
(2016) 02 SC CK 0067

In the Supreme Court Of India

Case No : C.A. Nos. 4142 and 4147 of 2004

D. Vishnu Murthy

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:

Constitution of India, 1950 — Article 320

Citation : (2017) AIR(SCW) 1708 : (2017) AIRSC 1708 : (2017) LIC 1978 : (2016) 3 Scale 27 : (2016) 13 SCC 111

Hon'ble Judges : F.M. Ibrahim Kalifulla and C. Nagappan, JJ.

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The Appellants are aggrieved by the full Bench decision of the High Court of Andhra Pradesh dated 21st November, 2003 passed in W.P. Nos. 17497, 18319, 18681 and 19041 of 1999 and W.P. No. 1793 of 2001. By the impugned judgment the full Bench upheld the order of Andhra Pradesh Administrative Tribunal dated 25th June, 1999 in a batch of Original Applications commencing from O.A. No. 5667 of 1993. To appreciate the controversy raised in these appeals certain facts are to be necessarily highlighted. The Appellants along with contesting private Respondents were all appointed in the Engineering Services of the Andhra Pradesh Government in different departments. Their initial entry into service was as temporary employees. Representations were made by them for their regularization. The State Government came forward to issue G.O.Ms. No. 647 on 14th September, 1979. After making reference to their induction into service as temporary employees ultimately gave the following directions:

"i) the services of all temporary Government employees who were appointed by direct recruitment to any category of post and are continuing in service as on 09.08.1979, should be regularized without subjecting them to any test written or oral;

ii)a) the service of all temporary employees in all categories other than L.D.Cs.

Typists and Steno Typists in the office of the Heads of Department and Junior Assistants. Typists and Steno Typists in the Secretariat should be regularized from the next date following the date on which the last regular appointment in that category was made in the Unit concerned or from the date of temporary appointment whichever is later."

The Government directed that all temporary appointments made by direct recruitment and continuing as such as on 09.08.1979 shall be excluded from the purview of the commission under the provision to Clause (3) of the Article 320 of the Constitution of India.

2. The Government also took a decision after careful consideration to regularize the services of all temporary employees who were continuing in service as on 9th August, 1979. The services of all temporary employees who were appointed by direct recruit in any category of posts and are continuing in service as on 9th August, 1979 were also to be regularized without subjecting them to any test written or oral. It is not in dispute that the said G.O.Ms. No. 647 of 14.09.1979 has become a final and conclusive.

3. Be that as it may, there was a selection for appointment for various posts in the Engineering Services in the post of Assistant Executive Engineers came to be made through the Andhra Pradesh Public Service Commission. The candidates from the open market as well as all the temporary employees participated in the said selection. It is submitted before us that all the temporary employees who participated in the selection got selected in the said process apart from the candidates from the open market. The issue arose for consideration, at the instance of some of the candidates who participated in the selection process and got selected but yet could not secured appointment into service. The said case came to be dealt with by this Court ultimately and was decided in the decision reported in , (1982) 3 SCC 341 I.J. Divakar and Ors. v. Government of Andhra Pradesh and Anr. After a detailed analyses the following relief came to be granted by this Court in paragraph 6. In order to do justice between the parties and not to leave the Appellants, fresh young engineering graduates, in lurch, we direct that the Commission shall proceed and finalise the list of selection on the basis of viva voce test conducted and marks assigned and forward the same to the Government within two months from today. If the Appellants or any one of them fall within the zone of selection, they must be first appointed according to their place in the selection list before any outsider is appointed. Hereafter to the post of Junior Engineer in any branch of Andhra Pradesh Engineering Services and this must be irrespective of the Department in which the post of Junior Engineer is available. The appeal to the extent herein indicated is allowed. There will be no order as to costs.

4. Subsequent to the said judgment the State Government issued G.O.Ms No. 307 dated 23rd May, 1983. In pursuance of the compliance of the order of this Court and thereafter G.O.Ms. No. 532 dated 31st October, 1983 came to be issued. The purpose of the said G.O. among other things is specified in

paragraph 2(d) which reads as under:

(d) "After completing this exercise, notice should be issued to these candidates covered by the items (b) and (c) above for indicating whether their names could be deleted from the selection list drawn up by the Andhra Pradesh Public Service Commission in view of the regularization of their services under G.O.Ms. No. 647, General Administration (Services-A) Department dated 14th September, 1979 or whether they should be considered for fresh appointment based on the selection list of Andhra Pradesh Public Service Commission within 15 days from the date of notice.

(e) Based on the replies received to the such notice from the concerned persons, the names of all persons who are willing to remain in the departments in which they are working and regularised/eligible for regularization under G.O.Ms. 647 General Administration (Service-A) Department dated 14th September, 1979 should be deleted from the lists of selection drawn up by the Andhra Pradesh Public Service Commission.

