
(2008) 12 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22978 of 2008

S. Bheem Prasad and Others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 18-12-2008

Acts Referred:

Andhra Pradesh Departmental Test Rules, 1965 — Rule 6
Andhra Pradesh Engineering Service Rules, 1966 — Rule 6, 8, 8(C)
Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 16, 17, 31, 32, 33
Constitution of India, 1950 — Article 226

Citation : (2009) 3 ALT 193

Hon'ble Judges : Ghulam Mohammed, J;B. Seshasayana Reddy, J

Bench : Division Bench

Advocate : J.R. Manohar Rao and M. Ratna Reddy, for the Appellant; G.P. for Irrigation and Comm. Area Dev., G.P. for Services-I and II for Official and P. Naveen Rao, for Respondent Nos. 3 to 6 in W.P. No. 17315 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—These batch of writ petitions are filed by the petitioners seeking a Writ of Certiorari to quash the common judgment dated 28.7.2008 passed in O.A. No. 562 of 2007 and batch on the file of Andhra Pradesh Administrative Tribunal and the impugned Government Memo No. 8477/Ser.1.2/2006-9, dated 20.1.2007 with a direction to the respondents to consider the case of the petitioners for promotion to the post of Deputy Executive Engineer and other higher categories basing on the ranking assigned in APPSC.

2. These batch of writ petitions are disposed of by this common order as the cause in all these writ petitions is same.

3. Brief facts of the case are that the petitioners are direct recruitees as Assistant Executive Engineers, on selection by the A.P. Public Service Commission in the year 1989 and 1990. Subsequently, they were promoted as Incharge Deputy

Executive Engineers. It is stated that the petitioners were not indicated that they need to pass the departmental test in their appointment orders and that the department commenced their probation w.e.f. 3.5.89 and 7.2.1990 etc. It is submitted that the petitioners have passed their departmental test on 12.1.1993, 20.1.1997 etc. The Government issued a memo on 20.1.2007 altering the date of commencement of probation of the petitioners by invoking Rule 16(h) of A.P. State and Subordinate Service Rules, 1996 read with Rule 6 of A.P. Departmental Test Rules, 1965. In the said memo the date of commencement of probation of the petitioners was altered by two years anterior to the date of passing their departmental test. As per Rule 8 of A.P. Engineering Service Rules, every person appointed by direct recruitment as Assistant Executive Engineer shall within the period of probation pass the Accounts Test for PWD Officers and Subordinates. According to Rule 6 of A.P. Engineering Service Rules, the period of probation will be two years within continuous period of three years. Under note to Rule 8(c) of A.P. Engineering Service Rules any Assistant Executive Engineer on probation shall not be discharged for failure to pass the test within the period of his probation, but his probation shall be extended and he will not earn increments till he passes the test. According to A.P. State and Subordinate Service Rules, a probationer has to pass the departmental test during the period of probation. According to Rule 16(f)(i), a person who did not pass the departmental test during the period of probation shall be discharged from service unless the period of probation is extended under Rule 17(b) of A.P. State and Subordinate Service Rules and the appointing authority may extend the period of probation of a probationer who fails to pass the departmental test during the period of probation. In other words, the said power is discretionary. It is stated that u/s 17(b), appointing authority is having powers to extend the period of probation not exceeding one year. It is further stated that if a person fails to pass the departmental test even during the extended period of probation, he or she shall be discharged from service under Rule 16(f)(i) and there is no power to extend the probation thereafter. However, the Government in exercise of the powers conferred under Rule 31 of A.P. State and Subordinate Rules can relax the rules relating to period of probation and can extend the period of probation in relaxation of rules. Where the period of probation was extended by the Government in relaxation of rules, his date of commencement of probation will be altered by invoking Rule 16(h) of A.P. State and Subordinate Service Rules. It is averred that Rule 16(h) is applicable only when the period of probation is extended by the Government in relaxation of rules, but the said rule is not applicable to Assistant Executive Engineers. As per note to Rule 8 of A.P. Engineering Service Rules, the period of probation of the Assistant Executive Engineers shall stand extended automatically till they pass the test. It is emphatically stated that the question of relaxation of rule by the Government does not arise in so far as Assistant Executive Engineers are concerned. It is further stated that the Assistant Executive Engineers are not liable to be discharged from service on failure to pass the departmental test and when there is no order of Government relaxing the rule extending the period of probation,

