(2003) 05 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 19826, 19827 and 19828 of 1999

K.L.N.S. Murthy and Another APPELLANT

Vs

Government of A.P. and Others RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:
Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 10

Citation : (2003) 4 ALD 375 : (2004) 5 ALT 592

Hon'ble Judges : G. Yethirajulu, J;Bilal Nazki, J

Bench : Division Bench

Advocate : A. Suryanarayana Murthy, for the Appellant; Government Pleader for Services II, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This batch of writ petitions was filed by the same set of petitioners against the same set of respondents seeking different reliefs under each petition.

2. In Writ Petition No. 19826 of 1999 the petitioners sought for the relief in the form of issuing a writ of certiorari quashing the order of the A.P. Administrative Tribunal (''the tribunal'' for brevity) dated 30-3-1999 in O.A.Nos.23269 and 23270 of 1990 as illegal, arbitrary and violative of Article 14 of the Constitution of India and to direct the respondents to fix their seniority as per the judgment dated 15-7-1986 in R.P. Nos. 1353/ 84, 1878/84 and 269/85 and to direct review of promotions.

3. Writ Petition No. 19827 of 1999 was filed for the similar relief in W.P. No. 19826 of 1999 against the order of the Tribunal dated 30-3-1999 in O.A.No. 3249 of 1993.

4. W.P. No. 19828 of 1999 was filed for the similar relief in W.P. No. 19826 of 1999 against the order of the Tribunal dated 30-3-1999 passed in O.A. No. 4328 of 1996.

5. The 1st petitioner filed common affidavit in all the writ petitions. Therefore all the writ petitions are clubbed and a common order is passed.

6. The petitioners contended that the 1st petitioner was temporarily appointed on 26-6-1975 as a typist in Treasuries Department and the 2nd petitioner was appointed temporarily on 30-7-1975 in N.S. Canals. After regular selection made by the District Selection Committee (DSC), both of them were appointed on regular basis and they joined duty in Commercial Taxes Department on 23-11-1976 and 26-11-1976 respectively. The 3rd respondent in his proceedings in Rc.No. 5841/76 dated 15-12-1978 regularised the services of the 1st petitioner with effect from 26-6-1975 and that of the 2nd petitioner with effect from 30-7-1975 by showing them at S.Nos .2 and 7 respectively. Their probation was also declared by the 3rd respondent in the proceedings in Rc.No. 5841/76 dated 21-2-1978 with effect from 26-6-1975 and 12-7-1977 respectively by showing them at S.Nos. 4 and 5. A seniority list was prepared by the 3rd respondent and communicated to (he employees in the proceedings No. 1787/79 dated 16-1-1981. Questioning the said seniority list R.P. No. 472 of 1981 was filed before the erstwhile Tribunal and it was allowed with certain directions. In pursuance of the directions in the order of the Revision Petition, a seniority list was prepared and communicated through proceedings in Rc.No. 4473/83 dated 12-6-1984. In the said seniority list the dates of regularization were not followed. The 2nd petitioner filed R.P. No. 1878 of 1984 challenging the seniority list of 1984. Others working in the same division also filed R.P. Nos. 1353 of 1984 and 269 of 1985 and the then Tribunal disposed of all the three Revision Petitions by a common judgment dated 15-7-1986 with certain directions to the 3rd respondent regarding the seniority. In pursuance of the judgment of the Tribunal dated 15-7-1986 an integrated seniority list was prepared in Rc.No. 451/86 dated 16-9-1986 and in pursuance of that the 1st petitioner was promoted as Senior Assistant in Rc.No. 6945/ 87 dated 17-9-1987 by showing him at S.No. 29. The 2nd petitioner was promoted as Senior Assistant through proceedings in Rc.No. 7404/87 dated 19-10-1987 showing him at S.No. 2 in the said proceedings. One Kothapalli Nageswara Sastry and two others filed R.P. Nos. 5801/87 questioning the preparation of the integrated seniority list without making the affected persons as parties. But the Tribunal dismissed the said R.P. on 19-1-1988 observing that the seniority list appeared to be prima facie incorrect and not in accordance with the rules. The respondents would have to look into the matter and take a correct decision. Basing on the judgment dated 19-1-1988 the 1st respondent issued proceedings in G.O. Ms. No. 194, Revenue (CT.I) Department, dated 16-3-1990 without notice to the petitioners mentioning that the orders of the 3rd respondent in regularizing the services of the petitioners from the date of their temporary appointment be cancelled and their services are regularized from the date of their entry into Commercial Taxes Department only. The petitioners questioning G.O. Ms. No. 194 dated 16-3-1990 filed O.A. Nos. 26369 and 26370 of 1990. During the pendency of the said O.As. the State Government in pursuance of G.O. Ms. No. 194 issued reversion orders

