

(2017) 03 AP CK 0060
In the Andhra Pradesh High Court
Case No : Writ Petition No.12680 of 2015

S. Venkatesham

APPELLANT

Vs

High Court of Judicature

RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

Andhra Pradesh Judicial Ministerial Service Rules, 2003 — Rule 5

Citation : (2017) 3 ALT 311

Hon'ble Judges : Sri V. Ramasubramanian and Ms. J. Uma Devi, JJ.

Bench : Division Bench

Advocate : Mr. V. Hari Haran, Advocate, for the Petitioner; Mr. J. Anil Kumar, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

V. Ramasubramanian, J.—The petitioners have come up with the present writ petition challenging the orders of repatriation and redesignation.

2. Heard Mr. V.Hari Haran, learned counsel for the petitioners and Mr. J.Anil Kumar, learned Standing Counsel for the respondents.

3. The petitioners herein were appointed as Steno- Typists/Stenographers in the year 1989 and 1993 respectively. With effect from 11-3-2010, the 1st petitioner was promoted as Senior Assistant and he was later promoted as Superintendent on 18-6-2013. Similarly, the 2nd petitioner was promoted as Senior Assistant on 25-3-2010 and as Superintendent on 17-6-2013.

4. As per the recommendations of the First National Judicial Pay Commission, the Government issued G.O.Ms. No.50, Law Department, dated 23-4-2009, restructuring the Andhra Pradesh Judicial Ministerial Service and providing for (1) constitution, method of recruitment and scales of pay, (2) procedure of recruitment etc. Under the said Government Order, the staff pattern of the subordinate courts was completely revamped and 12 categories of posts were created (or) redesignated. They are:

- (1) Chief Administrative Officer,
- (2) Senior Sheristadars/Senior Superintendents,
- (3) Sheristadars/Superintendents,
- (4) Stenographers (Grade-I),
- (5) Stenographers (Grade-II),
- (6) Stenographers (Grade-III),
- (7) Upper Division Clerks,
- (8) Lower Division Clerks/Typists/Copyists,
- (9) Bailiffs/Amins,
- (10) Examiner/Reader,
- (11) Process Servers and
- (12) Attenders/ Jamedars.

5. By another order in G.O.Ms.No.83, Law Department, dated 02-9-2009, the Government clarified that the orders issued in G.O.Ms.No.50, dated 23-4-2009, shall be deemed to have come into force with effect from 01-4-2003 and that the arrears of pay to the judicial employees from 01-4-2003 to 30-4-2009 shall be credited to the General Provident Fund Account of the concerned individuals.

6. After the issue of the Government Orders as aforesaid, the Registry of the High Court sought certain clarifications. Therefore, the Government issued yet another order in G.O.Ms.No.100, Law Department, dated 08-8-2013, making amendments to the Andhra Pradesh Judicial Ministerial Service Rules, 2003, which had earlier been issued under G.O.Ms.No.129, Law Department, dated 12-11-2003. Under the amendment so inserted under G.O.Ms.No.100, dated 08-8-2013, the Judicial Ministerial Service was formed under Rule 5 to comprise of 12 categories of posts, namely,

- (1) Chief Administrative Officers,
- (2) Senior Superintendents,
- (3) Superintendents,
- (4) Stenographers (Grade-I),
- (5) Stenographers (Grade-II),
- (6) Stenographers (Grade-III),
- (7) Senior Assistants,
- (8) Junior Assistants,

- (9) Typists,
- (10) Field Assistants,
- (11) Examiners and
- (12) Copyists.

7. In Note 1 under Rule 5 of the Amended Rules, it was stated as follows:

The re-designation of the posts as above will be implemented with effect from 01-4-2003 and will not affect the gradation or seniority of persons holding posts as on the date of implementation of the G.O.

