
(2008) 10 AP CK 0026
In the Andhra Pradesh High Court
Case No : Writ Petition No. 24609 of 2007

G. Boyanna

APPELLANT

Vs

The High Court of A.P.

RESPONDENT

Date of Decision : 30-10-2008

Acts Referred:

Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 28
Constitution of India, 1950 — Article 16(1)
State and Subordinate Rules, 1962 — Rule 45

Citation : (2009) 2 ALD 402 : (2009) 1 ALT 462

Hon'ble Judges : P.V. Sanjay Kumar, J;Goda Raghuram, J

Bench : Division Bench

Advocate : G. Jagadeeswar, for the Appellant; M. Bhaskara Lakshmi, S.C., for the Respondent

Final Decision : Allowed

Judgement

P.V. Sanjay Kumar, J.—Whether the petitioner, having turned his back on the promotion given to him earlier, can lay a claim to be considered for promotion thereafter is the short question arising for decision in this writ petition.

The admitted facts of the case are as hereunder:

The petitioner was originally appointed as a Process Server in the Last Grade Service of the Judicial Department. He was appointed on transfer temporarily as a Junior Assistant vide Proceedings in RCA No. 35/95, dated 07.02.1995 of the District and Sessions Judge, Nellore, second respondent herein. He submitted application dated 23.10.2000 to the District and Sessions Judge, Nellore, stating to the effect that his parents had expired two years prior thereto, casting the entire burden of the family upon him. He further cited grounds of ill-health and his lack of understanding of the English language as reasons for his facing difficulty in discharging the duties of a Junior Assistant. He therefore requested the District and Sessions Judge, Nellore, to revert him from the post of Junior Assistant to that of Process Server, originally held by him. Acting upon the said

representation, by Proceedings in RCA No. 273/2000, dated 19.12.2000, the District and Sessions Judge, Nellore, reverted the petitioner as requested.

After recovering from his illness, the petitioner submitted several representations to the District and Sessions Judge, Nellore, seeking promotion to the post of Record Assistant/Reader/Amin. His request was rejected under the Proceedings of the District and Sessions Judge, Nellore, dated 24.09.2003 holding that as the petitioner had relinquished his promotion, he was not entitled to be considered for promotion as per Memo No. 8/SER-A/84-1, dated 18.01.1984 of the General Administration (Services-A) Department, Government of Andhra Pradesh. Thereupon, the petitioner submitted an application to the High Court on the administrative side, first respondent herein, reiterating his request to be considered for promotion. Having called for and considered the record and the remarks of the District and Sessions Judge, Nellore, the High Court on the administrative side, passed orders in ROC No. I593/2004-CI (1), dated 06.11.2004 rejecting the request of the petitioner to be considered for promotion in the light of the aforestated Government Memo dated 18.01.1984. Aggrieved thereby, the petitioner approached this Court by way of the present writ petition.

2. A detailed counter-affidavit was filed by the Principal District and Sessions Judge, Nellore, stating to the effect that the case of the petitioner was squarely covered by the instructions issued by the Government of Andhra Pradesh in its Memo dated 18.01.1984 and also Rule 28 of the Andhra Pradesh State and Subordinate Services Rules, 1996 (for short, "the Rules of 1996"). It was stated that the petitioner, having relinquished the promotion given to him earlier, cannot seek review of the same in the light of the above mentioned instructions and Rule.

Sri G. Jagadeeswar, learned Counsel appearing for the petitioner, contended that merely because the petitioner sought reversion to his original post earlier, it cannot be construed that he had given up his right to be considered for promotion for all times to come. He submitted that the petitioner had relinquished his right for promotion due to certain unavoidable circumstances and as he was now in a position to further his career interests, he is entitled to be considered for promotion.

3. On the other hand, Smt. M. Bhaskara Laxmi, learned standing Counsel appearing for the respondents, contended that the petitioner having relinquished his right of promotion earlier, is bound by the same and in the light of Rule 28 of the Rules of 1996 the said relinquishment is deemed to be irrevocable. She submitted that the writ petition was devoid of merit and deserved to be dismissed.

4. It is relevant to note at this point that the petitioner was not promoted to the post of Junior Assistant but was appointed by transfer. In fact, he could not have been so promoted, as the post of Process Server is not in the feeder category for promotion to the post of Junior Assistant. In this view of the matter, it is doubtful

whether the act of the petitioner in seeking reversion from the post of Junior Assistant can be said to be one of relinquishment of his right to be considered for promotion. However, this is how the respondents have treated the matter and the petitioner also abided by it. Therefore, for the purpose of this case, it shall be presumed that the petitioner relinquished his right for promotion when he sought reversion to the post of Process Server.

