

B. Ranganathan

Vs

Union of India and Others

Writ Petition (Civil) Nos. 12361 and 12375 of 1985

(K. Jagannatha Shetty, Kuldip Singh JJ)

15.03.1989

JUDGMENT

K. JAGANNATHA SHETTY, J. –

1. S. Ranganathan, the common petitioner has preferred these two writ petitions under Article 32 of the Constitution. He was a Section Officer in the office of the Accountant General, Madras. The department took disciplinary proceedings against him. During the pendency of the proceedings, his case for promotion came to be considered along with that of his juniors. The Departmental Promotion Committee which considered the cases of all eligible candidates recommended promotion of juniors. The Committee kept its findings on the suitability of the petitioner in a sealed envelope to be opened only on the termination of the disciplinary proceedings. The petitioner filed Writ Petition No. 4835 of 1983 in the Madras High Court challenging the disciplinary proceedings and the applicability of the CCS(C) Rules, 1964. The stand taken by him was that the said rules have not been framed in accordance with Article 148(5) of the Constitution and, therefore, the entire disciplinary proceedings should be taken to be vitiated. The petitioner also filed another Writ Petition No. 7735 of 1983 challenging the denial of promotion to him by adopting the 'sealed cover procedure' to which we have earlier referred. His grievance was that that procedure has no sanction under the rules framed under Article 148(5) of the Constitution. The learned Single Judge of the High Court dismissed both the writ petitions. In the writ appeal, the Division Bench while upholding the applicability of the writ appeal, the Division Bench while upholding the applicability of the CCS(C) Rules, 1964 however, did not approve of the 'sealed cover procedure'. The Division Bench said that the procedure is based only on the executive instructions issued by the Ministry of Finance or the Ministry of Home Affairs and it has not been provided by the rules framed under Article 148(5) of the Constitution. The Division Bench accordingly directed that the promotion of the petitioner has to be considered without reference to the 'sealed cover procedure'. The petitioner has not preferred any appeal before this Court against the judgment of the Division Bench so far as it goes against him as to the applicability of the CCS(C) Rules, 1964. The Accountant General and the Union of India have preferred the Appeal No. 4950 of 1985 challenging the validity of the judgment giving relief to the petitioner ignoring the sealed cover procedure.

2. The petitioner has filed the top noted writ petitions under Article 32 of the Constitution. In Writ Petition No. 12361 of 1985, he seeks an order quashing the departmental instruction issued by the Comptroller and Auditor General of India on July 27, 1956 amending para 143 of his Manual of Standing Orders. They are applied to fix the seniority of the personnel in the Subordinate Accounts Service cadre. His case is that it is against the provisions of Article 148(5) of the Constitution. In Writ Petition No. 12375 of 1985, the petitioner prays for a writ or order quashing the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as ultra vires insofar as persons serving in

the Indian Audit and Accounts Department are concerned.

3. The aforesaid civil appeal and the writ petitions were heard together. We have already dismissed the civil appeal leaving open the question raised therein in view of the fact that the benefits which the petitioner was entitled to have been given to him and he has also since retired from service.

4 The contentions raised in the present writ petitions are similar to those considered by the High Court of Madras in the earlier writ petitions filed by the petitioner. As already stated, the petitioner has not preferred appeal against the judgment of the High Court. Apart from that, the decision of this Court in Accountant General v. S. Doraiswamy is against the contentions raised by the petitioner. The petitioner however, argued that that judgment requires reconsideration. We do not agree with the contention of the petitioner and indeed the question raised is academic in this case. These writ petitions are, therefore, dismissed, but without an order as to costs.

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