
(2014) 01 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13333 of 2002

M.V. Prabhakar Reddy and Another

APPELLANT

Vs

APSRTC and Others

RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Citation : (2014) 01 AP CK 0021

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : G. Vidya Sagar, for the Appellant; K.V. Subba Reddy for Respondents 1 and 2 and Sri A.G. Satyanarayana Rao, for the Respondent

Final Decision : Dismissed

Judgement

Dr. K.G. Shankar, J.—The question of seniority of the petitioners is the subject matter of the present Writ of mandamus. The petitioners challenge the Final Seniority List of Class-I Junior Scale Officers notified on 14-7-2002 as illegal and contrary to the Andhra Pradesh State Road Transport Corporation Employees' (Service) Regulations, 1964 (the Regulations, for short), seek to place the petitioners in the inter se seniority of Class-I Junior Scale Officers in terms of Regulation 3 of the Regulations and for a declaration that the placement of the unofficial respondents 3 and 4 above the petitioners as illegal and for consequential reliefs. The petitioners were appointed as Deputy Executive Engineers (Dy.EEs), which is a Junior Scale Officer's post. They were initially selected as Junior Engineers (Civil) on 28-3-1985. The 1st petitioner joined the service of the Andhra Pradesh State Road Transport Corporation (the Corporation, for short), represented by the official respondents 1 and 2, on 01-4-1985. The 2nd petitioner joined the Corporation on 29-3-1985. The 1st petitioner was promoted as Dy.EE (Civil) and assumed charge in the promoted post on 25-4-1988. The 2nd petitioner was promoted as Dy.EE (Civil) under Regulation 30 of the Regulations on 24-4-1988. The services of the petitioners as Dy.EEs were regularized on 07-9-1988.

2. The 2nd petitioner was posted as Depot Manager, Ibrahimpatnam on 29-6-1988. The 1st petitioner was posted as Depot Manager, Atmakur on 17-8-1996. The 1st and the 2nd petitioners were transferred to Nandyal and Kodur Depots through orders dated 28-6-2002 and 25-6-2002 respectively. On 14-5-2002, Notification was issued amending the Recruitment Regulations for the post of Divisional Engineer, which is a Senior Scale Officer's post. On 27-5-2002, Provisional inter se seniority of Class-I Junior Scale Officers was published. On 10-6-2002, the petitioners submitted objections to the Provisional Seniority List. On 10-7-2002, reply was issued to the objections raised by the petitioners. On the very next day, the petitioners submitted a joint representation. However, the Final Seniority List was published on 14-7-2002.

3. The Junior Scale Officers consists of Assistant Traffic Managers (ATMs), Assistant Mechanical Engineers (AMEs), Deputy Executive Engineers (Dy.EEs), Accounts Officers (A/c.Os), Personnel Officers (POs) and Stores Officers (St.Os). Prior to 2001, ATMs and AMEs alone were eligible for promotion as Divisional Managers. The amended Regulations in 2001 made Dy.EEs also eligible for promotion to the post of Divisional Manager. Consequently, inter se Seniority List was prepared by combining the 3 Categories of ATMs, AMEs and Dy.EEs.

4. A Notification was issued by the 1st respondent-Corporation on 14-5-2002 amending the Recruitment Regulations for the post of Divisional Manager after due approval by the Government. The new Rule came into force with effect from 02-5-2002. For the post of the Divisional Manager, the method of recruitment was the transfer of Class-I Senior Scale Officers except Medical and Civil Engineering Departments or promotion from Class-I Junior Scale Officers except Medical and Civil Engineering Departments or by deputation of officers from State Government or Central Government. After amendment, the recruitment method so far as the transfer of Senior Scale Officers except officers of Medical Department more or less was retained.

5. So far as the promotion method of recruitment is concerned, the promotion was by selection from among Class-I Junior Scale Officers. The note to the amended Rule is to the effect that the Junior Scale Officers of all Departments should be considered for selection for promotion to the post of Divisional Manager and other equivalent positions from a combined selection based on inter se seniority of all officers who are eligible for the post of Divisional Manager. The qualifications for promotion as a Divisional Manager were service for not less than 5 years in the Junior Scale Officer position out of which a minimum of 3 years must have been spent as Depot Managers. All Junior Scale Officers became eligible including ATMs, AMEs, Dy.EEs, A/c.Os, POs and St.Os.

6. A Provisional Inter se Seniority List was prepared and published on 27-5-2002 mixing all the 6 cadres of Junior Scale Officers. The petitioners figured at serial Nos. 69 and 70 in the Provisional Seniority List while the 4th respondent figured at serial No. 10. The 3rd respondent who is one of the two unofficial respondents did not figure in the Provisional Seniority List.

7. It is contended by Sri G. Vidya Sagar, learned Senior Counsel for the petitioners that the seniority is regulated by Rule 3(a) of the Regulations. Rule 3(a) of the Regulations reads:

3. Seniority:

(a) The "Seniority" of a person in service, class, category or grade shall unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade. If any portion of the service of such person does not count towards probation his seniority shall be determined by the date of commencement of his service which counts towards probation.

