

(1998) 07 AP CK 0004
In the Andhra Pradesh High Court
Case No : W.A. No. 96 of 1997

A.P. State Essential Commodities Corporation Ltd., Civil Supplies Bhavan, Somajiguda, Hyd. and Another	APPELLANT
Vs	
Kurumardhali Raghuramam and Others	RESPONDENT

Date of Decision : 01-07-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 32

Citation : (1998) 4 ALD 496 : (1998) 4 ALT 453

Hon'ble Judges : Ramesh Madhav Bapat, J;P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : Mr. V.T.M. Prasad, A.G, for the Appellant; Mr. V. Srinivas and Government Pleader for Civil Supplies, for the Respondent

Judgement

P. Venkatarama Reddi, J.—Respondents 1 to 25 herein filed writ petition No. 15544 of 1994 seeking the relief to declare paras (i), (ii) and (iii) of G.O.Nos. 87 and 88 (Irrigation & C.A.D.) dated 26-3-1993 as arbitrary and unreasonable and violative of Articles 14 and 16 of the Constitution and to direct the respondents to absorb them in the Andhra Pradesh State Civil Supplies Corporation by taking into consideration their service rendered upto 1-4-1991 for all purposes including promotions and pay scales and to protect the scale of pay drawn by them in the erstwhile A.P. State Construction Corporation Limited. The said writ petition was allowed by striking down the G.Os. to the extent that the length of service put in by the writ petitioners in the A.P. State Essential Commodities Corporation (first appellant herein) was not taken into account. As regards the pay scales, the learned single Judge observed that the Government is bound to protect the pay scales which they were getting while they were employed in the Construction Corporation Limited. The writ petition was "accordingly allowed". Aggrieved by the judgment in the writ petition, the present writ appeal is filed by the A.P. State Essential Commodities Corporation and the A.P. State Civil Supplies Corporation who were respondents 2 and 3 in the writ petition.

2. Respondents 1 to 25 (herein after referred to as the petitioners) are presently working in the A.P. State Civil Supplies Corporation Limited as Assistant Accounts Officers, Senior and Junior Assistants etc. They were originally employed in the A.P. State Construction Corporation Limited which practically ceased to function from the year 1984 onwards. Apprehending that the employees will face retrenchment, they moved the Supreme Court by filing Writ Petition No. 6001 of 1983 under Article 32 of the Constitution. The said writ petition was disposed of on 26-11-1986 by a short order which is extracted hereunder:

"We have carefully considered the matter and after hearing learned Counsel for the parties, we direct that the employees of the Andhra Pradesh State Construction Corporation Ltd., whose services were sought to be terminated on account of the closure of the Corporation shall be continued in service on the same terms and conditions either in the Government Department or in the Government Corporations. The writ petition is disposed of accordingly."

3. The position prior and subsequent to the decision of the Supreme Court is that the petitioners were sent on deputation, after a.i interview, to the A.P. State Essential Commodities Corporation between the years 1984-89. The deputation was initially for one year. It was mentioned in the order that the employees concerned will be eligible to the basic pay, dearness allowance and other allowances as applicable to the A.P. State Essential Commodities Corporation Employees. With effect from 1-10-1991, the A.P. State Essential Commodities Corporation also became defunct inasmuch as the functions of the said Corporation were transferred to the A.P. Civil Supplies Corporation (second appellant herein). Accordingly, the employees who were working on deputation in A.P. State Essential Commodities Corporation were transferred to A.P. State Civil Supplies Corporation. It was mentioned in the relevant order that they should continue to work on deputation with effect from 1-11-1991 on the usual terms and conditions of deputation. Some of the staff were however taken back on deputation to A.P. State Essential Commodities Corporation as the process of liquidation was not completed. But within a short time, they all joined the service of A.P. Civil Supplies Corporation. The A.P. Construction Corporation Limited in which the petitioners were originally employed was completely wound up with effect from 1-4-1991. The Government by G.O.Ms.No.87 (Irrigation and C.A.D.) dated 26-3-1993 issued orders providing for terms and guidelines for absorption of erstwhile staff of A.P. State Construction Corporation to other Government Departments/Corporations in which they were deployed. The relevant paras of the said G.O. are extracted hereunder:

"(8) xxxx xxxx

(i) The employees are given the benefit of counting the service rendered in A.P. State Construction Corporation Limited, as qualifying service for purpose of retirement and other service benefits, except for promotion, duly protecting their scale of pay and grade of the employees.

(ii) The staff of erstwhile A.P. State Construction Corporation Limited have to take "last rank" in the category on the date of their absorption i.e. 1-4-1991 for purpose of promotion to higher post/ category duly protecting the inter-se-seniority of the employees of A.P. State Construction Corporation Limited.

(iii) The date of absorption of employees of Corporation in various Departments/ Corporation may be taken as 1-4-1991 being the date of final closure of the Corporation.

(iv) From the date of absorption, the service conditions, rules, regulations and other benefits as enjoyed by the respective Government departments/ Corporations where they have been absorbed, have to be applied to the erstwhile A, P. State Construction Corporation Limited employees.

