prepared by: Ankit Gyan *Result of the Case:* Appeal dismissed.