
(1998) 06 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7563 of 1997 and WP No. 6252 of 1993

APCO Technical Employees Union, Secunderabad

APPELLANT

Vs

Vice-Chairman and Managing Director, APSHWCS Ltd., Hyd.
and others

RESPONDENT

Date of Decision : 11-06-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1998) 4 ALD 323 : (1998) 4 ALT 391

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : Mr. K. Ramreddy, for the Appellant; Mrs. K. Satyakumar, SC for AP State Handloom Weavers' Co-op. Society Ltd. and Mr. M.V. Rama, for the Respondent

Judgement

1. Writ Petition No.7563 of 1997 and Writ Petition No.6252 of 1993 raise common questions of law and fact and hence I am disposing both of them by this common judgment.

2. WP No.7563 of 1997 is filed by the APCO Technical Employees Union represented by its General Secretary. The grievance of the petitioners is that the promotion policy adopted by the respondent regarding the technical assistants, working in the respondent Society is illegal and contrary to the Bye-laws. It is further stated, in the affidavit filed in support of the writ petition, that the promotions were made to different categories in the years 1983, 1991 and 1994, but the persons who were juniors to the technical assistants have been promoted and therefore, the persons working as technical assistants are put to a great loss and hardship and in these circumstances, it is a fit case for granting relief as prayed for.

3. Writ Petition No.6252 of 1993 is filed by the same employees union of the first respondent regarding the next cadre i.e., regarding the employees of category IV claiming that they are entitled to be promoted to category III on the same

ground that juniors were promoted as against the seniors of the feeder category. The grievance is ventilated on behalf of the Assistant Marketing Officers for the purpose of promotion to the post of Marketing Officers.

4. The first respondent has filed the counter to both the writ petitions. The common stand taken in the counter of both the writ petitions is that there are three wings, in the first respondent establishment viz., Commercial Wing, Administrative Wing, and Technical Wing. In the category V there are in all nine posts as stated in Annexure I under Rule 7 of the Andhra Pradesh State Handloom Weavers' Cooperative Society Limited-, Hyderabad. Those posts are enumerated under sub-heading a, b, c, d, e, f, g, h and i but except three posts all other posts are not in existence as on today, those posts in existence are the officers under clause "a" i.e., Inspecting Officers and Officers under clause "f" Superintendents and officers under clause "g" Procurement Officers/ Inspecting Officers. Inspecting Officers belongs to Commercial Wing and Superintendents belongs to Administrative Wing and Procurement Officers/Inspecting Officers belong to Technical Wing. But under category IV there are only two wings administrative and technical. The designation of Procurement Officer found under clause "a" to category IV, is a promotional post to both Inspecting Officers of the commercial wing and Superintendents of the administrative wing. It is further submitted that for the purpose of category IV, the commercial wing and administrative wing have been merged into one. The result is there are only two wings viz., administrative and technical in category IV. Therefore, the persons who are working in the feeder category (that is in the category V) as Inspecting Officers and Superintendents are promoted to the post of Assistant Marketing Officers of the administrative wing. The persons belonging to clause "g" under category V i.e., Procurement Assistants/ Inspecting Officers are promoted as Procurement Officers. It is further stated that the persons under clause V "g" procurement assistants are now called as technical assistants and these technical assistants are promoted as Procurement Officers of category IV. It is further submitted that the number of persons belonging to Inspecting Officers and Superintendents would be more than the technical assistants. Therefore, the next promotion is made at the ratio of 2:1. In other words, if two persons belonging to clauses "a" and T of category V are promoted, one person is promoted from the cadre of clause "g" of category V. The seniority list is also maintained on the basis of three wing system in category V i. e. there is a seniority list of commercial wing, there is a seniority list of administrative wing and there is a seniority list of technical wing. On the basis of these seniority lists the promotions are being made from time to time. The learned Counsel appearing for the respondent further elaborated the point by contending that since the promotions are made on the basis of the seniority lists maintained in commercial wing, administrative wing, and technical wing of category V to category IV, there is a possibility that the vacancies of administrative wing and commercial wing may fall earlier than to the persons belonging to the technical wing. Therefore, there is a possibility that persons belonging to other wing may

