

(1987) 03 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 366 of 1987 etc.

K. Naga Raja and Others

APPELLANT

Vs

The Superintending Engineer, Irrigation Department,
Irrigation Circle, Chittoor and Another

RESPONDENT

Date of Decision : 26-03-1987

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14
Constitution of India, 1950 — Article 226, 371

Citation : AIR 1987 AP 230

Hon'ble Judges : K. Bhaskaran, C.J.;Lakshmana Rao, J;Anjaneyulu, J

Bench : Full Bench

Advocate : K. Plaksha Reddy, A. Krishna Murthy, C. Obulapathi Choudary, S. Ravindranath, P. Narasimha Rao, B. Siva Reddy, Shah Ali, J. Easwara Prasad, G. Dasaradharami Reddy, A. Kameswara Rao, D. Linga Rao, G. Chandraiah and C. Narasimha Charya, for the Appellant; Advocate General and Govt. Pleader for Education, for the Respondent

Judgement

K. Bhaskaran, C.J.—It is convenient to dispose of all these writ petitions (28 in number) by a common judgment as there arises a common point, and that is the only point for decision, in all of them; and that point is whether a Writ of Mandamus would issue from this Court to the respective respondents to consider the applications for appointment in respect of the petitioners without insisting on their being sponsored by the Employment Exchange, as according to them, the provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 did not prohibit the consideration of such applications received direct from the candidate. Their contention is that under the said Act, once the employer makes the requisition to the concerned Employment Exchange, his liability ceases and the employer is not precluded from considering the applications received from the candidate direct. The petitioners placed reliance on the decision of a learned single Judge of this Court in Sankara Reddy's case (1979) 1 ALT 404 and a decision of the Division Bench in N. Hara Gopal's case

(1985) 3 APLJ 150 : (1986 Lab IC 182)*.

*(N. Hara Gopal's case is reversed by Supreme Court. Union of India (UOI) and Others Vs. N. Hargopal and Others,

2. On 2-2-1987 when W.P.Nos 1001/87 and 1021/87 came up before Kodandaramayya, J., for admission the learned Judge referred the matter to a Division Bench on account of the interim order passed by the Supreme Court on 9-1-1987, which reads as follows :-

"List the appeal along with Civil Appeals" Nos. 9-15/86. Pending disposal of the stay application and notwithstanding any orders made by the High Court in other cases, recruitment will be effected in accordance with G.O.Ms. No. 535, Dated June 28, 1975 and G.O. Rt., No. 1406, Dated November 6, 1975 issued by the State Government. The Transfer Petitions are dismissed in terms of the signed order placed on the file."

When the matter was before the Division Bench, which consisted of two of us (the Chief Justice and Anjaneyulu, J.) a preliminary objection with respect to the maintainability of the writ petitions in view of the bar under Art. 371D of the Constitution was raised. The learned Advocate General, who appeared and assisted the Court at our request, submitted that the decision in Dr. Venkat Reddy's case (1982 Lab IC 1927) , on which the petitioners placed reliance, required reconsideration. As the Division Bench also doubted the soundness of the decision in the said case, it was referred to a Full Bench along with other cases involving the same question; and that was how these cases are before us.

3. The historical background of the insertion of Art. 371D into the Constitution is wellknown. In the year 1956, as a result of the reorganisation of States on linguistic basis, the Andhra and Telangana regions came to be merged, paving the way for the formation of the new State of Andhra Pradesh. There was a massive agitation for a separate State by the people of Telanganna arising out of discontentment with respect to conditions in Government service which were at variance in different regions. The high-level deliberations in a bid to find a durable solution culminated in what is known as the six point formula dated September 21, 1973 which was intended to secure balanced development of the State as a whole, providing equitable opportunities to different areas of the State in the matter of education and employment in public services. The implementation of this six point Formula envisaged inter alia amendment of the Constitution conferring power on the President of India to take the necessary steps in order to secure smooth implementation of the measures based upon the said formula without giving rise to litigation and consequent uncertainty. Inasmuch as one of the measures contemplated in that formula related to the setting up of an Administrative Tribunal with jurisdiction to deal with grievances relating to public services, Art. 371D was introduced in the Constitution by the Constitution (Thirty-second Amendment) Act, 1973, and pursuant to cl. (3) of that Article, the Andhra Pradesh Administrative Tribunal Order, 1975 (hereinafter

referred to as "the Presidential Order") has been issued by the President of India on May 19, 1975 constituting an Administrative Tribunal for the State of Andhra Pradesh with jurisdiction to deal with the service matters specified in that Order. For our present purpose, it would be sufficient to notice the provisions contained in Cls. (3), (4) and (7) of that Article, which we extract below :

"(3) The President may, by order, provide for the constitution of an Administrative Tribunal for the State of Andhra Pradesh to exercise such jurisdiction, powers and authority (including any jurisdiction, power and authority which immediately before the commencement of the Constitution (Thirty-second Amendment) Act, 1973, was exercisable by any Court (other than the Supreme Court) or by any Tribunal or other authority) as may be specified in the order with respect to the following matters, namely :-

(a) appointment, allotment or promotion to such class or classes of posts in any civil service of the State, or to such class or classes of Civil posts under the State, or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order.

