

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

450

1991

14-1-92

DATE OF DECISION 14-1-92

Suresh G _____ Applicant (s)

Mr.T.M.Chandran _____ Advocate for the Applicant (s)

Versus

SSC (Southern Region), _____ Respondent (s)
EVK Sampath Building, Madras & 3 others

Mr.George Joseph _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V.Krishnan - Administrative Member
and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Ys
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

The applicant, G.Suresh has in this application filed under Section 19 of the Administrative Tribunals Act, prayed for the following reliefs:

- a) to issue a writ of Mandamus or any other appropriate writ, commanding the IInd respondent to appoint the applicant as Income Tax Inspector forthwith.
- b) to issue a writ of Mandamus or any other writ or order to appoint the applicant as Income Tax Inspector with retrospective effect without affecting the seniority he is entitled to.

c) to issue any other order as this Tribunal deems fit.

2. The facts necessary for the disposal of the application can be briefly stated as follows. The applicant is a member of the Perumannan community which is recognised as a Scheduled Caste in the State of Kerala. He appeared for an examination conducted by the Staff Selection Commission (Southern Zone, Madras) for the post of Inspectors in Central Excise and Income Tax. Being successful in the written test, he was called ~~to appear~~ for a personality test with original as well as attested copies of the certificates as required in the call letter, Annexure-A. Being successful in the personality test he was informed by the second respondent, Chief Commissioner of Income Tax, Madras by letter dated 5.9.1989, Annexure-B that he had been selected and nominated by the Staff Selection Commission for appointment as Income Tax Inspector and he was directed to send the attestation form signed/photograph affixed and the relevant portion duly filled in along with the original community certificate, so as to reach the office of the second respondent before 20.9.1989. He complied with the directions in time and had also complied with the direction contained in the letter dated 6.10.1987 of the second respondent by appearing for medical test before the Government

General Hospital, Trichur. Thereafter he received a communication from the second respondent dated 11.12.1989 informing him that the community, character and nativity certificates were not received and directing him to forward them not later than 20.12.1989. Though the applicant had already sent these documents he again sent these certificates with a covering letter on 16.12.1989. The second respondent had confirmed the receipt of these documents in a letter dated 30.1.1990 at Annexure-F. But as he did not receive the appointment order, he made a representation on 28.3.1990 to the first respondent who informed him that his name had already been sponsored to the second respondent and advised him to await further information from the department. Expecting that he would be appointed without further delay the applicant sent a letter to the Joint Secretary, Railway Board, New Delhi declining to accept an offer of appointment as an Assistant in the Railways Secretariat Service. But, seeing that the appointment order was not received as expected, he made a representation to the second respondent on 17.9.1990 requesting for prompt action. Finding that there is no response to this representation and knowing that all the general candidates selected along with the applicant had already been appointed and that the examination

for selection of Inspectors had again been conducted in the year 1989, the applicant has filed this application praying that the second respondent may be directed to appoint him with retrospective effect without affecting his seniority.

3. The applicant had prayed for an Interim Order to direct the second respondent to appoint him as Income Tax Inspector pending disposal of this application. By order dated 17.4.1991 we had directed the second respondent to appoint the applicant immediately within two weeks as Inspector of Income Tax provisionally and subject to the outcome of this application. As this direction was not complied with within the stipulated time, we had by order dated 2.5.1991 directed the second respondent to appear either in person or through an authorised representative before us on 27.5.1991 to show cause as to why action under the Contempt of Courts Act should not be taken against him. The second respondent by order dated 30.4.1991, Annexure-RI, posted the applicant as Inspector of Income Tax in the office of the Chief Commissioner of Income Tax, with a direction to join duty before 17.5.1991. Thus in obedience to the Interim Order the applicant has been appointed as Inspector of Income Tax provisionally and subject to the outcome of this application.

4. The second respondent has filed a reply affidavit contending that, as the applicant belongs to Perumannan community which is treated as a Scheduled Caste in the State of Kerala, and not recognised as a Scheduled Caste in the State of Tamil Nadu, he is not eligible to be appointed towards the Scheduled Caste quota in the State of Tamil Nadu. However, it has been stated in the reply statement that, as the applicant has been appointed as Income Tax Inspector pursuant to the Interim Order, the application may be closed, reserving liberty to the second respondent to cancel his appointment without any enquiry in case he is found not eligible for appointment to the post reserved for Scheduled Caste Candidates in the State of Tamil Nadu.

5. We have heard the counsel on either side and have also carefully gone through the pleadings and documents.

6. That the applicant has been selected by the Staff Selection Commission for appointment to the post of Income Tax Inspector in the quota reserved for Scheduled Caste, and that the applicant belongs to the Perumannan community which is included in the list of Scheduled Castes in the State of Kerala are facts beyond dispute. Though the applicant was

