

SUPREME COURT OF INDIA

S. Jamaludeen

Vs.

High Court of Madras

(S Bharucha, G Nanavati and B Kirpal JJ.)

10.08.1999

ORDER

1. Application for impleadment is dismissed.

2. These appeals concern the subordinate judicial officials of the High Court at Madras. Having heard learned Counsel, we had, on 23rd September, 1998, taken the view that, considering the facts and circumstances, the intervention of the High Court itself was required. The Chief Justice of the High Court and/or a Committee nominated by him was required to invite and consider representations by all the judicial officers concerned and hear all or such of them as might be considered necessary. The order stated:

The object of this exercise is to do what is right and equitable to the judicial service itself as also the officers concerned, for this purpose, it may not be necessary to go strictly according to the prior judgments. The High Court shall take into account the facts as many of the judicial officials have by now retired, and try to see whether those who remain in service can be accommodated in the posts that are available. It shall attempt to see that no officers who have been working in higher posts are demoted. The principal object should be to find a fair, just and equitable resolution of the proceedings.

Learned Counsel are agreed to the above course and have assured us that the conclusion of the Chief Justice or of the committee aforementioned shall not be disputed.

3. Pursuant to the aforesaid directions, a report has been submitted on 9th March, 1999 signed by the then acting Chief Justice and another learned Judge. The report states that, on overall consideration and to find a fair, just and equitable solution as required by our order, and with a view

that the officers who are working already in higher posts be not to be demoted and those who remain in service be also accommodated, the following is proposed:

(1) In order to maintain respective seniority/merit, the Judicial Officers who were working as on 6-10-1988 and also selected by the Tamil Nadu Public Service Commission, totalling 31, be placed above others in dispute.

(2) Other Judicial Officers who were selected by the Tamil Nadu Public Service Commission, totalling 67, be placed, according to their seniority and keeping the list intact, below the aforesaid 31 Judicial Officers.

(3) However, among the remaining service candidates, Judicial Officers who are going to retire in the year 1999, on attaining the age of 60 years, will be considered as seniors and the remaining seniority list will stand intact.

(4) In the alternative, it is also resolved that among 67 TNPSC selected Judicial Officers and 67 Judicial Officers whose services were regularised earlier, as per the decision of the Screening Committee constituted pursuant to the order of the Apex Court in W.P. No. 128 of 1986 dated 5-8-1986. If seniority is maintained 1:1 ratio, then the Government can be requested to create 42 supernumerary posts to accommodate more number of Service candidates.

4. Mr. Salve, learned Counsel, supported proposal No. 1, in paragraphs 1 to 3 above, pointing out that proposal No. 2 in paragraph 4 above was "in the alternative." Mr. Sanghi, learned Counsel, supported proposal No. 2 because, in his submission, some promotional opportunity would then still be available. He added that there would be no need to create supernumerary posts, as indicated in paragraph 4, because an equal number of vacancies already existed.

5. A further submission was that neither of the two proposals be accepted. We decline to consider that last having regard to the fact that all concerned, including the party on whose behalf the submission is made, were agreed as recorded in our order of 23rd September, 1998, that "the conclusion of the Chief Justice or of the Committee aforementioned shall not be disputed.

6. We must assume that the learned Judges who made the report were aware of the position when the report was made and found it necessary to say that 42 supernumerary posts would have to be created if the alternative proposal in paragraph 4 was to be accepted. For the creation of supernumerary posts, the State Government would have to be requested and its acceptance of the proposal cannot be presumed. To bring about an early end to this dispute which has been fastening in the High Court for a long time, which is in the interests of the High Court and the subordinate Judges themselves, no proposal which is contingent on the sanction of the State Government to the creation of supernumerary posts can be considered satisfactory.

7. It is clear that the makers of the report favoured proposal No. 1 and put in proposal No. 2 to be considered in case we found proposal No. 1 unacceptable, which we do not. Proposal No. 1, set out in paragraphs 1 to 3 of the report, is a fair and acceptable proposal and the appeals must be disposed of in terms thereof. The seniority of those concerned shall be finalised in terms of proposal No. 1 and as indicated in the Schedule to proposal No. 1 in the said report.

8. Order on the appeals accordingly.

9. No order as to costs.