
(2001) 03 AP CK 0142

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 2781, 7377 and 7617 of 2000

K. Venugopal and Others

APPELLANT

Vs

Andhra Pradesh Administrative Tribunal and Others

RESPONDENT

Date of Decision : 28-03-2001

Acts Referred:

Constitution of India, 1950 — Article 162, 309

Citation : (2001) 03 AP CK 0142

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

Bench : Division Bench

Advocate : M. Surender Rao, for the Appellant; Govt. Pleader for Services-I, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners herein had questioned the order of reversion before the learned Tribunal from the post of Farm Foreman to the post of Operative. They are the employees of Sericulture Department. The orders of promotion in their favour were conditional ones that they should pass the departmental tests. They have passed the departmental test, Part I during the years 1992-1994. They allegedly appeared for Part III practical examination in the month of May, 1999 and the results thereof had been published in the month of January, 2000.

2. The conditions relating to such promotion is governed by A.P. Sericulture Subordinate Service Rules. Class (A) of the said Service consists of the following categories:

- 1) Inspector of Sericulture
- 2) Assistant Inspector of Sericulture
- 3) Farm Foreman, Grade I
- 4) Farm Foreman, Grade II

5) Sericulture Demonstrator

6) Operative

3. The post of Farm Foreman, Grade II can be filled up in terms of G.O.Ms.No.13, dated 28.1.1991 by the persons who have passed class 10 examination or its equivalent and who have passed Sericulture Department Tests Part I. However those with B.Sc., degree in Sericulture or holding a PGDS/STC in Sericulture are not required to pass the said test.

4. The learned Tribunal has passed the impugned judgment on the basis of an earlier judgment passed in O.A. No.6055 of 1993 wherein some employees who had passed Part III of the examinations were not being considered for promotion. However, the order passed in the aforementioned O.A. No.6055 of 1993 came up for consideration before a Division Bench of this Court in W.P.No.21493 of 1998 which set aside the said judgment.

5. G.O.Ms.No.4, dated 13.11.1990 which govern the conditions of service was amended by G.O.Ms.No.13 dated 28.11.1991 wherein the qualifications for promotion had been specified. A bare perusal thereof would show that passing of practical test is not an essential qualification for promotion, if the candidates hold the requisite qualification as per the statutory rules.

6. The question which came up for consideration before the Division Bench was as to whether a further condition could be imposed. The Division Bench in the fact situation of that case held that the same was not permissible.

7. The learned Tribunal in the instant case had not gone into the merits of the matter as to whether the petitioners had fulfilled the conditions for promotion.

8. The learned Government Pleader has placed reliance on a Division Bench decision of this Court in DIRECTOR OF SERICULTURE v. K.NARASIAH (W.P. No.14558, 14560 and 14562 of 1999) disposed of on 20.2.2001.

9. In the said judgment, this Court considered all the relevant Government Orders operating in the field including G.O.Ms.No.4, dated 13.11.1990 and held:

"As indicated hereinbefore, the conditions of service of the respondents herein, including the qualifications required to be possessed for holding the post of Asst Inspector of Sericulture are governed by statutory rules. Such rules having been framed by the State in exercise of its powers conferred upon it under the proviso appended to Article 309 of the Constitution of India, the question of amending the said Rule by providing a relaxation in the academic qualification by issuing a G.O. under Article 162 of the Constitution of India would not arise.

As noticed hereinbefore, in terms of the said statutory rules, qualifications have been prescribed. Grant of relaxation as regards the essential qualifications to be held by an employee for holding a higher post must be construed strictly. Such relaxation, which would be part of the conditions of service, cannot be granted by an executive order issued under Article 162 of the Constitution of India, as a

result whereof the statutory rules framed under the proviso appended to Article 309 of the Constitution of India would stand amended.

Furthermore, the second proviso appended to the G.O. clearly states that such exemption should not be applicable to technical or academic qualifications. As noticed hereinbefore, passing of Sericulture Departmental Test Part-I is mandatory for holding a technical post. Possession of such technical qualification is essential for holding the post, which would also be evident from the fact that only those persons who are possessing Bachelor's degree in Sericulture/Post Graduate Diploma in Sericulture/Short Term Course in Sericulture would not be required to pass the said test. The respondents herein have merely passed S.S.C. examination and they do not hold the aforementioned qualifications. Thus, either they were required to have passed the Sericulture Departmental Test Part-I or Short Term Course in Sericulture. The respondents do not possess either of the said qualifications and thus they do not possess the requisite qualification to hold the post of Asst Inspector of Sericulture.

The learned Tribunal, therefore, in our opinion, committed an error in relying upon the decision of this Court in G. Amrutha Rao and others Vs. Acharya N.G. Ranga Agricultural University, particularly in view of the fact that even in G.O.Ms.No.165, Finance & Planning (Finance Wing F.P.1) Department, General Administration (Services-C) Department dated 22.4.1997 and in the Government Orders issued by the State, as referred to hereinbefore, reference had not been made thereto."

10. The said judgment does not run counter to the decision of this Court in W.P.No.21493 of 1998. As the order passed by the learned Tribunal on the basis of its earlier order in O.A. No.6055 of 1993 had been set aside by this Court, we have no other option but to allow these writ applications by quashing the impugned order and remitting the matters to the learned Tribunal for disposal therein in accordance with law. The writ petitions are, accordingly, allowed. No costs.