
(2022) 11 TEL CK 0001

In the Telangana High Court

Case No : Writ Petition Nos. 9784, 10100, 10386 Of 2019

P. Sunitha Bai

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 08-11-2022

Acts Referred:

Andhra Pradesh Reorganisation Act, 2014 — Section 77, 77(2), 80, 80(2)

Citation : (2022) 11 TEL CK 0001

Hon'ble Judges : M.S.Ramachandra Rao, J;T.Vinod Kumar, J

Bench : Division Bench

Advocate : V Ravichandran

Judgement

1. The petitioners in these Writ Petitions had been appointed in the Office of the Directorate of Insurance in the composite State of Andhra Pradesh initially and are currently holding posts of Deputy Directors of Insurance in the State of Telangana.
2. The composite State of Andhra Pradesh was bifurcated into the new State of Telangana and the residuary State of Andhra Pradesh with effect from 02.06.2014 under the A.P. Reorganisation Act, 2014 (for short 'the Act'). At that time, the petitioners in these three Writ Petitions were working in the cadre of Assistant Director.
3. Under Section 77 of the Act, it is necessary to allocate the staff to either of the States on the basis of Guidelines dt.29.10.2014 issued by the Union of India under Section 80(2) of the Act.
4. On instructions issued by the Cadre Controlling Authority, i.e., the State of Andhra Pradesh, GA (SR) Department, the Director of Insurance, Hyderabad had furnished updated seniority lists of all categories of employees as on 01.06.2014.
5. Options were then called for from allocable employees of the Directorate of Insurance Department stipulating a two week period for submitting options

through a Notification No.21105-C-SR1-A1-2014-3, GA (SR) Department dt.23.03.2015.

6. Several employees including the petitioners uploaded their options indicating their preferred State for the purpose of final allocation.

7. Tentative allocations were notified through a Notification No.21105-C/SR1/A1/2014-4 dt.15.05.2015 and the petitioners were tentatively allocated to State of Telangana. Subsequently even final allocation list was notified vide order No.17(2)/2015 in F.No.29/30/2015-SR(S) dt.19.11.2015.

Contentions of petitioners

8. Petitioners contend that there was no final seniority list prepared in the various categories of employees in the office of the Directorate of Insurance of the composite State of Andhra Pradesh including that of Assistant Directors; that only a provisional seniority list was prepared based on the date of reporting to duties and communicated to the State Reorganisation Committee; and based on such provisional seniority alone, illegally allocations were made of the staff between the States of Andhra Pradesh and Telangana.

9. Petitioners rely on a Memo No.34/ADMN/A3/2016-2017 dt.05.03.2018 issued by the Directorate of Insurance, Government of Telangana and also a Memo No.1027/168/A2/ADMN.1/2016 dt.31.01.2019 passed by the Government of Telangana, Finance (ADMN.1) Department dt.31.01.2019 in support of the above plea.

10. According to them, it was incumbent on the part of the State of Andhra Pradesh to prepare a final seniority list of staff in each cadre as on 02.06.2014 and communicate it to the employees; then invite options from the employees of the Directorate of Insurance of the composite State of Andhra Pradesh; make permanent allocation on the basis of options giving due weight to seniority as per the Guidelines issued by the Union of India in that regard on 29.10.2014. They contend that an ad hoc or provisional seniority list could not have been adopted and acted upon for the purpose of final allocation of employees between the two States.

11. In W.P.No.10100 of 2019, the petitioner seeks a direction to the States of Telangana and Andhra Pradesh, the Union of India, the Director of Insurance, State of Telangana and the State of A.P. represented by its Principal Secretary, General Administration (SR-1) Department, Secretariat, Amaravati, Guntur District to review and revise the allocations made on the basis of provisional seniority list in so far as Assistant Directors working in the Insurance Department communicated vide G.O.Ms.No.180, General Administration (SR-1) Department, dt.05.12.2015 by the Government of Andhra Pradesh and representations made by the petitioner therein on 18.03.2019 to the Principal Secretary, Government of Andhra Pradesh, General Administration (SR-1) Department, Secretariat, Amaravati, Guntur District.

