

Union of India and Others Vs Dr. Ms. Beela Rajesh and Others

Court: Madras High Court

Date of Decision: March 2, 2013

Citation: (2013) 4 MLJ 139

Hon'ble Judges: Elipe Dharma Rao, J; Aruna Jagadeesan, J

Bench: Division Bench

Advocate: P. Wilson, Addl. Solicitor General for S. Udayakumar, for the Appellant; R. Singgaravelan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Elipe Dharma Rao, J.

The first respondent/applicant filed O.A. No. 870 of 2010 before the second respondent/Tribunal, challenging the

orders dated 9.2.2009 and 6.7.2010 passed by the writ petitioners/Administration, thereby rejecting her request for her reallocation to her home

State of Tamil Nadu against an insider vacancy. Since the Tribunal favoured the claim of the first respondent/applicant, the Administration has

come forward to file this writ petition. The brief facts that are necessary for the disposal of this writ petition are that the applicant, a native of Tamil

Nadu, got selected to IAS in the year 1997 and was allotted to Bihar Cadre. Even prior to her selection, she got married to Mr. Rajesh Das in the

year 1992, who is a 1989 batch IPS officer from Orissa and allotted to Tamil Nadu cadre. Therefore, she made a request to the Administration to

allot her to her native state, Tamil Nadu. Since her request was not considered by the Administration, she filed O.A. No. 132 of 1998 before CAT

and the said application was dismissed by the Tribunal, by the order dated 13.7.1998. But, it has been made clear in the said order that the

dismissal of the said application will not debar the applicant or her husband to ask for a change of cadre to a third cadre.

2. Thereafter, since a similar request of one Ms. Sarada Muraleedharan was allowed by the Ernakulam Bench of CAT in O.A. No. 308 of 2000

(which was confirmed by Kerala High Court in O.P. No. 31337 of 2001, dated 8.8.2006 and thereafter by the Honourable Apex Court in SLP.

(CC). No. 1341 of 2008, dated 4.2.2008), thereby directing the Administration to issue an order allocating her to Kerala State Cadre of IAS as

an insider of the 1990 batch, the applicant has again submitted a representation to the Administration on 26.5.2006, seeking allotment to Tamil

Nadu, on a correct scrutiny of her BC status, followed by another representation dated 4.6.2006.

3. As both the above said representations were pending, the applicant filed O.A. No. 457 of 2006 before CAT praying to consider her claim for

her transfer to the home State cadre by taking note of the allotment made in favour of one Karthikeyan, who is 3rd insider with 45th rank. In the

said O.A., the Tribunal has directed the Government of India to dispose of the representation of the applicant dated 26.5.2006 and 4.6.2006 on

merits and in accordance with law. In the meantime, the applicant was deputed to serve in Tamil Nadu in the year 2000 and again she had been

sent to Jharkhand State Cadre in 2003.

4. Since the fresh representation given by the applicant was also rejected by the Administration by the order dated 9.2.2009, the applicant filed

O.A. No. 568 of 2010 before the Tribunal. Before the Tribunal, it has been requested on the part of the applicant that a direction may be issued to

the Administration to consider and dispose of her representation dated 5.6.2009 in the light of the orders passed by Government of India, dated

1.12.2009 and 21.10.2008 and the order dated 10.4.2008 in Proc. No. 13011/22/2005-AIS(I), laying down the cadre allocation policy for the

All India Services and also the order passed by the Delhi High Court (allowing a similar request of one Mr. Ashwini Kumar Rai, IAS) in W.P.(C)

No. 5622 of 1999, dated 20.7.2007, confirmed by the Supreme Court in SLP (CC) No. 6788 of 2008, dated 9.5.2008. Thereafter, the

Administration has passed an order dated 6.7.2010, rejecting the request of the applicant. Aggrieved, the applicant has filed O.A. No. 870 of

2010 before the Tribunal and, as stated supra, since the Tribunal has allowed the claim of the applicant, the Administration has come forward to

file this writ petition.

5. On the part of the petitioners, Mr. Wilson, the learned Additional Solicitor General would vehemently argue that the earlier similar request of the

applicant having been rejected by the Tribunal by the order dated 30.7.1998 in O.A. No. 132 of 1998, the applicant is barred under the principles

of res judicata to rake-up the same plea and hence on this legal ground itself, the Tribunal should have rejected the present Original Application

filed by the applicant. Even otherwise, he would continue to argue, that an open category candidate who wishes to avail himself of a reserved

category vacancy shall be prohibited from doing so and carry forward of insider vacancy is not permissible and that no cadre transfer should be

permitted on medical or personal reasons and also on the grounds of marriage to an officer serving in a Central Service/State Service/Public

Service Undertaking or any other organization and that no selected candidate has any right to be allocated to a cadre of his choice or to his home

State. In support of his arguments, he would rely on the following judgments of the Honourable Apex Court:

1. Union of India (UOI) and Another Vs. Satya Prakash and Others,
2. M. Nagabhushana Vs. State of Karnataka and Others,
3. Union of India (UOI) Vs. Ramesh Ram and Others etc.,
4. Union of India (UOI) Vs. Mhathung Kithan and Others,
5. Union of India Vs. Mamta Anurag Sharma and Another, and
6. Union of India (UOI) and Others Vs. Rajiv Yadav, IAS and Others, .

