

(2007) 06 AP CK 0058

In the Andhra Pradesh High Court

Case No : Writ Petition No. 24603 of 2007

S. Chittaranjan Das and Others

APPELLANT

Vs

The Secretary, A.P. Residential Educational Institutions
Society and Others

RESPONDENT

Date of Decision : 05-06-2007

Acts Referred:

Service (Recruitment) Rules, 1972 — Rule 6

Citation : (2007) 5 ALD 212

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : N. Usha Kiran, for the Appellant; M. Subrahmanyam, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—Petitioners challenge the proceedings dated 17-10-2005, through which respondents 6 to 11 were promoted as Superintendents from the category of Senior Assistants. They also challenge the action of the 1st respondent in not promoting them to the posts of Superintendents and not treating them as seniors to respondents 2 to 11.

2. The 1st respondent is a Society, registered by the Government of Andhra Pradesh, for the purpose of establishing Residential Educational Institutions. It is funded by the State and Central Governments. The 1st petitioner was appointed as Typist/LDC on 10-07-1972, and petitioners 2 and 3 were appointed into that category on 12-03-1981 and 29-07-1981, respectively. All of them were promoted as Senior Assistants, on 11-11-1984. The respondents 2 to 11 are juniors to the 1st petitioner in the category of Typist/LDC and Senior Assistants. Petitioners 2 and 3 are seniors to respondents 4 to 8 and 11, in the said categories.

3. The 1st respondent framed Service Rules for its employees in the year 1972.

Matriculation was prescribed as the qualification for the post of L.D. Clerk or Typist, in the educational institutions. For the post of U.D. Clerk, Graduation from any recognized University and pass in a departmental test was made essential, apart from five years experience in the feeder post. The petitioners and many of the respondents did not hold graduation degree qualification. However, on account of non-availability of qualified candidates, they were promoted to the higher posts of Senior Assistants. In the year 1988, the Society relaxed the requirement of holding degree qualification for promotion to the post of U.D.C.

4. Initially, provisional seniority in the category of UDC was published on 22-04-1992. W.P. No. 18506 of 1993 and batch was filed by the petitioners and other similarly situated persons. The batch of writ petitions was disposed of through order dated 04-04-2000, directing the 1st respondent to consider the objections raised for the provisional seniority list. Acting on the same, the 1st respondent considered the objections and cancelled the provisional seniority list of 1992, through proceedings dated 10-10-2002. A committee was constituted to examine the matter. On the basis of this exercise, another provisional seniority list, in the category of Senior Assistants, was published on 31-01-2003. The same was finalized through proceedings dated 05-08-2004 after considering the objections.

5. In this list, the 1st petitioner was placed above respondents 2 to 11, and petitioners 2 and 3 were assigned seniority above respondents 4 to 8 and 11. The grievance of the petitioners is that, notwithstanding the seniority assigned to them, the 1st respondent has not only denied the promotion to the post of Superintendent, but also promoted their juniors to that post.

6. The 1st respondent filed a counter affidavit, and an additional counter affidavit. The facts pleaded by the petitioners as regards their dates of appointment, promotion, preparation of seniority list etc., are not denied. The principal contention advanced on behalf of the respondents is that the relaxation given by the Society for the degree qualification is confined to the post of UDC, and unless the petitioners acquire degree qualification, they are not eligible to be promoted to the post of Superintendent. It is also stated that in supersession of the 1972 Rules, new set of Rules were framed in the year 2004, and possession of degree qualification is mandatory under these Rules for promotion to the post of Superintendent.

7. Though respondents 2 to 11 are served with notices, they have not chosen to enter appearance. Ms. N. Usha Kiran, learned Counsel for the petitioners submits that the action of the respondents in ignoring the seniority of the petitioners over respondents 2 to 11 is illegal, arbitrary and discriminatory. She contends that the petitioners and several other employees were promoted to the post of LDC/Typist, though they did not possess degree qualification, on account of exigency of service and a policy decision was taken in the year 1988 to relax that condition. Learned Counsel points out that the relaxation granted in favour of the petitioners for the promotion to the post of UDC, would enure to their benefit, for

subsequent promotions also. She contends that the 1st respondent acted in a discriminatory manner in applying different yardsticks to the petitioners, on the one hand, and the respondents 2 to 11, on the other hand.

8. Sri M. Subrahmanyam, learned Counsel appearing for the 1st respondent submits that the relaxation given to the petitioners and other similarly situated persons was, for the limited purpose of promotion to the post of UDC. He points out that the Service Rules of 1972 as well as 2004 are clear in their purport, that a candidate must possess degree qualification for being promoted to the post of Superintendent. According to him, the petitioners can claim right to be promoted as well as seniority, only if they possess the degree qualification.

9. The 1st respondent framed Service (Recruitment) Rules in the year 1972. The posts of Typists, LDCs and Stenographers are in category 11 of Class III. UD clerks occur in category 3 and the post of Superintendent and Accountant are in category 6 of Class III. As regards the qualification for L.D clerks, dichotomy was maintained for the posts in the office of the Society, and those in the institutions. For the former, a degree from a University is made essential, whereas for the latter, Matriculation was treated as sufficient. The petitioners are appointed as L.D clerks/Typists on the dates mentioned in the preceding paragraphs. It is not in dispute that in the said category, they are seniors to respondents 2 to 11.

