

(2002) 02 AP CK 0178

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 3433 and 3761 of 2002

G. Sreedhar

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 28-02-2002

Acts Referred:

Andhra Pradesh Judicial Ministerial Service Rules, 2003 — Rule 4(2)

Citation : (2002) 2 ALD 764 : (2002) 2 ALT 455

Hon'ble Judges : Ar. Lakshmanan, C.J.;I. Venkatanarayana, J

Bench : Division Bench

Advocate : K. Vasudeva Reddy and M.V. Raja Ram, for the Appellant;
Government Pleader for Home and C.V. Nagarjuna Reddy, SC for the High Court,
for the Respondent

Final Decision : Dismissed

Judgement

Dr. Ar. Lakshmanan, C.J.—Heard Sri K. Vasudeva Reddy and Sri M. V. Rajaram for the petitioners and Sri C. V. Nagarjuna Reddy for the Registrar General of this Court.

2. The petitioner in WP No.3433 of 2002 is working as Superintendent in Industrial Tribunal-cum-Labour Court, Godavarikhani. The writ petition was filed by him for mandamus directing the respondents to incorporate/include his category i.e., the category of Superintendents of Industrial Tribunals/Labour Courts under Rule 4(2) of the A.P. State Judicial Service Rules for being eligible for appointment by transfer as Junior Civil Judge and to direct the respondents to permit the petitioner to appear for the examination scheduled to be held for the post of Junior Civil Judge in terms of the notification dated 29-1-2002 as communicated by the District and Sessions Judge, Karimnagar vide proceedings dated 5-2-2002 duly accepting the petitioner's application.

3. The petitioner in Writ Petition No.3761 of 2002 is working as the Head Clerk in the Court of Junior Civil Judge, Sultanabad, Karimnagar. He filed the writ petition

for mandamus declaring the Rules 4, 5 sub-rule (c), (d) and (e) of Rule 12 and Rule 10 of the A.P. State Judicial Service Rules insofar as in-service candidates are concerned as illegal, arbitrary, to set aside the notification dated 29-1-2002 and to direct the respondents 1 and 2 to consider the case of the petitioner as eligible for the post of Junior Civil Judge by relaxing the case of the petitioner as eligible for appearing the written examination.

4. According to the petitioners, they have fulfilled the requisite qualification prescribed for being appointed as Junior Civil Judges by transfer, viz., (a) that they have not completed 48 years of age as on 1-7-2001 and (b) that they possess the law degree qualification and hence they are eligible for being appointed as Junior Civil Judges by transfer.

5. The grievance of the petitioners is that the notification dated 29-1-2002, the "Superintendents" working in the Industrial Tribunals/Labour Courts and the "Heard Clerks" working in the Courts of Junior Civil Judges are not included along with other categories of employees shown under B(i) to (vi) in the notification. Therefore, they became ineligible for submitting applications and that unless they are permitted to appear in the ensuing selection process, they will be put to serious and irreparable loss.

6. Under Rule 4(2) of the A.P. State Judicial Service Rules and as per the notification dated 29-1-2002 issued by the Registrar General of this Court, the following categories of persons are entitled to be recruited/appointed to the post of Junior Civil Judges/District Munsifs by transfer:

(i) Section Officers, Court Officers, Scrutiny Officers, Accounts Officers, Court Masters, Personal Assistants (Now re-designated as the Personal Secretaries) to the Hon'ble Judges and Registrars, Special Assistants (Now re-designated as Deputy Section Officers) and Translators of the High Court;

(ii) Sheristadars of District Courts (Now re-designated as Administrative Officers), Head Clerks of District Courts, Sheristadars of Senior Civil Judges Courts and Central Nazirs, Deputy Superintendent of City Courts, Nazir of City Civil Courts, City Criminal Courts and District Courts;

(iii) Assistant Public Prosecutors Grade I, Assistant Public Prosecutors Grade-II in the Andhra Area, Chief Law Instructors in the Police Training College, Anantapur, Police Prosecuting Officers and Assistant Police Prosecuting Officers in the Telangana Area;

(iv) Section Officers in the Law Department of Secretariat;

(v) Managers of the Officers of the Advocate-General, Governmentor, Pleader, Public prosecutor and Editor ILR,

(vi) Section Officers of the Legislature Department.

7. It is submitted that in the categories of employees eligible for appointment as Junior Civil Judges by transfer as mentioned by respondents 1 and 2 in Rule 4(2)

