

(2002) 11 AP CK 0068

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 7214 and 11264 of 2002

D. Narsimhulu

APPELLANT

Vs

A.P. Legislative Assembly and Others

RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 6

Citation : (2002) 6 ALD 747

Hon'ble Judges : S.R. Nayak, J;Dubagunta Subrahmanyam, J

Bench : Division Bench

Advocate : P.V. Krishnaiah, in WP No. 7214 of 2002 and M. Panduranga Rao, in WP No. 11264 of 2002, for the Appellant; Rama Rao in WP No. 7214 of 2002 and Government Pleader for Service-II, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—Writ Petition No. 7214 of 2002 is filed by D. Narasimhulu assailing the validity of the notice bearing Memo No. 853/P.P. 1/2001, dated 28.3.2002 and the subsequent order issued in G.O. Rt. No. 730, dated 20.6.2002 reverting him to the post of Reporter from the post of Assistant Secretary, Andhra Pradesh State Legislature. Writ Petition No. 11264 of 2002 is filed by Sri S. Raja Sadaram questioning the validity of the Government Order G.O. Rt. No. 730, Legislature (O.P.I) Secretariat, dated 20.6.2002 reverting him to the post of Chief Reporter from the post of Assistant Secretary, Andhra Pradesh State Legislature. Since facts and questions of law that arise for decision are substantially similar, both the writ petitions were clubbed and heard together and they are being disposed of by this common judgment and order.

2. The substantive questions that were raised by the learned Counsel appearing for the petitioners are : (i) the impugned action taken by the Secretary of the Andhra Pradesh State Legislature is not in conformity with the judgment of the Division Bench of this Court dated 5.2.2002 in Writ Appeal Nos.390, 413 and 1372 of 2002 and in fact the order of the Division Bench would not enable the

Secretary of the Andhra Pradesh State Legislature to do the impugned action, (ii) that it was totally impermissible and illegal for the Secretary of the Andhra Pradesh State Legislature to revert the petitioners to the post of Chief Reporter and Reporter without revising the newly prepared panel in pursuance of the order of the learned single Judge in WP No. 32601 of 1997, dated 4.9.2000.

3. Although this case has had chequered career, it is not necessary for the Court to refer to all those past facts and the entire case history. Suffice it to state that when the correctness of the order of the learned single Judge dated 4.9.2000 in WP No. 32601 of 1997 was questioned before the Division Bench, at the time of hearing of those writ appeals, it was brought to the notice of the Division Bench that in pursuance of the direction issued by the learned single Judge, revised panels for the years 1997-98 and 1998-99 were prepared and promotions were given to the writ petitioners on the basis of the revised panels. In view of that submission, the Court while allowing the writ appeals and setting aside the order of the learned single Judge, the Division Bench observed:

"We, however, make it very clear that all the contentions raised by the parties are left open to be agitated at an appropriate stage by the aggrieved parties and we should not be taken to have expressed any opinion on the merits of the matter. No costs."

4. After the disposal of the above writ appeals, the Secretary of the Andhra Pradesh State Legislature issued notice Memo bearing No. 853/O.P.I/2001, dated 28.3.2002 to both the petitioners separately proposing to revert them from the post of Assistant Secretary to the post of Chief Reporter and the Reporter respectively and directing the petitioners to submit their reply, if any, to the proposed action within three days. In response to the said show-cause notices, both the petitioners submitted their replies opposing to the proposed action, However, the Secretary of the Andhra Pradesh State Legislature not being satisfied with the explanation offered by the petitioner in W.P.No.7214 of 2002, issued the proceedings G.O. Rt. No. 731, Legislature (O.P.I) Secretariat, dated 20.6.2002 reverting him to the post of Reporter. Similarly by G.O. Rt, No. 730, dated 20.6.2002, the petitioner in WP No. 11264 of 2002 was also reverted to the post of Reporter. G.O. Rt. No. 731, dated 20.6.2002 reads as follows :

"GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Legislature Secretariat - O.P.I - Reversion of Sri D. Narasimhulu, Assistant Secretary as Reporter - Orders - Issued.