the question of applying Rule 16(h) does not arise. Hence, the impugned memo of the Government is illegal, bad and arbitrary. In those circumstances, the petitioners approached the Tribunal by filing O.A. No. 562 of 2007, which was dismissed on 6.8.2007 on the ground that the provisional seniority list was issued and as such the petitioners can raise their objections to the provisional seniority list. Aggrieved thereby, the petitioners filed W.P. No. 18529 of 2007, whereby and where under this Court set aside the order of the Tribunal and remanded for fresh disposal on merits. The main contention of the petitioners in the Tribunal was that Rule 16(h) is applicable only when the Government exercises its powers under Rule 31 relaxing the Rule and that in so far as Assistant Executive Engineers in Irrigation Department are concerned, there is no necessity to relax the rule for continuing them in service without discharging as the special rules permits the Assistant Executive engineers to continue in service without discharge. The Tribunal held that the Special Rules do not prescribe the specific period for extension of probation. It was further contended that according to Special Rules the probation stands extended automatically till he passes the departmental test. The Tribunal held that note to Rule 8 of the Special Rules has to be read in conjunction with Rule 17(b) of A.P. State and Subordinate Service Rules. It was further contended before the Tribunal that the powers vested with the appointing authority under Rule 17(b) are discretionary and that the appointing authority may discharge the probationer for not passing the departmental test without extending the period of probation and that the power under Rule 17(b) is only for a limited extension of one year and beyond that the appointing authority has no jurisdiction and that note under Rule 8 is clear that the probation shall be extended till passing of the test, and the only condition is that the increment will be stopped during the said period. The Tribunal held that there is no provision for extending the period of probation beyond one year except by way of relaxation of power under Rule 31. Ultimately, the Tribunal has come to the following conclusions:

(1) All the applicants were appointed by way of direct recruitment and therefore, they commence their probation from the date of joining upon first appointment initially by the mandate of Rule 6 of the Special Rules.

(2) Rule 16(h) of the General Rules overrides the provisions of the Special Rules. Further the note under Rule 8 of the Special Rules cannot be read in isolation in the absence of any provision with regard to the declaration of probation in the Special Rules.

(3) The said note under Rule 8 of the special Rules has to be read in consonance with the rules pertaining to the declaration of probation in the General Rules.

(4) The Note under Rule 8 cannot take away the effect of the rule itself and further it has to yield the mandatory overriding provisions of Rule 16(h) of the General Rules.

(5) There is no need for the appointment order to specially require the

appointees to pass the tests in accordance with the special and general rules. The moment an appointment is made by way of direct recruitment, the mandate of Rule 6 would require the appointees to pass the required tests as laid down in the General as well as in the Special Rules within the stipulated periods.

(6) The Government not only invoked their powers under Rule 31 of the General Rules but also exercised the powers under Rule 16(h) thereof. The inter se seniority among the direct recruits which has to be fixed in accordance with the Rule 33(a) and (b) of General Rules has to yield to the overriding clause in Rule 16(h).

4. These batch of writ petitions are filed inter alia challenging the order of the Tribunal in O.A. No. 562 of 2007 and batch dated 28.7.2008.

5. Learned Counsel appearing for the petitioners contends that the petitioners' initial appointment did not indicate that they need to pass departmental test during the period of probation and that the proceedings were issued subsequently placing them on probation with effect from the date of their initial appointment and that the government by issuing memo No. 8477/Ser.1.2/2006-9, dated 20.1.2007 altered the date of commencement of probation, which is two years anterior to the date of passing the departmental test, by invoking Rule 16(h) of A.P. State and Subordinate Service Rules, 1996 r/w Rule 6 of A.P. Departmental Test Rules, 1965. He relied on the following judgments:

- (1) M.P. Chandoria Vs. State of M.P. and others,
- (2) Sanjay Dhar Vs. J and K Public Service Commn. and Another,
- (3) M. Radha Krishna Murthy Vs. Government of A.P. and Others,

There is no dispute with regard to the propositions laid down in those judgments.

6. The main contention of the writ petitioners is that when once they have assigned ranking based upon the examination conducted by A.P.P.S.C. and in view of Rule 8(C) of A.P. Engineering Service Rules which mandates that any Assistant Executive Engineer on probation shall not be discharged for failure to pass the test within the period of his probation, the Tribunal ought not to have dismissed the O.As. It was further contended that at the most, according to Rule 8(C) of A.P. Engineering Service Rules their probation shall be extended and their increment may be stopped till they pass the departmental test. It was further elaborated that according to Rule 17(b) of A.P. State and Subordinate Service Rules the appointing authority may extend the period of probation only for a period of one year. Rule 16(h) has no application to the facts and circumstances of the cases on hand.

7. Rule 16(h) of A.P. State and Subordinate Service Rules, reads as under:

16(h) Change of date of commencement of probation: Notwithstanding anything contained in the special rules or Sub-rules (a) and (b) of Rule 33, a probationer

who does not pass the prescribed tests or acquire the prescribed special qualifications within the period of probation or within the extended period of probation under Rule 17 and whose probation is further extended by the government by an order under Rule 32, till the date of his passing such tests or acquiring such qualifications shall be deemed to have commenced the probation with effect from the date to be fixed by the Government which would be anterior to a date to his passing such tests or acquiring such special qualifications, so, however, that the interval between the two dates shall be equivalent to the prescribed period of probation, whether on duty or otherwise and seniority of such probationer shall be deemed with reference to the date so fixed.