6. In the first judgment cited above, it has been held by the Honourable Apex Court that:

If a candidate of the Scheduled Caste, the Scheduled Tribe and Other Backward Class, who has been recommended by the Commission without

resorting to the relaxed standard could not get his/her own preference in the merit list, he/she can opt a preference from the reserved category but

while computing the quota/percentage of reservation he/she will be deemed to have been allotted a seat as an open category candidate (i.e. on

merit) and not as a reserved category candidate recommended by the Commission by resorting to the relaxed standard. Simply because he opted

a preference from the reserved category would not exhaust the quota of OBC category candidate selected under the relaxed standard.

7. In the second judgment cited above, the Honourable Apex Court has dismissed a petition filed by the appellant therein questioning land

acquisition proceedings, which was already decided by the Supreme Court in another case 2006 (10) SCC 683, with an exemplary cost of Rs. 10

lakhs on the ground that the present petition filed by the appellant is barred by the principles of res judicata.

8. In the third judgment cited above, the Honourable Apex Court has held that "an open category candidate who wishes to avail himself of a

reserved category vacancy shall be prohibited from doing so."

9. In the fourth judgment, the Honourable Apex Court has held that an insider vacancy cannot be carried forward for non-availability of insider,

10. In the fifth judgment, the Honourable Apex Court has held that "transfer from cadre in one State to cadre in another State of all India Service

Offices on marriage to another member of an All India Service to the home State of the spouse seeking transfer is not permissible.

11. In the sixth judgment cited, the Honourable Apex Court has held that a member of an All India Service has no right to claim allocation to a

State of his choice or to his home State.

12. Submitting the above judgments, the learned Additional Solicitor General would argue that no similar request of any officer was acceded to by

the Government and they have adopted uniform policy and would pray to set aside the order of the Tribunal.

13. On the other hand, the learned counsel appearing for the first respondent/applicant would argue that there is complete non-application of mind

on the part of the Administration in considering the representations of the applicant. He would further argue that the Administration has failed to

consider the crucial fact that the applicant's marriage took place five years before her selection to IAS with her IPS husband. He would also

submit that similar requests of some of the officers were considered favourably by the Administration and rejection of the request of the applicant is

nothing but discrimination. He would argue that the Tribunal is perfectly right in accepting the claim of the applicant/first respondent and would pray

to dismiss this writ petition.

14. We have paid our anxious consideration to all the facts and circumstances, in the light of the materials available on record.

15. First of all, taking up the point of res judicata argued on the part of the Administration that the first respondent/applicant is barred under the

principles of constructive res judicata, since her request was already turned down by the Tribunal on an earlier occasion in O.A. No. 132 of 1998,

dated 30.7.1998 and therefore, the Tribunal is not correct in entertaining the present plea of the applicant, it is to be stated that her earlier

representations were rejected by the Administration based on the earlier cadre policies and since the cadre policy has undergone a sea change in

the year 2008, which is available at Page No. 49 of the typed set of papers filed by the Administration/petitioners, the applicant has again knocked

the doors of the Administration and thereafter the Tribunal. As could be seen from the records, the earlier representations of the applicant/first

respondent were rejected by the Administration, in the light of the earlier policy of the Government and since the same has changed vide Office

Memorandum No. 13011/22/2005-AIS(I), dated 10.4.2008, which was not the issue before the Tribunal in O.A. No. 132 of 1998, the

subsequent representations of the applicant in the light of the changed policy cannot at all be said to have been barred under the principles of res

judicata We would have appreciated the contentions of the Administration in this regard, had the applicant resorted to the present litigation under

the very same earlier policy of the Government and not under the revised policy. Therefore, we reject this argument advanced on the part of the

Administration.