(f) The list of the remaining persons would be redrawn with the approval of the A.P. Public Service Commission keeping in view the order of merit rule of reservation and local candidature."

5. It is common ground that none of the temporary employees who were governed by G.O.Ms. 647 dated 14th September, 1979 came forward to exercise their option to go by the selection made by A.P. Public Service Commission and that too within 15 days from the date of issuance of said G.O. One other factor to be noted is that, that G.O.Ms. 532 in the very opening paragraph it was pointed out that the orders being issued in the context of the directions of the Supreme Court in Civil Appeal No. 2487 of 1992, namely judgment of this Court reported in , (1982) 3 SCC 341.

6. In the above stated background while on the one hand the services of all the temporary employees governed by G.O.Ms. No. 647 came to be regularized and their seniority came to be fixed based on their respective entry into service as temporary employees, the appointment of the other candidates governed by the order of this Court in the above reported judgment also came to be regularized. In the above stated background when an issued as regards the determination of seniority between those who entered service in the various engineering departments of the State initially as Supervisors and who on acquiring a degree in engineering were re-designated as Junior Engineers and those graduate Junior Engineers who were temporarily appointed on ad hoc basis under Rule 10(a)(i) (1) of the Andhra Pradesh State and Subordinate Service Rules and whose services were later regularized under GOMs. No. 647 dated September 14, 1979. While dealing with the said controversy this Court observed as under:

"15. To summarise; The candidates who have entered service after passing the SQT shall rank immediately after the regularly appointed candidates who had entered service before the selection of the successful SQT candidates. Next to

the SQT candidates will rank those who are governed by this Court's directive in the last paragraph of Diwakar case. Thereafter the seniority will be fixed between the candidates covered under G.O.Ms. No. 647, the upgraded supervisors and the SC/ST candidates recruited under the Rule 22(e) limited recruitment scheme in the light of this judgment....."

7. It was submitted before us that though as pertaining to the Divakar's judgment it was held that if the Appellants or any one of them fall within the selection they must be first appointed and the number of Appellants in that case was nine but yet applying the said directions apart from those nine Appellants around 48 other than also came to be appointed. All of whom were from the open market. It must be noted that while the Divakar's case came to be decided on 21st October, 1982 the summarization came to be made by this Court subsequently in the decision reported in 1993 (Supple) 3 SC 425 G.S. Venkata Reddy and Ors. v. Govt. of A.P. and Ors. Till then there was no controversy from any quarter with reference to the seniority pertaining to the Appellants and the contesting private Respondents. Later in the year 1997 yet another case at the instance of P.B. Chowdhary and Anr. v. Govt. of A.P. and Ors. Reported in , (1997) 11 SCC 450. It was observed as under in paragraph 5:

"The submission that candidates such as Respondents 7 to 9 would have to slide down in seniority if the decision in Venkat Reddy case is so applied although they too were selected by the Public Service Commission, cannot be entertained, for that would be seeking a review of the decision in Venkat Reddy case which has since become final and had been applied. The ratio of that decision must apply to all those covered under those categories and it is no argument to say that Respondents 7 to 9 were not parties to that petition. We are, therefore, clearly of the view that the decision in Venkat Reddy case must be applied to all those falling within the three categories set out in the summary of that case. That is what this Court also did in the case of S. Chinnappa Reddy v. State of A.P. In that case the direct recruits selected in 1978 were appointed and given seniority as directed in Divakar case as understood by the State Government's GOMs No. 307 dated 23-05-1983."

8. Thereafter the present litigation came to be lodged at the instance of the private Respondents before the Tribunal wherein the contesting private Respondents claiming parity with such of those candidates who got selected and appointed in the selection made by the A.P. Public Service Commission claiming that their seniority should also be determined in tune with the direction issued by this Court in the decision reported in 1993 (Supple) 3 SCC 425 read along with , (1997) 11 SCC 450. While dealing with the said claim of the contesting private Respondents which came to be raised in O.A. No. 5667 of 1993 etc. batch the Tribunal took the view that justice of fair play required in respect of Junior Engineers who were selected by the A.P. Public Service Commission in the year 1978 and whose services were regularized under G.O.Ms. 647 and who are eligible should be given option afresh as to whether they would like to have their

services regularized either in G.O.Ms. 647 or based on their selection made by the A.P. Public Service Commission in 1978 and that they should be appointed similar to 48 direct recruits and should be treated as belonging to I.J. Divakar for the purpose of reckoning their seniority. With that view the Tribunal issued the following direction in paragraph 26 which reads as under:

"In the light of the above discussion on point No. 1, we hold, keeping in view the directions, of the Supreme Court in P.B. Chowdary's case, below 1975 SQT batch persons belonging to I.J. Diwakar's batch as stated above should be placed in the seniority list. While fixing the inter se seniority among the I.J. Diwakar's batch, the ranking given in APPSC selection, rule of reservation and presidential order should be followed. Below them, Junior Engineers who are eligible for regularization of their services under G.O.Ms. No. 647 and who have not exercised their option in the fresh options to be called for, for appointment based on selection by APPSC in 1978 should be placed and their dates of regularization should be revised by restricting them to the last date of regular appointee in the unit of appointment. The Junior engineer selected under limited recruitment should be given seniority as per the directions of the Supreme Court in Venkatareddy's case."