(b) seniority of persons appointed, allotted or promoted to such class or classes of posts in any civil service of the State, or to such class or classes of civil posts under the State, or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order;

(c) such other conditions of service of persons appointed, allotted or promoted to such class or classes of posts in any civil service of the State or to such class or classes of civil posts under the State or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order.

(4) An order made under cl. (3) may -

(a) authorise the Administrative Tribunal to receive representations for the redress of grievances relating to any matter within its jurisdiction as the President may specify in the order and to make such orders thereon as the Administrative Tribunal deems fit;

(b) contain such provisions with respect to the powers and authorities and procedure of the Administrative Tribunal (including provisions with respect to the powers of the Administrative Tribunal to punish for contempt of itself) as the President may deem necessary;

(c) provide for the transfer to the Administrative Tribunal of such classes of proceedings, being proceedings relating to matters within its jurisdiction and pending before any court (other than the Supreme Court) or Tribunal or other authority immediately before the commencement of such order, as may be specified in the order;

(d) contain such supplemental, incidental and consequential provisions (including

provisions as to fees and as to limitation, evidence or for the application of any law for the time being in force subject to any exceptions or modifications) as the President may deem necessary.

(7) The High Court for the State shall not have any powers of superintendent over the Administrative Tribunal and no court (other than the Supreme Court) or Tribunal shall exercise any jurisdiction, power or authority in respect of any matter subject to the jurisdiction, power or authority of, or in relation to, the Administrative Tribunal."

Paragraphs 6 and 7 of the Presidential Order, to the extent relevant for our purpose, provide as follows :

6. Jurisdiction, powers and authority of the Tribunal :-

"(1) Save as otherwise expressly provided in this Order, the Tribunal shall exercise all the jurisdiction, powers and authority which, immediately before the commencement of this Order, were exercisable by all Courts (except the Supreme Court) with respect to appointment, allotment, or promotion to any public post, seniority of persons appointed, allotted or promoted to such post and all other conditions of such persons.

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7. Authority, of the Tribunal to receive representation :-

(1) The Tribunal may receive, from persons employed, or, as the case may be, from persons claiming under them, representations for the redress of their grievances relating to matters within its jurisdiction and admit, after such enquiry as it may deem fit such representations.

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(2) Notwithstanding anything contained in sub-para (1) of this Para, the Tribunal may, in its discretion, admit a representation made under that sub-para if it is satisfied, having regard to all the circumstances of the case, that it is just and proper to do so.

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4. The sole ground urged in the argument of the learned Counsel for the petitioners in support of the plea of maintainability of the writ petitions was that the Presidential Order applied only to "appointment" not to "recruitment", by which expression he meant the selection process and procedure leading to actual appointment. It was vehemently argued before us that what the petitioners sought was not a direction for appointment, but only one for their being considered for appointment by the process of selection which preceded actual appointment, to which according to the learned Counsel, neither cl. (7) of Art. 371D of the Constitution nor any of the provisions contained in S. 14, Administrative Tribunals Act, 1985 (Act No. 13 of 1985) (hereinafter referred to

as "the Central Act"), for adjudicating disputes with respect to "recruitment" and "matters concerning recruitment" of personnel in the service of the Central Government. (Sic) Great stress was laid on the expressions "recruitment" and "matters concerning recruitment" occurring in S. 14 of the Central Act, which deals with jurisdiction, powers and authority of the Central Administrative Tribunal. True it is the words "recruitment" and "appoint-ment" are not synonymous. Each has its separate connotation. The difference between the two words, however, would not in any way advance the petitioners' case that the Tribunal appointed under the Presidential Order (hereinafter referred to as "the Administrative Tribunal") would derive jurisdiction only when the dispute relates to a person already employed in the service; and that any dispute relating to the process of selection leading to appointment would not fall within its ambit. As the Supreme Court pointed out in *Shri Narakesari Prakashan Ltd. and Others Vs. Employees' State Insurance Corporation and Others*, , "the effect of an act cannot be controlled by the provisions of another Act unless the provisions in one have bearing on the provisions of the other". We have already noticed the historical background of the insertion of Art. 371D. We have also noticed what the Administrative Tribunal constituted under cl. (3) is authorised to do under cl. (4) of that Article. The Central Act, on the other hand, is an Act of Parliament in exercise of the power conferred under Art. 323A of the Constitution.