"Annexure" of A.P. State Judicial Service Rules and also in the notification issued by the Registrar General, no mention is made about the petitioners' categories, viz., Superintendents of Industrial Tribunals/ Lower Courts and Head Clerks of the Court of Junior Civil Judge. According to the petitioner in WP No.3433 of 2002, the Superintendent of the said Industrial Tribunals/Labour Court is in Category-I of A.P. Ministerial Service Rules and that the said post of Superintendent is filled up by Category-II employees of the A.P. Judicial Ministerial Service, which is mentioned in clause (ii) of Annexure to Rule 4(2) by the respondents. The Superintendents of Industrial Tribunal/Labour Court and the Sharistadars (Administrative Officers) of District Courts are Category-I posts in A.P. Ministerial Service Rules and A.P. Judicial Ministerial Service Rules respectively and both the posts carried identical scale of pay till 1978, viz., Rs.700-40-1060-35-1250/-. Thus, both posts are identical in respect of discharge of duties and pay scales also, but it was deviated in 1986 Revision of Pay Scales and the Superintendents of Industrial Tribunals/Labour Courts are given pay scale of Rs. 1,330-2,630/-, in 1993 Revision of Pay Scales Rs.2,600-5,580/- and in 1999 Revision of Pay Scales Rs.5,000-10,600/-, which is identical to Category-II employees of the A.P. Judicial Ministerial Service. Thus, even on par with the Category-II employees of the Judicial Department, the Superintendents of Industrial Tribunal/ Labour Courts are entitled to be included/ incorporated in Rule 4(2) of the Rules for being eligible for appointment as Junior Civil Judge by transfer. It is submitted on behalf of the petitioner in WP No.3761 of 2002 that the employees working in the Courts, by the time reach the post of Sharistadar, complete 48 years age of and thereby their right of promotion is being curtailed and that therefore age relaxation has to be given to in service candidates. It is further submitted that insofar as the rules are concerned, they are made by virtue of the powers given to the Government and the rules for appointment of District Munsifs re-designated as Junior Civil Judges are framed by the Government of Andhra Pradesh and proviso to Article 309 read with Article 235 of the Constitution of India in consultation with the High Court and ultimately this Court has got a say in the matter and as such the petitioners have to invoke the jurisdiction of this Court only.

8. Along with writ petition, the petitioners have filed notification dated 29-1-2002, office memo dated 5-2-2002, the proceedings dated 14-3-1997 and 25-11-1997, letter dated 30-8-1997, the proceedings dated 16-11-2001 and the two interim orders dated 15-2-1996 and 2-7-1996.

9. Counter-affidavit was filed by the Registrar General of this Court denying the allegations contained in the affidavit filed by the petitioners.

10. Sri C. V. Nagarjuna Reddy, learned Counsel for the High Court submitted that the post of Superintendents of Industrial Tribunal/Labour Court and Administrative Officers of District Courts are not identical since they carry identical scale of pay. It is also submitted that the duties and responsibilities of the Administrative Officer in the District Courts are entirely different from that of

the Superintendent of the Industrial Tribunals and Labour Courts and the post of Administrative Officer in the District Court in Gazetted one, whereas the post of Superintendent in the Tribunal is non-gazetted. In fact, it is brought to our notice that many of the candidates both from the High Court Service and Judicial Ministerial Service, who, are ineligible for appointment to the post of Junior Civil Judge by transfer, filed the writ petitions to declare their categories as eligible categories. However, those writ petitions were dismissed on the ground that the writ petitioners are not in the eligible categories to be interviewed for the post of Junior Civil Judge by transfer and until and unless the rules are amended, no relief can be granted to the petitioners.

11. We see merit, substance and force in the contention of the learned Counsel for the High Court. As rightly pointed out by the learned Counsel for the High Court I that unless and until the category of Superintendents of Industrial Tribunals/ Labours Courts and the Head Clerks of the Court of Junior Civil Judges are not included as eligible feeder categories for appointment to the post of Junior Civil Judge by transfer by the rule making authority i.e., the Government of Andhra Pradesh in consultation with the High Court, the petitioners are not eligible for appointment to the posts as per the existing rules.

12. Our attention was also invited to a decision in Writ Petition No.749 of 1980. The said petition was filed by the approved probationers in the category of Assistants in the High Court claiming eligibility for recruitment to the post of District Munsif and to issue a consequential direction declaring the Memo in question as illegal, null and void. Jeevan Reddy, J., dismissed the writ petition by observing as follows:

"May be that there are good reason for making the category of Assistants in the High Court service also eligible for recruitment by transfer as District Munsifs; but, that is a matter to be considered by the rule making authority. So far as this writ petition is concerned, I am unable to hold that the category of Assistants in the High Court service have been subjected to hostile discrimination, it is, therefore, not possible to declare that the rule is void. Nor is it possible to issue a mandatory direction to consider the Assistants in the High Court service also as eligible for recruitment by transfer, assuming that such a mandatory direction is permissible in law".

13. This order was affirmed by a Division Bench of this Court comprising of A. Raghuveer, J., and P. Ramachandra Raju, J., in Writ Appeal No.535 of 1980 dated 10-12-1980. In our opinion, fixing the age limit or classification or categorisation or relaxation is primarily for the Legislature or for the statutory authority. If there is no discrimination and the classification is found to rest on reasonable basis, the rules as it stands today is to be upheld. Fixing the age limit or including a particular category or classification or categorisation or relaxation is primarily for the Legislature and for the statutory authority charged with the duty of framing the terms and conditions of service. Therefore, the Court cannot issue a mandamus or direction to the legislative authorities to amend the law and it is

for the rule making authority to include or to exclude any category from the list of eligible category. We are, therefore, unable to grant any relief to the petitioners in these writ petitions. It is for the petitioners to approach the Government for including the said categories as categories eligible for appointment in future.

14. The writ petitions are dismissed accordingly. No order as to costs.