9. The issue when before the High Court and by the impugned judgment the High Court with great respect to state that after making reference to the various backgrounds noted above and after stating that the only question to be answered was as to whether the Tribunal disposed of the case in accordance with the directions of the Supreme Court merely extracted in paragraph 26 of the Tribunal's order and later on held that it was in tune with the decision of this Court in Venkatarareddy's case and I.J. Divakar's case and there was no scope for interference. Having perused the above judgment of the Tribunal as well as that of the full Bench impugned in these appeals and after hearing the learned Counsel for the Appellants and Respondents we are of the considered view that the order of the Tribunal was wholly misconceived and inasmuch as without any reason and without giving any valid reason the conscious decision of all the employees governed under G.O.Ms. 647 dated 14th September, 1979 not to exercise their option to be governed by their selection made through A.P.P.S.C. as early as in the year 1978 within the stipulated time limit, proceeded to hold that there should be such of those Appellants who approached the Tribunal should be given a fresh opportunity to be exercised either choose to go by their selection made by APPSC or to be governed by G.O.Ms. 647 of the year 1979. In service jurisprudence the rights of the employees in particular relating to the seniority is of very vital one inasmuch as such seniority could renew to their benefit all their promotions and consequential benefits in their higher scale of pay as well as all future benefits after their retirement by way of pension, commutation, family pension etc. In such circumstances when the State Government gave a wide opportunity to or summarily placed temporary employees who were all governed by G.O.Ms. 647 by which G.O. their services came to be regularized from their date of entry into service and allowed them to

choose either to go by benefit granted under the said G.O. or to opt for their seniority as well as entry into service based on the merit list of selection made by Service Commission and once the employees governed by G.O.Ms. No. 647 choose not to exercise their option within 15 days time granted in G.O.Ms. 532 dated 31/10/1983 and that services of those employees were set at rest bases on the above referred Government order. The question whether it will be open for the Tribunal without any other Rule or Regulation or any other decision providing for any change to the effect based on such Government orders to alter the service conditions of the employees differently and thereby providing scope for complications in their inter se service conditions. We are of the view that any such attempt if it is by the Tribunal in the absence of any valid authority for doing so would cause serious prejudice to those who choose to abide by the procedure which was applied on them valid orders by making it known to everyone concerned and similarly placed and consequently similarly placed viewed in that respect when we consider the reasoning of the Tribunal as noted in paragraph 24 of its order and the ultimate direction in paragraph 26 of its order cannot be allowed to operate. Unfortunately, though the full Bench was called upon to examine the correctness of the said decision of the Tribunal as quoted by us earlier by one later order simply took the view that the conclusion of the Tribunal was justified and there was scope for interference. We are, therefore, concerned to examine the issue and having noted the above features wherein the Tribunal exceeded its jurisdiction by interfering with certain service conditions of all the temporary employees whose services came to be regularized under G.O.Ms. 647 dated 14.09.1979 by simply drawing a comparison with the relief granted in the decision reported in , 1993 (Supple) 3 SCC 425 who are governed by the earlier direction issued in the case of I.J. Divakar in the decision reported in , 1982 (3) SCC 341 who were all directly selected and appointed in the selection made by the APPSC from the open market and whose case was nowhere comparable to those of temporary employees who are exclusively governed in G.O.Ms. 647 and the subsequent G.O. 532 dated 31.10.1983. We are therefore, obliged to interfere with the judgment as well as the order of the Tribunal. Consequently, the appeals are allowed. The impugned judgment of the Tribunal dated 25th June, 1999 in a batch of Original Applications commencing from O.A. No. 5667 of 1993 and the order of the full Bench of High Court of Andhra Pradesh dated 21st November, 2003 in W.P. Nos. 17497, 18319, 18681 and 19041 of 1999 and W.P. No. 1793 of 2001 is set aside and if the service conditions of the temporary employees governed under G.O.Ms. No. 647 dated 14.9.79 were altered in any manner based on the order of the Tribunal the official Respondents are directed to reverse the same and rework the benefits to be granted to the Appellants in accordance with law. Any action taken pursuant to the judgment of the Tribunal is also set aside. The appeals are allowed with the above directions.