LEGISLATURE (O.P.I) SECRETARIAT

G.O.RLNo.731 Dated 20.6.2002 Read the following :

1. Judgment of High Court in WP No. 32601 of 1997, dated 4.9.2000
2. G.O. Ms. No. 7, Legislature (O.P.I) Secretariat, dated 25.1.2002

3. G.O. Rt. No. 103, Legislature (O.P.I) Secretariat, dated 25.1.2002
4. Judgment of High Court in WA No. 390 of 2001 and Batch, dated 25.2.2002
5. Memo No. 853/OP.I/2001, dated 28.3.2002
6. Explanation dated 3.4.2002 of Sri D.Narasimhulu, Assistant Secretary

ORDER:

A panel of candidates for the purpose of promotion to the post of Assistant Secretary for the year 1997-98 was issued in G.O. Ms. No. 70, Legislature (OP.I) Secretariat, dated 27.11.1997. As against such panel Sri S. Raja Sadaram who was working as Reporter has filed a writ petition in WP No. 32601 of 1997 challenging the validity of the panel. By an order dated 4.9.2000 the Hon"ble High Court while allowing the writ petition has struck down the panel of the year 1997-98 and directed for preparation of fresh panel.

2. Having been aggrieved by the judgment in Writ Petition No. 32601/97, dated 4.9.2000 the Legislature Secretariat has filed W.A. No. 413/2001 against the said judgment. During the pendency of the appeal a fresh panel was issued in the G.O. 2nd read above and subjected the same to the main outcome of WA No. 413/2001. In pursuance of the said panel, orders are issued in G.O. 3rd read above promoting Sri. D. Narasimhuluy, Reporter as against Assistant Secretary under Rule 10(a) of A.P.State and Subordinate Service Rules, 1996 and such promotion is also subjected to the result of the above writ appeal.

3. A Division Bench of Hon"ble High Court by an order dated 25.2.2002 has been pleased to allow the W.A.No.413/2001 along with other connected appeals and set aside the orders of learned single Judge in W.P.32601/97, dated 4.9.2000. Consequent upon allowing of the writ appeal the orders issued in G.O. 2nd and 3rd cited ceased to operate.

4. By Memo 5th read above, Sri D. Narasimhulu, Assistant Secretary is afforded an opportunity to explain against his reversion as Reporter, in view of allowing of the above writ appeal, within 3 days. In pursuance of the said Memo Sri D. Narasimhulu, Assistant Secretary has submitted his explanation 6th read above. In his explanation Sri D. Narasimhulu, has not only pleaded the existence of the revised panel, but also stated that the Secretary to Legislature is not competent to revert him by issuing the Memo. As the revised panel has already ceased to operate with effect from 25.2.2002 the contention of Sri D. Narasimhulu is not sustainable and is therefore rejected.

5. In view of the above, Sri D. Narasimhulu, Assistant Secretary is reverted as Reporter with immediate effect.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

K.TULJANAND SINGH

SECRETARY TO STATE LEGISLATURE

To

Sri D.Narasimhulu, Reporter

The Accountant General (A&E), A.P., Hyderabad

Copy to : The Pay and Accounts Officer, A.P., Hyderabad

The Dy. Pay and Accounts Officer, Sectt. Branch, Hyd.

The Resident Audit Officer, O/o the P.A.O., A.P., Hyd.

The Peshi of Hon"ble Speaker, A.P. Legislative Assembly All Officers/All Sections in the Legr. Sectt. NCPF/SF/Spare.

//FORWARDED:: BY ORDER//

Sd/-

SECTION OFFICER"

