

SUPREME COURT OF INDIA

C. Chakkaravarthy and Ors.

Vs.

M.Satyavathy, IAS

CP(Civil)No.339 of 2013

(T.S.Thakur and V.Gopala Gowda,JJ.,)

16.10.2015

JUDGMENT

T.S.Thakur,J.,

1. In this petition under Article 129 of the Constitution of India read with Section 12 of Contempt of Courts Act, 1971 the petitioners allege deliberate violation by the respondents of the judgment and order dated 22nd April, 2010 passed by this Court in *N. Suresh Nathan and Ors. v. Union of India & Ors'*. The question that fell for consideration therein was whether the practice adopted by the Government of Pondicherry of counting the service of Section Officers/Junior Engineers who have qualified as graduates while in service only from the date they passed the degree or equivalent examination for purposes of promotion to the post of Assistant Engineers under Rule 11(1) of the Government of Pondicherry Assistant Engineers (including Deputy Director of Public Works Department) Group 'B' (Technical) Recruitment (Amendment) Rules, 1965 (for short 'Recruitment Rules') was legally sound. Rule 5 of the Recruitment Rules provide for the method of appointment as Assistant Engineer to be by 'selection' and reads as:

"5. Whether Selection post or: Selection" Non-Selection Post:

2. Reference may also be made to Rule 11 of the said rules which is as under:

"11 In case of recruitment by promotion/deputation /transfer grade from which promotion / deputation/transfer to be made : Promotion

1. Section Officer possessing a recognised degree in Civil Engineering or equivalent with 3 years service in the grade failing which Section Officers holding diploma in Civil Engineering with 6 years service in the grade - 50%.

2. Section Officers possessing a recognised diploma in Civil Engineering with 6 years service in the grade - 50%

3. This Court on a consideration of the rival submissions urged before it and the decisions of this Court relied upon by the parties in support of their respective submissions held that the practice adopted by the Government of Pondicherry of placing the Junior Engineers qualified as graduates in the order of seniority according to the date on which they passed the degree examination was contrary to Rule 5 of the Recruitment Rules. Having said that this Court held that the directions issued by the High Court directing that the entire service of a person should be counted for purposes of seniority and promotion to the post of Assistant Engineer was also contrary to the provisions of Rule 5 of the Recruitment Rules (supra). The following passage appearing in the judgment of this Court is, in this regard, apposite:

"41. The practice adopted by the Government of Pondicherry in consultation with UPSC of counting the services of Section Officers or Junior Engineers, who qualified as graduates while in service from the date they passed the degree or equivalent examination and placing them in order of seniority accordingly for the purpose of consideration for promotion to the post of Assistant Engineer under Clause 1 of Rule 11 of the Recruitment Rules is contrary to Rule 5 of the Recruitment Rules. Similarly, the direction of the High Court in the impugned judgment and order to count the entire service of a person concerned even before acquiring degree in Civil Engineering for the purpose of seniority and promotion to the post of Assistant Engineer under Clause 1 of Rule 11 of the Recruitment Rules is contrary to Rule 5 of the Recruitment Rules."

4. This Court then proceeded to declare that recruitment to the post of Assistant Engineers was by way of selection meaning thereby that seniority in the cadre of Section Officers/Junior Engineers was not of much significance. Selection for promotion to the post of Assistant Engineers was, declared this Court, to be made only on the basis of comparative merit of eligible candidates in which persons found most meritorious were to be selected for appointment. Such a method of selection would, according to this Court, not only be consistent with Rule 5 of the Recruitment Rules but also satisfy the demands of equality of opportunity contained in Article 16 of the Constitution. This Court observed:

"48. As we have seen, Rule 5 of the Recruitment Rules in the present case states that the post of Assistant Engineer is a selection post and the Recruitment Rules nowhere provide that seniority-cum-merit would be the criteria for promotion. In the absence of any indication in the Recruitment Rules that seniority in the grade of Section Officers/Junior Engineers will be counted for the purpose of promotions to the post of Assistant Engineer, consideration of all Section Officers/Junior Engineers under Clause 1 of Rule 11 of the Recruitment Rules who are eligible for such consideration has to be done on the basis of assessment of the comparative merit of the eligible candidates and the most suitable or meritorious candidate has to be selected for the post of Assistant Engineer. Such a method of selection will be consistent with Rule 5 of the Recruitment Rules and Article 16 of the Constitution which guarantees to all citizens equality of opportunity in matters of public employment."

5. Having said so, this Court set aside the impugned judgment of the High Court and directed the Government of Pondicherry to consider the cases of Section Officer/Junior Engineer who have completed 3 years service in the grade of Section Officers/Junior Engineers for promotion to the vacancies in the post of Assistant Engineers, Public Works Department, Government of Pondicherry on the basis of their inter se merit. The operative portion of the order passed by this Court runs as under:

"50. For the aforesaid reasons, we set aside the impugned judgment of the High Court and direct the Government of Pondicherry to consider the cases of all Section Officers or Junior Engineers, who have completed three years' service in the grade of Section Officers or Junior Engineers, for promotion to the vacancies in the post of Assistant Engineer, Public Works Department, Government of Pondicherry, in accordance with their merit. We make it clear that the promotions to the post of Assistant Engineer already made pursuant to the judgment and order of the High Court will not be disturbed until the exercise is carried out for promotion in accordance with merit as directed in this judgment and on completion of such exercise, formal orders of promotion to the vacancies in the posts of Assistant Engineer which arose during the pendency of the cases before this Court are passed in case of those who are selected for promotion and after such exercise only those who are not selected for promotion may be reverted to the post of Section Officer or Junior Engineer."

