

C. O. Arumugam and Others

Vs

State of Tamil Nadu and Others

Civil Appeal Nos. 4474-76 of 1989

(Dr. T. K. Thommen, K. Jagannatha Shetty JJ)

05.10.1989

ORDER

1. Special leave granted.
2. Heard counsel on both sides. This appeal is directed against the judgment of the Tamil Nadu Administrative Tribunal which allowed the appeals of respondents 3 to 5 and quashed the temporary promotions of the appellants 2 to 4 as Deputy Transport Commissioners.
3. On March 23, 1988 the Tamil Nadu Government approved a panel of six Regional Transport Officers including the four appellants before us for the purpose of temporary promotion to the cadre of Deputy Transport Commissioners. Respondents 3 to 5 who are seniors to the appellants were, however, not included in the panel. They were excluded from the panel either on account of disciplinary proceedings initiated or criminal case pending against them. In view of pendency of such proceedings, the government had decided to overlook their promotions as Deputy Transport Commissioner. The said respondents preferred writ petitions before the High Court of Madras questioning the exclusion of their names in the approved panel and seeking direction to include their names therein. The writ petitions were transferred to the Tamil Nadu Administrative Tribunal. The Tribunal on consideration of the relevant rules has observed that the panel for promotion to the post of Deputy Transport Commissioner was contrary to Rule 4 of the Tamil Nadu State and Subordinate Services Rules, since it was not published in the gazette and notice of preparation of the list was not given to senior officials who were excluded from the list. It was also observed that the list so prepared would be valid only for one year from the date of approval of the list and after expiry of one year, the list would not be valid. The Tribunal after referring to Rule 39(d) of the Tamil Nadu State and Subordinate Services Rules said :

"1. The temporary promotion contemplated in Rule 39(d) is to be made in public, interest and promoting officers against whom a prima facie case of misconduct is made out will not be in public interest.

2. Under Rule 39(d)(i)(ii) only persons possessing qualifications shall ordinarily be considered for temporary promotions and persons against whom a prima facie case of misconduct is indicated cannot be said to be qualified to hold the post.
3. Rule 39 of the General Rules is an exception to the general rule enabling the government to promote certain persons in certain contingency, and in such cases the guidelines for normal promotions cannot be ignored altogether.

4. In any event Rule 39(d) will not give the incumbent the right to be promoted."

The Tribunal went on to observe :

"It is for the government to exercise the discretion vested with it to decide whether an employee against whom disciplinary proceedings are pending is to be temporarily promoted or not. Our conclusion on the third point is that while there is no bar for consideration of persons against whom disciplinary proceedings are pending, yet the pendency of disciplinary proceedings are not to be ignored altogether, and it is incumbent upon the promoting authority to apply its mind in each case and consider the allegations, the nature of evidence in support of the allegation and the public interest involved and come to a conclusion. In the present case the procedure adopted by the promoting authority in not considering the claim of Regional Transport Officers against whom disciplinary proceedings are pending do not appear to be correct. Their case will have to be considered in the light of the principles set out above and a decision arrived at whether they are entitled to temporary promotion or not."

And it said :

"We have found that the claims of persons cannot be ignored only on the ground of pendency of proceedings against them. The non-consideration of the seniors on account of pendency of the disciplinary proceedings and promoting juniors temporarily vitiates the temporary promotions effected. In view of our finding that a Regional Transport Officer does not become ineligible for consideration for temporary promotion on account of pendency of disciplinary proceedings and in the present case, the claims of several RTOs were not considered on account of pendency of disciplinary proceedings the temporary promotions made cannot be allowed to stand."

With this conclusion, the Tribunal set aside the panel prepared by the government for temporary promotions and also quashed the consequential promotion of R. Santhanam, A. Radhakrishnamurthy and S. Sahul Hameed - appellants 2 to 4 respectively. The position of C.O. Arumugam, appellant 1 is, however, kept undisturbed in view of the dispute relating to his seniority. The Tribunal has further directed the State Government to observe certain principles stated in the judgment in the matter of making temporary promotions.

4. We have carefully perused the judgment of the Tribunal and also heard counsel on both sides. At the outset we may point out that the Tribunal has needlessly embarked upon enquiry on several aspects and more often with repetition. If we may say so with respect, the judgment is far from satisfactory.

5. As to the merits of the matter, it is necessary to state that every civil servants has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the

charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.

6. In the light of these principles, we may now examine the cases of respondents 3 to 5.

7. Thiru A. Andi, respondent 3, was not included in the panel for promotion on the ground that there was a criminal case pending against him. His exclusion then would not be found fault with. But it is now stated that he has been acquitted by the criminal court on September 13, 1989. It has been stated so in the counter-affidavit filed before this Court. If he has been acquitted, he must now be considered for promotion from the date on which his junior was promoted and if he is found suitable, he should be promoted with all consequential benefits.

8. Thiru L.V. Srinivasan, respondent 4, was not included in the panel for promotion since there were disciplinary proceedings then pending against him. But when the panel was prepared and approved, there was no charge framed against him. It is, therefore, not proper to have overlooked his case for promotion. We therefore, direct that his case be considered for promotion on the date on which his junior was promoted and if he is found suitable he must also be promoted with all consequential benefits.

9. Thiru G.P. Purushothaman, respondent 5, appears to be an exception to the preceding norm. It is said that there was then charge-sheet filed against him in the pending enquiry when the panel was prepared. His exclusion for promotion could not therefore be inappropriate. We may, however, observe that if he is exonerated in the pending enquiry, he be considered for promotion from the date on which his junior was promoted and if found suitable he be given promotion with all consequential benefits, but subject to seniority to be determined in C.A. Nos. 3815 and 3816 of 1988 pending in this Court. We may also observe that the department enquiry pending against him may be expedited.

10. We further make it clear that the appellants or any one of them need not be reverted if there are other vacancies available for considering the cases of respondents 3 and 4 (Thiru A. Andi and Thiru L.V. Srinivasan) for promotion. But if there is no additional vacancy, there shall be re-ordering of promotions according to merits and in the light of this order.

11. In the result, the appeals are disposed of in the terms as indicated above. In the circumstances of the case, we make no order as to costs.

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