

(2001) 03 AP CK 0039

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16826 of 2000

K. Anantha Reddy

APPELLANT

Vs

Chukka Ramulu and others

RESPONDENT

Date of Decision : 02-03-2001

Acts Referred:

Andhra Pradesh Commercial Taxes Subordinate Services Rules, 1990 — Rule 4
Andhra Pradesh General Subordinate Service Rules — Rule 22
Constitution of India, 1950 — Article 16, 226, 309

Citation : (2001) 2 ALD 653

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

Bench : Division Bench

Advocate : Mr. Nooty Rama Mohan Rao, for the Appellant; Mr. A. Ramalingeswara Rao, Addl. AG and Mr. P.v. Krishnaiah, for the Respondent

Judgement

S.B. Sinha, CJ

1. The writ petition involves an interesting question as regards the rule of reservation applicable in the matter of appointment to the category of Assistant Commercial Tax Officers in the Andhra Pradesh Commercial Taxes Subordinate Service.

2. Respondent No.1 herein filed an application before the A.P. Administrative Tribunal which was marked as OA No.2758 of 1999 complaining, inter alia, that the official respondents had not been giving effect to the policy of reservation contained in Rule 4 of the A.P. Commercial Tax Subordinate Service Rules (for short "the Special Rules"). The said application was allowed by the Tribunal directing as follows:

"Since the rules provide for considering the cases of B.Cs also for appointment by transfer to the post of ACTOs the respondents are directed to consider the cases of all eligible B.Cs. who are working in the city list offices for the appointment by transfer to the posts of ACTOs, in accordance with Special Rules and A.P. State and Subordinate Service Rules depending upon the vacancies including the

backlog vacancies in their slots reserved for B.Cs and pass appropriate orders as expeditiously as possible."

3. Two questions which arises for consideration in this writ petition are:

(1) Having regard to the provisions contained in clause 4-A of Article 16 of the Constitution of India, whether the principles of reservation applicable in the case of appointment by transfer to the post of Assistant Commercial Tax Officer which is in the nature of promotion and, in any event, whether having regard to the provisions contained in the aforementioned rules, the State can be said to have applied the said principle therefor?

(2) Whether the learned Tribunal erred in issuing a direction upon the respondents to consider the cases of all candidates belonging to Backward Class community in respect of vacancies including the backlog vacancies in their slots reserved for them although the carry forward rule or roster rule had never been implemented by the State?

4. In view of the pronouncements of the Apex Court in catena of decisions, there cannot be any doubt that clause 4 of Article 16 is only an enabling provision and the same does not confer any right. In *Ajit Singh and Others Vs. State of Punjab and Others*, , a Constitution Bench of the Apex Court, on an application filed for review of its decision in *Ajit Singh and Others Vs. The State of Punjab and Others*, , held:

"2. We are of the view that there are no merits in the review applications.

3. In *Ajit Singh II v. State of Punjab*, it was stated (at pp 229-30) relying upon earlier judgments starting from 1963, that Article 16(4) was only an enabling provision and did not impose any constitutional duty nor confer any fundamental right for reservation. The observations at p.691 by Jeevan Reddy, J., in *Indra Sawhney 1992 Supp (3) SCC 217*, relied upon in the review applications do not deal with the above issue. It was the view of two Constitution Bench judgments of this Court, one of 1963 in *M.R. Balaji and Others Vs. State of Mysore*, and another in 1968 in *C.A. Rajendran Vs. Union of India (UOI) and Others*, and also two-three judgments of this Court in *P and T Scheduled Caste/Tribe Employees' Welfare Association (Regd.) and Others Vs. Union of India (UOI) and Others*, and *State Bank of India Scheduled Caste/Tribe Employees Welfare Association and another Vs. State Bank of India and others*, , that Article 16(4) was only an enabling provision. The view was nowhere dissented in *Indra Sawhney* much less at p.691 by Jeevan Reddy, J.