to the petitioners in Re.No. A3/7350/93 dated 29-6-1993. They filed O.A.No. 3249 of 1993 questioning the said reversion orders and obtained interim stay from the Tribunal. During the pendency of those O.As. the seniority list of Senior Assistants showing the petitioners'' at S.Nos. 200 and 203 was communicated to them in Rc.No. 178/84 dated 4-9-1995 which was served on them on 24-4-1996. The petitioners being aggrieved by the said seniority list filed O.A. No. 4328 of 1996 before the Tribunal praying to direct the respondents to fix the seniority in accordance with the date of regularization issued in Rc.No. 5841/76 dated 15-2-1978 and the seniority list of the Senior Assistants in accordance with the proceedings in Rc.No. 6945/87 dated 17-9-1987 and 740/87 dated 19-10-1987. The Tribunal disposed of all the O.As. through a common judgment dated 30-3-1999. The petitioners being aggrieved by the common order of the Tribunal filed these writ petitions for the reliefs mentioned above.

7. On 26-6-1975 the 1st petitioner was appointed on temporary basis in Treasuries Department u/s 10(a)(i) of the A.P. State and Subordinate Service Rules and the 2nd petitioner was also appointed on temporary basis in N.S. Canals on 30-7-1975. They were subsequently selected by the DSC on 22-10-1976 and in pursuance of that selection, both of them were allotted to Commercial Tax Department and they joined in that department on 23-11-1976 and 26-11-1976 respectively. The 3rd respondent initially fixed the seniority of the petitioners taking into consideration their temporary service also. Subsequently, as per the direction of the Tribunal in R.P. No. 5801 of 1987 dated 19-1-1988 the Government issued G.O. Ms. No. 194 dated 16-3-1990 fixing the seniority of the petitioners from the date of their entry into Commercial Taxes Department. G.O. Ms. No. 194 dated 16-3-1990 is self explanatory, since all the developments regarding the seniority of the petitioners have been incorporated. The Government issued the said order in pursuance of the view expressed by the Tribunal in R.P. No. 5801 of 1987, which reads as follows:

The rule position is clear that the temporary service cannot be taken into account in the absence of a specific order to that effect and the date of regularization is indicative of seniority. The authorities concerned have no right to alter the date of regularization. The Rule 33(b) of the A.P. State and Subordinate Service Rules cannot be invoked to alter the seniority of the persons selected by the District Selection Committee in 1976 except to the extent of setting right the seniority of the candidates based on original dates of regularization in service under Rule 23(a) of the general rules. The petitioners have to be satisfied with the ranking given as per their dates of regularization based on their regular appointment in Commercial Taxes Department

8. The Tribunal further observed that the seniority assigned to the petitioners admitted to be prima facie incorrect and not in accordance with the rules. Accordingly, the respondents were directed to look into the matter and to take a corrective action. As per the directions given by the Tribunal, the cases of the petitioners herein were regularized from the date of their entry into Commercial

Taxes Department i.e., 23-11-1976 and 26-11-1976, as was done in the case of Sri K. Nageswara Sastry. The petitioners did not challenge the order of the Tribunal in R.P. No. 5801 of 1987 dated 19-1-1988 on the ground that they were not parties to it and the said order became final. Since G.O. Ms. No. 194 dated 16-3-1990 was issued in pursuance of the directions of the Tribunal, there is no scope to question the said Government Order on the ground of illegality or on the ground of violation of the principles of natural justice.

9. In the impugned common order dated 13-3-1999, the Tribunal observed that though Rule 23(a) provides for taking into account the temporary service rendered by the petitioners, it cannot be operated so as to effect the settled seniority of other persons who are already placed, and ultimately held that G.O. Ms. No. 194 dated 16-3-1990 issued by the Government is in accordance with the Rules.

10. The learned Counsel for the petitioners contended that the 1st respondent issued G.O. Ms. No. 194 without issuing any notice to them and it is also vitiated for want of jurisdiction of the Government under relevant statutory rules. In support of the above contention, the learned Counsel relied on the Division Bench judgments of this Court in State of Andhra Pradesh v. Koka Subramaneswara Rao 1971 SLR 335 (DB), Hari Kishan Singh v. B. Narayana 1969 APLJ 290 (DB), and M. Shyam Sunder and Others Vs. Government of A.P. and Others, , but the principles laid down in those judgments are not applicable to the facts of the case on hand.

