
(2003) 12 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 29755, 33550 and 34772 of 1997

S. Sudarshan and Another

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:

Citation : (2004) 3 ALD 158 : (2004) 2 ALT 185

Hon'ble Judges : S. Ananda Reddy, J;G. Bikshapathy, J

Bench : Division Bench

Advocate : Nooty Ram Mohan Rao, in WP No. 29755 of 1997 and Government Pleader for Civil Supplies in WP No. 34772 of 1997 and Party in Person in WP No. 33550 of 1997, for the Appellant; Government Pleader for Civil Supplies in WP No. 33550 of 1997 and for Respondent Nos. 1 to 3 in WP No. 29755 of 1997 and Party-in-person in WP No. 29755 of 1997 for Respondent No. 4 and in WP No. 34772 of 1997 for Respondent No. 1 and A.S.N. Murthy, for the Respondent

Judgement

G. Bikshapathy, J.—All these writ petitions can be disposed of by a common order as they are directed against the same order of the A.P. Administrative Tribunal, Hyderabad (for short, the Tribunal) in O.A. No. 7069 of 1996 dated 30-7-1997.

2. The case has a chequered career. The unofficial respondent in W.P.No. 29775 of 1997, Mr. A.S.N. Murthy, has been agitating for more than a decade with regard to his promotion and other consequential benefits. However, we need not go into all those details and suffice it to refer to the following relevant facts. He filed O.A. No. 7069 of 1996 claiming the following numerous reliefs:

(i) to declare the retrospective seniority granted without eligibility to the Respondents 5 and 6 in the Deputy Tahsildar category with effect from 7-6-1982 and consequential promotions issued thereon to the categories of Tahsildar and further to District Supply Officer as illegal, arbitrary, null and void;

(ii) to replace all unqualified Respondents 6, 7, 8, 9 and 10 continuing in the

Gazetted categories I, II and III by qualified within 30 days from the date of receipt of order, declaring their promotions issued from Deputy Tahsildar category to Deputy Director Gr. I and their continuation still without replacement as illegal, arbitrary, null and void;

(iii) to implement the Presidential Order 1975 from October 1975 to the posts of Deputy Tahsildar as Zonal Unit in Civil Supplies Department which are to be filled up by the employees of Chief Rationing Officer's Unit only, declaring the recruitment of Directorate personnel on statewide basis and revenue personnel as District unit prior to and after issue of G.Os. 154 and 408 as illegal, arbitrary, null and void;

(iv) to fix integrated seniority on countable service towards probation in the Dy. Tahsildar category among Dy. Tahsildars of entire State as one unit basing on integrated seniority fixed on regularization in Sr. Asst. Category among Sr. Assistants of CRO's Unit and Directorate under read 33 and 24(c) of APSS rules and revise all promotions issued thereon prior to and after issue of G.Os. 154 and 408 from Dy. Tahsildar category to Dy. Director category-I according to integrated seniority fixed above or by implementing Presidential Order within 30 days from the date of receipt of order, declaring two uncommunicated seniority lists fixed separately in Sr. Asst. category and Dy. Tahsildar category i.e., one for CRO's unit and other for Directorate, adoption of 2:1 ratio in the promotion of Dy. Tahsildar and Tahsildar, seniority fixed in Sr. Asst. category for promotion to Dy. Tahsildar category and seniority fixed in Deputy Tahsildar category for promotion to Tahsildar category on countless service, seniority list from CRO's as District Unit, seniority list for Directorate as State-wide unit and CCS proceedings No. 197/95 dated 21-4-1995 as illegal, arbitrary, null and void and consequential promotions issued thereon from Dy. Tahsildar category to Dy. Director category-I prior to and after issue of G.Os. 154 and 408 as illegal, arbitrary, null and void;

(v) to consider the promotion of Tahsildar with effect from 7-6-1982, Tahsildar with effect from 7-6-1985, 4-2-1988/4-11-1989 - 2-8-1991, DSO with effect from 9-10-1989/24-7-1992/8-4-1993/ 31-10-1994 and further as Deputy Director category-I with effect from 9-10-1992/24-7-1995/8-4-1996 with all consequential benefits with retrospective effect.

