
(2002) 11 AP CK 0034

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25433 of 2001

M. Radha Krishna Murthy

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 22-11-2002

Acts Referred:

Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 24, 26
Constitution of India, 1950 — Article 309

Citation : (2003) 1 ALD 132 : (2003) 2 ALT 24

Hon'ble Judges : D.S.R. Varma, J; Bilal Nazki, J

Bench : Division Bench

Advocate : Nooty Rama Mohana Rao, for the Appellant; Government Pleader for Transport for Respondent Nos. 1 and 2 M. Surender Rao and M. Ratna Reddy, for the Respondent

Judgement

Bilal Nazki, J.—This writ petition has been filed challenging the common order passed by the Andhra Pradesh Administrative Tribunal in O.A.Nos. 3381 of 2000 and 866 of 2001, dated 5.12.2001. O.A.No. 3381 of 2000 was filed by the petitioner challenging the combined seniority list of Regional Transport Officers issued by the Transport Commissioner, A.P., Hyderabad in Memo No. 6582/C4/2000, dated 26.5.2000 and the provisional seniority list of the Deputy Transport Commissioners issued in Memo No. 6520/C4/2000, dated 31.5.2000. The Tribunal passed interim order in O.A. No. 3381/2000 on 17.7.2000. This interim order was challenged in the High Court by 3rd respondent Sri P.Srinivas in W.P. No. 15794 of 2000. The writ petition was disposed on 16.11.2000. Pursuant to the interim order passed by the Tribunal which was later on modified by the High Court in W.P. No. 15794 of 2000 the Government of Andhra Pradesh published a provisional seniority list of Regional Transport Officers and sought objections from concerned officers. The petitioner also filed his objections. The Government issued G.O. Ms. No. 14 Transport, Roads and Buildings (Tr.T) Department, dated 29.1.2001 finalising the inter se seniority of Regional Transport Officers. The Government also issued G.O. Rt. No, 127, Transport,

Roads and Buildings (Tr-II) Department, dated 14.2.2001 by which the provisional seniority list of the Deputy Transport Commissioners was approved. The Tribunal rendered a judgment on 19.2.2001 which was challenged by the petitioner in W.P.No. 3252 of 2001. This writ petition was disposed of by an order dated 16-3-2001. By this order the High Court remitted the case back to the Tribunal for fresh disposal. O.A. No. 866/ 2001 was filed by respondent No. 5 in the writ petition challenging G.O. Ms. No. 14, dated 29-1-2001 by which inter se seniority of Regional Transport Officers was finalised subject to the outcome of O.A. No. 3381/ 2000. In this background the Tribunal passed the order impugned in this writ petition.

2. Now, coming to the facts on the basis of which the writ petition has been filed, it is stated that the petitioner was appointed as Regional Transport Officer vide G.O. Ms. No. 474, dated 13-5-1987 through direct recruitment based on the recommendations of the A.P. Public Service Commission. Five other persons were also appointed as Regional Transport Officers along with the petitioner. Out of the total six persons appointed three were allotted to Multi zone-1 and the remaining were allotted to Multi zone-II. One person being Sri Ramananda Swamy who was allotted to Multi zone-I did not join. There was a condition in the order of appointment that the persons who had been appointed should report for duty within 60 days from the date of appointment. The date of appointment was 13-5-1987 and the candidates had to join before 12-7-1987. It was stipulated in the order of appointment that candidates failing to report before the due date would lose their appointment. The third respondent Sri P. Srinivas did not join the duty within the stipulated period of 60 days. A table has been given in the writ petition which gives the dates of joining of each of the candidate and it shows that the first candidate Sri Ramananda Swamy did not join at all, P. Srinivas joined on 21-7-1987 and all other 4 candidates including the petitioner joined before 13-7-1987. Respondent No. 5 Sri Venkateswarlu joined duty within the stipulated period of 60 days but did not pass accounts test of executive officers within 2 years of probationary period. The parties went in litigation after the final seniority list was issued, they also approached the High Court after Tribunal passed an order and the High Court remanded the case and finally by the impugned order the Tribunal held that irrespective of respondent No. 3 having joined after 60 days his seniority would have to be determined in accordance with the merit obtained by him in the test conducted by Public Service Commission and it also directed that seniority of respondent No. 5 shall have to be determined in accordance with his merit in the selection and not from the date when he passed the accountancy test.

