

(2001) 12 AP CK 0113
In the Andhra Pradesh High Court
Case No : Writ Petition No. 16124 of 2000

Khaja Zaffer Ali

APPELLANT

Vs

The Engineer in Chief, Public Health, A.C. Guards and Others

RESPONDENT

Date of Decision : 24-12-2001

Acts Referred:

Advocates Act, 1961 — Section 24A, 49

Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 33, 7A

Citation : (2001) 3 APLJ 451

Hon'ble Judges : S.R. Nayak, J; L. Narasimha Reddy, J

Bench : Division Bench

Advocate : Y.S. Venkat Rao, for the Appellant; Govt. Pleader for Services II, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This writ petition is filed against the order of the Andhra Pradesh Administrative Tribunal (for short "the Tribunal") dated 4-5-2000 in O.A.No.7712/2000.

2. The brief facts leading to filing of the OA are as follows:

The petitioner was initially appointed as Junior Assistant on 24-7-1967 in the Public Health Department of Government of Andhra Pradesh. Thereafter, he was promoted to the post of Senior Assistant on 15-4-1983. When he was serving as Senior Assistant at Nalgonda, he sought for transfer to Nizamabad, his native place, on account of certain serious domestic problems. Since there was no vacancy of Senior Assistant at Nizamabad in the concerned department, he requested that he may be reverted to the post of Junior Assistant and posted at Nizamabad. Accepting this request, the respondents issued orders dated 23-9-1987 reverting him to the post of Junior Assistant and transferring him to Nizamabad. However, since he was not being relieved in spite of reversion, he submitted a letter dated 17-11-1987 requesting the authorities to restore his earlier position. On 8-3-1988, he was relieved at Nalgonda and joined at

Nizamabad. At Nizamabad, in the usual course, he was once again promoted as Senior Assistant through proceedings dated 23-10-1991. While so, his services as Senior Assistant with effect from 15-4-1983 i.e., prior to his reversion, were also regularised through proceedings dated 12-2-1992.

3. The petitioner submitted a representation on 3-11-1999 for treating his services from 8-3-1988 to 28-11-1991 as the one in the post of Senior Assistant for all purposes. Since that was not considered, he filed OA.No.6451/91 before the Tribunal. The Tribunal disposed of the said OA with a direction to dispose of the representation of the petitioner dated 3-11-1999. In pursuance of the directions of the Tribunal, the respondents considered and disposed of the representation of the petitioner through orders dated 12-11-1999 rejecting his request. Aggrieved by the same, the petitioner filed the present OA viz., OA.No.7712/2000 claiming the relief that he should not be denied the benefit of the services rendered by him as Senior Assistant with effect from 15-4-1983 to 7-3-1988 i.e., the service rendered by him as Senior Assistant before his reversion as Junior Assistant. The said OA was dismissed by the Tribunal, through orders dated 4-5-2000, on the ground that there is no rule which permits counting of the service rendered by an employee in a higher post before reversion to a lower post. The petitioner challenges this order of the Tribunal as well as the action of the respondents in the present writ petition.

4. The learned counsel for the petitioner submits that it was not in dispute that the petitioner was promoted as Senior Assistant in the usual course on 15.4.1983 and worked as such till 8.3.1988 when he was reverted as Junior Assistant on request. It is also not in dispute that subsequent to the reversion he was once again promoted as Senior Assistant at Nizamabad on 23.10.1991. Whatever may be the justification for not treating the period between 8.3.1988 and 23.10.1991 as service in the post of Senior Assistant, there is absolutely no justification for the respondents in not treating the period from 15.4.1983 to 7.3.1988 as service, during which period he actually worked. He places reliance upon Rule 33(d) of the A.P. State and Subordinate Service Rules, hereinafter referred to as "the Rules", as they stood at the relevant point of time.

5. The learned Government Pleader for Services, on the other hand, submits that once the petitioner had opted to be reverted to a lower post, he is not entitled for the benefit of the service rendered by him in a higher post before reversion.

6. The learned counsel for the petitioner did not seriously contend before us as regards the service rendered by the petitioner between 8.3.1988 and 23.10.1991 i.e. the period during which he worked in the reverted post. The subject matter of this writ petition is only as regards the period between 15.4.1983 and 7.3.1988 during which period the petitioner had in fact worked as Senior Assistant. One fact, which deserves to be noticed in this regard, is that through proceedings dated 12.2.1992 i.e. after the petitioner was promoted for the second time on 23.10.1991, the respondents regularized the services of the petitioner from 15.4.1983 to 7.3.1988. From this it is evident that the

respondents did not treat the service of the petitioner as Senior Assistant during that period as having lapsed on account of his reversion to a lower post. Otherwise, there was no necessity to issue these proceedings.

