

(2001) 01 AP CK 0053
In the Andhra Pradesh High Court
Case No : WA No. 1809 of 1998

Mohd. Hussain

APPELLANT

Vs

APSRTC, Hyderabad and Another

RESPONDENT

Date of Decision : 20-01-2001

Acts Referred:

Road Transport Corporations Act, 1950 — Section 10, 19, 45

Citation : (2001) 2 ALD 78

Hon'ble Judges : B. Subhashan Reddy, J

Bench : Single Bench

Advocate : Mr. Mirza Imamullah Baig, for the Appellant; Mr. A.V. Sivaiah, SC for APSRTC, for the Respondent

Judgement

Satyabrata Sinha, CJ.

1. This appeal is directed against the judgment dated 19th August, 1998 passed by a learned single Judge of this Court in WP No.3848 of 1998, whereby and whereunder the writ petition filed by the appellant herein was dismissed.

2. Bereft of all unnecessary details, the fact of the matter is as follows:

The appellant, at all material times, was holding the post of Foreman (Mechanical). It is not in dispute that for the purpose of promotion to the post of Assistant Engineer (Mechanical) the said post is a feeder post.

3. In the years 1992, 1993, 1996 and 1997, the post of Assistant Engineer (Mechanical) fell vacant. The petitioner contended that although he was senior, his case for promotion was ignored treating the said post of Assistant Engineer (Mechanical) as a "selection post". According to the petitioner, having regard to the fact that his case had not been considered in the earlier years, he is entitled to be promoted to the post of Depot Manager.

4. The contention raised on behalf of the respondent in the writ petition before the learned single Judge was that the post of Assistant Engineer (Mechanical)

was a "selection post". By reason of the impugned judgment, the learned single Judge has held that the said post is a "selection post".

5. It is not in dispute that the conditions of service of the employees of the first respondent herein are governed by the provisions of the Road Transport Corporation Act, 1950 (hereinafter referred to for the sake of brevity as "the Act"). Section 45 of the Act reads thus:

45. (1) A Corporation may, with the previous sanction of the State Government, make Regulations, not inconsistent with this Act and the Rules made thereunder for the administration of the affairs of the Corporation.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:--

(a) the manner in which, and the purposes for which, persons may be associated with the Board u/s 10;

(b) the time and place of meetings of the Board and the procedure to be followed in regard to transaction of business at such meetings;

(c) the conditions of appointment and service and the scales of pay of officers and other employees of the Corporation other than the Managing Director, the Chief Accounts Officer and the Financial Adviser or, as the case may be, the Chief Accounts Officer-cum-Financial Adviser;

(d) the issue of passes to the employees of the Corporation and other persons u/s 19;

(e) the grant of refund in respect of unused tickets and confessional passes u/s 19."

In terms of the power conferred upon the State under sub-section (3) of Section 45 of the Act, service Regulations of the first respondent-Corporation have been framed known as the A.P. Road Transport Corporation Employees (Service) Regulations 1964. Regulation 4 of the said Regulations reads thus:

"4. Promotion--

(a) No member of a service or class of service shall be eligible for promotion from the category in which he was appointed to the service unless he has satisfactorily completed his probation in that category.

(b)(1) Promotion in a service or class to a Selection Category or to a Selection Grade shall be made on grounds of merit, seniority being considered only where merit is approximately equal."

6. Further, the Corporation, upon obtaining prior approval of the State Government, framed another set of Regulations known as the Andhra Pradesh State Road Transport Corporation Employees (Recruitment) Regulations, 1966. Regulation 2(xiv) and (xv) define "selection" and "selection post" in the following

terms:

(xiv) "Selection" means the selection of a person for appointment to a post in the service of the Corporation by the Selection Committee, if any, appointed for the purpose under Regulation 6 or by the appointing authority in its discretion when no Selection Committee has been appointed, provided that the Regulations as regards the method of recruitment and qualification in respect of the post for which the selection is made, are fulfilled.

(xv) "selection post" means a post which is declared as such by a resolution of the Corporation."

Despite the fact that Regulation 2(xv) purports to empower the Corporation to declare a post as "selection post" by a resolution, which forms part of the Regulation, in relation to posts of promotion from Executive Director to Chief Industrial Engineer, directed to be made "by selection" and in relation thereto the Government gave sanction vide letter dated 29-4-1977. No such direction was issued in the matter of filling up of the post of Assistant Engineer (Mechanical) by promotion. The method of recruitment, inter alia, in respect of Assistant Engineer (Mechanical) and Assistant Works Manager, has been stated in the following manner.

SI. No Category of Post Method of Recruitment Qualifications

(1) (2) (3) (4)

(1)

Assistant Mechanical Engineer and Assistant Works Manager.