10. For the U.D clerks, a Bachelor's Degree from a University is one of the qualifications, apart from pass in Accounts Test for Subordinate Officers, and certain other departmental tests. Petitioners were promoted in the year 1984 as UDCs, though they did not hold these qualifications. It is stated that this was resorted to, on account of dearth of qualified candidates. Obviously, having regard to the generality of the problem, the Society passed a resolution on 22-02-1988, relaxing the qualifications for the post of U.D.C. The resolution read as under:

The existing non-teaching staff in the Society Office and Schools may be considered for promotion up to the post of Superintendent by giving relaxation from possessing Graduation Qualification provided they had duly put in 5 years of service and passed the Departmental Tests prescribed. Such relaxation shall not apply to future recruitment. Those who were already promoted by giving relaxation from passing the prescribed tests and who did not pass the Departmental Tests within the time limit prescribed, should be reverted, after giving two year's time and notice if they do not pass the tests within the time limit. Relaxation for Graduate qualification is applicable to all those promoted already. However they must pass the departmental tests within 2 years (from now). A notice to that effect may be given.

Therefore, the ineligibility of the petitioners to be promoted to the post of U.D Clerks stood wiped off. Administrative orders in terms of this resolution were issued on 11-07-1988. In addition to the petitioners, 16 others, including most of the respondents, were extended the benefit of promotion.

11. After the promotion of the petitioners as UDCs came to be legalized, in the year 1988, by virtue of a resolution of the Society, a provisional seniority list was prepared in the year 1992. The petitioners felt aggrieved, since they were placed below their juniors. A batch of writ petitions came to be filed, and as a result of the order passed therein, the provisional seniority list, issued in the year 1992, was cancelled. Fresh provisional seniority list was published on 31-01-2003 and the same assumed finality on 05-08-2004. Petitioners were assigned places at Sl.Nos.18, 27, and 28 respectively. So far as respondents 2 to 11 are concerned, all of them are shown as juniors to the 1st petitioner; and respondents 4 to 8 and 11 figured as juniors to the petitioners 2 and 3.

12. Whatever may have been the rationale or justification for the 1st respondent in treating the petitioners as juniors to respondents 2 to 11 and denying them the promotion to the post of Superintendent, before the seniority list was finalized, there was absolutely no basis for continuing the same state of affairs, even after the final seniority list was published. Having declared the petitioners as seniors to respondents 2 to 11, the 1st respondent has chosen to issue the impugned order, promoting some of the respondents as Superintendents, in preference to the petitioners and in violation of the seniority list. The reasons pleaded, either in the counter affidavits, or during the course of arguments, for this action; are totally unsatisfactory and contrary to law.

13. It is strongly urged on behalf of the 1st respondent that the relaxation given in the year 1988 is confined to the post of U.D. Clerk, and it would not be available for subsequent promotions. Firstly, the text of the resolution, which is extracted in the preceding paragraphs, does not support this contention. Even otherwise, the relaxation of qualifications once given, cannot be restricted to a particular stage. On acquiring promotion, on the basis of relaxation, an employee joins others in the promoted category. He cannot be subjected to discrimination within that category, unless it was made specific in the orders of promotion, or those granting relaxation.

14. A similar situation arose before the Madras High Court. The Government relaxed the qualifications, that are required for the post of Assistant in the office of Board of Revenue. An employee was appointed to that post on the strength of relaxation, but was denied promotion to the next higher category, on the ground that he did not hold the necessary qualifications for that post. The aggrieved person approached the Madras High Court by filing a writ petition. The High Court allowed the writ petition. It was held that the relaxation once granted, would enable the employee to reap the benefit at subsequent stages also. The Government preferred writ appeal and a Division Bench dismissed the appeal See *Government of Tamin Nadu v. M.N. Raghunathan* 1983 (1) SLR 22 (Mad).

15. In *Jagdish Kumar and Ors. v. State of H.P and Ors.* 2005 (1) DT (SC) 1123 similar question fell for consideration before the Supreme Court. It was observed as under:

Para-16 : "Further question is whether any relaxation was necessary while giving promotion as Assistant Draftsman. For being eligible to be considered for appointment as Assistant Draftsman, the requirements are indicated in Rule 6(ii). Once the requirement of passing diploma of Draftsman Course is relaxed in terms of Rule 6(i) for appointment as Tracer, there is no necessity for again having relaxation for being considered as Assistant Draftsman. That contingency is already taken care of when relaxation is given for appointment as Tracer. Otherwise, a person who has been found eligible to be appointed as a Tracer will not be considered for promotion as Assistant Draftsman, even though there is no illegality attached to the appointment as Tracer. Such a view would go against the logic of relaxation for appointment as Tracer.

Therefore, the contention of the respondents cannot be accepted.

16. It was urged on behalf of the respondents that the Rules framed in 1972 were replaced in the year 2004, and the relaxation granted vis-a-vis the Rules of 1972, cannot be enforced, once the new set of Rules were framed. This contention is recorded only to be rejected. It hardly needs any emphasis that the rights that have accrued to the employees under a particular set of Rules cannot be taken away by framing a fresh set of Rules. Even if any changes are introduced, through new set of Rules, they will become operative prospectively, and cannot have the effect of taking away the rights of the employees, who are in service. The approach of the 1st respondent in the whole episode is far from satisfactory. An objective and fair consideration of the cases, at the relevant points of time, would have obviated unnecessary litigation.

17. During the pendency of the writ petition, the 1st respondent issued orders of promotion to the petitioners to the posts of Superintendents. A substantial part of the relief claimed in the writ petition stood extended to them. The seniority accorded to the petitioners in the seniority list, for the post of U.D Clerks, published on 05-08-2004, must be reflected in the higher posts of Superintendents also. Notwithstanding the delay in promoting the petitioners, they shall be entitled to be treated as seniors, on the basis of the seniority list dated 05-08-2004. This exercise shall be completed within two months from the date of receipt of a copy of this order.

18. The writ petition is accordingly allowed. There shall be no order as to costs.