

(2001) 09 AP CK 0071

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1596 of 1999

G.Y.V. Prasad and Others

APPELLANT

Vs

Collector/Chairman, District Scheduled Caste Service Co-op.,
Society Ltd., Guntur and Others

RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:

Citation : (2001) 6 ALD 270

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : P. Kishore Rao, for the Appellant; M.V.S. Suresh Kumar, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—The petitioners are three in number. They filed this writ petition praying, inter alia, for the following reliefs:

"to issue an appropriate writ, order or directions especially one in the nature of a writ of mandamus declaring the action of respondents in not considering the claim of petitioners for promotion as Senior Assistants on the illegal ground of non-finalization of recruitment rules as arbitrary, discriminatory and unconstitutional and consequently direct the respondents to promote the petitioners as Senior Assistants in the Office of the third respondent with all consequential benefits."

2. The following facts are not disputed: The 1st petitioner was appointed as Junior Accountant on 20th April, 1992 and his services were regularized as Typist on 6-2-1993. The 2nd petitioner was appointed as a Junior Assistant on 10th June, 1988 and his services were regularized in the said post on 3rd November, 1991. He was thereafter appointed as Special Grade Junior Assistant on 9-10-1993. The 3rd petitioner herein was appointed as Junior Accountant on 20-4-1992.

3. Circular No.E2/1409/APSC/96 dated 31-5-1996 was issued by the Managing Director (3rd respondent herein) wherein it was directed:

"As such the revised latest staffing pattern of District S.C. Societies is communicated herewith. As per revised staffing pattern 4 Junior Assistants, 2 Attenders and one Attender-cum-Driver post is sanctioned for each district. All Executive Directors are directed to surrender the deputation staff in the cadre of Junior Assistants and promotions may be given to eligible Attenders/Record Assistants who have completed 3 years of service basing on merit-cum-seniority and after conducting a written test. Rule of Reservation and qualifications and efficiency should be observed while promoting the existing staff as Junior Assistants. While considering the promotions, the staff working in Engineering Wing shall also be taken into consideration."

4. The petitioners herein have, inter alia, stated that the Managing Director of the Scheduled Caste Service Co-op. Finance Corporation had issued a Circular bearing No.E2/2593/APSC/94 dated 5-7-1996, in terms whereof all posts of Senior Assistants were to be filled up by promotion from in-service candidates. Such a direction appears to have been issued in view of a decision of a learned single Judge of this Court in W.P. No.29617 of 1995 dated 16-7-1997.

5. The aforementioned statements are not denied or disputed by the respondents. The respondents, however, in their counter affidavit contend that there were one post of Senior Assistant, four posts of Senior Inspector (Co.op), one post of Accountant Senior Inspector and another Accountant's post. However, by a Circular dated 5-7-1996, it was clarified that the post of Senior Inspector can be converted into the post of Senior Assistant. The respondents contend that two posts of Senior Assistants, one post from Social Welfare Department; one post from Revenue Department and one post of Revenue Inspector from Revenue Department are also filled up and they have been working in respondents-society, [t is stated that promotions of the Junior Assistants to the post of Senior Assistants could not be considered in the absence of the approved Service Rules and having regard to the fact that such Service Rules have not been approved by the State Government, the cases of the petitioners could not be considered.

6. The stand taken by the respondents cannot be accepted on two grounds. Section 116(c) of the A.P. Co-operative Societies Act, 1964 (Act 7 of 1964) was inserted by A.P. Act 21 of 1985, which came into force with effect from 22-4-1985. The said provision reads thus:

"116-C. Staffing pattern of societies:-

(1) A society shall have power to fix the staffing pattern, qualification, pay scales and other allowances for its employees with the prior approval of the Registrar of Co-operative Societies;

(2) No appointment or removal of a Chief Executive by whatever name called of

any society, or class of societies as may be prescribed which are in receipt of financial aid from the Government, shall be made without the prior approval of the Registrar of Co-operative Societies."

7. This Court in *A. Ranga Reddy v. Co-operative Electric Supply Society, Karimnagar District and others* 1997 (2) ALD 582, held that once a staffing pattern is approved, it is not necessary to approach the Registrar every time when the Board sanctions new posts. Section 116 (c) of the Act has undergone an amendment by reason of A.P. Co-operative Societies (Amendment) Act, 2001 (Act 2 of 2001), which is in the following terms:

"(1) A society shall have power to fix the staffing pattern, qualification, pay scales and other allowances for its employees with the prior approval of the Registrar of Co-operative Societies subject to the condition that expenditure towards pay and allowances of the employees shall not exceed two per cent of the working capital or thirty per cent of the Gross Profit, in terms of actuals in an year whichever is less."

8. In terms of the aforementioned provisions, therefore, it is for the respondent-society alone to fix the staffing pattern, qualification, pay scales etc. But before the same is implemented, approval of the Registrar of Co-operative Societies is required to be taken, subject to the conditions mentioned therein. The respondents-society, therefore, cannot now turn round and say that as the Service Rules have not been approved by the State no promotion can be granted to the petitioners.

9. Secondly, assuming that the society can alter its policy decision, there does not appear to be any plausible reasons as to why, despite the decision of the apex court in *Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another*, to the effect that promotional avenues should be created, the posts are being filled up by deputation.

10. For the reasons aforementioned, this writ petition is allowed and the respondents are directed to act in terms of Section 116 (c) of the A.P. Co-operative Societies Act and frame rules pertaining to conditions of service with the prior approval of the State Government. We may make it clear that in the event a policy decision is taken by the respondents that such posts can be filled up on the basis of the existing pattern also, absence of an approved Service Ruler shall not stand in their way in doing so.

11. There shall be no order as to costs.