

CASE NO.:
Contempt Petition (civil) 248 of 2007

PETITIONER:
Promotee Telecom Engineers Forum & Ors.

RESPONDENT:
D.S. Mathur, Secretary, Department of Telecommunications

DATE OF JUDGMENT: 25/03/2008

BENCH:
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:
J U D G M E N T
CONTEMPT PETITION (C) NO.248 OF 2007
IN I.A. NO. 16 IN
CIVIL APPEAL NO. 4339 OF 1995

V.S. SIRPUKAR, J

1. This is a Contempt Petition filed by Promotee Telecom Engineers Forum and others. They complain that the Department of Telecommunications has flouted the judgment and directions dated 28.9.2006. The observations on which the petitioners rely are as follows:

\023The question then arises as to whether the applicants can claim the protection of their seniority and consequent promotion on the basis of observations and the clarification contained in the judgment of this Court reported in (2000) 9 SCC 71. Having considered all aspects of the matter, we are satisfied that those whose cases stand on the same footing as that of Parmanand Lal cannot now be adversely affected by re-determination of their seniority to their disadvantage relying on the later judgment of this Court in C.A. No. 4339 of 1995 reported in (1997) 10 SCC 226 (supra) as affirmed by this Court in its judgment reported in (2000) 9 SCC 71 (supra).\024

2. The petitioners rely on the further directions given by the Court. They are to the following effect:

\023We, therefore, direct that such of the applicants whose seniority had been determined by the competent authority, and who had been given benefit of seniority and promotion pursuant to the orders passed by Courts or Tribunals following the principles laid down by the Allahabad High Court and approved by this Court, which orders have since attained finality, cannot be reverted with retrospective effect. The determination of their seniority and the consequent promotion having attained finality, the principles laid down in later judgments will not adversely affect their cases.

This Court has clearly clarified the position in its aforesaid judgment. The observations made by this Court while disposing of the appeal of Parmanand Lal are also pertinent. This Court clearly laid down the principle that the seniority fixed on the basis of the directions of this Court which had attained finality is not liable to be altered by virtue of a different interpretation being given for fixation of seniority by different benches of Tribunal. Consequently, the promotions already effected on the basis of seniority determined in

accordance with the principles laid down in the judgment of the Allahabad High Court cannot be altered.

Having regard to the above observations and clarification, we have no doubt that such of the applicants whose claim to seniority and consequent promotion on the basis of the principles laid down in the Allahabad High Court's judgment in Parmanand Lal's case have been upheld or recognized by Court or Tribunal by judgment and order which have attained finality will not be adversely affected by the contrary view now taken in the judgment reported in 1997(10) SCC 226. Since the rights of such applicants were determined in a duly constituted proceeding, which determination has attained finality, a subsequent judgment of a Court or Tribunal taking a contrary view will not adversely affect the applicants in whose cases the orders have attained finality. We order accordingly.

Before parting with this judgment we may observe that we have not laid down any principle or law having universal application. We have only clarified and given effect to an earlier judgment of this Court rendered in an extraordinary situation.

3. The above mentioned observations and directions were issued at the instance of the Promotee Telecom Engineers Forum and Ors. (petitioners herein).

4. The petitioners contend that all of them (45 in number) would be covered by these directions in as much as their claim to seniority and consequent promotion was finally recognized by the Tribunal and or the Court earlier and as such that claim could not be adversely affected only because of the judgment reported in 1997(10) SCC 226. The aforementioned directions were passed in I.A. No. 16 in Civil Appeal No. 4339 of 1995 which was filed by the present Contempt Petitioners.