5. It is a settled proposition that in interpreting the provisions of the Constitution, the widest possible amplitude should be given to the expressions used therein. The constitutional object of Art. 371D, as we could gather, with particular reference to cl. (7) thereof, is to relieve the High Court (for that matter, every other court and tribunal, except the Supreme Court) of the burden concerning service matters relating to State Government employees; and in that view also it would run counter to the provisions of the Article both in letter and spirit if we give a restrictive meaning to the application of the provisions barring the jurisdiction of the High Court in terms of cl. (7) of the Article. Viewed in that light, we are clear in our mind that the expression "with respect to appointment" in cl. (3) of Art. 371D should not be given a narrow meaning as to restrict its application to the stage after actual appointment. That expression not only takes within its sweep actual appointment as such or any stage posterior to such appointment, but also every stage leading to the appointment. The entire process of appointment forms an integral whole and it could not be taken in parts, so as to exclude the exercise in the process of selection leading to appointment from the jurisdictional ambit of the Administrative Tribunal. No such distinction or differentiation is warranted if we go by the plain meaning of the expression used. The principle and reasoning underlying the observations of Gajendragadkar, J., (as he then was) in *The General Manager, Southern Railway Vs. Rangachari*, that "there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment"

should hold with equal force to the expression "with respect to appointment" occurring in cl. (3) of the Article also. The usage of the word "with respect to appointment" in fact conveys a larger meaning, not a narrower meaning than the usage "appointment" simpliciter.

6. The counsel for the petitioners strongly relied on the expression "person employed" used in para 7 of the Presidential Order to contend for the position that the Tribunal was authorised to receive representations for the redress of their grievances only from persons employed in service of the Government and, therefore, the writ petitioners were not precluded from invoking the writ jurisdiction of this court to seek the appropriate relief. This contention overlooks what precisely is the meaning of the expression "person employed" used in para 2(1) (d) of the Presidential Order is meant to remove any doubt on this question, and it reads as follows :

"person employed" means an individual in relation to whom the Tribunal has jurisdiction in respect of the matters specified in para 6 of this order."

It is evident that the expression "person employed" is used in a comprehensive sense for the sake of convenience to avoid repetition. Though at the first flush the argument of the learned Counsel for the petitioners would appear to be attractive, even in the absence of the definition in para 2(1) (d) of the Presidential Order, a careful analysis of the language guardedly used in sub-para (1) of para 7 thereof, would indicate that the persons employed are persons who are entitled to approach the Tribunal with "representations for the redress of their grievances relating to matters within its jurisdiction" which implies that the right of the persons to seek redressal extends to all matters within its jurisdiction. The provisions contained in sub-para (2) of para 7 of the Presidential Order are also of some relevance. The combined effect of cls. (3), (4) and (7) of Art. 371D of the Constitution and paras 2(1) (d), 6 and 7 of the Presidential Order is that the Administrative Tribunal, and Administrative Tribunal alone, has jurisdiction to entertain matters with respect to appointment inclusive of selection process for being appointed to the post in service of the Government. It has to be noticed that para 7 of the Presidential Order is one which lays down procedure than one conferring any right or jurisdiction. It is, in fact, an enabling provision which gives guidance as to what the Tribunal was expected and authorised to do when a person invokes its jurisdiction in terms of para 6(1) of the Presidential Order. It would be absolutely unreasonable to hold that the intention of using the expression "person employed" is to restrict the jurisdiction of the Tribunal.

7. We notice that the Division Bench in Dr. Venkat Reddy's case 1982 Lab IC 1927 (supra) in para 10 is seen to have stated as follows :

"suffice for the purpose of these writ petitions dealing with the preliminary objection, we held that such an order has not been made by the President so far, and the Andhra Pradesh Administrative Tribunal Order 1975 as it stands, makes a

provision only for a person already employed under the State of Andhra Pradesh, to make a representation with regard to the grievance before the Tribunal.

On going through the decision of the Division Bench we notice that it does not advert to the definition of the term "person employed" in para 2(1) (d) of the Presidential Order; it does not appear to have been brought to the notice of the learned Judges during the course of the hearing of the case; that in all probability led to the Division Bench giving the ruling relied on by the petitioners, which, with due respect, we are constrained to hold, does not represent the correct position in law.

8. Lastly, the learned counsel for the petitioners sought to rely on the observations of Bhagwati, C.J. who spoke for the Constitution Bench in Sambamurthy's case AIR 1987 SC 663 in the last para at P. 668 which reads as follows :-

"The Government of India is directed to ensure that the necessary amendment is carried out in the Presidential Order, so as to bring it in conformity with the law laid down by us in this judgment."

According to the learned counsel, the wording in para 7, as it now stands, confines the application of the provisions of para (1) to cases of persons who are already in service and in the absence of suitable amendment to the provisions of para 7, to bring in the case of persons who seek appointment also, for which in the light of the observations of the Supreme Court the Central Government is to take action, the petitioners are not entitled to approach the Tribunal, and inasmuch as the matter will fall out of the jurisdiction, powers of authority of the Administrative Tribunal the bar under cl. (7) of Art. 371D would not operate. Once we notice that cl. (7) of Art. 371D has to be read with paras 2(1) (d) and 6(1) of the Presidential Order, this contention loses all its relevances and significance. Moreover, the direction by Bhagwati, C.J. is to give effect to the modification suggested in that judgment, and that has no relevance to sub-para (1) of para 7 of the Presidential Order. We have no hesitation in rejecting this contention which is most untenable.

For the foregoing reasons, we dismiss these writ petitions on the preliminary objection that in view of cl. (7) of Art. 371D of the Constitution, and the Presidential Order issued thereunder, this Court has no jurisdiction to entertain or decide these writ petitions. We do not, however, make any order as to costs. Advocate fee Rs. 150 in each case.

9. Petitions dismissed.