get quicker promotions than the persons belonging to the technical assistants wing. Therefore, only because a person belonging to other wing gets promotion earlier to the person belonging to the technical wing, the person belonging to technical wing cannot complain violation of Articles 14 and 16 of the Constitution of India. It is further submitted that at any rate promotions are made in accordance with the Bye-law 7 read with Annexure of the Andhra Pradesh State Handloom Weavers" Cooperative Societies Bye-laws, and there is no violation of Bye-law as alleged in these writ petitions. Therefore, the petitioners are not entitled to any relief. It is further submitted that at any rate the Bye-laws are contractual in nature the writ petition is not maintainable to enforce such bye-laws. Lastly it is contended that these writ petitions are liable to be dismissed on the ground of laches only. The case as pleaded by the petitioners" themselves is that those promotions are made right from the year 1983 and they were not challenged for all these years, and accordingly the promotions have been affected in different wings and if three promotions are upset now on any reason and there would be an administrative difficulties not only to the respondent society but also to the persons who have been promoted in their respective wings long back. Therefore, these writ petitions are liable to be dismissed on the ground of laches

5. In order to appreciate the rival contentions I have to note Bye-law No.7 of the Bye-laws referred to above. The said Bye-law reads as under :

"The staff of the Apex Society shall, for the time being, be of the cadres formulated according to their duties and responsibilities as per Annexure I. The Board shall be competent to create any further new cadres as may be found necessary or to omit any of the existing cadres from time to time with the approval of the Director of Handlooms and Textiles.

No person shall be eligible for direct appointment to any of the posts mentioned in Annexure I unless he possesses the qualifications specified therein for each post."

The Annexure I referred in Bye-law No.7 provides as under : (only relevant portion extracted)

III.(a) Divl. Marketing Officer

(b) Marketing Officer (R. Off)

(c) Procurement Officer

(d) Admn. Officer (CO & RO)

(e) Accounts Officer (RO)

IV.(a) Procurement O. (DMO)

(b) Asst. Marketing O. (RO)

(c) Cashier (CO &RO)

- (d) Office M. (CO & RO)
- (e) Accounts (CO & RO)
- V. (a) Inspecting Officer
- (b) Superintendent of Factories
- (c) Managers Model Weaving Centre
- (d) Handloom House Managers
- (e) Manager, Cloth Godown
- (g) Superintendents
- (g) Procurement Assistants/Inspecting Officers
- (h) Marketing Assistants
- (i) Neta Press Manager

6. From a reading of the above Bye-law along with Annexure I, it is clear that the persons are entitled to be promoted on the basis of Annexure I. In category V there are different posts with different designations enumerated under clauses "a" to Y. Now I am informed that except the posts at clause "g" Procurement Assistant, Inspecting Officers, clause "a" Inspectors and clause "f" Superintendents, the other posts have become non-existent. In other words the promotions to the next category i.e. to category IV are to be made from amongst the Inspecting Officers, Superintendents and procurement assistants/ Inspecting Officers. It is the case of the respondent cooperative society that these three posts, now existing in category V, are categorised in three wings, having regard to the nature of the duties. The persons holding the post of Inspecting Officers found under category V(a) belong to commercial wing. The persons found at clause V "f" i.e. Superintendents belong to administrative wing and the persons found at clause V "g" procurement assistants/Inspecting Officers, belong to technical wing. It is to be noted at this stage itself that the persons belong to clause V "g" i.e. Procurement Assistants/ Inspecting Officers have been redesignated as technical assistants. It is the further case of the respondent that for the purpose of promotion to the next cadre (that is to category IV) there are only two wings in the category IV viz., administrative wing and technical wing. The persons belonging to clause "a" "f" or category V that is Inspectors and Superintendents are taken together for the purpose of promotion in the administrative wing of category IV. In other words in the promotion cadre, that is in the category IV, both commercial and administrative wings are combined into one. The persons belonging to inspecting officers and superintendents of category V (belonging to commercial wing and administrative wing) are promoted to the post in the administrative wing of category IV i.e. as assistant marketing officers, and the persons belonging to the category V "g" Procurement Assistants/Inspecting Officers (redesignated as technical assistants) are

promoted in the technical wing of category IV i.e. as procurement officers; but these promotions are made from these three wings at the ratio of 1:1:1. Therefore, the petitioners in WP No.7563 of 1997 cannot have any grievance since this is an uniform practice that is accepted right from the year 1983,

