
(2011) 11 AP CK 0117
In the Andhra Pradesh High Court
Case No : Writ Petition No. 9839 of 2011

P. Dasharatha and others

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 24
Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 10
Constitution of India, 1950 — Article 14, 16, 16(4), 16(4A), 21
General Rules — Rule 33, 6

Citation : (2012) 2 ALD 522 : (2012) 2 ALT 390

Hon'ble Judges : V.V.S. Rao, J;B.N. Rao Nalla, J

Bench : Division Bench

Advocate : P.V. Krishnaiah, for the Appellant; J.R. Manohar Rao, G.P. for Services, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao

Introduction

1. Four petitioners herein were appointed as Prohibition and Excise Inspectors (Inspectors) in 1996 or 1995 by Direct Recruitment. The competent authority also declared that they have successfully completed the period of probation. By three separate proceedings dated 16.12.2009, they were promoted as Assistant Prohibition and Excise Superintendents (AES) under Rule 10(a) of the A.P. State and Subordinate Service Rules, 1996 (the General Rules, for brevity) on temporary basis.

2. The petitioners filed an application u/s 19 of the Administrative Tribunals Act, 1985 (hereafter, the Act) being O.A. No. 1748 of 2011 before the A.P. Administrative Tribunal (the Tribunal, for brevity) seeking a declaration that the action of the respondent i.e., the Government of A.P., and the Commissioner of

Excise and Prohibition (the Commissioner) in not preparing the seniority list of Scheduled Caste (SC) candidates in the cadre of AESs as arbitrary, illegal and violative of Articles 14, 16 and 21 of the Constitution of India, ultra vires Rules 6 and 33 of General Rules and for a consequential direction to forthwith prepare the seniority list of SC candidates in the cadre of AES by giving notional dates based on availability of vacancies by following the same principle as was done by the Commissioner vide proceedings CR. No. 7649/2003/CPE/L3-2, dated 12.07.2010, before effecting promotions to the posts of Prohibition and Excise Superintendents (ES) or alternatively direct the respondents not to effect any promotions to the post of Superintendents without preparing final or provisional statewide integrated seniority list in the cadre of AESs by including all eligible candidates including SC candidates. The petitioners also prayed for interim direction to the respondents 1 to 3 to forthwith prepare a seniority list in the cadre of AES exclusively for SC candidates based on the availability of vacancies by following the same principle as was done in proceedings dated 12.07.2010 of the second respondent before effecting promotions to the posts of Excise Superintendents.

3. On 01.04.2011, the Tribunal while admitting the original application passed the interim direction which reads: "pending disposal of the O.A., the respondents are directed to prepare the seniority list in the cadre of Assistant Prohibition & Excise Superintendents as per the Rules". Being aggrieved by the said order, the petitioners filed the instant writ petition praying the relief which is verbatim reproduction of the main relief in the original application. The petitioners also filed a miscellaneous application being W.P.M.P. No. 12161 of 2011 seeking interim relief which is also verbatim reproduction of the interim relief prayed before the learned Tribunal.

4. This Court while admitting the writ petition on 11.04.2011 granted interim relief as prayed for in the miscellaneous application referred to supra. The respondents 4 and 5 (hereafter, contesting respondents) filed W.V.M.P. No. 1524 of 2011 praying this Court to vacate the ex parte interim order date 11.04.2011. The official respondents also filed W.V.M.P. No. 2161 of 2011 seeking vacation of the ex parte interim order. At the stage of interim relief itself, with the consent of the counsel, the main writ petition is heard on 02.09.2011, 05.09.2011 and 21.10.2011 and is being disposed of by this order.

Background

(a) The case of petitioners

5. Shorn of unnecessary argumentative pleadings that have crept in the writ affidavit filed by the first petitioner, the case of the petitioners is as follows. All of them were appointed as Inspectors in 1996 or 1995 by Direct Recruitment. Their probation was also declared. In the matter of promotion to the posts of Superintendents, the rule of reservation would apply since 2003. The panels of Inspectors for promotion to the posts of AESs were not prepared for 2007-08

and 2008-09. An ad hoc panel was prepared in December, 2009 for the entire State. Based on the same, the petitioners and contesting respondents were promoted on 16.12.2009.

