
(2002) 02 AP CK 0164

In the Andhra Pradesh High Court

Case No : WA No's. 1226 and 1227 of 2000

K.G.V. Krishnaiah

APPELLANT

Vs

C. Venkata Reddy and Others

RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:

Andhra Pradesh Ministerial Service Rules, 1998 — Rule 23

Citation : (2002) 3 ALD 47

Hon'ble Judges : S.R.K. Prasad, J;S.R. Nayak, J

Bench : Division Bench

Advocate : P. Gangaiah Naidu, for the Appellant; Government Pleader for Endorwments and P.V.S.S.S. Rama Rao, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—Both these appeals are directed against the common Judgment of the learned single Judge dated 26.9.2000 made in WP Nos. 7416 and 2255 of 1999. Appellant in both the writ appeals is the common person, respondent No. 4 in WP No. 7416 of 1999 and 3rd respondent in WPNo. 2255 of 1999. The 1st respondent in WA No. 1226 of 2000 is the petitioner in WP No. 7416 of 1999 whereas the 1st respondent in WA No. 1227 of 2000 is the petitioner in WP No. 2255 of 2000. Both the writ petitioners, in their respective writ petitions, have assailed the validity of G.O. Ms. No. 45 Revenue (Endts. II) Department dated 12.1.1999. By the said Government Order, the Government allowed the review petition filed by the appellant, and directed the seniority of the appellant to be fixed notionally in the cadre of Upper Division Clerks (UDCs) and Superintendents over and above the 1st respondent in WA No. 1226 of 2000, namely, Mr. Venkata Reddy of Sri Bhramaramba Mallikarjunaswamy Devasthanam, Srisailam.

2. The background facts leading to the filing of the above writ petitions and these writ appeals be noted briefly as under: The appellant and the 1 st respondent in each of these writ appeals viz., Mr. K.G.V. Krishnaiah, Mr. C. Sarabha Reddy and

Mr. S. Venkata Reddy are the employees of Sri Bhramamba Mallikarjunaswamy Devasthanam, Srisailam. The appellant joined the services of the temple as Lower Division Clerk (LDC) on 23.2.1971; he was promoted as Senior Assistant on 30.12.1988; he was promoted as Superintendent on 30.6.1990; and subsequently as PA to the Executive Officer on 21.1.1999. The 1st respondent in WA No. 1226 of 2000, Mr. S. Venkata Reddy was appointed as LDC on 23.7.1968, promoted as UDC on 1.4.1979 and further promoted as Superintendent on 12.3.1990. Mr. C. Sarabha Reddy, the 1st respondent in WA No. 1227 of 2000 was appointed as LDC .on 6.12.1969, promoted as UDC on 13.11.1979 and further promoted as Superintendent on 19.5.1990. Thus, it can be seen that in the cadre of LDCs, M/s Sarabha Reddy and Venkata Reddy are seniors to the appellant, Mr K.G.V. Krishniah. When one Mr. A. Swaminathan, who was senior to the appellant in the cadre of LDC was promoted to the cadre of UDC in the year 1978, the appellant and certain others made complaints to the Temple administration against the promotion of said A. Swaminathan contending that he did not possess the special qualifications prescribed under Rule 23 of the A.P. Ministerial Service Rules, 1966 (for short, Ministerial Service Rules) and, therefore, he is not entitled to be promoted to the cadre of UDC. Acting on the said complaint made by the appellant and others, the promotion of Mr. A. Swaminathan was cancelled and he was reverted to the post of LDC. When Mr. S. Venkata Reddy was promoted as UDC with effect from 1.4.1979, the appellant preferred an appeal on 3.5.1979 to the Commissioner of Endowments u/s 90 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966 (for short, 1966 Act). According to the appellant, the Commissioner by his order dated 30.5.1979 directed the appellant to submit appeal to the Board of Trustees of the Temple, and accordingly the appeal submitted by the appellant to the Board of Trustees was numbered as Re. A.2/2612/79. Since the Board of Trustees did not take any action on the said appeal of the appellant, the appellant preferred a revision u/s 93 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 1987 Act), to the Government, though it was styled as an appeal, for refixation of his seniority in the cadre of UDC on the ground that he passed the departmental tests earlier to his seniors in the cadre of LDCs. The Government by its order dated 12.8.1991 dismissed the said revision of the appellant without assigning any reason. The relevant portion of the said order reads-

"Sri K.G.V. Krishnaiah in the reference (supra) submitted an appeal petition to the Government for refixation of his seniority in the category of U.D. clerk at Srisailam Devasthanam on the ground of passing of Departmental tests earlier to his seniors in the category of L.D. Clerks.