G.O. Rt.No.730 is also to the same effect. It needs to be noticed at the threshold that the revised panels for the years 1997-98 and 1998-99 were prepared and promotions to the petitioners were given by virtue of the order of the learned single Judge dated 4.9.2000 in W.P.No.3260i of 1997 subject to the result of the writ appeal preferred against the order of the learned single Judge. This position was made quite clear in the orders promoting the petitioners to the post of Assistant Secretaries. After the disposal of the writ appeals, since the writ appeals were allowed and since the order of the learned single Judge was set aside, the Secretary of the Andhra Pradesh State Legislature issued the impugned showcause notice dated 28.3.2002 informing the petitioners that since their promotion was subject to the result of the writ appeal and since the writ appeals were allowed by the Division Bench of this Court, they are not entitled to continue in the promotional post. In our considered opinion, no exception can be taken to the stand taken by the Secretary of the Andhra Pradesh State Legislature. It is trite that consequential action taken in pursuance of an order of the Court should fall to the ground, if such order of the Court has been set aside by the Court above and it should not lie in the mouth of the beneficiary of the order which has been set aside by the Court above to contend that despite the promotion order being nullified, the consequential order will remain in law. Therefore, we do not find any merit in the contention of the learned Counsel for the petitioners that the Secretary of the Andhra Pradesh State Legislature ought not to have taken steps to revert the petitioners to the post of Reporter without revising or modifying the revised panels for the years 1997-98 and 1998-99.

5. This takes us to the merits of the case. The question is whether the petitioners could have any lawful grievance against the impugned actions taken by the Secretary of the Andhra Pradesh State Legislature. The foundation for the grievance, if we may state in a nut shell is this : The Secretary of the Andhra Pradesh State Legislature ought not to have promoted the seniors of the

petitioners in the cadre of Reporters in the leave vacancies for few days and if the seniors of the petitioners were not promoted in the leave vacancies, those vacancies would have been available to the petitioners when their turns came and that the promoting authority would have selected and promoted them to those posts. In other words, according to the learned Counsel for the petitioners, under the rules governing recruitment to the post of Assistant Secretary, Andhra Pradesh State Legislature, promotion of the seniors to the petitioners could not have been made to the post of Assistant Secretary in the Andhra Pradesh State Legislature, against leave vacancies and that too for few days. This contention of the learned Counsel for the petitioners is not acceptable to us. Rule 6 of State and Subordinate Service Rules deals with method of preparation of the panels and Sub-rule (2) thereof clearly envisage that in the preparation of the panels, the recruiting agency can take into account the vacancies likely to arise for more than two months on account of (i) deputation; (ii) training; (iii) long leave; or (iv) suspension.

6. Therefore, even in terms of the rule, a candidate who comes under zone of consideration to a promotional post could be considered to fill up even a leave vacancy. We do not find any impediment, barrier or prohibition for the Secretary of the Andhra Pradesh State Legislature to fill up the leave vacancy in the post of Assistant Secretary. Therefore, it cannot be said that the promotions granted to the seniors of the petitioners in the feeder cadre of Reporters to the post of Assistant Secretary in the leave vacancies were irregular. If the seniors promotions were regular the petitioners cannot have any legitimate grievance. Since we find the selection and appointment of the seniors of the petitioners in the feeder cadre of Reporters to the post of Assistant Secretary, Andhra Pradesh State Legislature were regular and legal, the petitioners cannot have any grievance against the impugned action now taken by the Secretary of the Andhra Pradesh State Legislature in reverting them to the substantive post of Reporters. Simply, because, during the pendency of the writ proceedings in this Court in WP No. 32601 of 1997, fresh revised panels were prepared and on that basis they were granted promotion, they could not claim that they are not liable to be reverted to the substantive posts held by them. Such a contention is untenable, because, the order of the learned single Judge by force of which panels were prepared and the petitioners were promoted was set aside by a Division Bench of this Court and, therefore, all consequential actions taken by the Secretary of Andhra Pradesh State Legislature in pursuance of the order of the learned single Judge should also fall to the ground. However, the learned Counsel for the petitioners placing reliance on the judgment of the Supreme Court in *C.K. Antony Vs. B. Muraleedharan and Others*, , would maintain that a promotional post could be filled only if a vacancy is permanent and not a leave vacancy which is temporary. The judgment cited by the learned Counsel for the petitioners is of no help to them. In the first instance, the Supreme Court was not called upon to decide the issue now raised by the learned Counsel for the petitioners in the premise of the rule of the nature of Rule 6 of the State and Subordinate Service

Rules. When the statutory rules specifically empower the recruiting agency to take into account the vacancies that may be caused on account of the officials availing long leave, it could not be said that despite such rule, the recruiting agency is not competent to prepare the panel taking into account leave vacancies or to make promotions on the basis of such panel.

7. In the result, writ petitions are dismissed with no order as to costs.