

Kerala High Court

The Ministry Of Communications vs Thursday on 1 October, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MRS. JUSTICE SHIRCY V.

THURSDAY, THE 10TH DAY OF AUGUST 2017/19TH SRAVANA, 1939

RP.No. 880 of 2013 (Z) IN OP (CAT).158/2010

AGAINST THE JUDGMENT IN OP (CAT) 158/2010 of HIGH COURT OF KERALA DATED
01-10-2010

REVIEW PETITIONER(S):

1. THE MINISTRY OF COMMUNICATIONS,
REPRESENTED BY THE SECRETARY, GOVERNMENT OF INDIA,
NEW DELHI.
2. CHAIRMAN AND MANAGING DIRECTOR
BHARAT SANCHAR NIGAM LIMITED, BSNL BHAWAN, JANPATH,
NEW DELHI-100001.
3. THE CHIEF GENERAL MANAGER (TELECOM)
BSNL KERALA CIRCLE, THIRUVANANTHAPURAM-695033.
4. THE GENERAL MANAGER
BSNL, PATHANAMTHITTA DIVISION, THIRUVALLA, KERALA.

BY ADV. SRI.P.J.PHILIP,SC,BSNL

RESPONDENT(S)/RESPONDENTS IN O.P.NO.158/2010:

1. SHYAMALA M.L
SENIOR TELECOM OFFICE ASSISTANT (GENERAL),
OFFICE OF THE CHIEF GENERAL MANAGER (TELECOM) (BSNL),
THIRUVANANTHAPURAM. 695033.
2. C.C.MOHANAN
SENIOR TELECOM OFFICE ASSISTANT,
OFFICE OF THE SUB DIVISIONAL ENGINEER, KARUGACHAL,
KOTTAYAM-686001.
3. M.K.KRISKNANKUTTY
SENIOR TELECOM ASSISTANT (RETIRED),
CENTRAL TELEGRAPH OFFICE, PUNALLOOR, NOW RESIDING AT

'KRISHNA NIVAS', KOODAL P.O., PATHANAMTHITTA,
KERALA-689645.

4. POUTHAN.S.

SENIOR TELECOM OFFICE ASSISTANT, OFFICE OF THE GMT,
SANCHAR BHAVAN, BSNL, PALAKKAD-678001.

R1 BY ADV. SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)

R BY SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 10-08-2017,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMACHANDRA MENON & SHIRCY V., JJ

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R.P. No. 880 of 2013 in  
O.P.(CAT) No. 158 of 2010  
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Dated, this the 10th day of August, 2017

O R D E R

Ramachandra Menon , J.

This review petition has been filed by the respondents in O.A. No.133 of 2009; after losing the battle before the Tribunal, this Court and also before the Apex Court, when the SLPs preferred by them came to be withdrawn after final hearing, though with liberty to move this Court by way of review.

2. It is brought to the notice of this Court by the learned counsel for the respondents that, in the course of the proceedings, non compliance of the direction given by the Tribunal led to contempt of court proceedings. Pursuant to the said proceedings, directions were given by the authorities in New Delhi as per letter bearing No. 211-34/2010-Pers-III dated 05.07.2017, to have the verdict implemented which has been given effect to by the authorities in Kerala as per the proceedings bearing No. LCIII/OA No.133/2009/Vol.II/26 dated 04.08.2017. The learned standing R.P. No. 880 of 2013 in O.P.(CAT) No. 158 of 2010 counsel further submits that the compliance of the direction will be subject to the outcome of the review petition. Both the sides were heard accordingly, at length.