The appeal petition of Sri K.G. V. Krishnaiah has been examined in detail with reference to the connected records and is found devoid of merits. The appeal petition is, therefore, rejected."

According to the appellant, after the dismissal of the revision, he sought review

of the said order on 5.9.1991 by presenting a review petition to the Government and since the Government did not decide the said review petition, the appellant sent reminders on 29.9.1994 and 12.12.1994, On 29.3.1996, the Government issued Memo No. 71677/Endts. II(1)94-5 directing the Commissioner of Endowments to issue show-cause notices to the affected persons of the subject-Devasthanam for their representations, if any, as regards re-fixation of seniority of the appellant in the cadre of UDCs. Being aggrieved by the above proceeding of the Government, M/s Sarabha Reddy and Venkata Reddy, without filing any objections to the above show-cause notices, approached this Court by filing WP Nos. 11483 of 1996 and 512 of 1997, and this Court ultimately dismissed the said writ petitions and directed them to file objections before the Government. While disposing of the writ petition No. 512 of 1997 on 21.1.1997 filed by Mr. S. Venkata Reddy, this Court directed the Government to dispose of the review petition filed by the appellant within a period of 4 weeks from the date of receipt of a copy of the order.

3. After the disposal of the above writ petitions, the Commissioner of Endowments in turn directed the Executive Officer, Sri Bhramamba Mallikarjunaswamy Devasthanam, Srisailam to call for objections from the affected persons. The Executive Officer, accordingly served notices on M/s Sarabha Reddy and Mr. Venkata Reddy and one K.L. Narasimha Rao. As directed by this Court, M/s Sarabha Reddy and Venkata Reddy, filed objections before the Executive Officer, Sri Bhramamba Mallikarjunaswamy Devasthanam, Srisailam and the same were forwarded to the Government. Mr. S. Venkata Reddy and Mr. K.L. Narasimha Rao have stated in their objections that their promotion to the higher cadre shall be on the basis of seniority-cum-fitness as per G.O. Ms. No. 4 GAD, dated 3.1.1990 and that they were given conditional promotion subject to their passing the prescribed departmental tests within two years, and accordingly they passed the departmental tests within the prescribed period of two years. They also contended that the appellant did not raise any objection either to the provisional seniority list or the final seniority list dated 31.8.1980 as confirmed by the Executive Officer vide order dated 7.6.1981 and that after a lapse of 14 years he filed the revision petition before the Government. Mr. C. Sarabha Reddy, in his objections, contended that in 1987 Act, a review petition does not lie against the orders passed by the Government in appeal and that the review petition filed by the appellant is belated and the appellant did not file any objection to the seniority list issued on 7.6.1981. The Government on consideration of the case of the appellant and the objections filed by M/s Sarabha Reddy, Mr. Venkata Reddy and Mr. K.L. Narasimha Rao, issued the impugned G.O., the operative portion of which reads as follows :

"In view of the above, and taking into consideration of the totality of the case, the Review petition filed by Sri K.G. v. Krishniah is allowed, and Government accordingly, direct that the Seniority of Sri K.G.V. Krishniah be fixed notionally in the cadre of Upper Division Clerks and Superintendents over and above to Sri S. Venkata Reddy of Srisailam Devasthanam.

The Commissioner of Endowments Department is requested to take necessary action accordingly in the matter."

This led to M/s Sarabha Reddy and Mr. Venkata Reddy filing the writ petitions as noticed above.

