

(2002) 11 AP CK 0081
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8814 of 2002

G.K. Bhaskaraiah

APPELLANT

Vs

Vice-Chairman, Tirupati Urban Development Authority and
Others

RESPONDENT

Date of Decision : 22-11-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2003) 1 ALT 523

Hon'ble Judges : D.S.R. Varma, J; Bilal Nazki, J

Bench : Division Bench

Advocate : Y. Anupama Devi, for the Appellant; M. Ratna Reddy, for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—This writ petition is filed challenging the order dated 4-4-2002 passed by the Andhra Pradesh Administrative Tribunal (for short "the Tribunal") in O.A. No. 5192/2001 with VMA No. 427/2001.

2. The applicant before the Tribunal is the writ petitioner. He sought to declare the action of the 2nd respondent in directing the 1st respondent through letter dated 1-6-2001 to prepare the revised seniority list in the cadre of Assistant Executive Engineer (for short "A.E.E.") in Tirupati Urban Development Authority (for short TUDA") without considering the weightage of service, without notice to the applicant and consequential order passed by the 1st respondent dated 20-7-2001 as illegal and arbitrary. The Tribunal rejected his claim. Hence, the writ petition.

3. The facts leading to the filing of the O.A. and thereby the writ petition, in brief are as follows:-

The writ petitioner was initially appointed as Draftsman and was promoted as Assistant Engineer (for short "A.E.") on 9-7-1986. His services were regularized

in the said cadre in the year 1987. He acquired degree qualification of B.Tech. on 31-10-1993. Considering his representation dated 1-7-1994, he was appointed as A.E.E. with effect from 1-11-1993 on conversion from the post of A.E. (Supervisor) upon his acquisition of B.Tech. qualification. Further he was given notional date of appointment with effect from 27-7-1991 allowing 1/3rd service weightage in the cadre of A.E. in pursuance of G.O.Ms. No. 658 M.A. dated 22-10-1977 and G.O.Ms. No. 428 M.A. dated 30-3-1997, through proceedings dated 24-12-1994. The unofficial respondents herein who were appointed as A.E.E. on 12-5-1993 submitted an application in the year 2000 for fixation of their seniority in the cadre of A.E.E. The 1st respondent sought for a clarification from the 2nd respondent with regard to giving of 1/3rd service weightage rendered in the cadre of A.E. for fixation of seniority in the cadre of A.E.E. on the ground that there are no rules for TUDA. Thereupon the Government issued the impugned order dated 1-6-2001, wherein it was stated that it is not appropriate to consider the service weightage to the upgraded post i.e., A.E.E. as there is no enabling provision in the Staff Regulations of TUDA and thereby requested the 1st respondent to take appropriate action by preparing the revised seniority list without taking into account the service weightage. Consequently the 1st respondent through proceedings dated 20-7-2001 communicated the provisional seniority list of A.E.E., wherein the name of the petitioner was shown at Sr. No. 3, and unofficial respondents were shown at Sr. Nos. 1 and 2. Challenging the same, the present O.A. was filed before the Tribunal and eventually the same was dismissed. Hence, the writ petition.

4. From the above facts the question that falls for consideration before us is whether the petitioner was rightly appointed to A.E.E. by conversion from the post of A.E. from 1-11-1993 and whether the fixation of notional date of appointment with effect from 27-9-1991 for the purpose of promotion duly allowing the 1/3rd service weightage in the cadre of A.E. by virtue of G.O.Ms. No. 658 dated 22-10-1979 and 428 dated 30-3-1997, is correct?

5. The contention of the counsel for the petitioner is, the impugned order of the 2nd respondent dated 1-6-2001 to follow the Staff Regulations of TUDA, but not the G.Os. is not tenable. He contended that G.O.Ms. No. 658 and 428 are very much applicable to the petitioner in so far as giving service weightage in the cadre of A.E. He stated that in fact as per G.O.Ms. No. 428 dt.30-3-1997, the petitioner is entitled to get the notional seniority after the application of benefit of weightage.

6. The case of the 1st respondent in the counter-affidavit mainly is that the service weightage of three years was given to the petitioner as per G.O.Ms. No. 428 dated 13-3-1979 and G.O.Ms. No. 262 dated 14-7-1998. It is stated that in the said G.O. it is directed that Irrigation Command Area Development shall be nodal department for other departments having engineer wing like Municipal Administration and Urban Development Department and if any engineering department wishes to deviate from the provisions, they may do so after duly

obtaining suitable orders from the Government. It is further stated that the orders issued in G.O.Ms. No. 262 regarding nomination of Irrigation and Command Area Development as nodal department to other departments was kept in abeyance and the said orders were made absolute through proceedings dated 14-5-1999. Therefore, it appears that those G.Os. are no longer in force. It is further stated that since Service Regulations of TUDA do not contain special provisions for conversion of A.Es. to A.E.Es. and also no provisions have been made for considering the weightage to upgraded A.E.Es. Therefore, the TUDA by its letter dated 6-2-2000 requested the Government to clarify the rule position that has to be followed. Thereupon the Government through impugned proceedings dated 1-6-2001 clarified that in the absence of enabling provisions in the Staff Regulations of TUDA it is not proper to consider the service weightage to upgraded A.E.Es. and accordingly requested TUDA to prepare revised seniority list without considering service weightage. Basing on the said clarification, the authority has prepared the provisional seniority list and communicated to the petitioner. It is further stated in the counter-affidavit that the Government through G.O.Ms. No. 368 dated 31-7-1985 have extended the Service Regulations of Hyderabad Urban Development Authority (for short "HUDA") to TUDA.