4. It appears to us that all the nine Judges in *Indra Sawhney* were of the same view that Article 16(4) was not in the nature of a fundamental right and was only an enabling provision. In this connection, reference may be made with advantage to the view of Jeevan Reddy (at pp 667-735) referring to Subba Rao, J., that Article 16(4) was a provision conferring a "power" and referring to Article 16(1) alone as a guarantee and not to Article 16(4); to the view of Sawant, J. (at

p.517, para 43(4), Pandian, J. (at p.407, para 168), Thommen, J. (at p.449), para 282), Sahai, J.(at p.580) with whom Kuldip Singh, J, agreed-all expressly stating that Article 16(4) was only an enabling provision. Thus, the majority of the learned Judges expressly stated that Article 16(4) was an "enabling provision". Merely because the reservation for backward classes was created as a reasonable classification and justified at p.691, that does not detract from the view that Article 16(4) was only an enabling provision".

Yet again in M.G. Badappanavar and another v. State of Karnataka 2001 (1) Supreme 306 and others, Jagannadha Rao, J., speaking for a Three Judge Bench reiterated the same view.

5. By G.O. Ms. No.81, Revenue dated 3-2-1990, the Government of Andhra Pradesh in exercise of its powers conferred by proviso to Article 309 of the Constitution of India framed Special Rules for A.P. Commercial Taxes Subordinate Service known as A.P. Commercial Taxes Subordinate Service Rules, 1990 (Special Rules). The said service consists of posts of ACTOs only. There are two methods of appointment to the said service as would appear from Rule 3 of the aforementioned Rules which reads thus:

"3. Method appointment and appointing authority :--(a) Subject to other provisions in these rules, appointment to the service shall be-

(i) by direct recruitment.

(ii) by transfer from Senior Assistants (including those converted from the category of Senior Stenos), Senior Commercial Tax Inspectors and Senior Stenographers in the Andhra Pradesh Ministerial Service working in the Office of the Commissioner of Commercial Taxes, Office of the Sales Tax Appellate Tribunal and in the Offices of the Commercial Taxes Divisions:

Provided that if qualified candidates are not available from among the above-mentioned categories by transfer from Junior Assistants/ Typists/Junior Stenographers in the Andhra Pradesh Ministerial Service working in the Office of the Commissioner of Commercial Taxes Office or Sales Tax Appellate Tribunal and in the Office of the Commercial Taxes Divisions.

(iii) by transfer of Assistant Section Officers and Senior Stenographers in the Andhra Pradesh Secretariat Service in the departments of Secretariat except Law and Finance and Planning Finance (Wing) Departments :

Provided that if qualified candidates are not available from among the above mentioned categories by transfer from Assistants/Typists/Junior Stenographers and Typist-cum-Assistants in the Andhra Pradesh Secretariat Service in the Departments of Secretariat except Law and Finance aid Planning (Finance Wing) Departments.

(b) The appointing authority for the posts of Assistant Commercial Tax Officer shall be the Deputy Commissioner of respective territorial Division, subject to

prior approval of the list of persons considered fit to be appointed by transfer by Commissioner of Commercial Taxes.

(c) No addition to or removal of any candidates from any list of approved candidates and no transfer from any list of approved candidates and no transfer from any such list of a division to that of another shall be made without the approval of the Commissioner of Commercial Taxes.

Note :--The appointment by direct recruitment and by transfer shall be in the following order:

X X X XX

6. Rule 4 of the Special Rules provides for the reservation in appointment which is in the following lines:

"4. Reservation of appointment :--

(a) Except insofar as it relates to physically handicapped persons, the rule of special representation (General Rule 22) shall apply to the appointment of Assistant Commercial Tax Officers by direct recruitment and to their appointment by transfer.

(b) In the matter of direct recruitment to the post for which women and men are equally suited, other things being equal, preference shall be given to women to an extent of at least 30% (thirty per cent) of posts in each category of OC., B.C, S.C. and ST quota in terms of General Rule 22-A(2)".