12. Similar relief is sought in W.P.No.10386 of 2019 by the petitioner therein. She also contends that the final allocation was erroneously made in the Assistant Director category on the basis of the then existing provisional seniority list as on 01.06.2014; that her seniority vis-à-vis respondents 6 to 8 was wrongly fixed by the Director of Insurance, State of Telangana on 08.03.2019, that she has questioned it in W.P.No.9784 of 2019 which is pending; that she made a representation on 18.03.2019 to respondents 1, 2 and 4 to revise the allocations made on the basis of the provisional seniority list in the Assistant Director category; and since no action was taken, she was forced to file this W.P.

13. The petitioner in W.P.No.10386 of 2019 had earlier filed W.P.No.9784 of 2019 complaining that the date of commencement of her probation was altered from 12.10.2012 to 26.03.2015 in the feeder category of Assistant Director, Insurance; and declarations should be given that she is senior to respondents 3 to 5 and is entitled to continue as Deputy Director, Insurance with benefits incidental and ancillary thereto by setting aside Memo dt.31.01.2019 passed by the Government of Telangana and Memo dt.8-3-2019 issued by respondents 1 and 2.

The stand of the State of A.P.

14. Sri P.Govind Reddy, Special Counsel for the State of A.P. appearing for respondents 3 and 4 in W.P.No.10100 of 2019 and W.P.No.10386 of 2019 did not dispute the contention of the petitioners that there was no final seniority list prepared by the State of Andhra Pradesh in all categories of employees as on 02.06.2014, that there was only a provisional seniority list, that options were called from allocable employees which were submitted, that the same had been communicated to the State Reorganisation Committee constituted by the Union of India as per Section 80 of the Act, and that the said Committee considered the options and made tentative and final allocations.

15. It is stated in the counter affidavit filed by the State of Andhra Pradesh that out of 23 posts in the cadre of Assistant Directors, 11 posts were given to Andhra Pradesh and 12 posts were allotted to Telangana; allocable employees are 22, of whom 13 were local to A.P. and 10 of them opted to A.P. and 1 opted for Telangana. According to the counter affidavit, among the total allocable employees, 8 are local to Telangana and among them, 5 opted to Telangana and 3 opted for A.P. The remaining 1 post is non-local to either of the States and was filled by unofficial respondent no.6; that unofficial respondents 7 and 8 who are local to A.P. were allocated to Telangana in the reverse order of seniority as the 11 posts in A.P. were filled up with 10 local optees who are seniors to respondents 7 and 8 and 1 female widowed employee Smt. Y.Rajya Lakshmi who was local to Telangana opted to Andhra Pradesh and she was allotted to Andhra Pradesh on preferential treatment. According to the State of Andhra Pradesh, the final allocation list was notified on 19.11.2015.

16. The Special Govt. Pleader appearing for the State of Andhra Pradesh

contended that once final allocation orders of employees are issued by Government of India, the employees allocated to the respective States will become the employees of the State to which they stand allocated. All service matters including revision of seniority, promotions etc., are dealt by the Departments concerned of the respective States and GA (SR) Dept., has no role to play in such matters after final allocation orders are issued; and there is no provision in the A.P. Reorganisation Act 2014 or in the Guidelines approved by Govt. of India for revision of allocation on revision of seniority.

The stand of State of Telangana

17. In the counter affidavit filed by the State of Telangana, it is stated that the Director of Insurance had submitted allocable list of employees of A.P.G.L.I.D. as on 01.06.2014 to the A.P. Reorganisation Committee for allocation of employees to both the States. The petitioner in WP.No.10386 of 2019 was duly allotted to the State of Telangana as per her option and respondents 6 to 8 were also allocated to the State of Telangana though they exercised their option to the State of Andhra Pradesh on the reverse order of seniority. The petitioner, based on the final allocation list, was promoted to the post of Deputy Director from Assistant Director on 01.09.2016 vide Director of Insurance proceedings No.274, dt.01.09.2016 after the approval by the DPC. Since the seniority list was not prepared and communicated earlier to the individual officers, duly following the procedure and the direct recruits have joined in the year 2013, the seniority was subject to revision in respect of the employees allotted to the State of Telangana by State Reorganisation Committee.

