

(1996) 09 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5740 of 1991

P. Vidyasagar and Others

APPELLANT

Vs

Managing Director, A.P. State Seeds Corporation Ltd. and
Others

RESPONDENT

Date of Decision : 25-09-1996

Acts Referred:

Citation : (1996) 4 ALT 918

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : M.R.K. Chowdary, for K. Ananda Rao, for the Appellant; S. Ranga Reddy and K.R. Srinivas, for Respondent Nos. 2 to 15, for the Respondent

Judgement

S.R. Nayak, J.—The petitioners 1 to 3 are presently serving as Seed Officers in the establishment of the Andhra Pradesh State Seeds Corporation Limited, the first respondent herein. In this writ petition they have sought for a writ in the nature of mandamus directing the respondent No. 1 to refix the seniority of the petitioners in the category of Seed Officers placing their names over and above that of the respondents 2 to 15.

2. The relevant facts leading to the filing of this writ petition be stated briefly as under:

The first respondent-Corporation called for applications from the eligible candidates to fill up the posts in the cadre of Seed Officers. The Corporation after going through the necessary selection process, appointed the petitioners as Seed Officers by proceedings dated 26-11-1984. The petitioners 1 to 3 joined duty on 7-1-1985, 12-12-1984 and 10-12-1984 respectively. Under the terms of appointment, the petitioners had to undergo probation for a period of one year within a span of two years. Before the petitioners joined the services of the Corporation, the respondents 2 to 15 were serving in the Corporation as Technical Assistants on daily wage basis. It seems that the respondents 2 to 15 were initially appointed as Technical Assistants on daily wage basis without

seeking the espousal from the concerned Employment Exchange. Under those circumstances the Government of Andhra Pradesh issued order G.O.Ms. No. 422, Food and Agriculture (FP.II) department dated 6-9-1984 making provisions for absorption and regularisation of the services of respondents 2 to 7 as Technical Assistants. Further the Government by another order in G.O.Ms. No. 513, Food and Agriculture (FP.II) department dated 29-10-1995 directed that the names of the respondents 8 to 15 be included in the annexure to the G.O.Ms. No. 422, Food and Agriculture (FP.II) Department dated 6-9-1984. In the meanwhile the respondents 2 to 7 were appointed as Seed Officers on 23-1-1985. After G.O.Ms. No. 513 dated 29-10-95 the respondents 8 to 15 were appointed a Seed Officers on 31-12-1985. Although the petitioners were appointed before the respondents 2 to 15 were appointed as Seed Officers, in the provisional and final seniority lists of the Seed Officers prepared by the first respondent-Management the petitioners are placed below the respondents 7 to 15. Hence this petition by the petitioners seeking the reliefs referred to above.

3. On service of notice the first respondent has filed the counter. The respondents 2 to 15 have also filed a separate counter resisting the claim of the petitioners. Sri M.R.K. Chowdary, the learned Counsel for the petitioners submitted that the action of the first respondent in placing the respondents 2 to 15 above the petitioners in the provisional and final seniority lists of the Seed Officers is not only unjust and improper but also violative of Articles 14 and 16(1) of the Constitution. On the other hand, the learned Counsel appearing for the respondents would submit that the petitioners are bound by the terms and conditions of the appointment and if that is so it is impermissible for the petitioners now to contend that they should be assigned the ranks in the seniority lists above the ranks assigned to the respondents 2 to 15. The learned Counsel appearing for the respondents 2 to 15 would place reliance on the decision of the Apex Court in Ravi Paul and Others Vs. Union of India (UOI) and Others, .

4. After hearing the learned Counsel for the parties and perusing the pleadings and the documents placed before the Court I find an error apparent on the face of the impugned action of the first respondent. It is relevant to note at the outset that there is a separate cadre of Seed Officers in the establishment of the first respondent. The first respondent called for applications, went through the selection procedures and ultimately the petitioners came to be appointed as Seed Officers on 26-11-1984. There are absolutely no materials placed before the Court to show that before 26-11-1984 or at least before 23-1-1985 or 31-12-1985 as the case may be, the respondents 2 to 15 were working in the cadre of Seed Officers. It is also not established that the post of Technical Assistant was equal in status to that of the post of Seed Officer. However, the learned Counsel appearing for the respondents 2 to 15 would maintain that although the respondents 2 to 15 were initially appointed as Technical Assistants on daily wage basis, they were actually performing the duties and the functions attached to the post Seed Officer and in course of time the post held by the