selected for appointment in the examination held in 1988 until after a direction was issued by us, the applicant was not given a posting. The averment in the application that all the general candidates selected and nominated by the Staff Selection Commission along with the applicant had already been appointed long before the applicant filed this application is not controverted by the respondents in the reply statement. The delay in appointing the applicant is sought to be explained by the second respondent in paragraph 6 of the reply statement by saying that, as the applicant belongs to Perumannan community which is recognised as a Scheduled Caste only in State of Kerala and not so recognised in the State of Tamil Nadu, clarification was sought by issuing a reference to Tahsildar, Trichur, and that, as there was no response the matter was delayed. The second respondent has further contended that, as Perumannan community is recognised as a Scheduled Caste only in the State of Kerala and not in the State of Tamil Nadu, the applicant is not entitled to be appointed towards the quota reserved for Scheduled Caste in the State of Tamil Nadu, and therefore the second respondent will be justified in cancelling the appointment without any further enquiry, if he is satisfied that the applicant is not eligible for appointment towards the Scheduled Caste quota of the State of Tamil Nadu. In order to substantiate this contention the learned counsel for the respondents

brought to our notice a circular No.75/85 issued by the Govt. of India, Ministry of Finance (Dept. of Revenue, New Delhi) which runs as follows:

"XXX/I/15-ISSUE OF SCHEDULED CASTE/
SCHEDULED TRIBE CERTIFICATE TO MIGRANTS
FROM OTHER STATES/UNION TERRITORIES.

It is directed to say that it has been represented to this Ministry that persons belonging to Scheduled Castes/Scheduled Tribes, who have migrated from one State to another for the purpose of employment, education, etc. experience great difficulty in obtaining caste/tribe certificate from the State from which they have migrated. In order to remove this difficulty, it has been decided to modify the instructions issued in letter No.BC.12025/2/76-SCT. I, dated 22.3.1977 and letter No.BC.12025/11/79-SC&BCD.I/IV, dated 29.3.1982 that the prescribed authority of a State Government/Union Territory Administration may issue the Scheduled Caste/Tribe certificate to a person who has migrated from another State, on the production of the genuine certificate issued to his father by the prescribed authority of the State of the father's origin except where the prescribed authority feels that detailed enquiry is necessary through the State of origin before issue of the Certificate. The certificate will be issued irrespective of whether the caste/tribe in question is scheduled or not in relation to the State/Union Territory to which the person has migrated. This facility does not alter the Scheduled Castes/Tribe status of the person in relation to the one or the other State. The revised form of the Scheduled Caste/Tribe certificate has already been circulated with this Ministry's letter of even number dated 6.8.1984.

2. It is also clarified that a Scheduled Caste/Tribe person who has migrated from the State of origin to some other State for the

purpose of seeking education, employment, etc. will be deemed to be a Scheduled Caste/Tribe of the State of his origin and would be entitled to derive benefits from the State of origin and not from the State to which he has migrated.

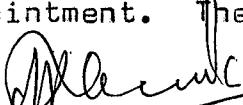
3. This letter substitutes this Ministry's earlier letter of even number dated 18.11.1982."

The applicant was selected by the Staff Selection Commission for appointment as Income Tax Inspector towards the quota reserved for Scheduled Caste being satisfied that the applicant belongs to the Perumannan community which is recognised as a Scheduled Caste. That the Perumannan community is included in the list of Scheduled Caste is not in dispute. The applicant had also admittedly produced a certificate showing that he belongs to Perumannan community which is a Scheduled Caste in the State of Kerala. Income Tax Department is a department of the Govt. of India. A person belonging to any State in the territory of India is entitled for appointment to the service in any State, if he is duly selected. Just for the reason that the vacancy arose in Tamil Nadu, his right to be appointed cannot be delayed for the reason that the Perumannan Community is not one of the communities in Tamil Nadu which is recognised as a Scheduled Caste. If the appointment was sought to any service under the State of Tamil Nadu the consideration may probably be different.

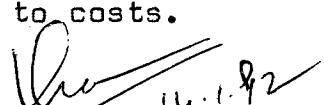
The clarification contained in the Government order

cited by the learned counsel for the respondents will apply only in cases where appointment is sought to any service under the State Government. Therefore the case of the respondents that as the applicant belongs to Perumannan community which is recognised as a Scheduled Caste only in the State of Kerala and not in the State of Tamil Nadu, he is not entitled to be appointed in a vacancy reserved for Scheduled Caste in Tamil Nadu cannot be sustained. We are therefore of the view that the action on the part of the second respondent in delaying the appointment of the applicant and maintaining that the appointment of the applicant is liable to be cancelled is unjust and illegal. The applicant therefore is entitled to be appointed as Income Tax Inspector without loss of seniority in accordance with the merit list as advised by the Staff Selection Commission.

7. In the conspectus of facts and circumstances, we allow the application and direct the respondents 2 to 4 to appoint the applicant as Income Tax Inspector with effect from the date on which the person just below him in the merit list of the Staff Selection Commission was appointed notionally without loss of seniority ~~xxxxxxkx~~ and to fix his pay accordingly. It is made clear that the applicant would not be entitled to any arrears of pay on the basis of his retrospective appointment. There is no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER

14/1/92


(N.V.KRISHNAN)
ADMINISTRATIVE MEMBER

CIRCULAR NO. 75/85

XXX/I/15.—ISSUE OF SCHEDULED CASTE/SCHEDULED TRIBE CERTIFICATE TO MIGRANTS FROM OTHER STATES/UNION TERRITORIES.

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3. This letter substitutes this Ministry's earlier letter of even number, dated 18-11-1982.