18. It is also contended that the State of Andhra Pradesh was bifurcated into the successor States of Andhra Pradesh and Telangana on 02.06.2014 and the Government of Andhra Pradesh through General Administration (SR) Department issued Guidelines vide G.O.Ms.No.312 dt.30.10.2014 for allocation of personnel between the two States as per the procedure prescribed for that purpose by the competent authority under the said Act. Seniority was one among various factors that were taken into consideration like availability of posts, option exercised by an employee, nativity, etc.

19. The staff was allotted as per the seniority and local status for both the States of Andhra Pradesh and Telangana under A.P. Reorganisation Act, 2014. Government vide Letter No.21105-C/SRI/A1/2014-15 dt.02.06.2015 have issued tentative allocation list and thereafter the DoPT vide order No.17(2)/2015 dt.19.11.2015 have issued final allocation list which was communicated with the G.O.Ms.No.180 General Administration (SR-I) Department dt.05.12.2015 by the Government of Andhra Pradesh. As per the allocation Guidelines, objection, if any, on the tentative allocation has to be filed within 2 weeks, but the petitioner has not filed any objection on the allocation of respondents 5 to 8. The department has not updated nor circulated any seniority list in the cadre of Assistant Director to the individuals as on 01.06.2014.

20. The list of allocable employees in all categories including the category of Assistant Director was prepared considering their date of joining to the posts and submitted to the Reorganisation Committee for allocation to both the residuary States of Andhra Pradesh and Telangana. As informed by the Director of Insurance vide Memo No.34/Admn./A3/2016-17, dt.05.03.2018, that the department was under intention to communicate the seniority list including direct recruits after completion of their probation duly following the procedure and calling objections, if any, but the seniority list in the cadre of Assistant Director could not be communicated as there was no sufficient time for communicating the seniority list to the individuals under pressure of work of administration, in view of State bifurcation process.

21. The Government vide Memo No.1027/168/A2/Admn.I/2016, Finance (Admn.I) Department, dt.31.01.2019 have issued a provisional seniority list as per the apportionment between direct recruits and promotees in the category of Assistant Director of Insurance to all the concerned officers.

22. The A.P. Reorganisation Committee has allocated the employees as per the list of allocable employees furnished by both the HoDs of newly formed States and later the seniority, since it was not prepared and circulated in the newly formed State of Telangana and also the fact that based on the final allocation list only the Assistant Directors in Telangana were promoted to the post of Deputy Director.

23. The Revision of allocation of employees in the category of Assistant Director does not arise as requested by the petitioner since the same contention was already disposed of before circulating seniority vide Govt. Memo No.1027/168/A2/Admn.1/2016, dt.31.01.2019 and Director of Insurance Memo No.34/Admn/A3/2016-17 dt.08.03.2019.

STAND OF THE UNION OF INDIA (5th RESPONDENT)

24. It is contended by the Union of India that the Andhra Reorganization Act, 2014 was notified on the first of March, 2014. As per sub-section (2) of Section 77 of the said Act, as soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-Section (1) shall be finally allotted for service, after consideration of option received by seeking option from the employees, and the date with effect from which such allotment shall take effect or to be deemed to have taken effect.

25. It is contended that as per the provisions of Section 80 of the Act, the Central Government constituted an Advisory Committee to delineate objective and transparent criteria for allocation of State cadre Government employees of different Services of Andhra Pradesh between the two successor States viz., Andhra Pradesh and Telangana to determine the cadre strength; to recommend specific individual allocation of State Government employees; and to consider any representation made by a State Government employee affected by such

allocation, in order to ensure fair and equitable treatment to all and to make appropriate recommendations. The 'Guidelines Relation to Allocation of State Service Employees' between the successor States of Andhra Pradesh and Telangana were issued by the Central Government on 29th October, 2014 and have been published for general information of all concerned on the A.P.Reorganization website.