(1)

In a unit of five vacancies, the first, the third and fifth shall be filled in by appointment of an officer Under Training who was successfully completed his training and the second and fourth by promotion of a Foreman

(1) For promotion - the Foreman, -

(a)

Must hold LME or LAE Diploma from Govt. Polytechnic or any other recognised or any institution or possess an equivalent qualification; and

(b)

Must have put in not less than 5 years of services as such

(2)

A member of the Supervisory staff who has passed sections "A" and "B" of the Associate Membership Examination of the Institute of Engineers (India) and who has shown outstanding merit may also be considered for promotion along with

the Foreman.

(2) For Direct Recruitment - the candidate -

(a)

Must hold a degree in Mechanical Engineering from a recognised University or have passed sections "A" and "B" of the Associate Membership Examination of the Institution of Engineers (India) or hold a diploma or a certificate recognised by the Institution of Engineers (India) as exempting him from sections "A" and "B" of the Associate Membership Examination,

(3)

If a suitable candidate is not available in a particular category for filling up a vacancy reserved for that category the vacancy may be filled in by a suitable candidate from the other category.

(b)

Must have served a regular Apprenticeship of not less than two years duration in Mechanical Engineering, preference being given to one who has served his apprenticeship in a Workshop, engaged in either the manufacture and assembly or the repair, overhaul and maintenance of commercial vehicles;

(4)

If no suitable candidate is available in any of the categories mentioned above, the post may be filled in by direct recruitment by selection.

(c)

Must have had subsequent to his training not less than two years experience as an executive in control of large and well organised workshop engaged in either the manufacture and assembly or the repair, overhaul and maintenance of commercial motor vehicles; and

(d)

Must not be above 30 years of age as on 1st July of the year, in which the recruitment is made."

The said provision was amended vide Resolution No.184/1984, dated 3-12-1983 and notified through Lr. No.P1/93(8) 83-PD dated 26-3-1984. It appears, the said amendment received the approval of the Government through letter No.89/Tr. IV(2)/84-1, Dated 9-2-1984.

7. Before the learned single Judge as also before us, the purported resolution passed by the Corporation in the year 1977 had been placed and pursuant thereto a contention has been raised that the post of Assistant Engineer (Mechanical) is a "selection post". The said contention raised on behalf of the respondent found favour with the learned single Judge.

8. The learned Counsel appearing on behalf of the appellant inter alia submitted that having regard to the fact that the mode of selection was prescribed by reason of the aforementioned Regulation, the learned single Judge erred in not relying thereupon. Our attention has been drawn by Mr. Baig to a Division Bench judgment of this Court in Vice-Chairman and Managing Director, APSRTC, WA No.1435 of 1989 dated 11th June, 1991, disposed of on 11-6-1991 wherein, while considering the case of the Assistant Foreman (Mechanical) and Foreman (Mechanical) it was held:

"The power conferred on the Corporation to declare by a Resolution, a post as "selection post" under sub-clause (xv) of Regulation 2 cannot nullify the specific provisions in the Regulations laying down specific methods of recruitment for appointment to the posts. It is only in respect of posts for which no specific method of recruitment is laid down in the Regulations, the residual power of the Corporation comes into play under sub-clause (xv) of Regulation 2."

Mr. Baig would urge that having regard to the aforementioned Division Bench judgment the learned single Judge must be held to have erred in passing the impugned judgment.

9. Mr. K. Harinath, learned Counsel appearing on behalf of the respondent on the other hand would urge that the point at issue is covered by Regulation 2(xv) of the Recruitment Regulations. According to the learned Counsel, having regard to the terminology used in the said provision as aforementioned, in the year 1977 the Corporation has passed a Resolution to the effect that the post of Assistant Engineer (Mechanical) is a "selection post", the learned single Judge must be held to have determined the issue correctly. The learned Counsel has also submitted that the method of promotion being not a condition of service, the same is not required to be prescribed by way of Regulation.

10. It is not in dispute that the method of selection which had been appended to the Regulations forms part of the regulations as indicated herein before. It is also not in dispute that the Resolutions passed by the Corporation were amended from time to time and such amended Regulations received the approval of the Government. It is needless to point out that previous sanction was required to be obtained in terms of subsection (1) of Section 45 of the said Act. It appears that the relevant Regulations were amended in the year 1995 as would appear from a notification dated 9th October, 1995, which reads thus:

"The Corporation Board vide Resolution No. 116/94 dated 8-9-1994 has approved the amendment to the method of recruitment and qualifications prescribed for the posts of Assistant Traffic Manager, Assistant Mechanical Engineer/Asst. Works Manager.