3. Now, these are the two issues which are before this Court in this writ petition. Admittedly, the petitioner was inferior in merit to both respondent No. 3 and respondent No. 5 when they were considered for selection by the Public Service Commission. In the Government Order issued on the basis of the recommendations of the Public Service Commission the name of the petitioner appears at No. 3 in the Multi zone-I whereas the, name of respondent No. 3

appears at No. 2. The name of respondent No. 5 appears at No. 2 in Multi zone-II. In this view of the matter, there is no dispute as regards the facts. The only two questions which have to be decided by this Court are, (1) whether by joining beyond the period of time granted in the G.O by which the petitioner and respondents were appointed, respondent No. 3 becomes junior to the petitioner, and (2) whether respondent No. 5 by having passed his Accounts Test during the extended period would also become junior to the petitioner.

4. Coming to the first question which relates to respondent No. 3 the Government Order had directed that the appointees will have to join their duties within 60 days from the date of appointment. The time so granted would expire on 12-7-1987. Respondent No. 3 made an application on 8-6-1987 to the State Government requesting the State Government to extend the time given to him for joining the duty. His request was based on the fact that he was working with the Central Government when he was appointed by the State Government and his relieving was delayed on administrative grounds by the Central Government. The State Government, on his representation, permitted him to join duty on or before 31st July, 1997 and he joined his service within the extended period of time. It is contended by the learned Counsel for the petitioner that under no circumstances time could have been extended by the Government in view of the clear stipulation in the order of appointment. The order of appointment which was issued on 13-5-1987 had the following stipulation amongst others; "The candidates should join duty "within 60 days from the date of issue of this order failing which their appointment will be cancelled They should report to the Transport Commissioner, Hyderabad." On the other hand, the learned Counsel for respondent No. 3 submits that this time was extended by the Government itself therefore having joined within the extended period it should be presumed that the stipulation was in the order itself that he could join before 31-7-1987. The learned Counsel for respondent No. 3 has relied upon various judgments which laid down that seniority amongst the direct recruits has to be determined on the basis of ranking secured in the selection and not on the basis of the date of joining the duty. In this connection, he relied on *Chairman, Puri Gramya Bank v. Ananda Chandra Das* 1994 SCC 1384, *Pila Sitaram Patrudu v. Union of India* 1997 (1) SLR 323, *G. Deendayalan Ambedkar v. Union of India* 1996 (6) SLR 612, *Dalilah Sojah v. State of Kerala* 1998 (8) SLR 297, *R. Suseela Devi v. Kerala Public Service Commission* 1998 (1) SLR 747. There is no dispute, as it is settled law that inter-se seniority between the direct recruits has to be determined in accordance with the merit obtained by them during the process of selection. This is the position even in the absence of rules, but in the present case we have rules also which lay down that such would be the position with regard to seniority of direct recruits recruited in a batch. But, in the present case it is not the applicability of the rule or applicability of law laid down by the Apex Court and this Court with regard to fixation of seniority between the candidates selected in a process which is the question, the question is, in accordance with the rules and the executive instructions period was fixed within which the recruits could have