7. Rule 33 of the Rules deals with the fixation of seniority of employees in various classes and categories. It also deals with the situation where an employee is reduced in rank by way of punishment. Whenever an employee is reverted by way of punishment to a lower post, a question would arise as to what should happen to the service rendered by him in the superior post held by him before reversion. Rule 33(d) deals with such situations. Three contingencies are contemplated on account of reversion which are dealt with as under:

"Rule 33 (d). Where a Member of a service, class, category or grade, is reduced, for a specified period, to a lower service, class, category or grade-

(a) in cases where the reduction does not operate to postpone future increment, the seniority of such member on re-promotion shall, unless the terms of the order of punishment provide otherwise, be fixed in the higher service, class, category or grade at what it would have been but for his reduction;

(b) in cases where the reduction operates to postpone future increment the seniority of such member on re-promotion shall unless the terms of the order of punishment provide otherwise, be fixed by giving credit for the period of service rendered by him in the higher service, class, category or grade;

(c) in cases where an order of punishment passed prior to the 10th June, 1963 does not specifically provide otherwise, such member shall, on completion of such period, be promoted automatically and his seniority shall be determined in accordance with the provisions of clause (a) or clause (b), as the case may be".

8. A reading of this Rule suggests that even in a case where the reversion of an employee is by way of punishment, the benefit of the services rendered by him in the superior post is lost once for all. The case of the petitioner falls on a higher footing, in that, his reversion was on request on account of certain domestic problems. He cannot be relegated to a worse position. By comparison, as regards the postponement of future increments, the case of the petitioner can be fitted into Rule 33(d) (b) inasmuch as he did not claim nor was granted increment of the post of Senior Assistant during the period he worked as Junior Assistant on reversion. In such a situation, he is entitled for being given the credit for the period of service rendered by him in the higher service, class or category. If an employee who is reverted by way of a punishment has extended this benefit, there is no reason why a person who was reverted not by way of punishment but on request should not be extended the same.

9. It is apt to refer to a judgment of a Division Bench of this Court in *A. Balakameswar Rao vs Bar Council*¹ to which one of us (Justice S.R.NAYAK) is a party. In that case, a Judicial Officer who was compulsorily retired on disciplinary grounds was refused the right to practice as an advocate on the basis of a

provision contained in the rules framed under the Advocates Act (for short "the Act").Section 24-A of the Act stipulated that any person who is convicted of an offence involving moral turpitude or of an offence under the provisions of the Untouchability (Offences) Act, 1955 (22 of 1955), or dismissed or removed from employment or office under the State on any charge involving moral turpitude, shall not be enrolled as an advocate on a State Bar Council. However, in the proviso, disqualification on the afore-said grounds restricted to operate only for two years. Rule 7-A of the Bar Council of India Rules framed by the Bar Council of India in exercise of the powers u/s 49 of the Act imposed a total ban on enrolment of any person as Advocate if a person was dismissed or removed from service. Placing reliance upon the judgment of this Court in G. Purushottam Reddy vs. Bar Council of A.P. 2 , the Division Bench took the view that Rule 7-A is ultravires the provisions of the Act, in that, it imposes greater disadvantage in respect of certain persons compared to the persons who are found guilty of severe offences.

10. It can be gathered from the decision cited above that a person who is situated in a better and advantageous conditions cannot be made to suffer a higher disadvantage. Rule 33(d), referred to above, provides for counting of service for the purpose of seniority, etc., even in a case where an employee has been reverted as a measure of punishment. The reversion of the petitioner was not on disciplinary grounds but was necessitated in view of his impending necessity to go to Nizamabad on account of family problems. He cannot be relegated to a worse position than a person who was reverted on disciplinary grounds. We, therefore, hold that the petitioner was entitled for the benefit of service rendered by him between 15-4-1983 and 7-3-1988 as Senior Assistant for the purpose of seniority and other benefits. The Tribunal, in our view, did not approach the issue in its proper perspective. It refused the relief to the petitioner on the ground that there is no provision, which entitles the petitioner to get the relief.

11. We accordingly allow the writ petition and set aside the order of the Tribunal in O.A.No.7712/2000 dated 4-5-2000. The OA No.7712/2000 shall stands allowed and the petitioner shall be entitled for the benefits claimed therein. There shall be no order as to costs.