5. In their petition, the petitioners have made the reference to the rules called Telegraph Engineering Service Class-II Recruitment Rules, 1966 framed in exercise of powers conferred by the proviso to Article 309 of the Constitution of India and to the instructions contained in paragraph 206 of the Post and Telegraph Manual (P&T Manual), Volume IV. It is then asserted that as per these rules, those who had passed the departmental qualifying examination earlier were ranked senior as a group to those who passed the examination subsequently. The change brought in by 1966 Rules was also referred to. A reference is then made to the writ petition filed by one Parmanand Lal of 1966 batch and Brij Mohan of 1965 batch who had qualified in the examinations held in 1974 complaining against their placing in the eligibility list below the last man who qualified the examination in 1975. It is then stated that the High Court of Allahabad allowed the writ petition granting relief to Parmanand Lal and Brij Mohan. The Judgment of the Allahabad High Court was challenged by Special Leave Petition filed by Union of India which was dismissed by this Court.

6. The petitioners then assert that they had obtained similar orders from various Benches of the Central Administrative Tribunal based on the principles laid down by the High Court of Allahabad and those judgments had attained finality in as much as in most cases they were confirmed by this Court and in some other cases the department did not prefer any appeal against the order of the Tribunal. The petitioners then assert that they were given the benefit of seniority applying the principles laid down in Parmanand Lal's case and their seniority in the cadre was fixed on the basis of the order in which they had passed departmental examination and as such they were placed above Mr. M.P. Belani, Mr. B.C. Biradar and Mr. A.V. Kulkarni respondents herein.

7. The petitioners then refer to the judgment delivered by this Court on 26.4.2000 in Union of India vs. Madras Telephone SC & ST Social Welfare Association reported in 2000(9) SCC 71 wherein this Court had taken a view whereby this Court did not approve of the view of the Allahabad High

Court and held that the statutory rules alone would govern the preparation of eligibility lists and the instructions in paragraph 206 of the P&T Manual would be of no consequence. The petitioners, however, assert that this Court was pleased to protect those persons like the petitioners herein who had already obtained the judgments in their favour and which judgments had obtained finality. The petitioners then assert that in the year 2001 when the seniority lists were revised, the department protected the seniority of Parmanand Lal by placing him above Shri Biswanath Pradhan who had passed the examination after Shri Parmanand Lal. They, however, further complain that the same principle was not applied and all the petitioners were superseded by various persons including Shri M.R. Belani, Shri B.C. Biradar and Shri A.V. Kulkarni who had passed the examination after the petitioners.

8. The petitioners then make a reference to the application for clarification being I.A. No. 16 in Civil Appeal No. 4339 of 1995 which was allowed by the Court by its detailed order dated 28.09.2006.

9. It is further complained that the respondent department did not make any attempt to implement the said judgment dated 28.09.2006 and therefore the petitioners were constrained to send representations dated 16.10.2006 and 15.01.2007 explaining to the Department that their seniority was required to be fixed above Shri M.R. Belani, Shri A.V. Kulkarni and Shri B.C. Biradar.

10. It is then complained that the department passed an order dated 20th January, 2007 wherein the petitioners were totally deprived of the seniority to which they were entitled. In that, they were given changed seniority number but in effect, they were continued to be shown junior to Shri M.R. Belani, Shri A.V. Kulkarni and Shri B.C. Biradar who had superseded the petitioners in the revision of seniority lists in the year 2001. According to them, it was therefore that the order dated 20.01.2007 was necessitated. In paragraph 14 of the Contempt Petition, the petitioners have shown the example of Shri A.S. Choudhary as to how he was superseded by Shri Belani who was shown senior to the petitioners. Similarly, the petitioner also gave an example of Shri Rajender Prasad as well as Shri Anil Gupta in the similar manner being shown junior to Shri B.C. Biradar and Shri A.V. Kulkarni respectively.