5. Memo No. 8/SER-A/84-1, dated 18.01.1984 issued by the Government of Andhra Pradesh, General Administration (Services-A) Department, reads as follows:

Rule 45 of the General Rules for Andhra Pradesh State and Subordinate Service Rule, lays down that nothing contained in the said rules or the Special Rules, shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished. The expression "to the extent to which it has been so relinquished" occurring in the said rules admits of a temporary relinquishment of any right. If any individual had temporarily relinquished his right it cannot be said that his right for promotion is permanently extinguished. There is, therefore, no legal objection to consider him for promotion subsequently. But any promotion subsequently made, will not give him any right for seniority over the persons who have been promoted in the mean-time during the period when the temporary relinquishment was in force.

2. Instances have come to the notice of Government that this provision is being put to mis-use and some persons are relinquishing their right of promotion "temporarily" on domestic grounds and coming up again with a request to reconsider their case for promotion as and when it is convenient for them. In order to curb this tendency, it has been decided that in future when any one seeks to relinquish such right temporarily, General Rule 45 shall be invoked and a view taken that such relinquishment "temporarily" is opposed to public interest and, therefore, not acceptable.

3.

The said memo was issued in the backdrop of Rule 45 of the State and Subordinate Rules, 1962 (for short "the Rules of 1962") issued in G.O.Ms. No. 418, General Administration (Rules) Department, dated 07.03.1962. Rule 45 of the Rules of 1962 reads as hereunder:

45. Relinquishment of rights by members:

Any person may, in writing, relinquish any right or privilege to which he may be entitled under these rules or the special rules if, in the opinion of the appointing authority, such relinquishment is not opposed to public interest; and nothing contained in these rules or the special rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished.

The Rules of 1962 were superseded by the Rules of 1996, whereby Rule 45 has

been substituted by Rule 28. Rule 28 of the Rules of 1996 reads as hereunder:

28. Relinquishment of rights by members: Any member of a sendee may, in writing, relinquish any right or privilege to which he may be entitled to, under these rules or the special rules, if in the opinion of the appointing authority such relinquishment is not opposed to public interest. Such relinquishment once made will be final and irrevocable. Nothing contained in these rules or the special rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished:

Provided that no conditional relinquishment or relinquishment of right for a temporary period shall be permitted.

6. The respondents relied upon the Memo dated 18.01.1984 in a rejecting the request of the petitioner to be considered for promotion. However, as the first paragraph of the said Memo would indicate, Rule 45 of the Rules of 1962 did not hold to the effect that once an individual had temporarily relinquished his right for promotion, such right stood permanently extinguished. It is in fact made clear that there could be no legal objection to consider such an individual for promotion subsequently, though the same would not entitle the individual to claim seniority over persons promoted during the period of his temporary relinquishment. Losing sight of the first paragraph in the Memo dated 18.01.1984, it appears that the respondents blindly relied upon the second paragraph which only states to the effect that temporary relinquishments should not be accepted, being against public interest.

7. Insofar as Rule 28 of the Rules of 1996 is concerned, it is in sum and substance, a replication of the earlier Rule 45 of the Rules of 1962. The only addition in the new rule is that the relinquishment once made is to be treated as final and irrevocable and a proviso is added stating to the effect that no conditional or temporary relinquishment shall be permitted.

8. A learned Division Bench of this Court had occasion to deal with the construction and interpretation of Rule 28 of the Rules of 1996 in its unreported judgment in *The District Educational Officer, Kurnool v. Shahnaz Begum* W.P. No. 26654 of 2005, 09.08.2006. Therein, the learned Division Bench quoted with approval the observations made by the A.P. State Administrative Tribunal in *Smt. S. Swarna Kumari v. Deputy Commissioner of Prohibition and Excise* O.A. No. 715 of 2004, dated 23.03.2004. The observations extracted by the learned Division Bench are replicated hereunder:

...A careful perusal of Rule 28, extracted above, would reveal the following:

(1) An option is given to any member of a service to relinquish any right or privilege to which he may be entitled to, under the relevant rules (this includes right or privilege of promotion).

(2) Such relinquishment is subject to acceptance of the appointing authority, who must be satisfied before acting upon such relinquishment that such

relinquishment was not opposed to public interest.

(3) Such relinquishment once made will be final and irrevocable.