4. Before the learned single Judge, on behalf of the writ petitioners, it was contended that the writ petitioners are seniors to the appellant in the cadre of LDCs and, therefore, they are entitled to be promoted to the cadre of UDCs before the appellant was promoted; that seniority was finalized as early as in 1981 and the appellant did not raise any objection either to the final seniority list or to the promotions which were effected in 1979 and, therefore, it is not now open for the Government to reopen the entire matter and unsettle the settled things. It was further contended that the Government, having dismissed the revision of the appellant filed u/s 93 of the 1987 Act, should not have again reopened the issue relating to the claim of the appellant and passed the impugned G.O., after a long lapse of time. It was contended on behalf of the appellant that when M/s Sarabha Reddy and Venkata Reddy were promoted as UDCs with effect from 1.4.1979 and 13.11.1979 respectively, their promotions were governed by the Ministerial Service Rules framed by the Governor in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India; that both of them did not pass the departmental tests prescribed under Rule 23 of the Ministerial Service Rules, and therefore, their promotion as UDC was ex-facie illegal. It was further contended that without any loss of time, the appellant had been agitating his grievances against the promotion of M/s Sarabha Reddy and Venkata Reddy with effect from 1.4.1979 and 13.11.1979. It was also contended that they were not entitled to be considered and promoted to the post of UDC as they did not pass the prescribed departmental tests as on the said dates.

5. The learned single Judge, taking into account that the appellant did not assail the validity of the seniority lists or the promotion of the writ petitioners at the earliest point of time and also taking into account the lapse of time between the dates of promotion of the writ petitioners to the cadre of UDCs and the date on which the impugned GO was issued, allowed the writ petitions and quashed the impugned G.O. What weighed with the learned single Judge in granting the relief to the writ petitioners can be discerned from the Judgment itself. It reads-

"...The explanation furnished by the 4th respondent that he has been agitating continuously right from 1979 cannot be accepted for the simple reason that he was promoted in 1988 and subsequently he was further promoted to the post of Superintendent in 1990. If really he was aggrieved, he should not have been kept quiet for ten years till he received the promotion in 1988. It shows that the Government has not applied its mind to the facts of the case in a proper perspective and tried to reopen the entire matter after a long lapse of time, which is not permissible in view of the Judgment of the Supreme Court. Thus, I find that there are clear and unexplained laches on the part of the 4th

respondent. The impugned order therefore is not legal and valid and it is vitiated by consideration of the facts which are not germane and relevant for deciding the issue."

Hence these writ appeals by the appellant, Mr. K.G.V. Krishniah.

6. Sri P. Gangaiah Naidu, learned senior Counsel appearing for the appellant, while assailing the order of the learned single Judge, would contend that the materials placed before the Court would clearly go to show that when M/s Sarabha Reddy and Venkata Reddy were promoted as UDCs with effect from 1.4.1979 and 13.11.1979 respectively, the Ministerial Service Rules were holding the field and admittedly both of them did not possess the prescribed qualifications as on the dates of their promotion. The learned Senior counsel would further contend that under the Ministerial Service Rules, for promotion to the post of Senior Assistant and Inspector, Account Test for Subordinate Officers Part II and Hindu Religious and Charitable Endowments (Admn) Departmental Test, are prescribed and both of them did not pass those tests on the dates of their promotion whereas the appellant had passed both the tests and, therefore, the appellant ought to have been promoted to the post of UDC. The learned counsel would also contend that the reasons given by the learned single Judge to allow the writ petitions are untenable because, the appellant without any loss of time from May 1979 till the Government issued the impugned G.O., had been agitating his grievance in one form or the other before the Commissioner of Endowments, Board of Trustees of the Temple as well as the Government against the promotion of M/s Sarabha Reddy and Venkata Reddy, and that simply because the appellant did not assail the seniority list in a separate proceeding, that circumstance itself cannot be a valid and justifiable ground for this Court to deny the legitimate rights of the appellant and confer a right to which the writ petitioners are not at all entitled in law.

7. On the other hand, the learned Counsel appearing for M/s Sarabha Reddy and Venkata Reddy would contend that when his clients were promoted to the post of UDC in the year 1979, no tests were prescribed as a condition precedent for promotion and there is absolutely no evidence to show that during the year 1979 the Ministerial Service Rules were made applicable to the employees of the subject-Devasthanam. The learned counsel would further contend that though the appellant and the Government have placed reliance on the circular of the Commissioner dated 26.12.1978, that circular in no way would show that Rule 23 of the Ministerial Service Rules is made applicable to the employees of the Devasthanam. The learned Counsel would further contend that even otherwise, there is absolutely no justification for the Government to entertain the claim of the appellant after long lapse of nearly two decades.