Provided that nothing in this sub-rule shall apply in the cases of persons appointed to the class, category or grade in a service prior to the 9th March, 1981 and whose seniority in the said class, category or grade was fixed under Sub-rule (b) of Rule 33, prior to the said date.

8. Rule 8(C) of the A.P. Engineering Service Rules together with Note thereunder reads as follows:

Tests:

(a) Every person appointed as Deputy Executive Engineer by direct recruitment shall within a period of three years from the date of his appointment, pass the Account Test for Public Works Department Officers. The penalty for failure to pass the test shall be stoppage of increment, but such stoppage shall not operate to postpone further increments after he passes the test.

(b) Omitted by G.O.Ms. No. 824, Irr. & Power (Ser.III), Dated 12.11.1976).

(c) An Assistant Executive Engineer appointed by direct recruitment shall within the period of his probation, pass the Account Test for P.W.D., Officers and Subordinates.

Note: Any such Assistant Executive Engineer on probation shall not be discharged for failure to pass the above test within the period of his probation, but his probation shall be extended and his increment stopped till he passes the test.

9. Rule (16)(f)(i) of A.P. State and Subordinate Service Rules read as under:

16(f)(i): If within the period of probation a candidate fails to pass such tests or acquire such qualifications as may be prescribed in these rules or in the special rules, the appointing authority shall, by order, discharge him from the service unless the period of probation is extended under the Sub-rule (b) of Rule 17 and if within such extended period also, the candidates fail to pass such tests or acquire such special qualifications, the appointing authority shall discharge him from service.

According to Rule 16(f)(i) a person who did not pass departmental test during the period of probation shall be discharged from service unless the period of

probation is extended under Rule 17(b). In the instant case the Government did not extend the period of probation and in view of Note to Rule 8(c) of A.P. Engineering Service Rules, application of Rule 16(h) does not arise.

10. Learned Government Pleader for Services on the other hand contends that the petitioners have to face the penal consequences as mentioned under Rule 16(h) of A.P. State and Subordinate Service Rules and that Government by order dated 20.1.2007 rightly revised the date of commencement of probation by anti-dating by two years from the date of passing of the departmental test for the purpose of determination of seniority of Assistant Executive Engineers who admittedly passed the test beyond the period of probation. He placed reliance on the following judgments:

- (1) K. Anbazhagan Vs. The Superintendent of Police and Others Etc., .
- (2) P.K. Unni Vs. Nirmala Industries and others [OVERRULED],
- (3) S.P. Badrinath Vs. Govt. of A.P. and Others etc. etc.,
- (4) K. Haridas v. High Court of Kerala AIR 2001 SCW 2312
- (5) Bhinka and Others Vs. Charan Singh,
- (6) Jugalkishoro Saraf v. Raw Cotton Company Limited AIR 1955 SC 376
- (7) Kanai Lal Sur Vs. Paramnidhi Sadhukhan,
- (8) Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram,
- (9) APSRTC, Musheerabad, Hyd. Vs. State Transport Appellate Tribunal, Hyd. and others, .
- (10) M.P. Chandoria v. State of Madhya Pradesh (supra)

11. Obviously as rightly contended by learned Government Pleader the petitioners have passed the departmental test beyond the prescribed period of probation, though they are directly recruited through A.P.P.S.C. as Assistant Executive Engineers. Since the petitioners themselves did not qualify or pass the departmental test within the period of probation and the provision in Note to Rule 8(C) only saves them against discharge from service and the Special Rules are silent on the method of extension of probation, in view of Rule 16(h) which operates qua to any other provisions either in general rules or special rules the Tribunal rightly came to the conclusion that normal principle of determination of seniority based on ranking has no application in cases where the employee does not pass the prescribed test within the probation. In the instant case the Government vide impugned proceedings extended the period of probation of the petitioners in the first instance and thereafter fixed the date of commencement of probation as mandated by Rule 16(h) of the Rules. Admittedly, the power to extend the period of probation is vested with the Government and therefore the Government issued the impugned proceedings fixing the revised date of commencement of probation in respect of the petitioners having extended their

probation vide first part of the impugned order. The Government thereupon invoked Rule 16(h) of the Rules revising the date of commencement of probation. In view of clear and categorical expression of Rule 16(h) that notwithstanding anything contained in Special Rules or sub-rules (a) and (b) of Rule 33 of General Rules, Rule 16(h) will over ride any provisions under the Special Rules, including the Note under Rule 8 thereof insofar as the date of commencement of periods of probation of the individuals who do not pass the departmental tests within the period of probation or extended period of probation are concerned.

12. Having regard to the circumstances of the case, we are of the view that writ certiorari jurisdiction is very narrow and limited, no good ground has been urged so as to warrant our interference under Article 226 of the Constitution of India.

13. For the foregoing discussion, we do not see any ground to interfere with the order impugned in these writ petitions. Accordingly, all these batch of writ petitions fail and they are dismissed. No costs.