The Tribunal after considering the respective claims of the parties i.e., the unofficial respondent as well as the petitioners in W.P. No. 29755 of 1997, allowed the said O.A. by order dated 30-7-1997 with the following directions:

"For the various reasons stated above, we are of the considered view that the applicant is eligible for promotion to the post of Civil Supplies Tahsildar from the date of passing of all the tests by him. We, therefore, direct the respondents to consider the case of the applicant along with other eligible officers in the department for promotion to the post of Civil Supplies Tahsildar from 1988, the year in which the official respondents promoted the unofficial respondents as Civil Supplies Tahsildars and complete this exercise within three months from the

date of receipt of a copy of this order."

Aggrieved by the said order, the petitioners filed W.P. No. 29775 of 1997 and the Civil Supplies Department filed W.P. No. 34772 of 1997, The unofficial respondent also filed W.P. No. 33550 of 1997 insofar as it relates to further promotion from the post of Tahsildar to next higher posts i.e., District Supply Officer, Additional Director, Deputy Director etc.,

3. Mr. A.S.N. Murthy, the unofficial respondent in the first writ petition was initially appointed as LDC in the establishment of Chief Rationing Officer (CRO) on 26-3-1974, promoted as U.D.C. in the same unit on 24-4-1980 and further promoted as Deputy Tahsildar (CS) on 18-3-1984. When he was transferred to Mahaboobnagar District on administrative grounds, he refused to go there and sought for retention at Hyderabad in the CRO's unit. Some vacancies in the cadre of Tahsildar, which is equivalent to the post of Assistant Supply Officer (ASO) arose in the year 1988, for which the cases of the eligible candidates were considered with reference to their seniority and merit and some of them were promoted. It should be mentioned at this stage itself that 25% of the vacancies in the post of Tahsildar are reserved to be filled up from among the candidates holding the post of Deputy Tahsildar in Civil Supplies Department and CRO's office and the ratio of 2:1 between the Civil Supplies Department and the CRO's unit is to be maintained. Therefore in February 1988 when two posts of Tahsildars were available to be filled up, one Mr. R. Balaiah and Mr. Javeed Ahmad Khan, who were working as Deputy Tahsildars from 23-2-1981 and figuring at S.Nos. 3 and 4 in the seniority list and admittedly seniors to Mr. A.S.N. Murthy, were promoted to the post of Tahsildar with effect from 4-2-1988. Admittedly, Mr. A.S.N. Murthy was figuring at S.No. 22 in the said seniority list. It is also to be noticed at this stage that in order to consider his case for promotion to the post of Tahsildar, as per Rule 6 of the Special Rules for the A.P. Civil Supplies Service (Gazetted) issued in G.O. Ms. No. 154, Food and Agriculture (CS.II) Department dated 19-3-1986, (for short, the Rules) he must have rendered satisfactory service of Superintendent/D.T. (CS) for a minimum period of three years, out of which one year service shall be in executive capacity in a District. As admittedly Mr. A.S.N. Murthy did not possess the said requirement, his case was not considered. Therefore, in order to enable him to acquire the said eligibility criteria, he was transferred to Anantapur District on 20-2-1988. He challenged the said transfer order by filing an O.A. before the Tribunal, on the ground that he cannot be transferred from one zone to another zone contrary to the provisions of the Presidential Order. However, the said O.A. was dismissed by the Tribunal and the said order has become final. Thereafter he started applying for long leave in different spells and finally he reported at Anantapur on 7-3-1989 and worked there till 1995-96 and thereafter he was transferred back to Hyderabad. Thus, he fulfilled the requirement of having worked for one year in an executive capacity in a District only on 6-3-1990. Thereafter, he filed the present O.A. before the Tribunal for the reliefs mentioned above. According to him, he became eligible to be considered for promotion to the post of Tahsildar

by 1984 itself as he passed all the Departmental tests and also fulfilled the requirement of having worked in an executive capacity in a district for a year, as he worked in Hyderabad district for more than three years, and hence he ought to have been promoted in the year 1984 itself. Hence, he sought for a direction to promote him with effect from the date when Mr. R. Balaiah and Mr. Javeed Ahmad Khan were promoted on 4-2-1988.