(vii) The employees shall be absorbed in the relevant Government Category subject to the condition that they will continue to draw the pay scale they are drawing and they should take the last rank, A Sub-Committee with the Engineer in Chief, Joint/Secretary/Deputy Secretary to Government, Irrigation and C.A.D. Department and a representative of the Finance Department shall be constituted to go into the cases where the Schedule I scales allowed to the employees of the erstwhile A. P. State Construction Corporation Limited, happen to be in between the categories and make suitable recommendations to Government for final decision."

4. As regards the employees of work charged establishment, more or less similar orders were issued on the same day i.e. on 26-3-1993 in G.O.Ms.No.88. The relevant paras of the G.O. are extracted hereunder:

"(i) To absorb the work charged employees on as is where is basis, duly protecting the scale of pay and grade. In other words, out of 1978 work charged establishment 1965 nos. (who are working in Irrigation and other Government Departments) would be absorbed in Government Departments, and the rest i.e. work charged establishment would be absorbed in Corporation,

(ii) As orders are issued in G.O.Ms.No.67, Irrigation and CAD (PW.EstU) Department, dated 30-3-1991 finally winding up of the A.P. State Construction Corporation Limited, the cut off date may be taken as 1-4-1991. With reference to which date the employees of erstwhile A.P. State Construction Corporation Limited have to be absorbed in Government Departments, and other Corporations as the case may be.

(iii) The rules and service conditions as applicable to the employees of absorbing Departments/Corporation shall be applicable to the employees of erstwhile A.P. State Construction Corporation Limited also.

(iv) All the work charged establishment belonging to the erstwhile A.P. State Construction Corporation Limited will take last rank, as on 1-4-1991, the Department/Corporation in which they are absorbed.

(v) Though the employees of erstwhile A.P. State Construction Corporation Limited are deemed to have been absorbed with effect from 1-4-1991 they are given the benefit of counting the service rendered in the A.P. State Construction Corporation Limited as qualifying service for the purpose of retirement and all other service benefits except for promotion and the rules of work charged establishment as applicable to the Department, are applicable to the erstwhile A.P. State Construction Corporation Limited Work charged employees also (i.e. G.O.Ms.No.130, dated 18-3-1981).

5. Para (vi) of the G.O.88 is similar to that of para 8(vii) of G.O.87 and is therefore not extracted. As already noticed, the writ petitioners (respondents 1 to 25 herein) are aggrieved by the prescription of cut off date as 1-4-1991 for the purpose of counting length of service in the Corporation in which they were absorbed. They are also seeking for the relief that they should be fitted into the same scales of pay as were existing in the parent Corporation and to extend the benefit of revision of pay scales and allowances accordingly.

6. The learned single Judge observed: "It is true (that the Government can fix a relevant date for purpose of determining the seniority and counting the service for promotion. However, the judgment of the Supreme Court says that the employees of the Construction Corporation Ltd., should be continued on the same conditions of service." After referring to the decision of the Supreme Court in K. Madhavan and Another Vs. Union of India (UOI) and Others, , the learned Judge observed as under:

"However, in the present case, the petitioners were employed in the erstwhile A.P. State Construction Corporation Ltd., which was abolished. Therefore, the observations made by the Supreme Court cannot be extended so as to take into account the service rendered by the petitioners in the erstwhile Construction Corporation Ltd.,"

At the same time, the learned Judge held:

"However, the observations are applicable to the service rendered by the petitioners in the second respondent Corporation, On the closure of the second respondent Corporation, the activities of the second respondent Corporation are taken over by the third respondent Corporation. Therefore, the services of the petitioners in the second respondent Corporation cannot be wiped out."

Thus, the learned Judge directed that the writ petitioners should be given weightage of service rendered by them in the A.P. Essential Commodities Corporation (first appellant herein), but not the entire length of service rendered by them in the parent Corporation.

7. As regards the pay scales, it was observed that "the Government is bound to protect their pay scales which they were drawing while they were employed in the Construction Corporation Limited". Adverting to the argument that the Civil Supplies Corporation has to maintain two different scales of pay for the same

category, the learned Judge observed:" if the respondents feel that two pay scales cannot be continued in the Corporation, it is for them to seek appropriate modification of the judgment of the Supreme Court." The writ petition was ""accordingly allowed".

