

(1998) 08 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 756 of 1995 and Batch

M. Subba Reddy and Others

APPELLANT

Vs

APSRTC, Musheerabad, Hyderabad and Others

RESPONDENT

Date of Decision : 24-08-1998

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Recruitment)
Regulations, 1966 — Regulation 3, 3(2), 30, 30(1), 30(4)
Constitution of India, 1950 — Article 14, 16

Citation : (1998) 6 ALD 10 : (1998) 5 ALT 542

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Judgement

1. These three Writ Petitions were heard together.
2. Writ Petition Nos.756 and 757 of 1995 raise common questions of fact and law, having regard to the nature of the relief in these two Writ Petitions that the seniority list published by the respondent No. 1 Corporation vide Notification No. Ea/752 (1)/94-PD, dated 10-11-1994, has been challenged. The only difference between these two writ petitions is that in W.P. No. 756/1995, the petitioners have challenged the seniority list pertaining to the cadre of Assistant Traffic Manager and W.P. No. 757/1995 pertains to the cadre of Assistant Mechanical Engineers. WP No.7410/96 is also filed challenging the seniority list vide notification dated 10-11-1994 and consequent action of the respondent No. 1 Corporation in seeking to revert the petitioners from the post of Divisional Manager/Deputy Chief Traffic Inspectors, while retaining their juniors as illegal and arbitrary. In other words, the petitioners in these three writ petitions. i.e., W.P. Nos. 756/95,757/95 and 7410/1996, stand or fall, according to the ultimate decision of this Court, with regard to the validity of the seniority list, vide notification dated 10-11-1994.
3. The petitioners in W.P. Nos.756 and 757 of 1995 are the promotees in the cadre of Assistant Traffic Managers and Assistant Mechanical Engineers and the

petitioners in W.P. No. 7410/1996 are the promotees in the cadre of Deputy Chief Traffic Inspectors. Their common grievance is that they have been shown below in the ranking to the direct recruits in the cadre of Assistant Traffic Managers, Assistant Mechanical Engineers and Deputy Chief Traffic Inspectors, in the impugned seniority list and the same is illegal. They further contended that though they were promoted under Regulation 30 of the Andhra Pradesh State Road Transport Corporation Employees (Recruitment) Regulations, 1966 (hereinafter referred to as "Recruitment Regulations"). But their promotions were on a clear vacancy, within their quota and as such, right from the date of their promotion under Regulation 30 of the Recruitment Regulations, their seniority has got to be counted, as against the direct recruits, who are appointed subsequent to such promotions. They also relied upon Regulation 34 of Recruitment Regulations, contending that they need not have to be reverted to the lower cadre, nor their seniority could be shown below the direct recruits, when they have been promoted within their quota, i. e. quota meant for promotees, and therefore, the seniority list reckoning their seniority in the cadre of Assistant Traffic Managers, Assistant Mechanical Engineers and Deputy Chief Traffic Inspectors, with a subsequent date is illegal and without jurisdiction. Therefore, the impugned seniority list is liable to be declared as illegal. On the other hand, the respondent No. 1 Corporation and the other respondents, who are direct recruits, by filing Counter contended that the petitioners being temporarily promoted under Regulation 30 of the Recruitment Regulations, on the quota meant for direct recruits, they have to be either reverted or they have to be necessarily shown below in the seniority from the date the direct recruits have been appointed, after being duly selected by the Selection Committee and after completing training. Respondent No.1 Corporation specifically made the promotion of the petitioners under Regulation 30 of the Recruitment Regulations, on the vacancy meant for direct recruits. The Corporation further contended that whenever a vacancy arose for the promotees in the promotional posts with effect from such a date their services have been regularised, since they were the promotees under Regulation 30 of the Recruitment Regulations and taking this principle, as the basis, the seniority list has been prepared- It is further contended by, the Corporation that the Promotions made under Regulation 30 are also governed by Regulation 34 of the Recruitment Regulations and according to Regulation 34 of the Recruitment Regulations, the promotees are liable to be reverted, the moment the selected direct recruits are appointed and as such, such promotees under Regulation 30 of the Recruitment Regulations do not have any right to claim seniority from the date of their promotion as such. However, they were regularised from the date the vacancy arose in the quota meant for promotees. The Corporation further stated in the counter that since there were no regular recruitments from time to time in view of the ban imposed, where promotions under Regulation 30 on the quota meant for the direct recruits. It was only to meet the administrative exigencies, such vacancies were filled up on emergent basis. under Regulation 30 of the Recruitment Regulations and such a person, cannot be regarded as a probationers in terms of Regulation 30(4) of the