7. Rule 22 and Rule 22(a) of the General Rules as it originally stood prior to the amendment issued in G.O. Ms. No.65 GAD, dated 26-2-1997 reads thus:

"22. Special representation :--All appointments to a service, class or category-

(i) by direct recruitment, except where the Government by a general or special order made in this behalf exempt such service, class or category;

(ii) otherwise than by direct recruitment, where the special rules lay down that the principle of reservation of appointments shall apply to such service, class or category;

shall be made on the following basis:

(a) the unit of appointments for the purpose of this rule shall be one hundred of which fourteen shall be reserved for the Scheduled Castes, four shall be reserved for the Scheduled Tribes. Twenty five shall be reserved for the Backward Classes and the remaining fifty seven appointments shall be made on the basis of open competition:

XX XX XX"

8. The above rule has undergone an amendment in the year 1997 and the amended rule reads thus:

"22. Social Representation (Reservation) :--(1) Reservations may be made for appointments to a service, class or category in favour of Scheduled Castes, Scheduled Tribes, Backward Classes, Women, Physically Handicapped, Meritorious Sportsmen, Ex-Servicemen and such other categories, as may be prescribed by the Government from time to time, to the extent and in the manner specified hereinafter in these rules or as the case may be, in special rules. The principle of reservation as hereinafter provided shall apply to all appointments to a service, class or category-

(i) by direct recruitment, except where the Government by a General or special order made in this behalf, exempt such service, class or category;

(ii) otherwise than by direct recruitment where the special rules lay down specifically that the principle of reservation insofar as it relates to Scheduled Castes and Scheduled Tribes only shall apply to such services, class or category to the extent specified therein.

(2)(a) The unit of appointments for the purpose of this rule shall be one hundred vacancies, of which fifteen shall be reserved for Scheduled Castes, six shall be reserved for Scheduled Tribes, twenty five shall be reserved for the Backward Classes and the remaining fifty four appointments shall be made on the basis of open competition and subject to Rule 22-A of these rules.

(b) xx xx xxx"

9. It is not in dispute that the posts are yet to be filled up. The question which arises for consideration is as to whether the rule as was existing prior to coming into force of the amended Rule 22 would be applicable.

10. On a careful examination of the rules referred to above, we are of the opinion that the State at no point of time intended to provide reservation for the Backward Class communities otherwise than by direct recruitment which includes recruitment by transfer. Reservation has been provided for in the matter of direct recruitment only. Whereas in the case of Scheduled Castes and Scheduled Tribes, the amended Rule 22(1)(ii) provides reservation to them in respect of recruitment by transfer which was also subject to the condition that where the special rules of the service lay down specifically that the principle of reservation insofar as it relates to Scheduled Castes and Scheduled Tribes shall apply to such services, class or category to the extent specified in the special rules. Such a provision has not been made in respect of the Backward Class communities in the General Rules.

11. The unamended General Rule 22(ii) only says that in respect of recruitment otherwise than by direct recruitment, if the special rules lay down any reservation to such service or class or category, then the reservation as provided for in the General Rules would be applicable. It is only, therefore, when the special rules specifically provides that the principles of reservation of appointments shall be made applicable to such service or class or category, then

only the reservation as provided for in the General Rules for various communities, castes, tribes etc., would be applicable. When the unamended Rule 22 does not provide itself any reservation for Backward Classes in respect of recruitment otherwise than by direct recruitment, mere reference of General Rule 22 and Rule 4 of the Special Rules herein that the rule of special representation as provided for in General Rule 22 shall apply to the appointment of ACTOS by direct recruitment and by appointment of transfer does not confer any right on the candidates to seek reservation under special representation. It is only when the Special Rules specifically provides for any special representation in such service, then only the percentage of reservation as provided for in the General Rules would be made applicable. In respect of Scheduled Castes and Scheduled Tribes, now, as already noticed hereinbefore, the amended General Rule 22(ii) refers to special representation subject to the condition that the Special Rules of any service provides for such special representation. But, in respect of Backward Class communities such a provision has not been made even in the amended General Rules. We are, therefore, of the opinion that by reason of the unamended General Rules or the amended General Rules, the State never intended to make any provision for reservation in respect of Backward Class communities in relation to recruitment otherwise than by direct recruitment. When such is the case, the reference of General Rule 22 in Rule 4 of the Special Rules is of no consequence.

