
(2014) 06 AP CK 0100

In the Andhra Pradesh High Court

Case No : W.A. Nos. 673, 773, 1212 and 1213 of 2003

A.P. Transco

APPELLANT

Vs

Shiv Shankar

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Citation : (2014) 06 AP CK 0100

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : O. Manohar Reddy, Advocate for the Appellant; R. Annapurna, Advocate for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—W.A. Nos. 673, 773 and 1212 of 2003 arise out of a common order, dated 26.11.2002 in W.P. Nos. 13657, 19720, 26058 of 2000 and W.A. No. 1213 of 2003 arises out of an order, dated 12.08.2002 in W.P. No. 12952 of 2000. The area of controversy in this batch of writ appeals is as to whether the party respondents in the respective writ appeals are entitled to be extended the benefit of revision of their pay on par with that of one Mr. Anwar Ahmed Mahamood.

2. Briefly stated, the relevant facts are as under:

3. In the erstwhile A.P. Electricity Board (for short the Board"), the post of Lower Division Clerk (L.D.C.) figured as part of the administrative structure. The qualification prescribed for that post is pass in Higher Secondary Course Certificate and the scale of pay was Rs. 90-6-150-7-192/-. While some of the respondents initially joined in the organization as attenders and later on were promoted as LDCs before 1969, some others were directly appointed as LDCs. The starting of their pay scale in the post of LDC was Rs. 90/-.

4. One Mr. Anwar Ahmed Mahamood joined the Organization as LDC on 02.05.1970 i.e., subsequent to date of appointment of the respondents as LDCs.

However, he was put in the pay scale of Rs. 114/- on account of the fact that he possessed qualification of Bachelors Degree. The next higher post in the Organization was Upper Division Clerk (UDC). One of the qualifications for that post is holding of an Undergraduate Degree. In between these two posts, there exists an intermediary category viz., Special Promotion Post (SPP)-I. Such of the LDCs who held the graduation qualification were eligible to be placed in that category. While Mr. Anwar Ahmed Mahamood was placed in SPP-I category, the respondents were denied the same. On the other hand, they were granted exemption from holding the Bachelors Degree, paving the way for being considered for the post of UDC.

5. In the year 1990, the respondents as well as Anwar were considered for promotion to the post of UDC and all of them were promoted. Since the service in the feeder category would become relevant in determining the seniority in the promotion category, Mr. Anwar Ahmed Mahamood was treated as junior to the respondents, notwithstanding the fact that he was drawing higher scale of pay in the feeder category than the respondents.

6. The Board issued proceedings vide B.P.Ms. No. 197, dated 09.07.1992, amending Regulation 30-A of the A.P.S.E. Board Service Regulations Part-I (for short "the Regulations") providing for removal of anomalies in the pay scales. It is to the effect that if any employee, appointed to a higher post subsequent to 19.11.1984 is drawing a lower rate of pay in that post than an employee, who is junior to him in the lower category and promoted to identical post, the pay scale of the senior shall be stepped up to be on par with his junior. Citing the amendment to Regulation 30-A of the Regulations and the pay structure of Mr. Anwar Ahmed Mahamood, the respondents submitted representations. Accordingly, their pay scales were increased to be on par with that of Mr. Anwar Ahmed Mahamood. However, on realizing that Mr. Anwar Ahmed Mahamood was drawing higher scale of pay in the feeder category, the orders stepping up the pay scale of the respondents were revoked. Challenging the same, the respondents filed writ petitions. Following the order, dated 06.07.1998 in W.P. No. 19554 of 1995, the writ petitions were allowed. Hence, these four writ appeals.

7. Sri O. Manohar Reddy, learned counsel for the appellants submits that the very basis for claiming the stepping up of pay by the respondents was totally untenable, since the case of Mr. Anwar Ahmed Mahamood was not at all comparable to that of the respondents. He submits that though the appointment of Mr. Anwar Ahmed Mahamood as LDC was subsequent to that of the respondents, the former was promoted and placed in SPP-I on account of his holding graduate qualification, whereas the respondents continued as LDCs, till they were promoted as UDCs. He further submits that the scale of pay attached to the post of SPP-I is higher than that of LDC and thereby, the occasion to invoke the amendment to Regulation 30-A of the Regulations did not arise. He also submits that the learned Judges, who dealt with the matter did not take this

aspect into account.