joined and the executive instruction further laid down that in case any candidate fails to report for duty within the stipulated period he would lose the appointment and if the period stipulated was extended by the Government could the benefits under rules with regard to seniority be still available to respondent No. 3. It is also settled law that the Government under its executive power and also under its power under Article 309 of the Constitution can lay down the norms and guidelines and also frame the rules. An executive instruction had been issued on 18-9-1967 which is G.O. Ms. No. 822. It is not important for us to trace out the source of power under which G.O. Ms. No. 822 was issued, it can be either the executive power of the State or the power under Article 309 of the Constitution of India. By this order the Government fixed an outer limit of 60 days for the candidates to join duty. It also laid down that failure to join duty within 60 days would end in removal of name of the listed candidate from the selection list. It also laid down a rider that in suitable cases the time may be extended where the Commission considers that there were valid reasons. So, the extension of time is not automatic on a request being made. There has to be a mental process and by this mental process it has to be examined that whether there were valid reasons for granting an extension and this exercise had to be done by the Public Service Commission. The power under G.O. Ms. No. 822 to extend the time for valid reasons had been given to the Public Service Commission. Now, the respondent No. 3 stated in his counter that since he was in service of the Union of India and he had applied for relieving him to join his new post in the State Government and his application was not decided for administrative reasons, therefore he applied to the State Government for extension of time. The application was moved by him on 8-6-1987. Copy of this application has not been produced either in the Tribunal or before this Court. We are not sure whether the reasons given in the application were that Government of India was not relieving him, this Court was also not told as to when did he apply to Government of India seeking his relieving from the post he was holding. On the other hand, the petitioner has submitted that in the appointment order itself a reference was made to a writ petition which was pending before the Court challenging the recruitment and the respondent No. 3 was apprehensive that after giving up the post with the Union of India he might also lose the job in the State Government therefore he waited beyond 60 days in order to ensure himself that he was taking a job in the State Government which was secure. The grounds pleaded by respondent No. 3 before the State Government for extension of time have not been disclosed to this Court but in any case we are of the view that the State Government had no power to extend the time beyond 60 days. They derive their power from G.O. Ms. No. 822. Rules do not give them any power. Even if it is accepted that extension of time could be granted under G.O. Ms. No. 822 this power was available only to the Public Service Commission and not to the State Government. In the counter-affidavit filed on behalf of the State Government it has been specifically pleaded that the Government before granting extension to respondent No. 3 did not even consult Public Service commission. Therefore, in our view the extension itself was bad and admittedly the respondent No. 3 could

not get the benefit of rules which stipulated that inter se seniority of the candidates who were selected during one selection has to be reckoned in accordance with the merit obtained by them in the selection. For these reasons, the order of Tribunal with respect to inter se seniority of respondent No. 3 and petitioner cannot sustain. His date of appointment shall have to be taken when respondent No. 3 has actually joined the service. The judgment to this extent passed by the Tribunal is set aside and official respondents are directed to make necessary corrections in the seniority list.

5. Now, coming to the question of respondent No. 5 who passed his accountancy test beyond the period of probation but during the extended time of probation the Tribunal found that since the examination of Accountancy has been passed by respondent No. 5 within the extended period of probation therefore he could not be deprived of his seniority. On the other hand the learned Counsel for petitioner submits that when there is a condition to pass an examination for qualifying the probation and when such an examination is not passed within the period of probation the seniority will not count from the date of initial appointment but from the date of passing of the examination. The learned Counsel relies on two judgments of Supreme Court being M.P. Chandoria Vs. State of M.P. and others, , and Mohan Lal and others Vs. State of Himachal Pradesh and others, . Before appreciating these two judgments the rule position as it exists in Andhra Pradesh has to be examined. Rule 23 of A.P. State and Subordinate Service Rules lays down the date of commencement of probation of persons first appointed temporarily. It is not disputed that it was a condition that during the period of probation the Accountancy Examination has to be passed. Rule 24 deals with suspension, termination or extension of probation. Rule 24(a) (ii) lays down that the appointing authority may at its discretion by order extend the period of probation in case the probation has not been extended under Rule 26. Rule 26 lays down that in case of any probationer falling under Sub-rule (b) of Rule 24, i.e., failing to acquire the special qualifications or to pass the special tests, if any, prescribed in the special rules or to acquire such other qualification as may be declared by the State Government or by the appointing authority, the appointing authority may extend his probation to enable him to acquire the special qualifications or pass the prescribed tests. Before appreciating the mandate of Rule 24 and Rule 26, it is also necessary to have a look to Rule 25 which lays down the conditions for suitability of full membership which in other words would mean the completion of period of probation resulting in a declaration about the suitability for full membership of the service. Under Rule 25 (b) and (c) it is laid down that:

"25. (a).....

(b) If the appointing authority, decides that a probationer is suitable for such membership, it shall, as soon as possible, issue an order declaring the probationer to have satisfactorily completed his probation. On the issue of such order, the probationer shall be deemed to have satisfactorily completed his

probation on the date of expiry of the prescribed extended period of probation:

Provided that the Head of the Department shall issue an order declaring the probationer holding initial gazetted post, to have satisfactorily completed his probation.