11. In A.G. Sainath Reddy Vs. The Govt. of A.P. and Others, , a question arose before the Supreme Court as to whether the regularization of the appellant and others from the date of their ad hoc appointment is correct. The appellant and 10 others, who were working as Welfare Officers in Jails Department of the Government of Andhra Pradesh, were appointed as Deputy Superintendents of Jail on ad hoc basis in 1984. Subsequently, Government recruited and appointed some more Deputy Superintendents in 1987, 1988 and 1989 through Service Commission. In the year 1990 the Government passed an order directing that the appointment of the appellant and others as Deputy Superintendents by transfer/promotion from Welfare Officers be regularized with effect from the date when they joined as Deputy Superintendents on ad hoc basis. In respect of those directly recruited, their date of joining duty was directed to be as date of regularization. The direct recruits challenged the Government Order and claimed seniority over the appellant and others. The Administrative Tribunal held that there was no scope for retrospective regularization and deemed probation and therefore the retrospective regularization of those appointed by transfer/ promotion was not valid. The question before the Supreme Court was whether the Tribunal was justified in not accepting the regularization of the appellant and others from the date of their ad hoc appointment. The Supreme Court while dismissing the appeal held that the ad hoc appointment does not confer on the person appointed any right of probation and such officiating arrangement is

really of no consequence. The Tribunal was therefore justified in allowing the applications of the direct recruits by holding that such seniority cannot be counted from the date of their ad hoc appointment of the Deputy Superintendents by transfer/promotion.

12. The Supreme Court while rendering the above judgment placed strong reliance on its earlier judgment in The Direct Recruit Class-II Engineering Officers'' Association and others Vs. State of Maharashtra and others, , and the conclusions derived by the Supreme Court in this decision read as follows:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.

13. The Supreme Court, while answering the issue raised before it, further held that when the appointments were stop-gap, emergency or fortuitous arrangement, it cannot be treated to be appointment under the Rules. The probation period started only when there was a regular appointment in terms of the Rules and not on any point of time before that date.

14. In State of W.B. and Others Vs. Aghore Nath Dey and Others, , the decision of the Direct Recruit Class II Engineering Officers'' Association (supra) was considered by the Supreme Court regarding the conclusions (A) and (B) and held that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed ''according to rules''. The corollary set out in conclusion (A), then is, that ''where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority''.

15. In A.P.M. Mayankutty Vs. The Secretary and Another, , the Supreme Court decided the position and analysed the issue as to when a person can be treated as probationer and what happens relating to appointments on emergency or fortuitous arrangement.

16. The Supreme Court ultimately held in A.G. Sainath Reddy (supra) that there is no question of deemed probation or notional date of probation as probation starts from the actual date of joining duty. The question of joining duty on probation shall arise only when there is a substantive appointment against a post available and not any ad hoc or officiating arrangement.

17. In State of Haryana Vs. Haryana Veternaty and A.H.T.S. Asson. and Another, , the Supreme Court held that the service rendered by an ad hoc appointee appointed de hors service rules who subsequently gets appointed on regular basis without any interruption in the service, cannot be treated as regular service. Such ad hoc service cannot be tagged on to service rendered by appointee after regular appointment for computing the period of regular service.

18. In Ramakrishna Kamat v. State of Karnataka AIR 2003 SCW 890 : 2003 (2) SC 88, the Supreme Court held that the teachers appointed temporarily on payment of honorarium, not by Zilla Parishad or State Government, and not against any sanctioned post cannot claim regularization in service, on ground of completion of few years of service.

19. It is an undisputed fact that the petitioners were appointed on temporary basis under Rule 10(a)(i) of the A.P. State and Subordinate Service Rules. Afterwards they joined afresh in the Commercial Taxes Department on the basis of regular selection after duly submitting their joining reports, as per the selection orders. The services of the petitioners were subsequently regularized from their dates of entry into Commercial Taxes Department, The legal position indicated above is amply establishing that the petitioners in the set of facts of these writ petitions are not entitled to claim seniority from the date of their entry into temporary service.

20. In the light of established legal proposition that temporary service cannot be counted for the purpose of seniority, the Tribunal was right in holding that the Government issued G.O. Ms. No. 194 dated 16-3-1990 in accordance with the directions given by it in R.P. No. 5801 of 1987 dated 19-1-1988 and the said Government Order is not liable to be quashed.

21. After carefully considering the material available on record and the impugned common order of the Tribunal dated 13-3-1999 with the touchstone of the principles laid down by the Supreme Court, we do not find any reason to interfere with the said order. Accordingly, the writ petitions are dismissed, but under the circumstances without costs.

