

Case relating to fixation of seniority:**Parties** : P. Pugazhendi & Others Director of Local Fund Audit**Court** : High Court of Judicature at Madras**Case No** : W.P.Nos.4248 & 47703 of 2006 & M.P.No.3 of 2006**Judges**: THE HONOURABLE MR. JUSTICE K. CHANDRU**Appearing Advocates** : For the Petitioners: A. Kalaiselvan, Advocate. For the Respondent: R. Murali, GA.**Date of Judgment** : 07-06-2011**Head Note :-**

Constitution of India - Article 226 - writ of certiorarified mandamus filed - directs the respondent to refix seniority of petitioners at the appropriate place with all consequential benefits including all other service benefits - directed to be posted along with the earlier writ petition - petitions attacking the seniority list can be entertained when affected individuals were not made as parties – Court held - direct recruits did not go unrepresented and it was not necessary to include all the 400 direct recruits as parties to the case - writ petitions dismissed.

Cases Referred :

1. A.Janardhana Vs. Union of India and others (1983) 3 SCC 601.
2. Prabodh Verma v. State of U.P. (1984) 4 SCC 251.
3. V.P. Shrivastava v. State of M.P. (1996) 7 SCC 759.
4. All India SC & ST Employees - Assn. v. A. Arthur Jeen3.
5. Indu Shekhar Singh v. State of U.P
6. M.P.Palanisamy and others Vs. A.Krishnan and others 2009 (6) SCC 428.

Judgment :-

(Prayer: W.P.No.4248 of 2006 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records of the respondent pertaining to the order Proc.Na.Ka.A.5/2978/86, dated 27.10.1999 and quash the same and consequently, to direct the respondent to refix seniority of applicant at the appropriate place with all consequential benefits.

W.P.No.47703 of 2006 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records of the respondent pertaining to the order Proc.Na.Ka.A.5/2978/86, dated 27.10.1999 and consequential confirmation order passed in Rc.No.35461/03/PA NI.II, dated 16.3.2005 quash the same and consequently, to direct the respondent to refix seniority of petitioners at the appropriate place with all consequential benefits including all other service benefits.)

Common Order

1. The first writ petitioner initially filed O.A.No.8541 of 2000 seeking to challenge an order dated 27.10.1999 passed by the respondent Director of Local Fund Audit in fixing seniority in the category of Assistant Inspector. The O.A was admitted on 22.11.2000 and it was stated that any promotion made would be subject to the result of the O.A.
2. On notice from the Tribunal, the respondent has filed a reply affidavit, dated 12.2.2001 together with supporting documents. In view of the abolition of the Tribunal, the matter stood transferred to this court and renumbered as W.P.No.4248 of 2006.
3. Even while that case is pending, one G.Purushothaman and seven others have filed W.P.No.47703 of 2006 seeking to challenge the seniority list fixed in the category of Assistant Inspector of Local Fund Audit by a communication, dated 27.10.1999. That writ petition was admitted on 11.12.2006 and it was directed to be posted along with the earlier writ petition. Accordingly, both writ petitions were listed.
4. Heard the arguments of Mr.A.Kalaiselvan, learned counsel appearing for petitioners in both writ petitions and Mr.R.Murali, learned Government Advocate appearing for the respondent in both writ petitions.
5. Before proceeding with the merits of the case, this court asked the counsel for the petitioners as to how the writ petitions attacking the seniority list can be entertained when affected individuals were not made as parties.
6. The learned counsel for the petitioner placed reliance upon a judgment of the Supreme Court in A.Janardhana Vs. Union of India and others reported in (1983) 3 SCC 601 and contended that the Supreme Court has held that since no relief is claimed against any individuals, they need not be made as parties.
7. In this context, the attention of the petitioners were drawn to the judgment of the Supreme Court in Prabodh Verma v. State of U.P. reported in (1984) 4 SCC 251.
8. However, Mr.A.Kalaiselvan, learned counsel appearing for the petitioners sought to distinguish the said judgment by stating that at the maximum, the affected persons can be proper parties, but they need not be necessary parties and their non joinder cannot be fatal to the writ petition. Reliance was placed upon the following decision in V.P. Shrivastava v. State of M.P. reported in (1996) 7 SCC 759. Emphasis was placed upon the following passage found in

paragraphs 15 to 17 of the said judgment, which are as follows:

15. In the case of *A. Janardhana v. Union of India*, a similar contention was also repelled by this Court in the following words: (SCC pp.625-26, para 36)

“In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents.”