16. In the considered opinion of this Court, the Administration has approached the issue of the applicant in a more hyper technical manner, rather

than on humanitarian considerations and they have ignored their own policy of the year 2008. This Court would have appreciated the stand and

arguments of the Administration, had it been the case that the first respondent/applicant, after selection to IAS got married to her husband, an (PS

officer of the 1989 batch, knowing pretty well that she cannot be allotted to the state where her husband is working. The material on record made

it unambiguously clear that well after her marriage in the year 1992, she got selected to IAS in the year 1997 and was allotted to Bihar, and after

bifurcation to Jharkhand, by the Administration and the applicant is making all her frantic efforts to join her family, which has not been given proper

attention by the Administration, thus leaving the applicant to repeatedly knock the doors of Administration and the legal fora.

17. From the materials placed on record it is seen that the first respondent/applicant belongs to BC community. But, since there was no "BC

creamy layer" heading given in the application form, she appeared for UPSC examination as a general category candidate, purely for the purpose

of meritorious selection. It is not and cannot be the case of the Administration, that for cadre allocation there is any concept of creamy layer and

therefore, in the opinion of this Court, the applicant/first respondent would be entitled for BC insider seat in the State of Tamil Nadu. However,

there cannot also be any doubt, in view of the settled position of law now, that no candidate will have any legal right to claim a particular cadre

allocation or to the home State cadre in view of the law declared by the Honourable Apex Court in Union of India and Others v. Rajiv Yadav,

IAS and Others (supra). But, as stated already, the applicant had asked for transfer only on the ground that her husband, who is a 1989 batch IPS

officer is working in Tamilnadu and in the light of the changed policy of the Government. It is also seen that though the applicant is of 1997 batch,

she spent only 3 1/2 years in Jharkhand and rest of her service was spent only in Tamil Nadu, on deputation and the Appointments Committee of

the Cabinet itself had approved her deputation. The other "option" given to the applicant by the Administration that her husband may apply for

cadre change to the cadre of the applicant i.e. Bihar/Jharkhand also cannot be appreciated for the simple reason that the husband of the applicant

is in Tamil Nadu for the last more than 20 years rendering his services as senior Police Officer, where field conditions play major role and it would

be very much difficult for him to seek transfer to another cadre at this distant point of time.

18. It is also to be stated that the Administration has considered similar requests of some of the Officers, to explain one Mr. Akshat Gupta, IAS

was transferred on 21.10.2008 (available at page No. 58 of the typed set of papers of the petitioners/administration) from the IAS Cadre of

Gujarat to the IAS cadre of Uttarakhand on the ground of marriage to Ms. Ridhim Aggarwal, IPS (batch 2005) Uttarakhand and one Mr.

Rajendra Cholan, IAS was transferred on 14.12.2009 (available at Page No. 64 of the typed set of papers of the petitioners) from Assam-

Meghalaya cadre to Karnataka cadre on the ground of marriage to Ms. Deepa, M., IAS. When similar is the case of the applicant, we wonder as

to why the applicant was discriminated by the Administration. When the new policy of the Government is favouring such transfer, the

Administration should have followed the same, while considering the representations of the applicant, given after the new policy of the Government.

Since they have failed to do so, it amounts to hostile discrimination. Therefore, we find every justification in the prayer of the first

respondent/applicant, which has been rightly accepted by the Tribunal. With regard to the judgments relied on by the learned Additional Solicitor

General, appearing for the Administration, it is to be stated that inter-cadre transfer of the officers in the cases before the Honourable Apex Court

were considered in the light of the guidelines/policy decision dated 30.7.1984 (with regard to the fourth judgment above, in Union of India v.

Mhathung Kithan (supra) case) and 19.9.1995 (with regard to the fifth judgment in Union of India v. Mamta Anurag Sharma and Another (supra)

case). Further, in those cases, it is given to understand by us, that the marriage of the All India Service Officers took place after they entered into

service. But, in the case on hand, as has already been stated supra, the marriage of the applicant took place five years before her entering into

service with the IPS officer of Tamil Nadu cadre. Further, the present request of the applicant is based on the new revised policy of the

Administration of the year 2008. Also, the present litigation has been initiated by the applicant consequent to the revised policy decision of the

Administration. Likewise, the applicant is not seeking to enjoy any reserved category vacancy, as is the case in first and third judgments cited

above. Therefore, for all the above reasons, the judgments 1 to 5 relied on by the learned Additional Solicitor General, will not come to the rescue

of the Administration. With regard to the sixth judgment cited above, there is no doubt that an All India Service has no right to claim allocation to a

State of his choice or to his home State. But, in view of the changed policy of the Government, and in view of the similar requests having already

been considered and favourable orders passed by the Administration, we have no doubt in upholding the decision of the Tribunal, which has

committed no illegality or irregularity in granting the prayer of the first respondent/applicant.

Accordingly, this writ petition filed by the Administration is dismissed. No costs. The Administration is directed to pass necessary orders in favour

of the first respondent/applicant within eight weeks from the date of receipt of a copy of this order.