8. Smt. R. Annapurna, learned counsel for the respondents on the other hand submits that on being satisfied that the respondents are entitled for the stepping up of pay under Regulation 30-A of the Regulations, proceedings were issued and they were withdrawn without any basis. She submits that though the starting pay of Mr. Anwar Ahmed Mahamood was a bit higher, the increments earned by the respondents upto the period, by which he was appointed, neutralized the same and in that view of the matter, they were entitled for stepping up of pay in the higher post. She further submits that the learned Single Judges have examined the matter in detail and no interference is warranted.

9. The respondents did not have any grievance about the granting or fitment of pay scales or sanction of increments for the entire length of their service. They made an endeavour to get their pay scales stepped up in the post of UDC by drawing comparison with one Mr. Anwar Ahmed Mahamood. The basis for their claim was Regulation 30-A of the Regulations as amended through B.P.Ms. No. 197, dated 09.07.1992, which reads:

AMENDMENT

In Regulation 30-A of the said Regulations.

(1) The existing instructions (i) and (ii) shall be renumbered as instructions (ii) and (iii) and after they are so renumbered the following shall be inserted as instruction (i) namely,--

(i) In order to remove the pay anomaly of a Board servant promoted or appointed to a higher post on or after the date of introduction of new regulations, namely 19th November, 1984 and drawing a lower rate of pay in that post, than another Board servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, the A.P.S.E. Board has decided that in such cases, the pay of the senior Board Senior servant should be stepped up in the higher post to figure equal to the pay fixed for the junior board servant in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior and shall be subjected the conditions mentioned in instruction (ii) below"

(2) In condition (f) of the renumbered instructions (ii) the following sentence shall be added at the end--

"In cases coming under instruction (i) the next increment of the senior officer shall be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay"

(3) These orders shall be deemed to have come into effect from the 19th November, 1984, the date on which new regulations 30-A was issued.

10. Certain conditions are necessary to extend the benefit under this Regulation. The first is that the person claiming the benefit must be senior to the comparable

junior in the lower category. The second is that after promotion, the person, who was junior in the lower cadre, must be drawing a higher scale of pay. Reverting to the facts of the case, the comparable junior to the respondents viz., Mr. Anwar Ahmed Mahamood no doubt was appointed as LDC much later than the respondents were either appointed or promoted to that post however, as against the starting pay for the post of LDC i.e., 90/- allowed to the respondents, Mr. Anwar Ahmed Mahamood was put in the starting pay of Rs. 114/-. Added to that, he has earned certain increments by undergoing family planning operation etc. Though it is asserted by the respondents that the increments earned by them up to the appointment of Mr. Anwar Ahmed Mahamood have neutralized the difference, the relevant facts are not placed before this Court. Assuming that the respondents were drawing higher scale of pay than Mr. Anwar Ahmed Mahamood, one fact comes in their way from claiming the benefit. The promotion of the respondents as well as Mr. Anwar Ahmed Mahamood was in the year 1990 and the seniority in that post was determined with reference to the date of appointment to the post of LDC. If all of them remained as LDCs, there would have been some scope for applying the Regulation and stepping up of the pay.

11. A serious and important point of distinction is that Mr. Anwar Ahmed Mahamood was placed in a post superior to LDC viz., SPP-I, before he was promoted to the post of UDC. The respondents were not extended that benefit. On the other hand, they were granted exemption from holding the Graduation Degree, which is essential for promotion to the post of UDC. But for that exemption, they would not have been eligible to be considered to the post of UDC. Therefore, by the time the occasion to effect promotion to the post of UDC arose, the respondents on the one hand and Mr. Anwar Ahmed Mahamood on the other hand were not in the same category. The Regulation applies only when all the persons are in the same lower grade. If in fact the respondents had any grievance about the promotion or placing of Mr. Anwar Ahmed Mahamood SPP-I and denial of the same to them, necessary steps ought to have been taken at the relevant point of time. That not having been done, they cannot compare themselves to be on par with Mr. Anwar Ahmed Mahamood.

12. It is no doubt true that in W.P. No. 19554 of 1995, a learned Single Judge of this Court allowed the writ petition and the writ appeal filed against it is said to have been dismissed. The fact however remains that it is too difficult to discern any principle or interpretation of the provision from it. On a close scrutiny of the facts with reference to the amended Regulation 30-A of the Regulations, it becomes clear that the cases of the respondents are not at all comparable to that of Mr. Anwar Ahmed Mahamood. Therefore, the question of applying the amended Regulation 30-A of the Regulations does not arise.

13. The writ appeals are accordingly allowed and the orders under appeals are set aside. It is however directed that the appellants shall not recover the amount, if any, paid to the respondents.

14. The miscellaneous petitions filed in these writ appeals shall also stand

disposed of. There shall be no order as to costs.