26. It is contended that according to para-17 of the Guidelines, a review of personnel strength of each category of posts shall be done by the Advisory Committee to determine the number of persons to be allotted to each cadre of a category to the two States in the light of the cadre strength of each category of post in a Department on the appointed Day. Thereafter the Committee will determine, in the light of the proposal received from the GA (SR) Department, the details of persons to be allotted to each State in respect of each category, keeping in view the status of seniority lists of cadres and disputes in relation to seniority and implication hereof, in accordance with the principles and procedure prescribed in the Guidelines. The principles guiding allocation of personnel are prepared in para-18 of the Guidelines.

27. It is contended that as per the procedure explained in the previous paras, the allocation of employees of the petitioner's Department was processed. Accordingly, a notification dt.06-12-2014 was issued for cadre strength seeking objections/representations within 10 days of the notification. Subsequently, options were called for from the eligible employees on 23-03-2015. After compiling the options and cadre strength of the Department, GA (SR) Department, Government of Andhra Pradesh issued notification on 15-05-2015 with the Tentative Allocation list giving 14 days time to raise objections/representations from the employees against the Tentative Allocation list. After the receipt of representations/objections along with the observations/comments of Administrative Departments/GA (SR) Departments, the Advisory Committee in its meeting held on 11-08-2015 recommended the final allocation list of employees after considering the representations. Based on the recommendation of the Advisory Committee, the 5th respondent issued final allocation order on 19-11-2015 allocating the employees to the successor States of Andhra Pradesh and Telangana as per the provisions contained in Section 77(2) of the Act.

28. It is contended that the Final Allocation order was issued based on the seniority list as on 01-06-2014 as furnished by the State Government of unified State Andhra Pradesh, and it is not feasible to revise the Final Allocation of an employee based on the seniority list carried out by a successor State, without consulting the other successor State.

29. It is also contended that the matter of final allocation and the matter of promotion of employees are two different issues. While the final allocation is done on the basis of the guidelines issued by the Government of India, the matter of promotion of its employees as per the existing rules and regulations falls under the jurisdiction of the State Government. The final allocation of

employees cannot be revised merely on the assumption that it will affect someone's promotion. The seniority of an employee is not the only criteria for the Final Allocation but it is done keeping in view the various other factors prescribed in the allocation guidelines viz., option, local status/nativity, vacancy in the grade etc. Hence, the change in seniority of an employee may not necessarily affect his personal allocation.

Consideration by the Court

30. Admittedly, vide G.O.Ms.No.312 General Administration (SR) Department dt.30-10-2014, the Government of Andhra Pradesh notified the approved guidelines for 'final' allocation of State Cadre employees under the Act which had been communicated to it by the Government of India.

31. Clause 18(f) of the said guidelines states that the allocation shall be done in order of 'seniority' as available on 01-06-2014, and those who have opted for the State in relation to which they are local candidates, shall, in order of their seniority, be considered for allocation first.

32. Clause 18(c) of the guidelines also states that allocable employees shall be considered for allotment between the successor State on the basis of seniority list as available on 01-06-2014.

33. In our opinion, in terms of guidelines framed by the Union of India for allocation of State Cadre employees to the successor States of Telangana and Andhra Pradesh, upon bifurcation of the erstwhile combined State of Andhra Pradesh, seniority as on 01-06-2014, is utmost relevant.

34. Similar view has been taken by a Division Bench of this Court in P.Parameswar Reddy Vs. State of Andhra Pradesh and others Order dt.19-09-2017 in W.P.No.9654 of 2016 and batch (DB) in regard to allocation of posts of Dy. Superintendents of Police which are State Cadre posts in the Home Department of the composite State of Andhra Pradesh between the States of Telangana and Andhra Pradesh.