4. The petitioners in W.P. No. 29755 of 1997 opposed the O.A. The Tribunal, after considering the matter, allowed the O.A. by order dated 30-7-1997 and directed the official respondents to consider his case for promotion to the post of Tahsildar with effect from 1988 and other consequential benefits. When the said order of the Tribunal was not implemented, he filed contempt cases and ultimately under the threat of contempt, the official respondents passed an order on 20-4-1998 promoting him to the post of Tahsildar with retrospective from 4-2-1988, subject to the result of the Writ Petition.

5. Mr. Nooty Rama Mohan Rao, learned Counsel for the petitioners in W.P.No. 29775 of 1997 submits that the order of the Tribunal allowing the O.A. is illegal and cannot be sustained as the Tribunal failed to consider the matter in the proper perspective. The learned Counsel submits that the persons who were promoted on 4-2-1988 were admittedly senior to Mr. A.S.N. Murthy having been appointed on 23-2-1981 and placed at S.Nos. 3 and 4 respectively in the seniority list whereas Mr. A.S.N. Murthy was placed at S.No. 22. The learned Counsel also submitted that by that date he did not even fulfil the requirement of having served in an executive capacity in a district for a period of one year out of the three years he worked as Deputy Tahsildar as per Rule 6 of the Rules and he could acquire the said eligibility criteria only on 6-3-1990 and he became eligible for being considered for promotion to the post of Tahsildar only from 6-3-1990 and not prior to that. The learned Counsel also brought to the notice of the Court that the immediate senior to Mr. A.S.N. Murthy, one Mr. A.A. Aleem who is at S.No. 21 in the seniority list was promoted as Tahsildar on 16-3-1995 only, and hence Mr. A.S.N. Murthy cannot claim promotion earlier to the said date.

6. It is also brought to our notice by the learned Government Pleader for Civil Supplies that from 4-2-1988 to 20-4-1998, none of the juniors to Mr. A.S.N. Murthy were promoted and his immediate junior was promoted only on 16-8-2003.

7. It is also brought to our notice by the learned Government Pleader that the CRO's unit is a Special Establishment and the provisions of the Presidential Order, 1975 would not apply. He, therefore, submitted that the post of Deputy Tahsildar cannot be said to be a zonal or district post and it is governed by the Special Rules issued in G.O. Ms. No. 154 dated 19-3-1986.

8. Mr. A.S.N. Murthy, who argued as party in person, submitted that though he became eligible to be considered for promotion to the post of Tahsildar in 1984 itself as he possessed all the requisite qualifications, he was not promoted even

in 1988 when two vacancies of Tahsildars arose and hence he filed the present O.A. before the Tribunal and the Tribunal after considering the matter allowed the O.A. and hence the order of the Tribunal cannot be interfered with. He further submitted that he also fulfilled the requirement of having to work for one year in executive capacity in a district out of three years as D.T., as he worked in Hyderabad district for more than three years.