3. The course and events reveal that the respondents herein who were the four applicants had moved the Tribunal with the following prayers in the O.A. :

"i) To declare that applicants are entitled to get the benefits of their entire service commencing from the date of initial engagement on RTP Telephone Operators for the purpose of annual increments, bonus and other emoluments and also for reckoning the minimum service period for departmental examination, seniority and also for pension.

ii) to direct the respondents to issue order to regularize their service of the applicants of Telephone Operators from the date of their initial appointment with all consequential benefits.

iii) to declare that the applicants are entitled for the benefit of Annexure A7 and A10 judgments of this Hon'ble Court which granted regularization with effect from 1.11.1983 as they were recruited along with the applicants.

vi) to direct the respondents to regularize the service of the applicants w.e.f. their initial appointment and R.P. No. 880 of 2013 in O.P.(CAT) No. 158 of 2010 declare that they are entitled for arrears of pay and allowance in the post of Telephone Operators with all consequential benefits like fixation of pay and other attendant benefits, like one time bound promotion (OTBP) and biennial Cadre Review (BCR) from the date of initial appointment.

v) to grant such other reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

4. Specific contention of the petitioners was that, it was after proper selection and imparting the training, that the applicants along with such other persons were enlisted as Reserve Trained Pool [RTP in short] operators in the BSNL and they were given initial placement w.e.f. 1983/1984 onwards. Despite the availability of vacancies, their service was not regularised, whereas the BSNL sought to regularize other six persons, including even a junior of the applicants. It was in the said circumstances, that reliefs were sought for as mentioned above. The claim was resisted from the part of the Department contending that regularization cannot be claimed as a matter of right by the RTP operators, by virtue of the ruling rendered in Union of India and another Vs. K.N. Sivadas and Others [(1997) 7 SCC 30]. It was also pointed out that the regularization was virtually R.P. No. 880 of 2013 in O.P.(CAT) No. 158 of 2010 effected in the year 1989 and there could not be any instance of pre- dating regularization under any circumstances. It was also brought to the notice of the Tribunal that a junior of the petitioners who was regularised was a member of scheduled caste community, which benefit could not be extended to the applicants.

5. During the course of hearing, the applicants brought to the notice of the Tribunal that a verdict had already been passed by the Tribunal in O.A. No. 661 of 1991 involving exactly similar circumstances in respect of Thiruvalla division. The principles laid down therein were ordered to be followed in the subsequent decision as well i.e. in O.A. No. 1140 of 1993. The Tribunal, after meticulous analysis of the facts and figures, held that the factual position disclosed from the decision reported in (1997) 7 SCC 30 [cited supra] was entirely different from the factual position involved in the present case [see paragraphs 5 and 6 of the verdict dated 09.07.2010 passed by the Tribunal].

6. Even though there was a contention for the Department that the factual scenario in O.A. No. 661 of 1991 was entirely different, the Tribunal had made a comparative analysis and found that the facts were exactly similar with reference to the facts in O.A. No. 1140 of 1993. It was accordingly, that appropriate directions were given in R.P. No. 880 of 2013 in O.P.(CAT) No. 158 of 2010 favour of

the applicants as revealed from the relevant portion of the verdict [paragraph 9], which reads as follows :

"9. In O.A. 1140/1193 also, this Tribunal directed the 3rd respondent therein to consider and dispose of the representation of the applicant therein on merits bearing in mind the principles laid down in O.A. No. 661/1991. We have no doubt that the applicants in the present O.A. are similarly placed as the applicants in the aforesaid O.A.s and that the principles laid down in O.A. No. 661/1991 will apply to the case on hand. The Director of Telecommunication South, Trivandrum, vide its letter No. AMS/04-38/83 dated 20.05.1983 (Annexure A-17) had conveyed administrative approval for creation of 10 posts of Telephone Operators with a rider that they should not be filled until further clearance. The Telecom District Engineer in his letter dated 04.03.1993 at Annexure A-18 had recommended to regularize the applicants in the available vacancies. However, this proposal was not accepted. But it shows availability of vacancies. The applicants had shown their willingness for posting anywhere in Kerala in the proforma meant for declaring the willingness of RTP candidates for regular absorption in any recruiting units in Kerala. By showing their willingness they did not forfeit their right for regularization and seniority. In the facts and circumstances of the O.A., we are of the considered view that the applicants case for R.P. No. 880 of 2013 in O.P.(CAT) No. 158 of 2010 regularization with effect from the date of their initial appointment should be considered in the light of the decision in O.A. No. 661/1991."