8. The table under Rule 6 of the Amended Rules (G.O. Ms.No.100, dated 08-8-2013) contained the method of appointment to various categories of posts and also indicated the Appointing Authority. This table, insofar as it relates to the first 8 categories of posts, is reproduced as follows:

Category and name of the post

Method of appointment

Appointing authority

1.Chief Administrative Officers

By promotion of Senior Superintendents (Category-2) and Stenographer Grade-I (Category-4) in the ratio of 5:1

District Judge

2.Senior Superintendents

By promotion of Superintendents (Category-3)

District Judge

3.Superintendents

By promotion of Senior Assistants (Category-7)

District Judge

4.Stenographers Grade-I

By promotion of Stenographers Grade-II (Category-5)

District Judge

5.Stenographers Grade-II

By promotion of Stenographers Grade-III (Category-6)

District Judge

6.Stenographers Grade-III

1. 60% by direct recruitment 2. 40% by promotion of Junior Assistants (Category-8)/Typists (Category-9) from a combined seniority

District Judge

7.Senior Assistants

By promotion of Junior Assistants (Category-8) /Typists (Category-9) and Field Assistants (Category-10) by fixing the ratio of 5:1 in a cycle of six (6) vacancies as prescribed in Note 2

District Judge

8.Junior Assistants

1. 50% by direct recruitment 2. 50% by promotion of Examiners (Category-11)/ Copyists (Category-12) from the combined seniority and appointment by transfer from the post of Record Assistants, Drivers and Process Servers by fixing ratio of 8:4:1:3 in a cycle of 16 vacancies as prescribed in Note 2

District Judge

9. Pursuant to the aforesaid Government Orders, the Principal District and Sessions Judge, Medak at Sangareddy, issued proceedings dated 11-4-2014, repatriating those who were working as Senior Assistant/Superintendents as Stenographers (Grade-III) with retrospective effect from 01-4-2003. In addition, the District Judge also granted up gradation to the 1st petitioner as Stenographer (Grade-II) with effect from 1-4-2003 and as Stenographer (Grade-I) with effect from 1-1-2004. Similarly, the 2nd petitioner, who was working as Superintendent, was redesignated as Stenographer (Grade-II) with effect from 1-4-2003 and as Stenographer (Grade-I) with effect from 5-8-2008.

10. However, by the proceedings dated 08-01-2015, the Principal District and Sessions Judge, Medak at Sangareddy, cancelled the proceedings dated 11-4-2014 on the ground that after the issue of G.O.Ms.No.100, dated 08-8-2013, separate feeder channels have been provided for promotion to the post of Chief Administrative Officers from the category of Senior Superintendents and Stenographers (Grade-I) in the ratio of 5:1 and that therefore if persons already promoted as Superintendents are repatriated as Stenographers (Grade-I), they will have an undue advantage. This order dated 08-01-2015 was passed by the District Judge on the basis of two letters of the High Court dated 23-4-2014 and 29-11-2014.

11. Aggrieved by the said order, dated 08-01-2015, of the District and Sessions Judge cancelling the earlier orders dated 11-4-2014, the petitioners filed a statutory appeal. The petitioners also filed a writ petition in W.P.No.4975 of 2015 challenging the order of the District Judge dated 08-01-2015. The said writ petition was disposed of by a Bench of this Court by an order dated 03-3-2015 directing the District Judge to afford an opportunity of hearing to the petitioners and to pass orders afresh. This was on the short ground that no opportunity of

hearing was granted to the petitioners before passing an order that had civil consequences. This Court also directed the order dated 08-01-2015 to be kept in abeyance till the District Judge passed orders afresh.

12. Pursuant to the said order of this Court, the District Judge issued notices to the petitioners, heard them and passed fresh orders dated 15-4-2015, confirming the earlier orders dated 08-01-2015. Aggrieved by the said order, dated 15-4-2015, the petitioners have come up with the present writ petition.

13. The Registry of this Court has filed a counter affidavit in addition to the counter affidavit filed by the District and Sessions Judge. It appears from both the counter affidavits that the impugned orders were passed as a result of the clarifications issued by the Registry of this Court on 23-4-2014 and 29-11-2014 with respect to the manner in which G.O.Ms.No.100, Law Department, dated 08-8-2013, had to be implemented. In sum and substance, the clarifications issued by the Registry of the High Court were to the effect that persons who had been promoted from the posts of Personal Assistants (Stenographers) to the posts of Senior Assistants and Superintendents as on the date of issue of G.O.Ms.No.100, dated 08-8-2013, cannot be restructured as Stenographers (Grade-I), (Grade-II) or (Grade-III).