8. The seniority of a person in service shall be determined on the basis of the date of first appointment of the employee into service and that if any portion of the service of such person was not eligible to be counted towards probation, the seniority should be determined from the date on which his services commences which is counted towards probation. It may be recalled that both the petitioners were regularized on 07-9-1988. It is submitted by the learned Senior Counsel for the petitioners that the 4th respondent was regularized on 15-12-1988.

9. As the 4th respondent figured at serial No. 10 whereas the petitioners figured at serial Nos. 69 and 70 although they were regularized prior to the 4th respondent, the petitioners raised an objection to the provisional seniority vis-à-vis the 4th respondent. The objections raised by the petitioners were ignored. The Final Seniority List was issued on 14-7-2002. The petitioners figured at serial Nos. 136 and 137 whereas the 4th respondent figured at serial No. 41. The 3rd respondent made entry in the Final Seniority List and figured at serial No. 3. The petitioners contend that both the unofficial respondents 3 and 4 are juniors to the petitioners as their services were regularized after the regularization of the services of the petitioners. Their stand is that in view of Rule 3(a) of the Regulations, the petitioners are seniors to the unofficial respondents 3 and 4.

10. The petitioners submitted their objections on 10-6-2002 to the Provisional Seniority List. Through orders dated 10-7-2002, the objections were overruled.

11. The learned Senior Counsel for the petitioners submitted that there is no quota rule for the promotion of the Junior Scale Officers into the Senior Scale Officers' position as Divisional Engineers. Consequently, the date of commencement of the probation or the date of regularization at the most shall be the criterion for determination of seniority, according to the learned Senior Counsel for the petitioners.

12. The learned Senior Counsel for the petitioners pointed out that in the Final Seniority List, the inter se seniority of ATMs and AMEs was determined at the outset and the seniority of the remaining 4 categories was determined thereafter, so much so, all ATMs and AMEs stood over and above the remaining 4 cadres in the inter se seniority. Indeed, the official respondents 1 and 2 admit that there is

no data for various categories of Junior Scale Officers for promotion into the Senior Scale Officers. The petitioners consequently seek for refixation of the seniority on the basis of their date of regularization.

13. In *B. Manmad Reddy and Others Vs. Chandra Prakash Reddy and Others*, , the question of inter se seniority of various persons from different categories came up for consideration. The Supreme Court raised the question in para 3 of its judgment. Para 3 of the judgment reads:

The short question that falls for consideration and that was argued at considerable length before us by the learned counsel for the parties is whether persons drawn from different sources and integrated into one class/cadre/category can be classified into separate categories for purposes of promotion on the basis of the source from which they were drawn. The question is, in our opinion, squarely covered by the decisions of this Court to which we shall presently refer but before we do so, we may briefly set out the factual backdrop in which the controversy arises.

The Supreme Court considered various cases and answered the question relevant for the purpose of the present case in para 17. It is useful to reproduce para 17, which reads:

In the light of the above pronouncements, the Tribunal and the High Court were, in our view, justified in holding that Note 6 to Rule 3 was unconstitutional inasmuch as the same classified officers eligible for appointment against Class II Category 1 posts depending upon whether they were direct recruits or promotees. Such a classification based on the birthmark that stood obliterated after integration of officers coming from different sources into a common cadre/category would be wholly unjustified and discriminatory.

The learned Senior Counsel for the petitioners contended on the basis of this decision that where there is no data for promotion of candidates from the 6 cadres of Junior Scale Officers, the integrated seniority shall be in terms of the date on which the probation is declared or services were regularized in terms of Rule 3(a) of the Regulations.

14. The learned Senior Counsel for the petitioners pointed out that *M. Subba Reddy and Another Vs. A.P. State Road Transport Corporation and Others*, referred to by the learned Standing Counsel for the official respondents 1 and 2-Corporation while inter se seniority is fixed has no relevance as the decision relates to inter se seniority of Depot Managers and not the Junior Scale Officers for promotion as Senior Scale Officers. He also pointed out that the services of the 3rd respondent were regularized as late as on 12-11-1990 and that he cannot be a senior to the petitioners, who were regularized on 07-9-1988.

15. It would appear that prior to 2001, there was no promotional avenues for Dy.EEs, A/c.Os, POs and St.Os for promotion as Senior Scale Officers. The Regulations were amended on 14-5-2002 to enable promotion to these cadres

also along with ATMs and AMEs with effect from 02-5-2002. The learned Standing Counsel for the official respondents 1 and 2-Corporation contended that the petitioners have been seeking for retrospective seniority on par with direct recruits in the cadres of ATMs and AMEs.