Recruitment Regulations and such a person shall not have any preferential claim to the future promotions. Clause (5) of the Regulation 30 of the Recruitment Regulations further provides that the appointing authority shall have the power to revert such person promoted under Clauses (1) or (2) of Regulation 30 at any time without assigning any reasons and without notice. Having regard to these circumstances, respondent No. 1 contended that absolutely there are no merits in the Writ Petitions. It is further contended that some of the petitioners and other persons similarly situated and who are promotees under Regulation 30 of Recruitment Regulations, urged the same points in WP Nos.5837 and 5838 of 1991 and the Writ Petitions were no doubt allowed by the learned single Judge vide order dated 19-1-1993, but the Division Bench in Writ Appeal Nos. 340 and 341 of 1993 reversed the order of the learned single Judge, by rejecting the same contentions raised by the petitioners in those writ petitions, vide Judgment dated 22-8-1994. The Division Bench of this Court further directed the Corporation to reconsider the persons who were promoted prior to 1981 and issue seniority list accordingly. The present seniority list is published following the said Judgment of the Division Bench of this Court and as such there is no irregularity or illegality in the seniority list now published. The Corporation also further contended that the very principles on the basis of which the present seniority list is prepared was upheld in earlier Writ Petitions in WP Nos.3094 and 3761 of 1974 and also by the Division Bench of this Court in W.A.Nos. 480, 485, and 492 of 1975 and the same principles also were upheld in W.P. Nos.2529 and 3532 of 1993 and as such the present Writ Petitions are liable to be dismissed.

4. Relying upon the above pleadings of the respective parties, the Counsel for the petitioners and the respondents strenuously urged certain contentions which I will be considering now. The learned Counsel for the petitioner contended the following points :

(1) That the petitioner are promoted earlier than the recruitment of the respondents-direct recruits, and as such the respondents--direct recruits being appointed later, shall be juniors to the petitioners.

(2) That if the promotees are promoted on the quota meant for direct recruits if they officiate on that post longer than one year, their services from the date of their promotion shall be considered as against the subsequent recruitment of the direct recruits.

(3) That the promotion of promotees on their own quota does not wait for the recruitment of the direct recruits and hence from the date of their promotion, their seniority shall be counted and.

(4) That from the impugned seniority list it is clear that certain slots are kept vacant for direct recruits, but the same is illegal, in view of the fact that if at any point of time, the direct recruits are not available the said posts are liable to be filled up by promotees.

According to the Counsel appearing for the Corporation and respondents--direct

recruits, these contentions of the petitioners are untenable.

5. All the points urged by the learned Counsel for the petitioners can be taken up together, since the discussion on any one of these points has to necessarily overlap, having regard to the nature of controversy. Hence, I am taking all the points together for consideration.

6. It is not in dispute, nor can it be disputed on the basis of the material on record, that the petitioners were promoted temporarily under Regulation 30 of the Recruitment Regulations. For instance, the promotion of petitioner No.1 in WP No. 756/1995, M. Subba Reddy, working as the Chief Inspector was promoted under Regulation 30 of the Recruitment Regulations with effect from the date he assumed the charge. The other orders of promotion dated 9-9-1988 issued in respect of certain Assistant Traffic Managers and Assistant Mechanical Engineers also clearly indicates that their promotions as Assistant Traffic Managers or Assistant Mechanical Engineers who under Regulation 30 and subject to Regulation 34 of the Recruitment Regulations, with effect from the respective persons join his duties. These orders are filed at material papers at pages 3 and 4 in the said Writ Petition. It is also not in dispute that some of the petitioners' services were regularised later, on their promotional post, with effect from certain further dates. For instance, the promotion of petitioner No.1 M. Subba Reddy in W.P. No.756/95, is confirmed and regularised with effect from 1-4-1987. These orders are taken only as an example and it is not in dispute that the same holds true regarding other petitioners also i. e., they were first promoted under Regulation 30 and on a later date, their services were regularised. According to the respondent No. 1 Corporation, such promotions were made in order to meet the exigency of the work on the posts belonging to the direct recruits, since for one reason or the other, the direct recruitments were being delayed from time to time and the moment the direct recruits assumed their duties, such persons promoted under Regulation 30 of the Recruitment Regulations required to be reverted back. But in some of the cases, if meanwhile, quota arose for promotees also, they were regularised with effect from the date of occurrence of such vacancy for the promotees. The Counsel appearing for the respondent No.1 Corporation also further urged that as per Annexure-A, appended to Recruitment Regulations, a quota and rota is determined between the direct recruits and the promotees. He elaborated his arguments by relying upon Regulation 3(2) of the Recruitment Regulations, by contending that the method of recruitment to each post specified in column 2 of Annexure-A shall be shown in the corresponding entry, as against the said post shown in the Annexure-A. He contended that so far as the post of Asst. Mechanical Engineer is concerned, in a unit of five vacancies, first, third and the fifth shall be filled by direct recruitments and second and fourth by promotion of a Foreman. Likewise, regarding the post of Asst. Traffic Manager in a unit of four vacancies, first and third vacancy shall be filled by direct recruitments and second and fourth by promotion of the Chief Inspectors and this ratio between the direct recruits and the promotees and also its rotation has been followed in preparing the impugned