(4) Once such relinquishment has come into force, the authorities concerned shall not be required to recognise any right or privilege to the extent to which it has been so relinquished.

The proviso to this Rule contemplates that conditional relinquishment or relinquishment of a right for a temporary period shall not be permitted....

...Viewed in this context, a relinquishment of a right or privilege to promotion would only mean that his right to be considered for promotion, while he was occupying a particular place in the seniority list, at a time when he was eligible for promotion by virtue of passing of the tests etc., as required under the then existing rules and in respect of a vacancy, that has arisen at the relevant time has been relinquished. This relinquishment may be permanent.

It is true that conditional relinquishment is not permissible. What is meant is that in respect of that particular opportunity for promotion a member of a service cannot relinquish with a rider that he would claim that privilege of promotion on the happening of certain contingency. For example, if a member of a service has relinquished his right or privilege of promotion on the ground of his sickness, he cannot be allowed to claim that offer of promotion may be revived after he is cured of his sickness.

Similarly, the provision that he cannot be permitted to relinquish temporarily would mean that in respect of a particular opportunity for promotion, the employee cannot be allowed to claim that the offer of promotion may be kept open for him for a particular period.

The real question is what privilege or right has been relinquished?

This assumes significance in view of the language used in Rule 28 of the State and Subordinate Service Rules which is to the following effect:

Nothing contained in these rules or the special Rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished.

This would indicate that the authorities concerned are not required to recognise any right or privilege of a member of a service to the extent to which it has been so relinquished. The words "to the extent to which it has been so relinquished" appear significant.

So, the question, therefore, is where a member of a service, who had a privilege or a right to be considered for promotion, at a particular stage, has relinquished his right, the relinquishment has to be interpreted in the background of what has been stated above that a privilege or right of promotion depends on concatenation of several circumstances. The extent of relinquishment has to be

determined in the context of that particular occasion when the right or privilege for promotion had arisen for a member of a service. The relinquishment of an opportunity for promotion, which arose for an employee occupying certain place in seniority list in the year 2001, in view of a vacancy that arose then, in view of the fact that she was eligible for promotion in the light of the criteria laid down in the Rules, would mean that the extent the privilege has been relinquished is confined to the privilege related to that particular vacancy which was available to her by virtue of the above mentioned circumstances. The Rule cannot be interpreted to mean that the relinquishment was in respect of future vacancies also.

The learned Government Pleader seeks to contend that such an interpretation would render the provision in the Rule that such relinquishment will be permanent nugatory. We are unable to accept this contention.

As far as that particular vacancy is concerned, the employee's relinquishment is final. He cannot claim later that he may be deemed to have been promoted to that particular vacancy and that his seniority may be fixed as if he was promoted to that vacancy. Accepting such interpretation would mean that if a member of service, who has relinquished his promotion, at one stage, is promoted subsequently when another vacancy arose, he will be junior to a person, who inspite of being junior to this member, was promoted to the vacancy relinquished by him in the promotion post.

In the light of the above discussion, we have no hesitation in holding that relinquishment of right or privilege of promotion to a particular vacancy would amount to permanent relinquishment of right of privilege for promotion to that particular vacancy. The Rule 28 of the State and Subordinate Service Rules cannot be read or interpreted to mean that his right to be considered for promotion to any vacancy arising in future also is permanently extinguished. Such an interpretation would lead to frustration and unrest in the service defeating the object of promoting efficiency and harmonious functioning....

(emphasis added).

9. The learned Division Bench in that case, expressed its complete agreement with the above interpretation of the Rule and pointing out the fact that the right to be considered for promotion is a fundamental right under Article 16(1) of the Constitution of India, it was held that Rule 28 of the Rules of 1996 did not disentitle a member of a service from being considered for promotion in a future vacancy merely because he/she had relinquished his/her right for promotion earlier.

We find ourselves in consensus with the opinion of the learned Division Bench in the above judgment. The mere fact that the petitioner sought reversion earlier on personal grounds did not disentitle him from being considered for promotion thereafter. The reliance placed upon the Memo dated 18.01.1984 was utterly misconceived as pointed out herein above and Rule 28 of the Rules of 1996 does

not have the effect, of extinguishing the right of the petitioner to be considered for promotion permanently. This being the legal position, the rejection of the petitioner's request to be considered for promotion on the ground of his alleged relinquishment is unsustainable.

10. Accordingly, the writ petition is allowed directing the second respondent herein to consider the case of the petitioner for promotion as per rules and in terms of his eligibility and qualification, as and when a suitable vacancy arises. There shall be no order as to costs.