

(2001) 09 AP CK 0069
In the Andhra Pradesh High Court
Case No : Writ Petition No. 22515 of 2000

D. Pataiah

APPELLANT

Vs

Superintendent of Police, Cuddapah, Cuddapah District and
Others

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Andhra Pradesh (Telangana Area) District Police Act, 1329 — Section 6
Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 1, 2
Constitution of India, 1950 — Article 309
Hyderabad City Police Act, 1348 — Section 7

Citation : (2001) 6 ALD 70

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : C. Srinivasa Babu, for the Appellant; Government Pleader for
Services-II, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The petitioner herein was appointed as a Police Constable in 1969. He was promoted as Head Constable in January, 1994. He had undergone the refresher course training, but had not passed the requisite test. He was reverted to the post of Police Constable by an order dated 22-5-2000. He filed Original Application No.2778 of 2000 before the State Administrative Tribunal to set aside said order of reversion issued by the first respondent.

2. The learned Tribunal in terms of the impugned judgment dated 8-6-2000 directed the petitioner to prefer an appeal to the Government. Aggrieved by the said order, this writ petition has been filed.

3. Mr. C. Srinivasa Babu, the learned Counsel appearing on behalf of the petitioner, would submit that having regard to the policy decision of the State, a person, who has crossed the age of 45 years, is exempted from appearance at the examination and thus the impugned judgment must be held to be bad in law.

4. The learned Government Pleader for Services-II would submit that exemption could not be granted in relation to an examination passing whereof is mandatory in nature.

5. The State Government of Andhra Pradesh on or about 22-4-1997 issued a notification in exercise of power conferred upon it under the proviso to Article 309 of the Constitution of India, which reads:

"Notwithstanding anything contained in the Andhra Pradesh State and Subordinate Service Rules or in the Special Rules or Ad hoc Rules, the Government employees, who have crossed 45 years of age, shall be exempted from passing departmental tests prescribed in the Special Rules/Ad hoc Rules for the purpose of promotion to the next higher category (i.e.,) promotion/appointment by transfer to a post above the one held by him/her if they could not pass the same".

6. However, another notification was issued on 18-5-1999 in terms whereof Ad hoc rules were framed, which is to the following effect:

"Notwithstanding anything contained in the Andhra Pradesh State and Subordinate Service Rules or in the Special Rules or in Ad hoc Rules, the Government employees, who have crossed 45 (forty five) years of age, shall be exempted from passing the departmental tests prescribed in the Special Rules or the ad hoc Rules for the purpose of promotion to the next higher category i.e., promotion or appointment by transfer involving promotion to a post above the one held by him or her, if they could not get even one promotion after their initial appointment :

Provided that the persons who already got a promotion once where no tests are prescribed for the higher post, the exemption is not applicable to him or her if he or she is to be considered for further promotion to next higher category where tests are prescribed. (This ad hoc rule is applicable from the panel year 1997-98);

Provided further that the exemption is applicable in case of departmental tests or special tests only, where they are prescribed as a pre-requisite for promotion and this exemption shall not be applicable where like technical or academic qualifications are prescribed for promotion to the next higher category of posts;

Provided also that the exemption shall not be applicable for declaration of probation, where passing of departmental tests or special tests is a pre-condition for declaration of probation".

7. In this connection, it may be relevant to notice Standing Order No. 110 of the Andhra Pradesh Police Standing Orders substituted by G.O. Ms. No.585, Home (Police-C), dated 7-10-1991. The relevant provisions whereof are to the following effect:

"(3) An examination will be conducted at the end of the course in both indoor and outdoor subjects they are taught. Constables scoring not less than 40% in

each of the subjects in the final written examination will be deemed to have passed the course.

(4) The Constables who fail in the examination have to appear for the supplementary examination in the failed subjects at any Police Recruit School. They will be given two additional chances to completely pass the failed subjects. If they do not pass, their probation as Head Constable will be terminated. Consequently they will have to work as Police Constables".

8. It is not in dispute that the State has also made rules which are known as A.P. Police Subordinate Service Rules in exercise of its powers conferred by Sections 8 and 10 of the Madras District Police Act, 1859, Section 6 of the Hyderabad District Police Act, 1329-Fasli and Section 7 of the Hyderabad City Police Act, 1348 Fasli read with proviso to Article 309 of the Constitution of India. According to Rule 1 of the said rules, Head Constables come within Category 6 of Class I. In terms of Rule 2, the appointment is required to be made in terms of Annexure I thereof.

9. The Ad hoc Rules, as noticed hereinbefore, are statutory in nature. Such exemption is available in cases of departmental tests or special tests only, but where they are prescribed as pre-requisite qualification, the said exemption is not applicable. By reason of clause (4) of the Standing Order No.110 dated 7-10-1991 passing of examination is considered to be a qualification. The same being a pre-requisite for promotion, the power of exemption in terms of general rule will not apply.

10. In terms of the aforementioned Standing Order No. 110, the Constables who are having qualifications, service and good record can be selected for inclusion in "C" List to act as Head Constables. In terms of clause (2), they are required to undergo two and half months" training. In terms of clauses (3) and (4), they are required to pass the examination, which would be conducted at the end of two and half months of refresher course training in both indoor and outdoor subjects which are taught to them. Those who had obtained 40% in each subject in the written examination would be deemed to have passed the test. In case they did not pass in the written test they will be given two additional chances to clear off the subjects in they are failed and despite the same they did not pass, they have to be reverted.

11. In the instant case, it is not in dispute that the petitioner had been given three chances to clear off the test. The petitioner appeared at the examinations without any demur whatsoever. He did not question the jurisdiction of the authority to examine him. In other words, he subjected himself to the jurisdiction of the authorities. We may notice that the Head Constable has onerous duties to perform. In the absence of the Sub-Inspector of Police, he acts as the Station House Officer. Examination had been prescribed keeping in view the nature of the duties. We are, therefore, of the opinion that in terms of the second proviso appended to the Ad hoc Rules framed in terms of G.O. Ms. No.225, dated

18-5-1999, the petitioner is required to pass the examination and the exemption clause cannot be said to have any application whatsoever.

12. For the reasons aforementioned, we do not find merit in this writ petition, which is accordingly dismissed, but in the facts and circumstances of this case, there will be no order as to costs.