8. We agree with the learned Advocate General that the judgment of the Supreme Court in W.P.No.6001 of 1983 does not make it obligatory to allow the employees of Construction Corporation to carry with them the entire length of service rendered by them in the said Corporation. It is now well-settled that when there is a merger or integration of certain employees coming from a different stream with the employees working in an altogether different organisation or department, a reasonable principle of seniority could be evolved on balancing the interests of both categories. The cut-off date 1-4-1991 was adopted for the reason that A.P. Construction Corporation Ltd., was completely wound up with effect from that date and the employees of the said Corporation including the writ petitioners who were till then on deputation to the other Corporations, finally renounced their status as employees of the Construction Corporation Limited on and from that date. With the completion of process of winding up of A.P. Construction Corporation Limited and its extinction as a Corporation entity, the way was clear for the absorption of the erstwhile employees of the Corporation into the Civil Supplies Corporation in which they had been working on deputation or deployment. That apart, in the process of absorption of employees coming from a different stream or organisation, it must be kept in view that too much of detriment to the interests of existing employees of the Corporation into which the writ petitioners were absorbed, should not be caused. In fact, basically, the writ petitioners are not faulting the principle evolved in the impugned G.Os. But, they want to claim an advantage on a literal interpretation of the Judgment of the Supreme Court in W.P.No.6001 of 1983- The Supreme Court's decision must be understood in the light of the contextual facts and the grievance made out before the Supreme Court. The order of the Supreme Court came to be passed in order to relieve the writ petitioners of the consequences of retrenchment. The words "same terms and conditions" used by their Lordships of the Supreme Court must be understood in the proper perspective. The under-lying intention behind the order of the Supreme Court was to ensure that their absorption is made in other Government Corporations or Departments without affecting their emoluments or status and other conditions of service such as leave, retirement benefits and the like. The direction of the Supreme Court cannot be construed as a mandate to the State Government to fix up the seniority in the organisation in which they are absorbed by giving them weightage to the entire length of service in the parent Corporation or the Essential Commodities Corporation. In fact, the learned single Judge did not go the whole hog to direct that the length of service rendered by them in the parent Corporation should also be tagged on to their service in the new Corporation. We do not agree with the reasoning of the learned single Judge that the writ petitioners should be given the benefit of service rendered by them in the A.P.

Essential Commodities Corporation to which they were sent on deputation in the first instance merely because the activities of the said Corporation were taken over by the Corporation into which they were eventually absorbed i.e. Civil Supplies Corporation. It is also pertinent to notice that for the purpose of retirement and other service benefits except promotion, the service rendered by the writ petitioners in the Construction Corporation Limited is being taken into account as per the directives issued in the impugned G.Os.

9. Having regard to all these considerations, we are of the view that the directives or guidelines issued by the Government in the two G.Os. are quite reasonable and not opposed to the Judgment of the Supreme Court, nor do they violate Articles 14 and 16 of the Constitution.

10. The stand taken by the Civil Supplies Corporation (second respondent) in the counter-affidavit is that the writ petitioners are still on deputation and that their absorption and revision of scales has to be done as per the needs of the Corporation and as per the Rules. It is also stated that the Government were addressed in May, 1991 to issue orders absorbing them in other Government Departments/Corporations wherever there are vacancies. It is not in dispute that the Civil Supplies Corporation which is wholly owned and controlled by the State Government is bound to carry out the directives issued by the Government as regards the service conditions of employees etc. It is no longer open to the second appellant Corporation to take a stand that the process of absorption is not yet complete despite the Government Orders. In fact, no such argument has been advanced before us by the learned Advocate General appearing for the appellants. Of course, if the second appellant Corporation is having surplus staff, the Government can be approached to absorb them in other Corporations without detriment to the existing benefits to the writ petitioners.

11. As regards the protection of pay, we agree with the learned single Judge to the extent she held that the decision of the Supreme Court mandates the State Government and the appellant Corporation to do so, so that they will not be drawing anything less than what they were drawing in the parent Corporation and the Essential Commodities Corporation to which they were transferred on deputation. As far as pay scales are concerned, there should be no bar to fit them into appropriate pay scales nearest or corresponding to the pay scales in which they were placed in the parent Corporation. It does not follow from the Supreme Court's decision that new pay scales applicable exclusively to absorbed employees should be created. A pragmatic and realistic view has to be taken into account. In regard to certain categories of posts, the starting pay in the relevant pay scale in the appellant Corporation may be less. However, the respondents-writ petitioners would have already reached the middle level or maximum in the pay scale and therefore, there may not be any difficulty in placing them in the corresponding pay scale as the difference of starting pay is now irrelevant. Where two grades in the same category of posts exist in the appellant Corporation, the writ petitioners have to be placed in appropriate grade having

due regard to the relative responsibilities, the pay benefits and other relevant considerations. So also, some disparities between the pay drawn earlier and the pay admissible in the corresponding category or grade in the appellant Corporation may arise. In this regard, the Committee constituted by the Government iii the impugned G.Os. will go into the question and make suitable recommendations to the Government as envisaged by para 8 (vii) of G.O.87 and para (vi) of G.O.88. But, as already observed it must be ensured that the writ petitioners should not get anything less than the emoluments they were drawing while in the parent Corporation plus the increments. It is also incumbent on the part of the appellant-Corporation to pay them the allowances which they were getting in the parent Corporation. The writ petitioners should also be given the benefit of revision of pay scales that might have taken place from the date of their absorption i.e. from 1-4-1991.

12. In the result, we uphold the validity of two G.Os. impugned in the writ petition and allow the writ appeal subject to the clarifications given supra with regard to the pay protection. We make no order as to costs.