
(2011) 02 AP CK 0022
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 78 of 2011

K. Sundar

APPELLANT

Vs

The Kakatiya University and Others

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Citation : (2011) 02 AP CK 0022

Hon'ble Judges : Nisar Ahmad Kakru, C.J; Vilas V. Afzulpurkar, J

Bench : Division Bench

Advocate : D. Linga Rao, for the Appellant; Deepak Bhattacharjee, for Respondent Nos. 1 and 2, G.P. for Education for Respondent No. 3 and G.P. for Finance, for the Respondent

Judgement

Nisar Ahmad Kakru, C.J.—Appellant - writ Petitioner and Respondent 5 were assigned the charge of the posts of Supervisors on 8.8.1989. Vide G.O. Ms. No. 47 dated 17-2-2009, services of several employees were regularized including the Appellant with effect from 4.1.1990. Though order is to his benefit, yet he is aggrieved, on the ground that regularization of his services against a subsequently created post of supervisor would pave the way for regularization of his junior, the Respondent 5, against a post that was in existence right from the date charge was assigned to the Petitioner. To appreciate the controversy in its right perspective, the orders of assignment of charge against the posts of Supervisors of both the Petitioner and Respondent 5 respectively, may be noticed:

Office of the Registrar Kakatiya University

No. 1104/43/KU/09 Date: 8.8.1989 ORDERS

Sub: ESTABLISHMENT - Non-Gazetted - Appointment of Sri K. Sunder, Tracer as Supervisor - Orders - Issued.

In view of the exigencies of work, the Vice-Chancellor has accorded approval for

the temporary appointment of Sri K. Sunder, L.G.E., Tracer as Supervisor in the scale of Rs. 1330-2630 in the Buildings Division, Kakatiya University from the date of his joining duty on or before 16.8.1989 for a period of 3 months. He has to attend the duties of Draftsman until further orders. He should submit all his original certificates in the registrar's Office for verification before joining duty. His salary will be paid from the existing post of the Supervisor, Buildings Division.

This appointment is purely temporary subject to rules and conditions in vogue in the University from time to time and revertable at any time without notice suit without assigning any reasons therefor.

Office of the Registrar Kakatiya University

No. 1103/A3/KU/89 Date: 8.8.1989 ORDERS

Sub: ESTABLISHMENT - Non-Gazetted - Appointment of Sri K. Ram Mohan, Works Inspector as Supervisor - Orders - Issued.

In view of the exigencies of work, the Vice-Chancellor has accorded approval for the temporary appointment of Sri K. Ram Mohan, L.C.E., Works Inspector as Supervisor in the scale of Rs. 1330-2630 in the Buildings Division, Kakatiya University for a period of 3 months with effect from the date of his joining duty on or before 16-8-1989. He has to look after the maintenance of works in the University campus and at the University Arts & Science College, Warangal.

He should submit all original certificates in the Registrar's Office for verification before joining duty.

His salary will be paid from the existing vacant post of Supervisor of the Buildings Division.

This appointment is purely temporary subject to the rules and conditions in vogue in the University from time to time and revertable at any time without notice and without assigning any reasons thereof.

2. A perusal of these orders makes it clear that the Petitioner and the Respondent 5 were assigned the charge on 8.8.1989 and both these orders provide specifically for drawing their salary from existing post of Supervisor of the Buildings Division. In that view of the matter, we find no substance in the argument of the learned Counsel for the Appellant, that Appellant alone is entitled to be regularized against the available vacant post, for the simple reason that both are assigned the charge of higher posts on the same day. In substance and in essence Petitioner seeks a restraint to be placed upon the official Respondents, from placing the Respondent 5 ahead of him. The contention is urged, even without there being an order like that. In that view of the matter, we are of the opinion that this writ petition emanates from a mere apprehension, therefore, it is not sustainable.

3. The Appellant in his anxiety to ventilate the grievance, questioned the order of regularization of his services to the regular post of Supervisor under the

aforesaid G.O. The grievance sought to be made out by the Appellant - writ Petitioner is clearly imaginary and is without any factual foundation. The prosecution of the writ petition and an appeal thereof, on the basis of an imaginary grievance and unfounded apprehension, amounts to abuse of process of the Court and such litigations need to be discouraged in order to save public time of the Courts which otherwise would have been utilized for adjudication of a real subsisting grievance of a party.

4. In spite of indicating our aforesaid views to the learned Counsel for the Appellant, he persisted with the contention that Respondent 5 is not eligible to be promoted as Supervisor as there is no channel of promotion for "Works Inspector" category to that of "Supervisor". The contention is urged simply to be rejected because the Appellant never chose to question the promotion of the Respondent 5 on any ground and these contentions are advanced for the first time in the writ petition filed on 01.4.2009, apparently after lapse of a decade, thus adverse impact of laches is bound to come in his way. His contention is liable to be turned down for one more reason, traceable to the fact that the promotion of the Appellant as also of Respondent 5 was made by the Vice-Chancellor on one and the same date i.e., 08.08.1989 due to exigencies of the work on a temporary basis for a period of three months initially, which was sought to be continued from time to time and the said promotion is not preceded by any selection process and is not a regular promotion, therefore the contention with regard to relative seniority between the Appellant and the Respondent 5 does not arise at all.

5. The learned Counsel for the Appellant has relied on State of Andhra Pradesh v. Dr. N. Ramachandar 1990 U.J. (SC) 7 to canvass that a junior cannot be allowed to steal a march over his senior. The judgment in the said case need not detain us because it is not attracted to the facts of this case, for, assignment of charge to both the Petitioner and Respondent 5 has taken effect on one and the same day. More so, no material was brought on record which would have persuaded the writ court to declare the Petitioner senior to the Respondent 5 and no relief was sought in that direction, therefore, the writ court could not be expected to deliberate upon the inter se seniority of the Petitioner and the Respondent 5 and that grievance could not be imagined as the seniority list, even according to the learned Counsel for the Appellant, has not been finalized as yet.

6. He further relied on the decision in State of Punjab Vs. Jagdip Singh and Others, but the ratio of the said decision instead of assisting the learned Counsel for the Appellant, is clearly against him. In that case, the officiating Tahsildars were confirmed as Tahsildars, but subsequently successor Government cancelled the previous order of confirmation, which was under challenge. The Supreme Court held that the very order of confirmation has no legal foundation, as there were no vacancies for which confirmations could take place and as such the order of confirmation itself was void.

7. In the aforementioned backdrop, we find no fault with the judgment of the

learned single judge. Interference is declined. Dismissed. Needless to say that if a cause accrues to the Petitioner to challenge the seniority, the dismissal of the writ petition and this writ appeal shall not work as an impediment for him.