8. The learned Government Pleader for Endowments, while supporting the impugned G.O., would contend that the pleadings and the materials placed before the Court would clearly go to show that when M/s Sarabha Reddy and Venkata Reddy were promoted to the cadre of UDC in the year 1979, the

Ministerial Service Rules were made applicable. The learned GP would particularly draw our attention to the pleadings of the writ petitioners themselves that they were promoted as UDCs subject to the condition of their passing the prescribed departmental tests within a time-frame. The learned Government Pleader would draw our attention to the pleading of Mr. Venkata Reddy where he claims that he is governed by Ministerial Service Rules. The learned GP would maintain that there was no lapse on the part of the appellant in pursuing the legal remedies and immediately after promotion of S. Venkata Reddy to the post of UDC with effect from 1.4.1979, the appellant started agitating his grievance by submitting appeal to the Commissioner on 3.5.1979. The learned Government Pleader would conclude by stating that the Government passed the impugned G.O., to do justice to the appellant who was unjustly denied promotion to the post of UDC before M/s Sarbha Reddy and Venkata Reddy were promoted.

9. Having regard to the rival contentions of the learned Counsel for the parties, the basic question that arises for consideration and decision is that when M/s. Sarabha Reddy and Venkata Reddy were promoted to the post of UDCs in the year 1979, whether the Ministerial Service Rules were made applicable to the employees of Sri Bhramamba Mallikarjunaswamy Devasthanam, Srisailam or not. If the answer to this question is in the positive, then, it is trite, the promotion of M/s Sarabha Reddy and Venkata Reddy in the year 1979 the cadre of UDCs would be ex-facie illegal and contrary to the statutory rules, inasmuch as admittedly both of them did not pass the tests prescribed under Rule 23 of the Ministerial Service Rules by that time.

10. According to all parties, during the year 1979 there were no separate set of rules or administrative instructions issued by the Government or the Commissioner of Endowments, governing promotion of employees of the subject-Devasthanam from one cadre to the other. However, according to the Government, the Ministerial Service Rules were made applicable to the employees of the subject-Devasthanam. In support of this plea, the Government as well as the appellant, would place reliance on the circular-letter dated 26.12.1978 issued by the Commissioner of Endowments. Of course, in this circular, the Commissioner has directed the Executive Officer, Sri Bhramamba Mallikarjunaswamy Devasthanam, Srisailam to follow Rules 4(2)(i), 27 and 28 of the Ministerial Service Rules. Rule 4 deals with promotion. Rule 27 deals with probation, seniority and confirmation whereas Rule 28 deals with promotion and transfer of clerks. No doubt, the circular does not specifically refer to Rule 23 of the Ministerial Service Rules, which deals with special qualifications, which a candidate should possess as part of eligibility for appointment to the service in the categories and posts specified in column No. 2 of Annexure I by different methods specified in corresponding entry in Column No. 3. It needs to be emphasized that non-mentioning of Rule 23 in the Circular and direction to apply Rules 4, 27 and 28 in the case of the employees of the subject-Devasthanam, would not make any difference as regards applicability of Rule 23 inasmuch as applying only Rule 4 to the employees of the temple in the matter of promotion

from one cadre to the other would not arise. Be that as it may, the Government in its pleading has specifically stated that during the relevant period, the Ministerial Service Rules were made applicable to the temple employees also. This stand of the Government is reinforced by the attendant reliable circumstances and also the pleading of the writ petitioners themselves. At the time of hearing, the learned Government Pleader for Endowments placed before us the records of the Government to show that Ministerial Service Rules were made applicable as far back as in the year 1969 itself. No material is placed before us to doubt the integrity of the statements made by the Government in its counter. Be that as it may, even according to the writ petitioners, they were promoted to the category of UDCs on temporary basis subject to their passing the departmental tests within a time-frame. This circumstance clearly goes to show that even according to the writ petitioners, the promotion from the cadre of LDCs to the cadre of UDCs in the year 1979 required the candidates to possess the prescribed qualifications. Furthermore, even according to Mr. S. Venkata Reddy, as pleaded by him in the affidavit, he was governed by Ministerial Service Rules and not the Special Rules. Thus, the totality of the circumstances would clearly go to show that promotion of the employees of the subject-Devasthanam from the cadre of LDCs to the cadre of UDCs were effected in terms of the Ministerial Service Rules during the year 1979. In that view of the matter, the promotion of M/s Sarabha Reddy and Venkata Reddy with effect from 1.4.1979 and 13.11.1979 were ex-facie illegal and contrary to the Ministerial Service Rules, because admittedly they did not possess the required qualifications prescribed in Rule 23 of the Ministerial Service Rules as on the dates of their promotion.