12. It is not in dispute that for the purpose of recruitment to all the posts under the Ministerial Service, the Andhra Pradesh Ministerial Service Rules would apply. In terms of the said rules, a panel has to be prepared therefore by the Public Service Commission.

It has not been pointed out that the principles of carry forward which is necessary for the purpose of filling up the backlog vacancies, which is a legal concept and must have legal backing, had been applied in the instant case. When a panel has to be prepared by the Public Service Commission, there cannot be any doubt that the new rules must govern the field.

13. Learned Counsel appearing the parties have addressed us at great length that having regard to the peculiar nature of service and particularly having regard to the source of recruitment provided for in the case of appointment by transfer, although the words "appointment by transfer" had been used in the rules, the same, would, however, in effect and substance, is a promotion. Having regard to the controversy involved and in the peculiar circumstances of the case, we are of the opinion that such a question need not be discussed in detail. Although in literal sense promotion means advancement to higher position or grade or honour, it may be understood in a wider sense and promotion can be either to a higher pay scale or to a higher position. Promotion, however, would be implied if it satisfies either of the following conditions, namely, that the new post is in a higher category or grade of the same service or class of service or that the new post carries higher pay scale in the same service or class of service. In the

instant case, as the nature of service differs, the Legislature has advisedly used the words "recruitment by transfer" although the consideration in relation to the eligibility of candidates therefore are confined to only sources referred to in Rule 3 of the Special Rules aforementioned.

14. However, assuming that clause (4) of Article 16 would be applicable in the instant case, the question posed herein must be considered having regard to the applicability of the rule. The word "otherwise" occurring in Rule 22(ii) of the unamended General Rules signifies that the same brings within its ambit all appointments other than by direct recruitment. Having regard to our findings aforementioned that Rule 22 of the General Rules which had been incorporated in Rule 4 of the Special Rules by reference, provides for reservation only in relation to Scheduled Castes and Scheduled Tribes, it must be held, that the learned Tribunal has committed a manifest error. The question now raised before us by Mr. P.V. Krishnaiah learned Counsel appearing on behalf of the original applicant-respondent and by Mr. Ramalingeswara Rao learned Counsel appearing for the impleaded party to OA No.67 of 1997, that the rules as existing prior to 1997 amendment shall prevail, however, had not been raised even before the Tribunal. Even otherwise also, such a question is of no consequence as, in the instant case, no carry forward rule has been implemented at any point of time. Further no data has been placed before us as to how and in what manner the backlog vacancies may be cleared applying the old rules in the matter of application of the policy of appointment by transfer in relation to certain posts earmarked from the feeder categories only.

15. In any event, as by reason of an enabling provision, the State is entitled to make a rule by applying the principle of reservation in relation to a particular class or community or Tribe; it can also be amended as clause (4) of Article 16 does not confer any fundamental right.

16. For the views we have taken, it must be held that the impugned judgment of the Tribunal cannot be sustained.

17. Before parting with this case, however, we may note that Mr. Krishnaiah, learned Counsel has vehemently contended that the writ petitioner has no locus standi as he is not likely to be affected by the impugned order, being at present not eligible for consideration for promotion to higher post.

However, having regard to the implication and the point involved herein which has far reaching consequences, we are of the opinion that it is a fit case where it should be decided on merits of the matter. Even assuming that the petitioner has no locus standi or that he is not likely to be affected by the operation of the impugned order of the Tribunal, we are of the view that, this Court, exercising the jurisdiction under Article 226 of the Constitution of India, is not precluded from deciding the matter on merits particularly when an issue of general importance has been brought to the notice of the Court.

18. For the reasons aforementioned, the writ petition is allowed and the

impugned order passed by the Tribunal is set aside. There shall be no order as to costs.