
(1955) 11 AP CK 0023
In the Andhra Pradesh High Court
Case No : W.A. No. 29 of 1955

K. Suryanarayanamurthi	Vs	APPELLANT
Superintending Engineer, Dowleshwaram Circle, and Others		RESPONDENT

Date of Decision : 25-11-1955

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)
Engineering Subordinate Service Rules — Rule 2(a)

Citation : (1955) 11 AP CK 0023

Hon'ble Judges : Subba Rao, C.J; Krishna Rao, J

Bench : Division Bench

Judgement

Krishna Rao, J.—This is an appeal from the order of our learned brother Satyanarayana Raju, J., dismissing an application made by the Appellant under Article 226 of the Constitution, for the issue of a writ of certiorari or any other appropriate writ quashing the order in 4923-General, dated 1st August 1953, passed against the Appellant by the 1st Respondent, a Superintending Engineer, Dowleshwaram Circle, Dowleshwaram.

2. The Appellant alleged that ho was regularly appointed as an Irrigation Conservancy Subordinate, II Grade, in January 1945, and became an approved probationer in that category of the Engineering Subordinate Service from 1st December i946. On that date, he was promoted as Emergency Draughtsman and on 6th December 1949, he was promoted as Emergency Overseer, But on 1st August 1953, while he was holding an appointment as Emergency Over-sea, he was reverted as Irrigation Conservancy Sub-ordinate, II Grade, by , the following order in No. 4923-General of the 1st Respondent:

Sri K. Suryanarayanamurthy, Emergency Overseer, Yendagandi Section of Godavary Western" Division is reverted as Irrigation Gumasta II Grade and posted to Godavary Eastern Division ousting the Emergency II Grade Irrigation Gumasta in Godavary Eastern Division.

3. The Appellant's contention is that he has been reduced in rank by this order,

without having been given a reasonable opportunity of showing cause against the action proposed to be taken against him, which is in violation of the provisions of Article 311 (2) of the Constitution.

4. Admittedly, the Appellant was promoted under the emergency provisions of the rules. The relevant rule is R. 39 of the State and Subordinate Service Rules, which runs as follows:

39 (a) (i). Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a higher category in a service or class by promotion from a lower category and there would be undue delay in making such promotion in accordance with the rules, the appointing authority may promote a person, otherwise than in accordance with the rules temporarily until a person is promoted in accordance with the rules.

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(c). A person temporarily promoted under Clause (i) of Sub-rule (a) shall, whether or not he possesses the qualifications prescribed for the service, class or category to which he is promoted, be replaced as soon as possible by the member of the service who is entitled to the promotion under the rules.

(d). A person promoted under Sub-rule (a) or (b) shall not be regarded as a probationer in the higher category or be entitled by reason only of such a promotion to any preferential claim to future promotion to such higher category.

5. Under Clause (c), the Appellant had to be re-, placed as soon as possible and under Clause (d) he had no claim to hold the higher post. The Government, pleader stated that a regular appointee took the place of the Appellant and this fact was not controverted at the hearing before us. Ex facie the order reverting the Appellant was in accordance with the terms of the Appellant's emergency promotion under R. 39. The decision in Balai Chand Basak Vs. N. Roy Choudhury, Additional Refugee Rehabilitation Commissioner, West Bengal and Others, (A), relied upon by the learned Counsel for the Appellant has no application to the facts here. That was a case where an order of dismissal was passed against a temporary employee in Government service. Deep Narayan Sinha, J., observed:

It is quite clear that the Petitioner was a temporary hand and his services could be terminated without notice. If the Respondents acted in terms of the letter of appointment and simply terminated his services, that would be unexceptionable. In such a case, no question of charge, enquiry, suspension or dismissal could arise..... If the Government does not choose to proceed under the terms of the contract but elects to punish or penalise the employee by dismissal, as it has done in this case, the provisions of Article 311 are instantly attracted.

6. On the ground that the Petitioner there was arraigned on a number of serious charges and found guilty and dismissed without a proper opportunity of meeting such charges, it was held that the Petitioner had not been given the protection

afforded by Article 311 of the Constitution. The decision is merely authority for the position that Article 311 makes no difference between a permanent and a temporary employee when it is proposed to punish him by reduction in rank. In the case before us, the order in question does not purport to punish the Appellant. It merely reverts the Appellant in accordance with R. 39 from a post to which he was temporarily promoted.

7. The basis for the Appellant's invoking Article 311 is that he was entitled to be treated as a regular promotee and not as a temporary promotee. The learned Counsel for the Appellant relies on para. 6 of G.O. No. 2752, dated 29th June 1953, which is in the following terms:

In respect of the irrigation conservancy subordinates who are appointed as overseers and draughtsman under the emergency provisions and who have since acquired all the qualifications for regular appointment as overseers or draughtsman, the Chief Engineer is requested to take action to regularise the temporary appointments which they are now holding with retrospective effect so that they may not become juniors to the persons in whose favour rules have been relaxed in para. 5 above.

8. It is not disputed that the Appellant is qualified for regular appointment as an overseer. The learned Counsel argues that the Appellant was entitled under the aforesaid direction of the Government to be regularly appointed as an overseer and that the first Respondent's order reverting him therefore amounts to a reduction in his rank, But G.O. No. 2752, dated 29th June 1953, was merely an administrative direction by the Government to the Chief Engineer. The appointing authority for the posts of Overseers is the Superintending Engineer concerned. Rule 2 (a) in Part II, Branch I, of the Engineering Subordinate Service Rules, governs the appointment of overseers and the relevant provision runs as follows:

Category 2 -

Overseers....

Promotion from the category of Irrigation Conservancy Subordinates in Branch III:

Provided that not more than two irrigation Conservancy Subordinates who are qualified for promotion as Overseers shall be promoted to the category of Overseers in one and the same year and such promotion shall be made from an approved list of Irrigation Conservancy Subordinates fit for appointment as Overseers prepared by the Chief Engineer (General).

9. The promotion has to be made from an approved list prepared by the Chief Engineer and the effect of the direction in para. 6 of G.O. No. 2752, was that the Irrigation Conservancy Subordinates mentioned therein should be included in such an approved list to be prepared by the Chief Engineer, But it is not against the Chief Engineer's refusal to include the Appellant in the approved list that a writ is sought.

The Government Pleader states that the Chief Engineer did not regularise the Appellant's promotion because after examining the confidential records, the Chief Engineer considered that the Appellant was not a fit person to be regularly promoted. The question whether the Chief Engineer complied with the directions in para. 6 of G.O. No. 2752 is a matter between him and the Government. If the Chief-Engineer had disobeyed the directions the Appellant's proper remedy is to apply to the Government to see that its direction is given effect to. It is stated that the Appellant has actually put in an application to the Government in the matter in April this year during the pendency of this appeal, and that the said application has not been finally disposed of.

No doubt, if the power of regularizing the temporary promotions is arbitrarily and capriciously exercised, it might be a ground for seeking the Court's-interference by way of a writ. But that is not the basis for the Appellant asking for a writ in this appeal. So long as the Chief Engineer has not regularized the Appellant's temporary appointment as overseer, the Appellant cannot be heard to say that he is entitled to the post and that his reversion by the Superintending Engineer is a reduction in his rank and Article 311 is attracted. The appeal fails and is dismissed with costs. Advocate's fee Rs. 100.