The Secretary to Government, Transport, Roads and Buildings (Tr.III) Department vide their Lr. No.589/Tr.III-2/95-1 dated 19-9-1995 has communicated approval of the Government to the method of recruitment and qualifications prescribed for the posts of Asst. Traffic Manager, Assistant

Mechanical Engineer/Assistant Works Manager. A copy of the amended recruitment Regulations is enclosed.

The amended Regulation is deemed to have come into effect from 19-9-1995."

By reason of the aforementioned amendment, the method of recruitment, in relation to the post of the Assistant Engineer (Mechanical) is:

Category of Post Method of Recruitment Qualifications

Assistant Mechanical Engineer/ Assistant Works Manager

(1)

by transfer of Officers in equivalent category; or

Qualifications for Promotion

The Sr. Supdt. (Mechanical)-

(ii)

by appointment of OUT (Tech.) who has successfully completed training and by promotion of Senior Supdt. (Mech.) by selection in the ratio of 1:2 respectively.

(a)

Must hold LME or LAE Diploma from a Govt. Polytechnic or any other recognised institution or possess an equivalent qualification and must have put in not less than five years of service as such; or

(b)

Must have passed SSC/ITI or its equivalent examination and must have put in not less than 8 years

(c)

Should have passed Higher Management Departmental examination irrespective of age.

2. For Direct Recruitment :

The candidate

(a) No change

(b) No change

(c) No change

(d) No change

It is, therefore, evident that the Corporation proceeded on the basis that the method of recruitment being a condition of service coming under sub-section (2) of Section 45, was required to be made by way of Regulations or amended upon

by following the due procedure laid down therefor. It, therefore, in our opinion, does not lie in the mouth of the Corporation now to contend that pursuant to or in furtherance of the purported Resolution of 1977, the post of Assistant Engineer (Mechanical) was declared as a "selection post". As indicated hereinbefore, since the said Resolutions of the Corporation have been amended in the year 1983, which received the approval of the Government in the year 1984, the latter would prevail over the former. In any event, as is well known, an interpretation clause is not a positive enactment (vide *Manik Ram v. Emperor* 1916 Pat 133 (FB)). In a case of this nature, the doctrine "Generalia Specialibus Non Derogant" shall squarely apply.

11. Having regard to the fact that the Regulations framed in terms of Section 45 are a subordinate legislation, the same will only have a prospective effect. Having regard to the provision contained in Section 45 of the said Act, there cannot be any doubt that any amendment carried out in the Regulation shall have a prospective effect. It is further beyond any cavil of doubt that any amendment affecting a right of a party by reason of a subsequent amendment shall have no effect for the purpose of appointment or otherwise if thereby a vested right is affected (vide *A.A. Calton Vs. Director of Education and Another*,); *Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others*, ; *P. Mahendran and others Vs. State of Karnataka and others*, .

12. In view of the aforementioned authoritative pronouncements of the Apex Court, we have no other option but to hold that prior to coming into force of the amended Regulations 1995, the mode of selection applicable to the case of the appellant herein i.e., the Assistant Engineer (Mechanical) could have only been carried out in terms of the Regulations as was existing at the relevant point of time namely "promotion by seniority" and not "promotion by selection".

13. When the method of recruitment has been laid down by a statute, the same could be altered only upon following the due procedure laid down under the statute and not otherwise. In any event, having regard to the fact that the State thought it necessary to amend the regulations in the year 1995 itself is a pointer to the fact that it was alive to the situation that prior thereto it was a "non selection post" and in that view of the matter the Rule in *Heydon*'s case must be applied as thereby the rule making authority intended to suppress the mischief and advance the remedy. In *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, , the law has been laid down in the following terms:

(22) It is a sound Rule of construction of a statute firmly established in England as far back as 1584 when *Heydon*'s case.....was decided that "for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st. What was the common law before the making of the Act;

2nd. What was the mischief and defect for which the common law did not

provide;

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Common wealth; and

4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and "pro privato commodo", and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, "pro bono publico".

The said Rule has been followed subsequently by the Apex Court in various other decisions.

14. For the reasons aforementioned we are unable to agree with the findings of the learned single Judge. The impugned judgment is, therefore, set aside. The respondents are directed to consider the matter relating to promotion of the writ petitioner-appellant herein to the post of Assistant Mechanical Engineer afresh upon taking into consideration his seniority in the post of Foreman (Mechanical). It goes without saying that the case of the petitioner-appellant be considered if he is otherwise eligible and such consideration for promotion shall be reckoned from the date when the said post fell vacant in the year 1992. If the petitioner-appellant is found to be entitled to any further promotion consequent upon grant of promotion in terms of this judgment, the respondents are directed to consider the same also. This appeal and the writ petition are disposed of with the aforementioned directions but in the facts and circumstances of the case there shall be no order as to costs.