16. It is submitted by the learned Standing Counsel for the official respondents 1 and 2-Corporation that when the Rule was amended, the members of the Civil Engineering Department also became eligible for promotion whereas the old Rules restrained members of the Medical and Civil Engineering Departments from promotion to the cadre of the Senior Scale Officers. He submitted that for the first time the personnel of the Civil Engineering Department have become eligible for promotion.

17. Be that as it may, both the petitioners were promoted as Dy.EEs under Regulation 30 of the Regulations. The petitioners were posted as Depot Managers on 29-6-1998 and 17-8-1996 respectively. The embargo for promotion under the amended Rule is service for a period of 5 years in the cadre of Junior Scale Officer out of which a minimum period of 3 years shall be spent as Depot Managers.

18. The learned Standing Counsel for the official respondents 1 and 2-Corporation submitted that ATMs and AMEs are equivalent to Depot Managers and that they are direct recruits. Be it noted that Rule 3(a) of the Regulations envisages that the inter se seniority is on the basis of the first appointment to such service, class, category or grade. The petitioners are in the grade of Junior Scale Officers with effect from April, 1988. Admittedly, the 3rd respondent was regularized on 12-11-1990 whereas the 4th respondent was regularized on 15-12-1988. The petitioners were regularized on 07-9-1988, which is prior to regularization of the unofficial respondents 3 and 4. The learned Standing Counsel for the official respondents 1 and 2-Corporation contended that the petitioners have been trying to seek seniority on par with direct recruit ATMS and AMEs by virtue of the amendment of 2002. The petitioners admittedly were promotees as Dy.EEs. The case of the official respondents 1 and 2-Corporation is that the petitioners who were promoted in 1998 and 1996 as Dy.EEs come into zone of consideration 5 years after their selection only and that the Integrated Seniority List of ATMs and AMEs on the basis of the quota system prior to 2002 cannot be affected.

19. The learned Senior Counsel for the petitioners submitted that the promotees filed a writ petition before the High Court and when the writ petition was dismissed, the promotees preferred a writ appeal unsuccessfully. He submitted that the promotees ultimately approached the Supreme Court which passed orders in M. Subba Reddy (supra). The learned Standing Counsel for the official respondents 1 and 2-Corporation contended that the petitioners therein could not be considered as seniors to ATMs and AMEs merely because of the change of the Rules.

20. The learned Senior Counsel for the petitioners contended that the inter se seniority of ATMs and AMEs has nothing to do with the inter se seniority of Depot Managers as Depot Managers is not a direct recruit post but is a post on transfer of a Class-I Junior Scale Officer. He submitted that a ratio has already been fixed between ATMs and AMEs and that the seniority between the direct recruits and promotees of ATMs and AMEs has also been fixed. His contention is that the seniority between the ATMs and AMEs as Junior Scale Officers does not apply to Junior Scale Officers for promotions as there is no data for promotion in the Senior Scale Officers position amongst the 6 categories of Junior Scale Officers.

21. The learned Senior Counsel for the petitioners insisted that the birthmarks of the employees is wiped out once the seniority is fixed and that how one reached the position between the Engineering stream and Management stream becomes irrelevant once the employees are brought into the same Junior Scale Officers" position.

22. The integrated seniority, according to the learned Standing Counsel for the official respondents 1 and 2-Corporation was prepared and is liable to be prepared before the amendment of the Rules in 2002 and that the remaining 4 categories of Junior Scale Officers together with their integrated seniority came below the existing seniority of ATMs and AMEs. He contended that the refixation of the seniority of all the 6 categories is not permissible on the basis of the Rules.

23. Indeed, the birthmarks of the employees are wiped out once the seniority is fixed. However, where do the 4 additional cadres of Junior Scale Officers fit in the seniority? Do they stand next to the ATMs and AMEs, or does their inter se seniority is prepared separately and tagged below the seniority of ATMs and AMEs? This is the basic question.

24. I consider that the seniority of ATMs and AMEs had already been determined even prior to the amendment of the Rules. After the amendment of the Rules, the petitioners and the members of other 4 classes acquired eligibility for promotion. They however cannot compete with ATMs and AMEs who had already been eligible for promotion and whose seniority is either fixed or ought to have been fixed. Therefore, the seniority of the Dy.EEs, A/c.Os, POs and St.Os indeed is liable to be determined in terms of Rule 3(a) of the Regulations but they cannot claim the same on par with the ATMs and AMEs whose seniority had already been determined. They continue to be seniors to the remaining 4 categories of employees. Thus, I consider that the petitioners who are members of the additional categories which became eligible for promotion owing to the amendment of the Rule do not take precedence or do not claim seniority with the employees who were already eligible for promotion but would take their seniority next to the employees who were already eligible viz., the ATMs and AMEs. Consequently, the Seniority List prepared by the 1st respondent does not appear to be incorrect as the only ground on which the Seniority List is questioned is found to be not maintainable. Consequently, I see no merits in this writ petition. This writ petition, therefore, is dismissed. The miscellaneous petitions pending, if

any, shall stand closed. No costs.