

(2003) 01 AP CK 0074
In the Andhra Pradesh High Court
Case No : Writ Petition No. 3515 of 2000

K. Prem Chand

APPELLANT

Vs

Govt. of A.P., Industries and Commerce Dept. and Others

RESPONDENT

Date of Decision : 22-01-2003

Acts Referred:

Citation : (2003) 6 ALD 165 : (2003) 2 ALT 281

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : K. Bhaskara Rao, for the Appellant; Government Pleader for Respondent No. 1 and A. Anasuya, for the Respondent

Final Decision : Dismissed

Judgement

S. Ananda Reddy, J.—This writ petition is filed by the petitioner questioning the order of termination issued by the 2nd respondent terminating the services of the petitioner as Manager of the 2nd respondent Corporation in pursuance of the instructions of the Government that the re-appointment was made in violation of the Recruitment and Service Rules of the Andhra Pradesh Handicrafts Development Corporation and Act 2 of 1994.

2. According to the petitioner, he was originally appointed as Manager Class-II in the A.P. State Trading Corporation on 11-4-1977. Subsequently, he had opted to the 2nd respondent Corporation and that option was accepted by the Government and issued G.O.Ms.No. 222 dated 17-4-1986. In pursuance of which, the petitioner joined the 2nd respondent Corporation on 11-6-1986 at Lepakshi Handicrafts Emporium, Vijayawada. In the month of February, 1988 the petitioner was transferred to Lepakshi Handicrafts Emporium, Visakhapatnam. Again he was transferred on 6-11-1989 to the Lepakshi Handloom Emporium at New Delhi. As the petitioner was subjected to frequent transfers, he has submitted his resignation along with the representation. The said resignation, according to the petitioner, was accepted only on 25-2-1990 and was relieved on 25-9-1990. But before the said communication of the acceptance of the

resignation, the petitioner made representation on 8-12-1989 withdrawing the resignation. But, however, no action was taken. Subsequently, the petitioner made a representation for reappointment and in the year 1993 the petitioner was reappointed by order dated 3-11-1993 as Manager in the 2nd respondent Corporation. While so, the petitioner made a representation to the concerned authorities to count the past service for all benefits such as pensionary benefits etc. While so, the petitioner was served a notice on 15-12-1999 to show cause why the service of the petitioner shall not be terminated. The petitioner, therefore, submitted an explanation on 11-2-2000. Thereafter, the impugned order was passed by the 2nd respondent Corporation. Hence the present writ petition.

3. The learned counsel for the petitioner contended that the impugned order is illegal and without jurisdiction and, therefore, liable to be set aside. According to the learned counsel, the petitioner is qualified to be appointed as Manager under direct recruitment and the Managing Director is the competent person to appoint and, therefore, there is no illegality or irregularity in the said appointment. It is also contended that Act 2 of 1994 has no application as admittedly the said Act came into force on 25-11-1993, whereas the petitioner was reappointed with effect from 3-11-1993 and as the reappointment of the petitioner was prior to the date of the said Act, the said Act has no application. Hence on both the counts, the impugned order is unsustainable. Hence, sought for setting aside the same. At the time of hearing, the learned counsel also placed the Recruitment and Service Rules and referred to Rule 28 (b) which says that the re-appointment of any person to any service shall be treated as a first appointment to such service by direct recruitment and all rules governing such appointment shall apply and contended that though the 2nd respondent referred to the said rule there is no contravention of the said sub-rule. The learned counsel also further referred to Rule 9, which shows the appointing authority to various categories of posts referred to therein and also the authority competent to relax qualification, experience, age limit etc., and contended as per the said Rule 9 the post of Manager shall be filled by the Managing Director, who is the person that appointed the petitioner. Therefore, it is contended by the learned counsel that there is no illegality or irregularity in the appointment of the petitioner and, therefore, the impugned order is liable to be quashed.