11. The next question is whether the impugned GO could be quashed on the ground that the appellant slept over his rights for nearly 9 years without any satisfactory explanation or justification. The facts narrated supra, which are not in serious dispute, clearly go to show that the appellant, without any loss of time, immediately after the promotion of Mr. S. Venkata Reddy to the post of UDC on 1.4.1979, made his grievance by filing appeal before the Commissioner on 3.5.1979 and from that day onwards, he has been continuously pursuing the Commissioner, Board of Trustees of the Temple and the Government for fixation of his seniority in the cadre of UDCs. It is true that the appellant did not separately challenge the seniority list as confirmed by the Executive Officer on 7.6.1981 in any legal proceeding. But that circumstance cannot be put against the appellant to deny him justice. It needs to be emphasized that even before the preparation of seniority list on 7.6.1981, the appellant lodged his grievance with the appropriate authorities like the Commissioner, Board of Trustees of the temple and the Government. The appeal filed by the appellant before the Board of Trustees of the temple, as directed by the Commissioner of Endowments, was pending and, therefore, the appellant perhaps thought it not necessary to assail the seniority list dated 7.6.1981 in a separate proceeding.

12. It also needs to be noted that fixation of seniority is a purely administrative

action and, therefore, it is always open for the Government to set right any illegality or irregularity which had crept in fixing the seniority of its employees. Simply because, the Government earlier rejected the revision of the petitioner filed u/s 93 of the 1987 Act on 12.8.1981, that too, without assigning any reasons, that fact itself would not come in the way of the Government appreciating the grievance of the appellant and doing justice to him by a speaking order. The reasons stated by the Government in the impugned GO to grant the relief to the appellant are quite sound, legal and to achieve the ends of justice. It is not that the impugned GO was issued by the Government without appraising and without giving opportunity to the affected persons like the writ petitioners. As stated above, before the Government issued the impugned G.O., show-cause notices were issued to the writ petitioners and one K.L. Narasimha Rao to submit their objections, if any, to the claim of the appellant and on proper consideration of the objections filed by them and by a reasoned order, the Government granted the relief to the appellant by directing re-fixation of his seniority in the cadre of U.D.Cs., and Superintendents notionally above Mr. S. Venkata Reddy.

13. Although the learned Counsel appearing for the writ petitioners placed reliance on the Judgment of the Supreme Court in *B.S. Bajwa and Another Vs. State of Punjab and Others*, and the Judgment of this Court in *V. Rajamalliah Vs. High Court of A.P. and another*, , to contend that in the matter of seniority, settled matters should not be unsettled after a lapse of considerable time, we do not think that the principle laid down in the above two decisions would apply to the facts of the present case. We have shown above how the appellant had been agitating his grievance without any loss of time from the year 1979 till the Government issued the impugned G.O.

14. Above all, as quite often said and reiterated by the Constitutional Courts, judicial review is essentially directed against the decision-making process and not against the decision as such. Even assuming that there was some delay in granting the relief to the appellant by the Government, that circumstance cannot be a valid ground for this Court to interfere with the impugned G.O. If the Government in its wisdom thought it fit to grant the relief to its employee for valid and justifiable grounds, the Courts should be slow to interfere with such orders of the Government. Such cases can be distinguished from the stale cases brought before this Court under Article 226 of the Constitution seeking reliefs.

15. In the result and for the foregoing reasons, we allow these writ appeals and set aside the order of the learned single Judge and dismiss WP Nos. 7416 and 2255 of 1999 with no order as to costs.