7. For the purpose of promotion from category IV to category III the promotion is made only from the administrative wing of category III. In the administrative wing of category III there is only one post that is the post of Marketing Officers. Now the post of Marketing Officer is also some times called as Divisional Marketing Officer. (Therefore, the post found under clause "a" and V of category III are one and the same.) For the purpose of promotion from category IV to category III promotion is made from the administrative wing and technical wing at the ratio of 2:1 since the number of persons in the administrative wing would be more or almost double than the persons in the technical wing. In other words if two persons of the administrative wing are promoted then one person from the technical wing would be promoted. In category IV only two seniority lists are maintained one pertaining to administrative wing and the other pertaining to technical wing, and from amongst the list of these two respective wings the persons who were seniors in their respective list are promoted as against the juniors, and the seniority list is not violated, nor it is the case of the petitioners that such seniority lists are being violated. This also has been the practice right from the year 1983. Having regard to these circumstances, the petitioners even in WP No.6252 of 1993 cannot have any grievance.

8. From going through the pleadings of both the parties, I find that there are no merits in both the writ petitions. Admittedly, the petitioners in both the writ petitions belong to the category of technical assistants. It is not their case that their juniors, in their respective lists are being promoted as against them. It is their case that persons in the other wings are getting promotions earlier to them. Therefore, there is a violation of Articles 14 and 16 of the Constitution of India. They have not challenged Bye-law No.7 and Annexure No.I, nor they have challenged the seniority lists. Their basic grievance is that if one consolidated seniority list is maintained in category V on the basis of the date of entry into service of the persons belonging to category V irrespective of their designation as Inspectors, Superintendents and Procurement Assistants or Technical Assistants etc., they would have got promotion earlier than the persons belonging to the commercial wing and administrative wing. But the Bye-laws are silent regarding the preparation of one consolidated seniority list of all the persons belonging to one category. But the employer, having regard to the nature of duties are classified the posts under category V into three wings as commercial wing, administrative wing and technical wing. Petitioners belong to the technical wing and the three separate lists are in vogue in practice right from the year 1983. The petitioners have not raised their little fingers against the preparation of such lists in the year 1983 itself, and moreover on the basis of these three seniority lists only promotions were made from time to time under Bye-law No.20 of the Bye-laws. Bye-law No.20(ii) further provides that if any person is aggrieved by

such promotion has a right of appeal to the Board within 60 days, and this remedy also the petitioners have not availed of against the promotions made from time to time. Moreover there is a provision for raising a dispute under the Andhra Pradesh Co-operative Societies Act under which the respondent society is registered. The petitioners also have not raised such a dispute u/s 61 of the said Act for all these years. Moreover, as contended by the learned Counsel for the first respondent that the promotions are being on the basis of ratio of 1:1:1 from the cadre of category V to IV and 2:1 from the cadre of category IV to III is not denied by the petitioners-Union, There is not any provision under the Bye-laws for fixing such a ratio for the purpose of promotion and also there is not any prohibition in the Bye-laws for classifying the employees of the first respondent into three categories viz., commercial, administrative and technical etc. Even otherwise, if the writ petitions are to be allowed at this stage, it would upset the entire working of the first respondent, since promotions are being made right from 1983 for nearly 15 years, and in these circumstances, it is not a fit case of interference at this stage. Moreover, a Division Bench of this Court in *D. Satyanarayana and Others Vs. Secretary to Government, Legislature Department and Others*, , has ruled that maintaining separate seniority lists for each post of the feeder category for the purpose of promotion to the next cadre cannot be said to be arbitrary and violative of Articles 14 and 16 of the Constitution. The ratio of the said judgment applies to the facts of this case in all force. The employees of the first respondent-Society also classified into three wings as administrative wing, commercial wing and technical wing on the basis of the nature of their duties that they are discharging. Hence, it cannot be said that there is any violation of Articles 14 and 16 of the Constitution of India. Moreover, the petitioners also have not challenged the validity of any Bye-laws. At any rate, the Bye-laws also are not enforceable as held by the Full Bench judgment of this Court reported in *Pragathi Nagar Welfare Association and Others Vs. Municipal Corporation of Hyderabad and Others*, and two other Division Benches of this Court reported in *Bovaiah and Others Vs. District Cooperative Central Bank Ltd., Sangareddy and Another*, and *B. Prakash Rao Vs. The District Educational Officer and Others*, .

9. In these circumstances, I do not find any merit in both the writ petitions and both the writ petitions are also liable to be dismissed. Hence, I pass the order as under :

Writ Petition No.7563 of 1997 and the Writ Petition No.6252 of 1993 are hereby dismissed but in the circumstances without costs.