3. A counter has been filed on behalf of respondents 1 and 2 disputing and denying the allegations. In the counter it is stated that the petitioner's transfers from one place to another place are only due to administrative grounds. In the counter it is also stated that the petitioner made a representation claiming seniority and when the matter was referred to the Government the irregularity committed in appointing the petitioner without following the procedure contemplated under the rules was noticed and, therefore, the Government on examination of the matter directed the 2nd respondent to remove the petitioner by terminating the services of the petitioner. Thereafter, the Board noted the directions of the Government and recommended to terminate the services of the

petitioner. Accordingly, the impugned order is passed. The same fact is reiterated in the counter filed by the first respondent.

4. At the time of hearing the learned Standing Counsel for the 2nd respondent Corporation contended that the said rule contemplated a regular selection process to be undergone. But, without following the said selection process, the petitioner was appointed by the Managing Director and when this irregular appointment was noticed, the Government has recommended termination of the petitioner's service. The learned counsel also contended that though the reappointment order was dt. 3-11-1993, actually the petitioner assumed the services only on 7-3-1994; by that date Act 2 of 1994 was in operation and, therefore, the reappointment is in violation of the provisions of Act 2 of 1994. Therefore, on either ground the petitioner is not entitled for reappointment and the termination orders issued by the 2nd respondent are legal.

5. On the above rival contentions, the issue to be considered is whether the reappointment of the petitioner as Manager by the 2nd respondent Corporation by the Managing Director is not legal and contravenes the provisions of Act 2 of 1994. A perusal of the rules governing the recruitment of staff and officers of the 2nd respondent Corporation show that as per Rule 6, appointment may be made to any post in the Corporation by direct recruitment, promotion or by deputation from any other source or on contract basis whenever it is necessary. It is also provided that the Corporation has to select, train and build its man power resources according to its own requirements. The required qualifications, age and other requirements for each post are as shown in the Annexure-A to these rules. Rule 7 deals with the source of recruitment. As per Clause -A for posts carrying Rs. 500/- basic pay per month or less, the same shall be notified to the employment exchange and recruitment made among the candidates sponsored by it. Under Clause-B in the case of other posts the candidates may be called through press from the open market as well as from local employment exchange and the selection will be made as specified thereunder through selection committee. Under Clause-C, in case of short vacancies, such posts will be filled up by qualified candidates through local employment exchange on daily wage. Rule 8 refers to the selection committee and the procedure. As per the said rule, selection committee shall be constituted by the Board in respect of posts included in class I and II. In respect of class III, IV and V, the Managing Director may arrange to select the persons for those posts by means of the method indicated against each such posts in the Annexure-A enclosed to the rules. Therefore, the above rules clearly refer that there is a regular method of selection and there is no provision for appointment of any individual to any post without referring to the above procedure contemplated under the rules. It is not the case of the petitioner that he has made an application in pursuance of any press publication or even his name was sponsored by any employment exchange. He made a representation to the Managing Director and the 2nd respondent Corporation appointed him to the post from which he has resigned earlier. The said appointment was found to be in violation of the rules by the Government.

Therefore, the Government directed the Corporation to take appropriate action by terminating the services of the petitioner. According to the first respondent Government, the appointment of the petitioner is also hit by provisions of Act 2 of 1994 which prohibits total appointment to any post after the said Act was enacted which came into effect from 25-11-1993. But, however, it is the case of the petitioner he was reappointed on 3-11-1993. Therefore, the appointment is prior to the date of commencement of the said Act. But the material filed before this Court shows that though the appointment is of 3-11-1993; the petitioner resumed the charge only on 7-3-1994, which is admittedly after the prohibited date. The petitioner contended that after reappointment he has rendered more than six years of service and, therefore, the termination of his service after rendering such length of service is in violation of the principles of natural justice. I am unable to accept the said contention of the learned counsel as admittedly the appointment of the petitioner is in contravention of the rules, which prescribed the method of recruitment. When once those rules are not followed, the appointment of the petitioner is illegal and the petitioner is liable to be terminated from service.

6. Under the above circumstances. I do not find any merit in the writ petition and the same is, accordingly, dismissed. No order as to costs.