11. A reference was then made to the contempt petition being contempt petition no. 36 of 2007 which was disposed of by this Court on 12.03.2007 with a direction that the respondent department to disclose the reasons for changing the seniority lists in the manner in which it has been done and to respond to their representation made by the petitioner. It is then pointed out that the Office Order came to be issued dated 30th March 2007 by respondent holding that the benefit of the order of this Court would be admissible only to the applicants who were parties before this Court. The petitioners, therefore, contended that the respondents by their interpretation restricted the scope of the judgment and directions of the order passed by this Court nullifying the earlier protection granted by this Court to the petitioners and that this action is a deliberate, contumacious and willful disobedience of the judgment of this Court. The petitioners have made a reference to a letter dated 19.04.2007 to the respondent department requesting to re-consider the above mentioned letter dated 16.04.2007 wherein it was explained that the petitioners' seniority was liable to be protected as per the order passed by this Court from time to time and more particularly in its last order. However, the department by its letter dated 04.06.2007 stated that the issues raised had already been taken into consideration by it and thereby refusing to act on the letter dated 19.04.2007. In this view of the matter, the contemnors contended before us that the department has committed contempt of court. They also pray for immediate directions regarding the restoration of their seniority following the principles laid down by Allahabad High Court Judgment in Parmanand Lal's case as approved by this court that is to say, in accordance with the year of passing of their departmental examination.

12. The contempt application is opposed on behalf of the department and the department has filed the detailed counter.

13. Learned counsel for the respondent contends that the respondent had sought the legal advice and on that basis they have implemented the

order passed in respect of the petitioners herein. According to the Department they have re-arranged the seniority and that is how the petitioners have been put at the higher position in the seniority-list. Learned counsel also urged that this Court by its order dated 12.3.2007 had dismissed the Contempt Petition with the direction to respond to the representations dated 16.10.2006 followed by a reminder within six weeks. This Court had left it open to the petitioners to take appropriate action in law if they felt aggrieved by the order passed on those representations. Accordingly, the learned counsel pointed out that the representations were disposed of and, therefore, there was no question of any contempt having been committed and if petitioners felt aggrieved, they ought to have challenged the orders passed by the Department disposing of the representations by way of an Original Application before the Central Administrative Tribunal as it amounted to a fresh cause of action.

14. We were taken through the records of the earlier orders passed by this Court and it was tried to be justified that the seniority-lists were correctly prepared and the seniority was also correctly fixed. However, it was admitted and asserted before us that according to the Department S/Shri Belani, Biradar and Kulkarni, who were junior to the applicants in the seniority-list 1-17 issued in pursuance of the Allahabad High Court judgment dated 20th February, 1985, have become senior to the applicants in the seniority-list 1-5 issued as per the guidelines of this Court contained in the order dated 26.4.2000 in CA No.4339 of 1995 in which the criteria for fixation of seniority was recruitment year. In paragraphs (iii) to (xvii) it is asserted as under:

\023This Hon\022ble Court in its order dated 28.9.2006 in IA No.16 in CA 4339 of 1995 has observed that they have not laid down any principle of law having universal application. It means that the entire seniority list prepared on the basis of Recruitment Year as per the direction contained in this Hon\022ble Court\022s order dated 26.4.2000 in CA No.4339 of 1995 stands. This Hon\022ble Court in its order dated 28.9.2006 has directed to ensure that the applicants do not suffer adversely due to implementation of this Hon\022ble Court\022s judgment dated 26.4.2000 in CA 4339 of 1995 and that has been ensured by the implementation orders dated 21.1.2007 and 9.3.2007.\024

After this a table has been given wherein S/Shri Belani, Biradar and Kulkarni have been shown seniors to all the applicants. It is then asserted at the end of the table:

\023From the chart given above it is clear that Shri Belani/Biradar/Kulkarni are senior to all the applicants in respect of Recruitment Year and, therefore, they are senior to the applicants in the seniority list prepared on the basis of the Recruitment year as per the guidelines of this Hon\022ble Court in their order dated 26.4.2000 in CA No.4339/1995 and in their judgment dated 28.9.2006, This Hon\022ble Court has clearly stated in last para of the judgment that \023before parting with this judgment we may observe that we have not laid down any principle or law having universal application. We have only clarified and given effect to an earlier judgment of this court rendered in an extraordinary situation\024. From the position as explained above the order dated 28.9.2006 of this Hon\022ble Court has been fully complied with by the respondent and there is no deliberate and willful disobedience of the judgment of this Hon\022ble Court. Therefore, the claim of petitioners regarding seniority at par with Shri Belani/Biradar/Kulkarni is baseless and devoid of merits. Accordingly the representations of the petitioners have been disposed of by letter dated 10.4.2007.\024

From this counter it is clear that inspite of the fact that the petitioners\022 seniority was finally decided by the judgment in Parmanan Lal\022s case and the petitioners\022 claims were also accepted by the various courts which verdicts had become final, yet the respondent has moved on the basis of

later judgment of this Court dated 26.4.2000 interpreting it in its own manner. The interpretation which has been put forward by the Government is that the advantage of the judgment was available only to those employees who were parties to that particular petition.