7. Therefore, according to the 1st respondent as indicated in the impugned proceedings since the G.Os. issued by the Government permitting TUDA to give service weightage in the cadre of A.E. for the purpose of seniority in A.E.Es. was kept in abeyance and also since in the regulations of HUDA which were made applicable to TUDA by virtue of G.O.Ms. No. 368 dated 31-7-1985, do not contain any specific provision enabling giving of weightage of service in the cadre of A.E. for the purpose of fixation of seniority in the cadre of A.E.E., the petitioner cannot claim any service weightage.

8. The learned counsel appearing for the petitioner placing heavy reliance on the judgments of the Supreme Court reported in *Devi Prasad and ors Vs. Government of Andhra Pradesh and ors*, and *State of Andhra Pradesh and another Vs. K.S. Muralidhar and others*, contended that the Apex Court upheld the giving of service weightage.

9. But a Full Bench of this Court in *U. Govinda Rao and Others Vs. Government of Andhra Pradesh and Others*, having considered various aspects including the question of *res judicata* and also the aspect of giving service weightage and distinguishing the judgments of the Apex Court referred to 1 and 2 *supra*, held that "those who have been appointed regularly cannot be subjected to loss of seniority at the instance of those whose services have been regularized subsequently". The Full Bench further held at paragraph No. 94 as under:-

"It is one thing to say that having regard to *Devi Prasad* and *K.S. Muralidhar* (cited 1 and 2 *supra*) that weightage rule is not arbitrary but it is another thing to say that it is violative of Articles 14 and 16 of the Constitution of India in so far as it seeks to take away the accrued and/or vested right of others who had

been holding a higher position from before. The apex Court has laid down several criteria for determining seniority. The apex Court "has also laid down a law to the effect that a person cannot hold a post anterior to the date when the post fell vacant and/or he acquired the requisite qualification to hold the same. Keeping in view entry in the service from various sources, the law laid down by G.S. Venkat Reddy and others etc. etc. Vs. Government of Andhra Pradesh and others, has been acted upon. It has been followed in many subsequent decisions. We are, therefore, of the opinion that the impugned rule to the extent challenged is violative of Articles 14 and 16 of the Constitution of India in so far as vested right of the junior engineers who are senior to them is sought to be taken away."

10. Coming to the present case it is to be seen from the proceedings dated 20-7-2001, which are consequential to the impugned proceedings dated 1-6-2001, the petitioner was converted as A.E.E. by virtue of his acquiring qualification on 1-11-1993, whereas, the unofficial respondents were appointed directly as A.E.Es. on 12-5-1993.

11. The above dates clearly indicate that the unofficial respondents were seniors to the petitioner in the cadre of A.E.E. Now the whole controversy is, due to giving notional promotion to the petitioner as A.E.E. with effect from 27-9-1991 duly allowing 1/3rd service weightage, for the purpose of seniority. This fact clearly indicates that as on 27-9-1991, the petitioner was not functioning as A.E.E. in which event the situation is squarely covered by the principle laid down by the Full Bench as extracted above.

12. Further more it is significant to see whether the notional date of appointment with effect from 27-9-1991 is permissible under the Regulations of TUDA or not. In this context, it has to be noted that the specific case of the Government as well as TUDA is that the Service Regulations of HUDA were made applicable to TUDA through G.O.Ms. No. 368 dated 31-7-1985 and the said regulations do not contain any specific provision with regard to giving service weightage in the cadre of A.E. for the purpose of seniority in the cadre of A.E.E. In other words, the G.Os. relied by petitioner are not applicable to TUDA. Therefore, giving notional date of appointment by giving 1/3rd service weightage in the cadre of A.E., is not permissible.

13. No doubt the regulations governing the service conditions relating to weightage for the purpose of seniority in G.O.Ms. No. 368 was not placed on record by the unofficial respondents, nor any attempt was made on behalf of the petitioner to counter the said specific contention. It is also on record that pursuant to the impugned proceedings dated 1-6-2001, only the provisional seniority list is stated to be made. No objections were called for in this regard and as such no objections were offered by the petitioner so far.

14. In the result, for the foregoing reasons, particularly in the light of Full Bench judgment of this Court (cited 3 supra), we do not find any infirmity in the order of the Tribunal nor any merit in the writ petition and the same is accordingly

dismissed. No costs.