6. The sixth respondent herein filed O.A. No. 2976 of 2010 for redressal of his grievance with regard to preparation of final seniority list and promotion to the post of ES. By order dated 26.05.2010, the Tribunal passed interim orders directing the official respondents to follow the final integrated seniority list which was set aside by it in earlier O.A., by considering the Inspectors in the seniority list upto Serial No. 41. Thereafter, the Commissioner prepared and communicated the seniority list, labelling it as a final seniority list vide proceedings dated 12.07.2010 including the names of twenty AESs in three multi Zones for the year 2007-08. The names of the petitioners were not included in the said list which is arbitrary, illegal and is violative of Article 16(4). The petitioners approached the Tribunal by filing original applications wherein directions were issued to prepare seniority list but the official respondents ignored the same. Therefore, the petitioners filed O.A. No. 1748 of 2011 seeking parity of treatment with the contesting respondents. The Tribunal without considering the main grievance passed the interim order on 01.04.2010, aggrieved by which the instant petition is filed under Article 226 of Constitution of India.

(b) The Case of the Government and the Commissioner

7. The sum and substance of the official respondents is as follows.

(i) The seniority list of Inspectors in Zone-II and the consequential integrated seniority list for multi Zone-II were assailed in O.A. Nos. 11590, 11373, 11332 and 1111 of 2010. The Tribunal allowed those OAs., on 17.03.2010 directing the Government to prepare the seniority list of Inspectors in Zone II as per the merit assigned by APPSC as per Rule 33 of the General Rules and not according to roster points, and then consider the cases of applicants therein for promotion to AESs as per the seniority list.

(ii) The Government decided to implement the orders dated 17.03.2010 of the Tribunal in O.A. No. 11590 of 2010 etc. So as to maintain uniformity in the application of law, it was decided to apply the principles laid down by the Tribunal to all the Zones in Excise Department. The Secretary of APPSC was addressed to communicate the common merit ranking prepared by them without reference to roster points. In response, by letter No. 15/RS-23A/2010, dated 19.10.2010, the Secretary, APPSC communicated the merit list of Direct Recruittee Inspectors of Zones I to VI. Based on the marks, the provisional integrated seniority list of Inspectors of Multi Zones I, II and III

(a) As per paragraph 3(1) of A.P. Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order 1975, issued by the President of India under Article 371D (1) and (2) of the Constitution, for the purpose of appointment, seniority and promotion to Government employment,

the State is divided into six Zones.

(b) These are Zone I (Srikakulam, Vizianagaram and Visakhapatnam Districts), Zone II (East Godavari, West Godavari and Krishna), Zone III (Guntur, Prakasam and Nellore Districts), Zone IV (Chittoor, Kadapa, Anantapur and Kurnool Districts), Zone V (Adilabad, Karimnagar, Warangal and Khammam Districts) and Zone VI (Hyderabad, Rangareddy, Nizamabad, Mahboobnagar, Medak and Nalgonda Districts).

(c) Paragraph 3(5) of Presidential Order empowers the State Government to organize the posts in two or more continuous Zones into a single cadre.

(d) In the Department of Excise, Zones I and II are included in Multi-zone I, Zones III and IV are included in Multi-zone II, and Zones V and VI are included in Multizone III.

(e) The posts of Prohibition Excise Inspectors are zonal posts; the posts of AES are multi-zonal posts and the posts of Superintendents and above are Statewide posts.

is revised irrespective of the date of joining of the officers. The Commissioner issued orders multi-zonewise inviting objections from those included in the provisional seniority list. The finalization of seniority list of Inspectors and sequential preparation of multi-zonal provisional integrated seniority list of AES is likely to take some time when the relative seniority of SC candidates would have to be determined.

(iii) The petitioners have not completed the period of probation as on 01.09.2010 which is the qualifying date for the year 2010-11 as per Rule 6(c) of the General Rules. In addition to this, they are also not eligible for consideration for promotion to Superintendents. Therefore, determination of the inter se seniority of SC candidates would not serve any purpose.

8. There are seventeen (17) vacancies of Superintendents and some more vacancy