9. Heard the learned Counsel for the parties and the party in person and perused the entire material on record.

10. It is submitted by the party in person that though he became eligible to be considered for promotion to the post of Tahsildar even in 1984 itself, his case was not considered and hence he should have been promoted in 1988 when the two vacancies in the cadre of Tahsildar arose in preference to Mr. R. Balaiah and Mr. Jaweed Ahmad Khan. This submission cannot be accepted for more than one reason. The above two persons who were promoted to the post of Tahsildar on 4-2-1988 were admittedly seniors to him having been appointed on 23-2-1981 and figuring at S.Nos. 3 and 4 in the seniority list respectively whereas the party-in-person is figuring at S.No. 22. Secondly, as per Rule 6 of the Rules, a candidate aspiring for promotion to the post of Tahsildar should have worked for one year in an executive capacity in a district out of the three years he worked as Deputy Tahsildar. As admittedly the party-in-person did not possess the said eligibility criteria. He was transferred to Anantapur District on 2-5-1988, which transfer he challenged before the Tribunal by filing an O.A. The said O.A. was dismissed and that order became final. Ultimately, he reported at Anantapur on 7-3-1989 and completed the requirement of having worked in a district in an executive capacity for one year only on 6-3-1990. Therefore, he became eligible to be considered for promotion to the post of Tahsildar only with effect from 6-3-1990 and not prior to that. Simply because he became eligible to be considered for promotion to the post of Tahsildar, it does not mean that he should be promoted immediately. His turn should come and it all depends upon the availability of vacancies. Since the post of Tahsildar is a selection post, he should come up in the merit list, seniority being considered only if merit of two candidates is approximately equal. Therefore, by no stretch of imagination, it can be said that he became eligible for promotion to the post of Tahsildar with effect from 4-2-1988. One more circumstance, which disentitles him to the said relief is that his immediate senior Mr. A.A. Aleem, who is at S.No. 21, was promoted to the post of Tahsildar only on 6-3-1995. Hence, Mr. A.S.N. Murthy cannot get promotion prior to the said date. In that view of the matter, the impugned order of the Tribunal directing the official respondents to consider his case for promotion to the post of Tahsildar from 1988 with all consequential benefits is illegal and is liable to be set aside.

11. This takes us to the other question, what is the date of promotion that can be assigned to Mr. A.S.N. Murthy, According to the learned Government Pleader for Civil Supplies, as on 20-4-1998 when Mr. Murthy was promoted with effect

from 2.4.1988 under the threat of contempt and subject to the result of the writ petition, a vacancy of Tahsildar was available, in which he was accommodated. Though the party-in-person tried to trace out the entire history right from the beginning when he was appointed as L.D.C., and make submissions which are vague and unintelligible, after hearing the learned Counsel for the petitioners in W.P. No. 29755 of 1997 and the learned Government Pleader for Civil Supplies and perusing the material on record, we are of the considered opinion that he is not eligible for being promoted to the post of Tahsildar with effect from 4-2-1988. He cannot also compare himself with Mr. R. Balaiah and Mr. Jaweed Ahmad Khan, who are admittedly seniors to him having been appointed on 23-2-1981 and acquired the necessary eligibility criteria much earlier to him. The party-in-person was at S.No. 22 in the seniority list and if at all he became eligible to be considered for promotion only by 6-3-1990. Be that as it may, as it is stated by the learned Government Pleader that a vacancy of Tahsildar was available on 20-4-1998, when he was promoted with effect from 4-2-1988 subject to the result of the writ petition, he is deemed to have been promoted to the post of Tahsildar with effect from 20-4-1988 and it is needless to say that he is entitled for consideration of his case for further promotion on the basis of the said date only and not prior to that, subject to his fulfilling the other eligibility criteria as per rules.

12. Though Mr. A.S.N. Murthy tried to compare himself with one Mr. Kamalakar, who was born on the rolls of the Commissioner of Civil Supplies, which is a separate and distinct establishment, he cannot be permitted to do so and he can only compare himself with the employees born on the rolls of CRO. He cannot also compare himself with Mr. R. Balaiah and Mr. Jaweed Ahmad Khan, who are also born on the rolls of Commissioner of Civil Supplies and admittedly seniors to him.

13. Viewed from any angle, the party-in-person is not entitled to the relief of promotion to the post of Tahsildar with effect from 4-2-1988 and other consequential promotions to the post of DSO, Additional Director, Deputy Director etc., on the basis of the said date.

14. For the above reasons, the impugned order of the Tribunal in OA No. 7069 of 1996 dated 30-7-1997 is set aside and consequently WP Nos. 29755 and 34772 of 1997 are allowed. WP No. 33550 of 1997 stands dismissed. However, we make it clear that the party-in-person is deemed to have been promoted to the post of Tahsildar with effect from 20-4-1998 only. No costs.