(c) If at the end of the prescribed or extended period of probation, as the case may be, the appointing authority decides that the probationer has failed to give satisfaction or that the probationer has not made sufficient use of his opportunities, the said authority shall, by order, discharge him from service after giving him one month's notice or pay in lieu of such notice:

Provided that if the discharge of the probationer is as a measure of punishment on the ground of misconduct, negligence, or any specific fault on the part of the probationer, the procedure prescribed in Sub-rule (2) of Rule 19 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules shall be followed and it shall not be necessary to give him one month's notice or pay in lieu of such notice;

Provided further that where the appointing authority other than the State Government passes an order of discharge or termination of probation of the probationer on the grounds of misconduct or unsatisfactory performance of duties on the part of the probationer, such order shall be effective only after its continuation within a period of one month from the date of such order by the next higher authority of that appointing authority."

Under Rules 23, 24, 25 and 26 it is nowhere envisaged that if a departmental examination is prescribed and it is not passed within the stipulated period of probation and it is passed in the extended period of probation the seniority would reckon from the date of passing of the examination. On the other hand Rule 26 makes it clear that if a probationer has not cleared his probation the authority may extend his probation to enable him to acquire the special qualification or pass the prescribed test. The period of extension shall be different for different categories. In case of candidates who had failed to pass the requisite test under Rule 24(b) they can be discharged from service unless the probation period is extended under Rule 26 and in terms of Rule 26 the period was extended by one year in case of respondent No. 5. The extension granted for passing the examination and extension of period of probation cannot result in losing the seniority because there is no such rule made in the Subordinate Service Rules but on the other hand the effect would be in terms of explanation to Rule 26(ii) which lays down that where the probation of a probationer is extended his increment shall be postponed until he completes his probation satisfactorily and by the period for which his probation is extended. It is also made clear that such postponement of increment shall not be treated as a penalty but only as a condition of extension of probation and shall not have the effect of postponing future increments after he passes the prescribed tests or examinations or after he completes his probation satisfactorily.

6. In the cases before the Supreme Court which we have referred to herein above the rules were altogether different. In *Mohan Lal v. State of Himachal Pradesh* (supra) it appears that the petitioners themselves wanted that their seniority should be reckoned from the date of passing the examination therefore, in our view this judgment will not be of any help to the petitioner. Coming to the second judgment i.e., *M.P. Chandoria v. State of M.P* (supra) the Supreme Court was interpreting Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961. According to these rules to which a reference has been made in the Supreme Court judgment after an employee was put on probation there were three modes available to the appointing authority on completion of period of probation. First mode was on successful completion of probation and on passing of the prescribed departmental examination if any and if there was a permanent post available the employee could be confirmed in the service or post in which he had been appointed. The second mode was, on completion of the period of probation successfully and having passed the departmental examination, if any prescribed but the post was not available a certificate had to be issued by the appointing authority in favour of the candidate to the effect that the candidate would have been confirmed but for non-availability of the permanent post and such candidate would be confirmed on availability of the post. The third mode was to discharge on the grounds of unsatisfactory conduct during the probation and/or non-passing of the examination, if any prescribed. There was a Sub-rule (4) to Rule 6 that a candidate who was neither confirmed nor discharged nor given a certificate of non-availability of the permanent post he would be deemed to have been appointed as a temporary Government Servant with effect from the date of expiry of probation and his service had to be treated under a different set of rules. Therefore, this judgment is also not going to come to the rescue of the petitioner. In case of non completion of period of probation successfully the rules provide a different date of appointment in cases falling under the Madhya Pradesh Civil Services (General Conditions of Service) Rules, therefore the Supreme Court came to the conclusion that relevant date for the purpose of counting of seniority was the date on which the departmental test had been passed and probation had been cleared. The rule position in the present case is altogether different. Therefore, as regards the seniority of respondent No. 5 we agree with the conclusions arrived at by the Tribunal.

7. In result, the order passed in O.A. No. 3381/2000 is set aside and the order passed in O.A. No. 866/2001 is upheld.

8. The writ petition is accordingly disposed of.