

(2001) 02 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 14558, 14560 and 14562 of 1999

Director of Sericulture and Another

APPELLANT

Vs

K. Narasaiah, Asst. Inspector, T.S.C. and Another

RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Citation : (2001) 2 ALT 324

Hon'ble Judges : S.B. Sinha, C.J.; S.R. Nayak, J

Bench : Division Bench

Advocate : G.P. for Services-I, for the Appellant; Ganesh, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—All these three writ applications involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

2. The respondents herein filed applications before the learned Tribunal questioning the proceedings bearing Rc.No.18675/93-B2 dated 05-2-1999 for being quashed. The said order reads thus:

"In the proceedings reference 1st cited Sri K.Narasaiah, was temporarily promoted as Asst. Inspector of Sericulture, under Rule-37 (a)(i) of A.P. State and Subordinate Service Rules with a condition that he should pass the Sericulture Departmental Test Part-I in one of the first two examinations to be held by the A.P.P.S.C. and also that he should pass the Accounts Test Part-I within the period of probation, failing which he will be reverted to the lower cadre.

He has filed O.A.No.6602/93 along with others before Hon"ble APAT. The Hon"ble APAT in their orders dt.20-8-1998 while dismissing the O.A. have passed the following orders. " In this case also we hold that since the applicants did not pass the relevant departmental tests as prescribed in G.O.Ms.No.120, dt. 9-3-1989 they are not entitled to continue as Asst. Inspector of Sericulture."

As per the record and entries in his Service Register Sri K.Narasaiah, has not passed the Sericulture Departmental Test and also the Accounts Test for Sub-ordinate Officers Part-I.

In view of the orders of Hon''ble APAT, and as he failed to pass the test(s) prescribed, Sri K.Narasaiah, is not eligible to continue in the post of Asst. Inspector of Sericulture.

Therefore, Sri K.Narasaiah, is hereby reverted as Farm Foreman with immediate effect.

The Regl. Joint Director of Sericulture, Warangal is requested to issue necessary posting orders to the individual as Farm Foreman and report compliance.

The receipt of the orders should be acknowledged.

Orders of filling up the vacancy of Asst. Inspector of Sericulture consequent on the reversion of Sri K.Narasaiah will be issued separately in due course."

3. The learned Tribunal without considering the merit of the respective cases, relying on the basis of a decision of a learned single Judge of this Court in G. Amrutha Rao and others Vs. Acharya N.G. Ranga Agricultural University, that exemption having been granted to the employees, who have crossed 45 years of age from passing the departmental examinations, the impugned order must be held to be illegal.

4. The learned Government Pleader for Services submits that the learned Tribunal committed a serious error in passing the said judgment in so far as it failed to take into consideration that passing of the Sericulture Departmental Test Part-I was required to be possessed by the candidates concerned as a qualification and the same cannot be equated with a departmental test held for the purpose of promotion only. The learned Government Pleader also drew our attention to the statements in paragraph 5 of the writ affidavit, which is in the following terms:

"5. In this connection, it is submitted that, to provide promotional avenues to the employees working in the Sericulture Department, who are Non-Short Term Training Course and Non-Post Graduate Diploma in Sericulture and Non-Science graduate to get themselves qualified for promotion, the Sericulture Department Tests were prescribed as qualification in the Service Rules (Statutory Rules). So, the passing of Sericulture Department Test Part-I is a pre-requisite qualification for promotion to the post of Asst. Inspector of Sericulture as per Service Rules."

5. The Government of Andhra Pradesh issued G.O.Ms.No.4, Housing (Sericulture) Department, dated 13-11-1990 (hereinafter referred to as "the G.O." for the sake of brevity) whereby and whereunder Andhra Pradesh Sericulture Subordinate Service Rules were framed in exercise of the powers conferred upon it by the proviso appended to Article 309 of the Constitution of India. By reason of the said statutory rules, qualifications have been prescribed for appointment

to the category of Asst. Inspector of Sericulture either by direct recruitment or by promotion, which is as follows:

By Direct Recruitment

By Promotion

"Must possess Bachelor's Degree in Sericulture or Bachelor's Degree with Botany, and Zoology, as subjects of study or Bachelor degree in Agriculture from any recognised University in India established or incorporated by or under a Central Act, or Provisional Act or State Act or an Institution recognised by the University Grants Commission. Preference shall however be given to candidates possessing Bachelor's degree in Sericulture or holding Post Graduate Diploma in Sericulture, from any recognised University or an Institution as an additional qualification."