seniority list. He further contended that if the seniority has been determined by consistently adopting both quota and rota rules, as per the method provided under the Recruitment Regulations, if the petitioners have to go below the direct recruits in the seniority list, that is in accordance with the regulations of the Corporation and such a determination of seniority on the basis of these Regulations cannot be found fault with by the petitioners, when their initial promotion is under Regulation 30 of the Recruitment Regulations.

7. I find that there is substance in the arguments of the learned Counsel for the respondent No. 1 Corporation and other direct recruits. Regulation 30(1)(i) of the Recruitment Regulations provides that wherever it is necessary in the administrative interest to fillup emergency a vacancy, in a post borne on the cadre of a higher category, and in filling up such vacancy, in the cadre of a higher category in accordance with the regulations, it is likely to result in undue delay, the appointing authority may promote a person temporarily otherwise than in accordance with these Regulations. Under Clause (4) of Regulation 30 of Recruitment Regulations, it is further provided that a person so promoted under Clauses (1) or (2) of Regulation 30, shall not be regarded as a probationer in the higher category, nor such a person shall be entitled to any preferential claim to the future promotions to such higher category and under Clause (5), the appointing authorities are entitled to revert to a lower category, without assigning any reasons and without notice. Under Regulation 34 of the Recruitment Regulations it is further provided that in the post of Assistant Mechanical Engineer or in the post of Assistant Traffic Manager, with which we are now concerned in these cases, if successful candidates after training are not available for recruitment to fillup the posts reserved for such recruitments, temporary departmental promotions may be given, until approved candidates become available to replace the promotees. Such persons reverted, shall be subsequently considered for promotion against the promotional quota, arising at a later point of time. From a reading of Regulation 3(2) along with Regulations 30 and 34 of Recruitment Regulations, the only irrefutable conclusion would be that the promotees temporarily promoted under Regulation 30 shall be necessarily subject to Regulation 34 of Recruitment Regulations. Therefore, when in terms of the rota and quota rule provided under Rule 2 of Annexure-A, appended to the Recruitment Regulations, if the direct recruits were subsequently appointed, such promotees promoted under Regulation 30 are necessarily required to be reverted back to their original post, or their promotion may be regularised with effect from the date the vacancy arises for promotional quota. In fact, this has been the very interpretation of this Court in a Division Bench Judgment reported in General Manager, APSRTC v. Mathur, 1976 (II) An.W.R. 389. The principle laid down in this judgment has been affirmed by the later Division Bench of this Court in the decision reported in Krishna Murthy v. APSRTC, 1987 (I) ALT 520 (DB). For immediate reference, I am herewith extracting paragraphs 13, 14 and 15 of this judgment as under :

"13. In AIR 1977 251 (SC) , the Supreme Court observed that irregular service

cannot be counted for the purpose of seniority. In *A. Janardhana v. Union of India*, 1983 (2) SLR 113 (SC), the Supreme Court observed:

"It is, therefore, time to clearly initiate a proposition that a direct recruit who comes into service after the promotee was already unconditionally and without reservation promoted and whose promotion is not shown to be invalid or illegal according to relevant statutory or non-statutory rules should not be permitted by any principle of seniority to score a march over a promotee because that itself being arbitrary would be violative of Articles 14 and 16."