7. The review petitioners herein had sought to challenge the above verdict by approaching this Court by way of O.P.(CAT) No. 158 of 2010. The sequence of events was analysed and appreciated by the Bench and it was held that there was no reason to interfere with the order of the Tribunal and accordingly, interference was declined and the O.P. was dismissed. Being aggrieved of the said course and proceedings, the review petitioner took up the matter before the Apex Court by filing SLP. It is stated that an interim order of stay was obtained. Ultimately, the matter was finally heard on 23.08.2013, when the Apex Court obviously did not find it as a fit case to deal with the merits and on the other hand, granted permission to the petitioners to withdraw the SLP with liberty to file a review petition. The order passed by the Apex Court on 23.08.2013, as disclosed from Annexure B, reads as follows :

"Learned counsel for the petitioners seeks permission to withdraw the special leave petition with the liberty to file a review petition. Permission is granted. The special leave petition is dismissed as withdrawn with the liberty as prayed for."

R.P. No. 880 of 2013 in O.P.(CAT) No. 158 of 2010 The present R.P. has been sought to be instituted at the instance of the respondent in the O.A. in the said circumstances.

8. The learned standing counsel appearing for the review petitioners points out that the grounds are mainly based on the verdict passed by the Apex Court as reported in (1997) 7 SCC 30 [cited supra]. We have gone through the said decision as well. The review petitioners have pointed out in 'Ground

No.3' that the effect of the previous order passed by the Tribunal was to give appointment from the 'date of vacancy' and not from the date of initial appointment, which aspect was omitted to be considered in the judgment passed by this Court as well; at the earlier instance. On going through the observations and directions in O.A. No. 661 of 1991 [as extracted in paragraph 8 of the verdict of the Tribunal] and the consequential direction given in the present O.A., this Court does not have any doubt with regard to the course of action ordered to be pursued. The admitted facts reveal that the vacancy was created as early as in the year 1983 [as borne by Annexures A1 to A4] and as per Annexure A8 dated 18.06.1992 recommendation was forwarded to have service of the applicant regularised w.e.f. 1983 [though the same was not acceded to by the 'higher ups']. Existence of vacancies in the year 1983 is not disputed, which was taken note of by the R.P. No. 880 of 2013 in O.P.(CAT) No. 158 of 2010 Tribunal while moulding the relief. The gist of the direction in O.P (CAT) No. 661 of 1991 is to have regularization effected from the date of availability of the vacancy. At the same time, this has to be read in the light of date of initial placement given by the petitioners as 'RTP operators' and the date of initial appointment as above. If vacancies were available, whether the benefit of regularization has to be given w.e.f that date or from the date of initial appointment; is the question. This alone requires to be clarified in the present proceedings and never beyond. This is more so, since the scope of the decision of the Supreme Court [which is now pressed before this Court] i.e. (1997) 7 SCC 30 [cited supra] has already been considered by the Tribunal and held as not applicable. This Court finds that there is no error apparent on the face of the record to invoke the power of review. The power of review can never be misunderstand or misconstrued as a substitute for appeal, in view of the law laid down by the Apex Court in Meera Bhanja Vs. Nirmala Kumari Choudhary (AIR 1995 SC

455). We also find support from the rulings of the Apex Court in M/s. Thungabhadra Industries Ltd. Vs. Government of Andra Pradesh rep. by Deputy Commissioner Commercial Taxes, Anantapur [AIR 1964 SC 1372], Parison Devi Vs. Sumitri Devi [(1997) 8 SCC 715] and N. Anantha Reddy Vs. Anshu Kathuria R.P. No. 880 of 2013 in O.P.(CAT) No. 158 of 2010 [(2013) 15 SCC 534]. Interference is declined and the review petition stands dismissed.

sd/-

P. R. RAMACHANDRA MENON, JUDGE sd/-

SHIRCY V., JUDGE kmd /True copy/ P.A. to Judge