"Must have passed Sericulture Departmental Test Part-I. Provided that the persons possessing Bachelor's degree in Sericulture/Post Graduate Diploma in Sericulture/Short Term Course in Sericulture shall not be required to pass this test."

6. The respondents herein were promoted in March 1991. The said orders of promotion were conditional one viz., they will have to pass the aforementioned Sericulture Departmental Test Part-I which consisted of the following papers, as stated by the 1st petitioner herein in the affidavit filed on behalf of the petitioners, and as notified in the G.O. and in G.O.Ms.No.13, Housing (S) Department dated 28-1-1991 read with G.O.Ms.No.120, Industries & Commerce (SP & S) Department dated 9-3-1989:

"1. Paper I- General Sericulture and Silk Work Rearing.

2. Paper II- Mulberry Cultivation and Management.

3. Paper III- Seed Technology and Silk Worm Pathology.

4. Paper IV- Silk Reeling, Spinning and Testing and Practical Test as per Statutory Rules, and also to pass Accounts Test for Subordinate Officers Part-I, otherwise they will be reverted to the lower category."

7. It is not in dispute that the aforementioned Sericulture Departmental Test Part-I was a technical test.

8. As the learned Tribunal passed its judgment solely on the basis of a judgment of the learned single Judge of this Court in AMRUTHA RAO's case (1 supra), let us consider the said decision at the outset before adverting to the issue involved in these applications.

9. The question which arose before the learned single Judge was as to whether the State having issued the G.O. as a result whereof, the employees, who have crossed 45 years of age had been exempted from passing the departmental examinations, could be asked to appear in the Accounts Test for their second

Promotion keeping in view the clarifications made by the State thereafter by way of executive instructions, as also issuing Circulars therefor.

10. The learned Judge held that such purported Circulars are not valid, being contrary to and inconsistent with the Government Order 165 dated 22-4-1997.

11. Evidently, the aforementioned judgment was rendered on the basis that the Circular letters or clarifications couldn't be issued contrary to or inconsistent with any Government Order issued under Article 162 of the Constitution of India. The said decision, in our considered opinion, is not applicable to the fact of the present case. As indicated hereinbefore, the conditions of service of the respondents herein, including the qualifications required to be possessed for holding the post of Asst. Inspector of Sericulture are governed by statutory rules. Such rules having been framed by the State in exercise of its powers conferred upon it under the proviso appended to Article 309 of the Constitution of India, the question of amending the said Rule by providing a relaxation in the academic qualification by issuing a G.O. under Article 162 of the Constitution of India would not arise.

12. As noticed hereinbefore, in terms of the said statutory rules qualifications have been prescribed. Grant of relaxation as regards the essential qualifications to be held by an employee for holding a higher post must be construed strictly. Such relaxation, which would be part of the conditions of service, cannot be granted by an executive order issued under Article 162 of the Constitution of India, as a result whereof the statutory rules framed under the proviso appended to Article 309 of the Constitution of India would stand amended.

13. Further more, the second proviso appended to the G.O. clearly state that such exemption should not be applicable to technical or academic qualifications. As noticed hereinbefore, passing of Sericulture Departmental Test Part-I is mandatory for holding a technical post. Possession of such technical qualification is essential for holding the post, which would also be evident from the fact that only those persons who are possessing Bachelor's degree in Sericulture/ Post Graduate Diploma in Sericulture/Short Term Course in Sericulture would not be required to pass the said test. The respondents herein have merely passed S.S.C. examination and they do not hold the aforementioned qualifications. Thus, either they were required to have passed the Sericulture Departmental Test Part-I or Short Term Course in Sericulture. The respondents do not possess either of the said qualifications and thus they do not possess the requisite qualification to hold the post of Asst. Inspector of Sericulture.

14. The learned Tribunal, therefore, in our opinion, committed an error in relying upon the decision of this Court in AMRUTHA RAO's case (1 supra) particularly in view of the fact that even in G.O.Ms.No.165, Finance & Planning (FINANCE WING, F.P.1) Department, General Administration (Services-C) Department dated 22-4-1997 and in the Government Orders issued by the State, as referred to hereinbefore, reference had not been made thereto.

15. For the reasons aforementioned, the impugned order cannot be sustained, which is set aside accordingly. The writ petitions are accordingly allowed. No orders as to costs.

16. After the judgment was pronounced, the learned counsel submits that the department had granted exemption to the persons similarly situate. It is a well settled principle of law that even if an irregularity had been committed by the department on misinterpretation and misconstruction of the relevant Government Orders, the same cannot be permitted to be continued, as by reason of such mistaken order the respondents do not derive any legal right to obtain the relief sought for by them. Reference in this connection can be made to a decision of the Apex Court in Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others,