16. Further in view of the finding of the Tribunal that Respondents 3 and 4 successfully safeguarded the interest of the promotees, the Tribunal erred in law in holding that non- inclusion of the affected parties is fatal to the proceeding. It has been held by this Court in the case of *Prabodh Verma v. State of U.P.*⁶, that: (SCC Headnote p.256)

“A High Court ought not to hear and dispose of a writ petition under Article 226 without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually.”

17. Even in *Janardhana case*⁵ referred to supra, this Court also rejected a similar objection on the ground that 9 of the direct recruits having been impleaded as party, the case of direct recruits has not gone unrepresented and therefore the non-inclusion of all the 400 and odd direct recruits is not fatal to the proceedings.

9. However, it must be stated that the Supreme Court subsequently had followed the *Prabodh Verma's case* (cited supra) in *Suresh v. Yeotmal Distt. Central Coop. Bank Ltd.* reported in (2008) 12 SCC 558. The relevant passage found in paragraphs 15 to 17 may be usefully extracted below:

15. Respondent 1 is a cooperative society. It has its own rules and bye-laws. The service rules framed by Respondent 1 stand approved by the Registrar. We have noticed hereinbefore that in the seniority list published in the year 1995, the position of the appellant was at Sl. No.

4. Those candidates whose names appeared at Sl. Nos. 2 and 3 were not impleaded as parties in the said proceeding. In their absence, the dispute could not have been effectively adjudicated upon.

16. This Court in *Rashmi Mishra v. M.P. Public Service Commission*¹ observed: (SCC pp.728-29, para 16)

"16. In *Prabodh Verma*² this Court held: (SCC pp.273-74, para 28)

"28. 'The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its officers concerned. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties' not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties."

(See also *All India SC & ST Employees - Assn. v. A. Arthur Jeen*³ and *Indu Shekhar Singh v. State of U.P.*)"

17. The dispute raised by the appellant before the Cooperative Appellate Court, therefore, was not maintainable. It was so held by the High Court also.

10. Very recently, the Supreme Court once again reiterated the principle laid down in *Prabodh Verma's* case in *Tridip Kumar Dingal v. State of W.B.*, (2009) 1 SCC 768 and reliance can be made on the following passage found in paragraph 41, which reads as follows:

41. Regarding protection granted to 66 candidates, from the record it is clear that their names were sponsored by the employment exchange and they were selected and appointed in 1998-1999. The candidates who were unable to get themselves selected and who raised a grievance and made a complaint before the Tribunal by filing applications ought to have joined them (selected candidates) as respondents in the original application, which was not done. In

any case, some of them ought to have been arrayed as respondents in a 'representative capacity'. That was also not done. The Tribunal was, therefore, wholly right in holding that in absence of selected and appointed candidates and without affording opportunity of hearing to them, their selection could not be set aside.

11. The learned counsel wanted to contend that he has a prima facie case to succeed and the grounds raised by the petitioners have found acceptance by the Supreme Court in identical circumstances vide judgment in M.P.Palanisamy and others Vs. A.Krishnan and others reported in 2009 (6) SCC 428.

12. However, it must be stated that the principal question about non joinder of parties had not been answered by the learned counsel. The reliance placed upon in V.P.Srivastava's case is misconceived. Even in that judgment the Supreme Court did not distinguish the Prabodh Verma's case. The same principle had been followed in two subsequent pronouncements of the Supreme Court referred to above. In Srivastava's case, the Supreme Court referred to A.Janarthana's case and quoted it with approval. In Janarthana's case, it must be stated that 9 direct recruits were impleaded as parties and therefore, it was held that the case of the direct recruits did not go unrepresented and it was not necessary to include all the 400 direct recruits as parties to the case.

13. It must be noted that while A.Janardhana's case is the two Judges Bench judgment, whereas Prabodh Verma's case is three judges Bench judgment and it is subsequent. The Prabodh Verma's case has been consistently followed by the subsequent benches as found in Suresh's case (cited supra) and Tridip Kumar Dingal's case (cited supra).

14. In the light of the above legal pronouncements and in view of the fact that the affected parties were not impleaded in the manner known to law, the writ petitions fail. Accordingly, both the writ petitions will stand dismissed. No costs. Consequently, connected miscellaneous petition stands closed.