
(2001) 11 AP CK 0052
In the Andhra Pradesh High Court
Case No : Writ Petition No. 27039 of 1999

Muthyala Ashok

APPELLANT

Vs

Ch. Shyamsunder and Others

RESPONDENT

Date of Decision : 13-11-2001

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Andhra Pradesh Last Grade Service Rules, 1992 — Rule 9
Andhra Pradesh Ministerial Service Rules, 1998 — Rule 3(14)

Citation : (2002) 1 ALD 595 Supp

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

Bench : Division Bench

Advocate : R. Ranganathan, for the Appellant; P. Amarender, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.

1. This writ petition is directed against the order of the Andhra Pradesh Administrative Tribunal dated 10.12.1999 passed in O.A. No. 4022 of 1997 filed by the 1st respondent herein allowing his application, wherein he assailed the validity of the appointment of the petitioner herein as Junior Assistant with effect from 23.5.1997, and seeking a consequential direction to the official respondents to promote him as Junior Assistant with effect from 14.5.1997 with all consequential and attendant benefits.

2. The petitioner was initially appointed as Barber by the 2nd respondent with effect from 25.2.1991 under the Andhra Pradesh Last Grade Service Rules. Prior to that date, the 1st respondent herein was appointed as "Thoti" with effect from 7.11.1990. The Post of Barber falls within Category-12 whereas the post of Thoti falls under Category-8 of the posts.

3. When the matter stood thus, at the request of the 1st respondent herein the 2nd respondent issued an office order dated 6.12.1996 appointing the 1st

respondent as Stretcher bearer by way of transfer. It is also relevant to note at this stage itself, the post of Stretcher bearer also falls within category-12 of the posts. Subsequently, on 14.5.1997 the 2nd respondent issued notification calling for applications from the eligible candidates to fill up one post of Junior Assistant and the last date fixed for receiving the applications was 16th May 1997. The petitioner applied for the post on 14.5.1997 whereas the 1st respondent applied for the said post on 20.5.1997. On consideration of the applications, the 2nd respondent issued office order on 23.5.1997 appointing the petitioner as Junior Assistant. The application of the 1st respondent was rejected by the 2nd respondent by his proceedings Rc.No.E2/171/96 dated 6.6.1997 mainly on the following two grounds:

"1. In terms of G.O.Ms.No.517, GAD Ser. B dated 29.10.1987 minimum general educational qualifications required for the post of Junior Assistant is intermediate. But he has failed S.S.C. There is no mention in the above said G.O. regarding Open University qualifications. 2. In terms of G.O.Ms.N9o.565 GAD, dated 24.12.1992 (item No.9) for consideration of promotion or appointment by transfer every person should have completed (3) years of service in the category. But recently he has been appointed by transfer as Stretcher bearer vide this office Proc. Rc.No.E2/320/96, dated 6.12.96 and reported for duty on 11.12.96 and he has not completed (3) years of service in the category of Stretcher bearer".

4. The 1st respondent being aggrieved by the above action of the 2nd respondent and also of the action of the 2nd respondent dated 23.5.1997 appointing the petitioner as Junior Assistant, instituted O.A. No. 4022 of 1997 before the Andhra Pradesh Administrative Tribunal, for short, "the Tribunal". The prayer in the application reads as under:

"Application filed u/s 19 of the Administrative Tribunals Act, 1985, praying the Tribunal to declare the action of respondent no.2 in promoting the respondent No. 3 as Junior Assistant, ignoring the seniority of application in the cadre of Thoti (Sweeper) as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India and consequently direct the respondent authorities to promote the application as Junior Assistant w.e.f. 14.5.1997 with all consequential and attendant benefits."