respondents 2 to 15 was redesignated as Seed Officer. Except those self-serving averments in the counter-affidavit nothing is placed before the court to accept the statement as the correct one. The proper person to state this fact is the first respondent establishment itself. What is stated in para 8 of the counter-affidavit filed by the first respondent establishment clearly leads to the fact that the cadre of Seed Officers and the cadre of Technical Assistants are neither equivalent in status nor similar. Therefore it should be held that the posts held by the respondents 2 to 15 anterior to their appointment as Seed Officers on 23-1-1985 and 31-12-1985 as the case may be, cannot be equated to the cadre of Seed Officer. If this is the premise, the question to be considered by the Court need not detain it for long. It is well-settled position in law that while assigning ranks in the seniority list of personnel working in a cadre, the span of service put into by individual personnel is the relevant criteria. Admittedly the petitioners were appointed as Seed Officers on 26-11-1984 whereas the respondents 2 to 7 were appointed on 23-1-1985 and the remaining respondents 8 to 15 on 31-12-1985. In other words keeping in mind the span of service put in the position of Seed Officer it should be held that the respondents 2 to 15 are juniors to the petitioners. In that view of the matter the first respondent ought to have assigned the ranks to the petitioners in the seniority list above the ranks assigned to the respondents 2 to 15. However, at this juncture an argument sought to be advanced by the learned Counsel for the respondents 2 to 15 be noted. According to the learned Counsel the petitioners are bound by the condition No. 5 incorporated in the appointment order. The appointment order issued to the petitioners dated 26-11-1984 vide condition No. 5 states that the petitioners will take their seniority after the technical staff that are being regularised as per G.O.Ms.No. 422 Food and Agriculture (FP.II) Department dated 6-9-1984. In the first place this condition does not refer to any cadre. Reference to G.O.Ms. No. 422 dated 6-9-1984 is in no way helpful to the respondents 2 to 15. As pointed out supra, G.O.Ms. No. 422 dated 6-9-1984 only directs regularisation of the services of the respondents 2 to 15 as Technical Assistants. That G.O. did not promote or appoint the respondents 2 to 15 to the cadre of Seed Officers. We may also notice a fallacy in this argument from another angle. Under the G.O.Ms. No. 422 itself if the respondents 2 to 15 were promoted or appointed to the cadre of Seed Officer, there was absolutely no necessity for the first respondent to issue orders on 23-1-1985 and 31-12-1985 appointing the respondents 2 to 15 as Seed Officers. Therefore I do not find anything in the argument of the learned Counsel which deserves acceptance by the Court. The decision of the Apex Court in Ravi Paul and Ors. v. Union of India and others (I supra) was cited before the Court out of context and without any relevancy. That case dealt with an entirely different facts situation. There is nothing in common. That is a case where the petitioners after release from the Indian Army were appointed as Assistant Commandants in the Border Security Force after selection by the Special Selection Board during the years 1974 to 1978. The letters of appointment issued to them expressly provided that the pay of the petitioners would be fixed at the appropriate stage and in the matter of fixation of the pay

the services of the petitioners therein in the Army should not count for seniority or promotion in the Border Security Force. In that context the Supreme Court said that having accepted the appointment in the Border Security Force with certain conditions and terms they are bound by the same, and their subsequent claim that the service put in by them in the Army should count for seniority and promotion in the B.S.F. is untenable. That ratio has no application to the facts of this case for the reasons stated supra. A Division Bench of this Court in *A. Lakshmipathi Rao v. B.R. Ramabhadraiah & others* 1983 (3) SLR 190 held that a person can never be deemed to be in service from a date anterior to his date of appointment. If this rule is applied to the facts of this case, it should be held that the respondents 2 to 15 can never be deemed to be in service anterior to 23-1-1985 and 31-12-1985. If it is so held, admittedly the petitioners, having been appointed to the post of Seed Officers anterior to 23-1-1985, should be held to be seniors. Looking from any angle there is absolutely no justification in the action of the first respondent in assigning lower ranks to the petitioners in the provisional and final seniority lists of Seed Officers. A case is made out for interference.

5. In the result and for the foregoing reasons the writ petition is allowed and a writ of mandamus shall issue to the first respondent to refix the seniority of the petitioners and assign ranks above the respondents 2 to 15. In the facts and circumstances of the case the parties are directed to bear their own costs.