6. Considering the fact that the number of candidates eligible for consideration will be large, this Court reserved liberty to the Government to issue executive instructions as to the method to be followed for consideration of such eligible candidates for promotion. This Court said:

"Where, therefore, there are a large number of eligible candidates available for consideration for promotion to a selection post, the Government can issue executive instructions consistent with the principle of merit on the method to be followed for considering such eligible candidates for promotion to the selection post."

7. Pursuant to the liberty so reserved, the review DPC appears to have taken note of certain pre-existing Government of India Order dated 6th January, 2006 issued by the Department of Personnel and Training, for purposes of selecting suitable officers for promotion on the basis of 'Merit'. The said order set out guidelines to be followed for restricting the field of selection to a manageable number of candidates in cases where the number of such candidates was large. The case of the respondent-State of Pondicherry is that the review DPC evolved a procedure keeping in mind the observations made by this Court as also the DoPT guidelines referred to above for identifying the field of selection and applying the criteria for determination of inter se merit of the candidates. The procedure so evolved comprised six steps which the respondent-state has identified in the counter affidavit filed by it in the following words.

"A. Identify the available vacancies of Asst. Engineers for the relevant year.

B. Make a list of eligible candidates based on the date of attaining eligibility in terms of the Rule 11 of the Recruitment Rules.

C. In view of the large number of candidates available for selection to less number of available posts, identify the Field of Selection using the DoPT prescribed formula of $2 \times \text{Available Vacancies} + 4$. For example for 10 vacancies, the field of selection would be 24.

D. Fix the benchmark. In the present case it is 'good'.

E. In the field of Selection, the grading is marked.

F. Prepare the Select List of the most meritorious candidates in terms of this Hon'ble Court's criterion in paras 39 to 42 of Judgment in CA No. 8468/2003 and batch, and listing of the successful candidates in accordance with their merit with reference to the entries given in Annual Confidential Reports, which inter alia included all or most of the ingredients constituting merit as enunciated by this Hon'ble Court in Para 42 of the judgment, and not in accordance with seniority, for that year of selection."

8. A new list of promotees was, on the above basis, prepared by the review DPC, which according to the respondents was based on the inter se merit of the candidates. The petitioners find fault with the above procedure but only to the extent para 'B' reproduced above determines the zone of consideration, based on the date the candidates acquired their eligibility in terms of Rule 11 of the Recruitment Rules. The grievance of the petitioner is that this action of the respondent has totally distorted the picture and denied to persons who were otherwise eligible and senior in terms of their length of service, an opportunity to compete for promotion. It is argued on their behalf that the process of preparing a list of eligible candidates on the basis of the date of obtaining eligibility is totally wrong, unfair and discriminatory. The date on which a candidate acquires his eligibility would depend upon the date on which he completes three years after obtaining the degree qualification. The obtaining of degree qualification would, in turn, depend upon several imponderables beyond the control of the candidates including whether the candidates were working on a hard or soft posting over which the candidates have no control. It was urged that while length of service of Sections Officers/Junior Engineers may not count for purposes of determining their inter se merit, the same was the only sound basis for identifying the zone of consideration. Inasmuch as the Government has ignored the length of service of the candidates and departed from the principle of seniority of candidates who served in the same cadre while drawing-up of the list of eligible candidates, it has committed a mistake that needs to be corrected.

9. There is, in our opinion, considerable merit in that submission of the petitioners. There is no gainsaying that this Court has unequivocally declared that promotion to the post of Assistant Engineers in the service shall be on the basis of merit and merit alone and that seniority of the candidates cannot be taken as an input for determining such merit. This Court has also very clearly rejected the procedure followed by the Government whereby the date on which the candidate had acquired his degree qualification was taken as a determining factor.

That being so, and given the large number of candidates eligible for consideration the Government was entitled to adopt the method of restricting the zone of consideration based on the number of vacancies. Inasmuch as the Government relied upon the DoPT guidelines for achieving that objective it committed no fault. The question, however, is whether the Government could draw-up a list of eligible candidates not by reference to the length of service in the cadre but by reference to the date on which the candidates acquired the eligibility which, as noticed earlier, was itself dependent upon the date on which the candidate acquired the degree qualification. Since, however, the acquisition of a degree qualification itself was not based on any consistently uniform criterion, test or procedure, the date on which such a qualification was acquired and resultantly the date on which the candidate attained their eligibility was also bound to be anything but uniform and non-discriminatory. As between the date of acquiring eligibility and the date of entering service as a Section Officer/Junior Engineer the latter was, in our opinion, a more intelligible, fair and reasonable yardstick to be applied for drawing-up the list of eligible candidates by the review DPC. Inasmuch as the review DPC relied upon the date of acquiring eligibility as the basis for preparation of the list of eligible candidates, it committed a mistake which needs to be corrected.

10. Having said so, there is, in our opinion, no deliberate or contumacious breach of the directions of this Court to warrant punitive action against those responsible for taking the said decision. The error it appears has occurred more because of an erroneous perception on the part of the government and the review DPC that the method adopted by them was sanctioned by law and the orders of this Court. We do not, therefore, consider it necessary to pass any orders of punishment against the respondent on that score although we would expect them to be more careful and circumspect in future. With the above observation we dispose of these contempt petitions with a direction to the respondent-State to redo the exercise in terms of the directions of this Court in *N. Suresh Nathan (supra)* keeping in view the observations made hereinabove. No costs.