5. Before the Tribunal, the 1st respondent contended that since he was initially appointed as Thoti with effect from 7.11.1990, that is to say, before the petitioner herein was appointed as Barber on 25.2.1991 and since both the posts of Thoti and Barber are the feeder cadres to the cadre of Junior Assistant and since in the final seniority list of Last Grade Services he is placed above the petitioner herein, he should have been appointed as Junior Assistant and not the petitioner herein. As regards the prescribed educational qualification of Intermediate, the 1st respondent contended before the Tribunal that after he was appointed as Thoti, he secured B.A. graduation degree from Dr. B.R. Ambedkar Open University, Hyderabad in the month of January 1995 and the Degree being

a higher qualification to Intermediate qualification, he fulfils the educational qualification also. The said application was opposed by the official respondents as well as the petitioner herein. On behalf of the petitioner herein, it was contended that the 1st respondent did not possess the required minimum educational qualification and the B.A. Degree obtained by him from Dr. B.R. Ambedkar Open University cannot be taken into account. It was also contended on behalf of the petitioner herein that since the 1st respondent was recruited to the post of Stretcher bearer by way of transfer with effect from 6.12.1996, the service put in by him as Stretcher bearer should alone be taken into account in computing the prescribed three years of service as per Rule 9 of the Andhra Pradesh Last Grade Service Rules. The learned Tribunal accepting the contention of the 1st respondent allowed the application by its judgment and order dated 10th December 1999 and set aside the proceedings of the 2nd respondent dated 23.5.1997 appointing the petitioner as Junior Assistant and issued a consequential direction to the official respondents to promote the 1st respondent herein as Junior Assistant with consequential benefits. Hence this writ petition assailing the validity of the same.

6. We have heard the learned counsel for the petitioner and the learned Government Pleader for Services-II as well as the learned counsel appearing for the unofficial 1st respondent.

7. The only question that arises for our decision is, whether the appointment of the petitioner herein as Junior Assistant by way of transfer with effect from 23.5.1997 is vitiated on account of any flaw - legal or factual - and whether the order of the learned Tribunal impugned herein is justified and legal?

8. There is no controversy and there cannot be any controversy that the post of Thoti and the post of barber are the feeder cadres under the Andhra Pradesh Last Grade Service Rules to the post of Junior Assistant. That is the only reasonable way of interpreting having regard to the language employed by the rule making authority in Clause (b) of Sub-Rule (14) of Rule 3 of the Andhra Pradesh Ministerial Services Rules.

9. It is also admitted that the 1st respondent herein was appointed as Thoti with effect from 7.11.1990, that is to say before the petitioner herein was appointed as Barber with effect from 25.2.1991. It is also admitted position that in the final seniority list prepared by the appropriate authority covering the last grade service personnel, the petitioner is assigned rank No. 28 whereas the 1st respondent is assigned rank No.27. In other words, the 1st respondent is senior to the petitioner herein in the final seniority list.

10. Secondly the view taken by the learned Tribunal that 1st respondent possess the prescribed qualification by securing B.A. Degree from Dr. B.R. Ambedkar Open University is also well founded. We say this because, admittedly the 1st respondent has secured B.A. Degree from Dr. B.R. Ambedkar Open University. The degrees and diplomas awarded by the said University have been recognized

by the Government of Andhra Pradesh and the Government of India for the purpose of recruitment in Public Services (vide Lr.No.1057/Admn./760/2000-2001, dated 9-11-2000 addressed by the Registrar of Dr. B.R. Ambedkar Open University to the District Collector, Chittoor and Lr.No.599/Admn./760/2001-2002, dated 16/17-10-2001 addressed by the Registrar of Dr. B.R. Ambedkar Open University.

11. Clause (b) of Sub-Rule (14) of Rule 3 of the Andhra Pradesh Ministerial Service Rules reads thus:

"(b) Record Assistants and members of equivalent categories in other services and members of Andhra Pradesh Last Grade Services and members of other services shall not be eligible for appointment by recruitment by transfer to the posts of Junior Assistants, Typists and Junior Stenographers in the subordinate offices, viz., offices other than the Heads of Departments and Directorates unless they possess the qualification of pass in Intermediate Examination and the other qualifications prescribed and put in not less than five years of regular service in such categories; Provided that those appointed prior to 29th October, 1987 may be considered for appointment by recruitment by transfer to the posts mentioned above, if they possess Minimum General Educational Qualification and put in not less than five years of regular service."

12. It is trite that the B.A. Degree obtained by the respondent No.1 from Dr. B.R. Ambedkar Open University is undoubtedly a superior degree than the Intermediate Qualification prescribed under the Rule. In that view of the matter, no exception can be taken to the view of the learned Tribunal. Therefore, we do not find any merit in the writ petition.

13. Writ Petition is devoid of any merit and it is accordingly dismissed with no order as to costs.