The above observation would clearly show that the promotee cannot claim seniority on the basis of his continuous temporary service unless he was promoted unconditionally and without reservation. It follows that where a promotee was promoted subject to the conditions envisaged in Regulation 34, he cannot claim his seniority ignoring Regulation 34 and on the view taken in *G.S. Lamba and Others Vs. Union of India (UOI) and Others*, . So are the observations made by the Supreme Court in *G.P. Doval v. Chief Secretary to Government of A.P.*, 1984 (2) SLR 555 to 564. Where the Supreme Court stated that "Now if there was no binding rule of seniority it is well settled that length of continuous officiation prescribes a valid principle of seniority". In *P.S. Mahal and Others Vs. Union of India (UOI) and Others*, , the SC observed once again:

"But it is now well settled as a result of several decisions of this Court that in the absence of any statutory rule or executive memorandum or order laying down a rule for determining seniority in a grade, the normal rule applicable would be to determine seniority on the basis of length of continuous officiation in service."

14. In support of the above view the observations of earlier Bench decisions in *Bishan Sarup Gupta and Others Vs. Union of India (UOI) and Others*, and AIR 1977 251 (SC) , was referred to. It, therefore, follows that where there is a rule providing for fixation of seniority that rule alone governs the matter and not the general argument relating to quota and rota. As in this case we have found that the petitioner has been appointed specifically under Regulation 34 and Regulation 3 of the Service Regulations which provides for the fixation of seniority, we hold that the petitioner, who has been appointed on a regular basis only in the year 1978, cannot claim seniority over respondents 2 to 8,

15. For the above reasons we cannot agree with the petitioner's argument that his seniority should be determined on the basis of his continuous officiating service from the year 1975."

From the above law declared by this Court, it is clear that the petitioners' seniority cannot be counted from the date they were promoted under Regulation 30 and their services in the promotional post are entitled to be considered only with effect from the date on which the vacancy arose for the promotees. By perusing the seniority list, it is clear that this very principle has been adopted by the respondent No.1 Corporation. However, the learned Counsel for the petitioners relied upon the decisions reported in *A. Janardhana Vs. Union of India*

(UOI) and Others, and A.N. Pathak and Others Vs. Secretary to the Government, Ministry of Defence and Another, , contending that if there is delay in recruitment for the posts meant for direct recruits and if meanwhile, the petitioners were promoted under Regulation 30 of Recruitment Regulations, they should not suffer any adverse consequence, when admittedly they were working on the promotional post prior to such recruitments. As against these judgments, the Counsel for the respondent No. 1 Corporation relied upon the judgments reported in Union of India and others etc. Vs. S.D. Gupta and others, , Devendra Prasad Sharma Vs. State of Mizoram and others, , Madan Gopal Garg v. State of Punjab, 1995 (4) SLR 412 and AIR 1997 3127 (SC) , contending that the inter-se seniority in between direct recruits and promotees has got to be determined in terms of the Regulations providing for rota and quota rule to a particular post, and to the posts in question, the Recruitment Regulations have already prescribed such rota and quota rule and the present seniority list is prepared on the basis of these Regulations, applicable to the posts in question. From all these judgments of the Supreme Court it is clear that inter-se seniority between direct recruits and the promotees has got to be determined only according to the Rules and Regulations providing for such rota and quota between these two categories. By considering all these judgments, the later Division Bench of this Court in the decision reported in P. Komaraiah and Others Vs. A. Yegneswarudu and Others, held that the seniority between direct recruits and the promotees has got to be determined only according to these Regulations and there was no breakdown of these Regulations after 1981. The Division Bench in this Judgment noticed that due to the ban imposed for direct recruitments, there were no recruitments for number of years. It further held that prior to 1981 there appears to be a breakdown of the quota and rota rule as such and the cases of the persons promoted prior to 1981 under Regulation 30 requires to be redetermined and consequently, the Division Bench directed to issue a fresh seniority list. I think it appropriate to extract the relevant portions of the said judgment as under:

"36 point No. 4: A promotee will have no right when his service conditions are governed by rules to say that by virtue of his continuous service, he is entitled for being placed above the direct recruits. Further, the promotees are disentitled to contend that Recruitment Regulations and Service Regulations will not apply to their case, for the reason that prior to their promotion either as A.M.Es or A.T.Ms., their earlier appointments and promotions were made purely on the basis of recruitment Regulations and Service Regulations of the Corporation. Having availed of the benefits under Regulations earlier, it is not open to them now to say that Regulations are not applicable to their case. Thus, they cannot blow both hot and cold at the same time. As rightly contended by Sri Subramanya Reddy, learned senior Counsel for the direct recruits, the Writ Petitioners did not choose to challenge the Regulations in question. The Writ Petitioners, are therefore not entitled to claim seniority over the direct recruits and contend that the seniority list dated 28-12-1989 is incorrect, illegal or arbitrary. Apart from that, when the provisional seniority list was circulated to all

the concerned prior to its publication, the writ petitioners failed to raise any objections. Since the appointment of the Writ Petitioners was purely a temporary one, no right has accrued to them. As and when the direct recruits who were entitled to occupy the said posts came and occupied, the Corporation placed them above the writ petitioners and the same is quite legal, proper, just and reasonable. Hence point No.4 is answered against the Writ Petitioners/promotees.

Point No.5: Though on merits the promotees are not entitled for the relief, at least a few of them are entitled to request the Corporation to readjust the seniority of both promotees and direct recruits in respect of posts of A.M.Es and A.T.Ms which fell vacant prior to 1981. The explanation offered by the Corporation why it did not fill up the vacancies existing prior to 1981 by direct recruitment, is not convincing in nature. In all fairness all the vacancies existing in a particular year should have been filled up in the same year, or at least the back-log should have been cleared in the next year. Instead of following this principle, the Corporation allowed promotees to continue. For the fault of the Corporation, the promotees, who were appointed by way of promotion during the years prior to 1981 shall not be penalised. It is the duty of every authority, more so in case of a public authority like the Corporation, always to act in a just and fair manner, without giving room for a feeling in any quarter that the action of the authority has resulted in causing injustice to an employee.

For the reasons given above, we are constrained to hold that the action of the Corporation in issuing the notification dated 28-12-1989 was neither illegal nor improper and the notification is not vitiated by the vice of arbitrariness or discrimination.

The reasoning adopted by the learned single Judge that the earlier decisions of this Court in Writ Appeal Nos.480, 485 and 492 of 1975 are no longer good law, in view of the decisions rendered by Supreme Court in "The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, and clarified in State of W.B. and Others Vs. Aghore Nath Dey and Others, , incur considered view, is not correct-Accordingly, these Writ Appeals are allowed judgment in Writ Petitions No.5837 and 5838 of 1991, dated 19-3-1993 is set aside.

However, while parting with the case, we observe that the Corporation shall adjust the seniority of the promotees and direct recruits appointed for the period prior to 1981 and prepare a fresh seniority list of such officers in the light of the observations made by us."

8. In obedience to the above directions of this Court, the impugned seniority list has been issued. So far as the petitioners are concerned, they were all the persons promoted subsequent to 1981 only and so far as their cases are concerned, the very contention urged in these Writ Petitions have already been negated by the Division Bench in the above judgment. The very fact that their promotion was under Regulation 30 would lead to only conclusion that their

appointment was either in excess of the quota meant for them or these promotions were on the quota meant for the respondents-direct recruits. From the pleadings of respondent No.1 Corporation it is also established that whenever a vacancy arose for such persons, promoted under Regulation 30, their services were regularised and those persons for whom no vacancy meant for promotional quota arose, either they are still under Regulation 30 or they are liable to be reverted on the direct recruits joining on their legitimate quota. In this view of the matter, I am of the opinion that there is neither illegality nor irregularity in preparing the present impugned seniority list. At the cost of repetition. I am making it clear that the seniority list earlier published was already upheld by the Division Bench in the decision P. Komaraiah and Others Vs. A. Yegneswarudu and Others, , excepting certain promotions made under Regulation 30, prior to 1981 and the contentions of the petitioners urged in these Writ Petitions have already been rejected by the Division Bench in the said judgment. The persons who were promoted prior to 1981 have not made any kind of complaint by filing a Writ Petition against the present seniority list, since the direction of this Court in the said judgment vide P. Komaraiah and Others Vs. A. Yegneswarudu and Others, , was only to consider the seniority of such persons promoted prior to 1981. In this view of the matter, the impugned seniority list being valid, the necessary consequence has got to be followed, if the petitioners in Writ Petition No.7410 of 1996 are liable to be reverted, such reversion would be in accordance with law and as such, the petitioners in Writ Petition No.7410 of 1996 would not be entitled to any relief in this petition.

9. For all the above reasons, I do not find any merit in the Writ Petition Nos.756/95, 757/95 and 7410/96 and accordingly, I pass the order as under:

The three writ petitions are dismissed, but in the circumstances without costs.