15. It is obvious that a completely wrong view has been taken by the Government. It was specifically held by this Court in its order dated 28.9.2006 that such of the employees, whose claims for the seniority on the basis of the qualifying year had become final because of the orders of the courts, should not be disturbed on account of its subsequent judgment dated 26.4.2000. There can be no doubt and it is also admitted that all the applicants were senior to S/Shri Belani, Biradar and Kulkarni on the basis of their having passed the examination earlier in the year 1974 or so. Learned counsel also agreed that in the seniority-list, based on the judgment of the Allahabad High Court, the applicants were senior whereas S/Shri Belani, Biradar and Kulkarni were juniors because they had passed the examination later on, though they were senior in service to the petitioners. Once this Court, in its order dated 28.9.2006 had declared that the earlier seniority gained on the basis of the court's orders was not to be disturbed, the respondent-Government was bound to keep the seniority of the applicants untouched. It has been argued before us that their numbers in the seniority were improved. However, we cannot forget the fact that S/Shri Belani, Biradar and Kulkarni were placed above these applicants which is clear from the table given at the end of para (iv) of the counter affidavit. This could not have been permitted and it was indeed not permitted by this Court. We cannot accept the so-called interpretation put forward by the respondent on the order that the benefit of the judgment of this Court would be available only to those who were parties in that particular appeal. Such is not the import at all. The observations of this Court in order dated 28.9.2006 are extremely clear.

16. It is nowhere asserted by the respondent that the rights of the petitioners were not finally crystallized by the orders of the Tribunal and/or courts. Indeed that could not be the position as otherwise the petitioners could not have been put above S/Shri Belani, Biradar and Kulkarni. It may be that the seniority of the applicants was restored and was placed at the same place in the earlier seniority-list, however, that by itself cannot be a proper implementation since the seniority of S/Shri Belani, Biradar and Kulkarni was not only improved but they were rendered senior to all the applicants which was not the position earlier. It is, therefore, clear that the order of this Court dated 28.9.2006 has been clearly breached. The so-called interpretation put forth by the respondent is wholly incorrect.

17. We would have ordinarily taken a very strict view of this obvious breach committed. However, considering that the matter is very old and is also a complicated one, there can be a scope for misunderstanding of the order of this Court. We, therefore leave it at that.

18. We are not impressed at all by the contention of the learned counsel appearing on behalf of the respondent that since the respondent has passed the orders disposing of the representations of the petitioners, the only way left for the petitioners was to challenge the same by way of an independent Original Application before the Tribunal. It is more than a decade that the petitioners are fighting for their rights. Their rights had already been crystallized by various orders passed by the Tribunals and the courts which fact is not denied by the respondent. On the top of it, the petitioners were again required to come before this Court by way of an Interim Application being IA No.16 and that has resulted in denial of the fruits of the orders which were passed in their favour by the Tribunals and the courts. Under such circumstances, to push them again to file Original Application challenging the obviously erroneous orders passed by the respondent disposing of the representations of the petitioners would be a travesty of justice.

19. We, therefore, direct that the respondents shall re-arrange the seniority in terms of the principles laid down in Parmanand Lal's case restoring their earlier position and shall not put any employee over and above the present petitioners on the basis of the seniority in service in the entry year, more particularly S/Shri Belani, Biradar and Kulkarni shall not be put over and above the petitioners herein. This shall be done within 8

weeks from the date of this judgment.

20. In the result the present petition is allowed. However, in the circumstances we pass no order as costs.

JUDIS