35. The importance of seniority in the context of allocation guidelines is that according to clause 18(f) of the Guidelines framed by the Union of India, firstly, allocation is to be done in the order of seniority as available on 01-06-2014, and secondly options of the seniors have to be respected i.e. those who have opted, who are 'local candidates' relatable to the State to which they have opted, shall, in order of their seniority, be considered for allocation first. If allocable posts in that category remain, others will be considered in the reverse order of seniority by allotting the junior most.

36. In other words, depending upon the availability of the posts in a particular category, being a senior in the category makes it more probable that the said employee would get a State of his choice. If an employee is not senior, then if his seniors had opted for a particular State, and they are all accommodated in the posts allocated to that State, then he would be allocated to a State which he did

not opt.

37. Admittedly, in the instant case, only a provisional seniority list of Assistant Directors was supplied by the then Government of Andhra Pradesh to the State Reorganisation Committee for the purpose of allocation. No final seniority list of employees in the said Cadre was prepared.

38. This is admitted in (i) Memo No.34/Admn.A3/2016-2017 dt.05-03-2018 issued by the Directorate of Insurance, Government of Telangana and also in (ii) para-9 of the Memo No.1027/168/A2/Admn.1/2016 dt.31-01-2019 issued by the Government of Telangana, Finance (Admn.I) Department dt.31-01-2019 whereunder decision was rendered in regard to fixation of seniority in the category of Assistant Directors of the Directorate of Insurance Department. It is categorically stated in the said order "the allocation of employees in the category of Assistant Directors was itself made based on the provisional seniority list as on 01-06-2014 endorsed by the Heads of Departments of both the new States."

39. The Government of Andhra Pradesh in its counter at page 2 stated "it is submitted that based on the seniority list existing as on 01-06-2014, furnished by the Director, Insurance Department, options were called for from the allocable employees of the Director of Insurance Department ...". It does not say whether the said seniority list is final seniority list in the category of Assistant Director.

40. The Government of Telangana in its counter-affidavit at page-2 admits that seniority was one among various factors that were taken into consideration for allocation of personnel between the two States apart from availability of posts, options exercised by an employee, nativity etc. It also admits "since the seniority was not prepared and communicated earlier to the individual Officers, duly following the procedure and the direct recruits have joined in the year 2013, the seniority was subject to revision in respect of the employees allotted to the State of Telangana by the State Reorganization Committee". It is also stated that "the Department has not updated nor circulated any seniority list in the cadre of Assistant Director to the individuals as on 02-06-2014" and that "the list of allocable employees in all categories including the category of Assistant Director was prepared after considering their date of joining to the post and submitted to the Reorganization Committee for allocation to both the residuary States of Andhra Pradesh and Telangana. As informed by the Director of Insurance vide Memo No.34/Admn./A3/2016-17, dt.05.03.2018, that the department was under intention to communicate the seniority list including direct recruits after completion of their probation duly following the procedure and calling objection, if any, but the seniority list in the cadre of Assistant Director could not be communicated as there was no sufficient time for communicating the seniority list to the individuals under pressure of work of administration, in view of State bifurcation process."

41. Thus, according to the Government of Telangana also, only tentative seniority list in the cadre of Assistant Director and other categories was communicated to

the State Reorganization Committee; that the said seniority list was not communicated to any Officer in the said category, that the said list was prepared on the basis of date of joining, and final allocation was made on the said basis.

42. The Union of India, in its counter, makes no reference to the question whether the seniority list on the basis of which allocations were made finally was the final seniority list or tentative seniority list.

43. It was not open to either the Union of India or the States of Andhra Pradesh and Telangana to proceed to make allocations of employees in all categories in the Office of the Directorate of Insurance of the composite State of Andhra Pradesh on the basis of an uncommunicated tentative seniority list prepared on the basis of date of joining of an employee in a particular post including the Assistant Director Post.

44. The respondents therefore cannot effect allocation on the basis of such tentative seniority lists contrary to the guidelines framed by the Union of India on 25-10-2014 to the detriment of the petitioners and other employees.

45. It was also not open to the respondents to proceed to deal with disputes about seniority after the final allocation of the employees and they should have sorted out the seniority issues before final allocation of the employees is done as per the final seniority list as on 2.6.2014.