14. In the counter affidavit filed by the Registry of the High Court, it is stated that based upon the recommendations of the First National Judicial Pay Commission, the Government issued G.O.Ms.No.50, dated 23-4-2009; that since the Government Order contained some discrepancies, the Administrative Committee and other Committees of the High Court recommended amendment of Rules and sanctioning of new posts; that in accordance with the recommendations of the Committee, the Government issued G.O.Ms.No.100, dated 08-8-2013, amending Rules 5, 6 and 8 of A.P. Judicial Ministerial Service Rules, 2003; that thereafter when clarifications were sought by some Unit Heads, the High Court found that some persons promoted as Superintendents and Senior Assistants as on the date of issue of G.O.Ms. No.100, were reverted as Stenographers so as to give them the benefit of Grades-II and III; that therefore a clarification was issued on 29-11-2014; that the clarifications were issued, for the purpose of ensuring that persons who had already been promoted as Senior Assistants and Superintendents do not gain any undue advantage for promotion to the post of Chief Administrative Officer by virtue of being reverted to the post of Stenographers.

15. In simple terms, the stand taken by the respondents is that if persons working as Personal Assistants (in the category of Stenographers) had already chosen a line of promotion to the posts of Senior Assistants and Superintendents, as on the date of issue of G.O.Ms. No.100, dated 08-8-2013, they are not entitled to come back to their original line. This stand taken by the respondents is triggered by the fact that after the amendment to the Service Rules under G.O.Ms.No.100, dated 08-8-2013, a ratio of 5:1 is prescribed for promotion to the post of Chief Administrative Officer, from among Senior

Superintendents (Grade-II) and Stenographers (Grade-I).

16. In other words, if the petitioners herein had continued as Superintendents, without being repatriated or reverted as Stenographers, they would first have to become Senior Superintendents (Grade-II), to be eligible for promotion to the post of Chief Administrative Officer. But on account of their reversion as Stenographers, they have become eligible for promotion to the post of Chief Administrative Officer. This appears to have worried the respondents, leading to the issue of clarifications and cancellation of repatriation.

17. But we do not think that the stand taken by the Registry is fair and justified. The First National Judicial Pay Commission was constituted pursuant to the order of the Supreme Court dated 07-01-1998 in All India Judges' Association case. The Commission made several recommendations which were accepted by the High Court. Therefore, by orders dated 26-3-2008 and 15-7-2008, the Hon'ble Supreme Court directed the implementation of the recommendations of the Shetty Commission with effect from 01-4-2003.

18. But it took 6 years for the Government to issue G.O.Ms. No.50, Law Department, dated 23-4-2009. It took another period of 4 years for the Government to issue G.O.Ms. No.100, amending the A.P. Judicial Ministerial Service Rules. But nevertheless, G.O.Ms. No.50 as well as the amendment to the Service Rules under G.O.Ms. No.100, dated 08-8-2013, came into effect from 01-4-2003. This is why a Note was incorporated in Note 1 under Rule 5 which provided that the redesignation of the posts will be implemented with effect from 01-4-2003 and will not affect the gradation or seniority of persons holding the posts as on the date of implementation of the G.O.

19. If the recommendations of the Shetty Commission had been accepted at the appropriate point of time, the petitioners would not have accepted the promotion as Senior Assistants and Superintendents. As a matter of fact, many persons retired before G.O.Ms. No.100 was issued. The only benefit they reaped was to have promotions to the posts of Senior Assistants and Superintendents.

20. This is not a case where the petitioners had two different options to choose from two different channels of promotion, at the time when they accepted promotion as Senior Assistants and Superintendents. At the time when the petitioners accepted the promotion to the posts of Senior Assistant and Superintendent, they had only one channel and the recommendations of the Shetty Commission remained only a distant dream. Therefore, as and when G.O.Ms. No.100 was issued in the year 2013, with retrospective effect from 01-4-2003, the petitioners are entitled to get back to their original posts and seek up gradation to Grade-II and Grade-I respectively.

21. The contentions of the respondents could hold good only if the petitioners had exercised an option to choose a particular line or particular channel of promotion. If they have secured promotion in the only line of promotion or channel of promotion available at that point of time, they should be given the

option of coming back to their original line or channel. This is what the District Judge had done on 11-4-2014 when the District Judge allowed the petitioners to get back to the stream of Stenographers from the post of Superintendents. This was not only fair and proper but also legally valid, since all persons who are entitled to the benefit of an amendment of the Rules with retrospective effect, would always have an option to avail the benefit. It cannot be found fault with and hence the impugned orders are illegal and unjustified.

22. In view of the above, the writ petition is allowed, the impugned orders are set aside and the original order of the District Judge dated 11-4-2014 shall stand restored. The petitioners will be entitled to all consequential benefits, if any.

23. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.