46. Unless the final seniority lists in each cadre of employees in the Directorate of Insurance of the erstwhile composite State of Andhra Pradesh as on 02-06-2014 is drawn up, proper allocation of Officers of the said Organization between both States is not possible, and could not have been done.

47. Undoubtedly, the Union of India, as para 20 (vi) of the Guidelines for allocation of employees has got the power to review any of its orders issued under the Act and there is no time limit specified in the guidelines for the same.

48. The counsel for the private respondents in all these Writ Petitions did not make any submissions on the procedure for allocation though they made claims about their seniority over the petitioners. But we do not propose to deal with the inter-se seniority claims of petitioner and the private respondents and propose the following order:

(a) We set aside G.O.Ms.No.180, General Administration (Sr.I) Department dt.05-12-2015 issued by the Government of Andhra Pradesh publishing order No.17(2)/2015 dt.19-11-2015 of the Department of Personnel and Training, Ministry of Personnel, PG & Pensions, Government of India finally allocating employees of the Director of Insurance, Department of Finance of erstwhile composite State of Andhra Pradesh in so far employees in the cadre of Assistant Director as on 2.6.2014;

(b) The Government of Andhra Pradesh (respondent No.3 in W.P.No.10100 of 2019 and W.P.No.10386 of 2019) is directed to communicate the tentative

seniority list prepared by it in the cadre of Asst. Directors as on 02-06-2014 in the office of the Director of Insurance, Department of Finance of erstwhile composite State of Andhra Pradesh to all employees who are in such a list within two (02) weeks from the date of receipt of copy of this order;

(c) within four (04) weeks thereafter, objections to the said seniority lists shall be made by all the employees in the cadre of Asst. Directors as on 02-06-2014 to respondent No.3 in W.P.No.10100 of 2019 and W.P.No.10386 of 2019;

(d) within six (06) weeks of receipt of objections from such employees, the respondent No.3 in W.P.No.10100 of 2019 and W.P.No.10386 of 2019 shall decide on the objections of seniority and communicate a final seniority list to such employees;

(e) the 3rd respondent in W.P.No.10100 of 2019 and W.P.No.10386 of 2019 shall thereafter call for options from such employees within two (02) weeks thereafter;

(f) the said employees shall submit their options within three (03) weeks of issuance of such notification by the 3rd respondent;

(g) the final seniority list of employees in the cadre of Asst.Directors as on 02-06-2014 in office of the Director of Insurance, Department of Finance of erstwhile composite State of Andhra Pradesh along with the options exercised by such employees shall be communicated to the State Reorganization Committee/ Department of Personnel and Training, Ministry of Personnel, PG & Pensions, Government of India;

(h) the State Reorganization Committee/ Department of Personnel and Training, Ministry of Personnel, PG & Pensions, Government of India shall then consider the options of employees in the cadre of Asst.Directors as on 02-06-2014 in accordance with the guidelines for allocation notified by it and then make permanent allocation to either of the States;

(i) till the said process is completed, status quo as on date shall be maintained by all parties.

(j) any person aggrieved by a final seniority list in the cadre of Asst.Directors as on 02-06-2014 in the Directorate of Insurance of the erstwhile State composite State of Andhra Pradesh as on 02-06-2014 prepared by the 3rd respondent is entitled to avail remedies available at law to challenge the same, but the final allocation shall not be stopped for the said reason.

(k) W.P.No.10100 of 2019 and W.P.No.10386 of 2019 are allowed to the extent indicated above.

(l) the issues raised by the petitioners in W.P.No.9784 of 2019 are left open to be agitated by the parties after the above process is taken up and completed by the respondents. It is accordingly disposed of.

(m) No costs.

49. We make it clear that we have not dealt with cases of allocation of employees in cadres other than the Assistant Directors in the Directorate of Insurance of the erstwhile State composite State of Andhra Pradesh as on 2.6.2014.

50. Consequently, miscellaneous petitions, pending if any, shall stand closed.