(2002) 01 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6146 of 1998

Shaik Haneef and Others — APPELLANT

Vs

Secretary, Excise Dept. and Others — RESPONDENT

Date of Decision : 22-01-2002

Acts Referred:

Citation : (2004) 1 ALD 3 : (2003) 2 ALT 538

Hon'ble Judges : D.S.R. Varma, J;Bilal Nazki, J

Bench : Division Bench

Advocate : D. Narasing Rao, for the Appellant; G.P., for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—This writ petition is filed challenging the common order dated 27-10-1997 passed by the Andhra Pradesh Administrative Tribunal in O.A.Nos. 3187, 3188 and 3189 of 1991. By the impugned order, the Tribunal directed the official respondents to fix the seniority of the applicants, who are unofficial respondents herein, by granting their service rendered by them in the Revenue Department with all consequential benefits, treating them as candidates transferred to the Excise Department on administrative grounds.

2. The case of the petitioners is that they were initially appointed in different capacities in the Excise Department during the period between 1974 to 1986. Subsequently they were promoted as Junior Assistants between the period from 1985 to 1988. The unofficial respondents herein were appointed as Junior Assistants in the Revenue Department through proceedings dated 22-6-1984 through the Public Service Commission. Later on they were rendered as surplus in the Revenue Department, inasmuch as the Government pursuant to the directions of the ''Supreme Court appointed the Ex-Village Officers as Village Assistants in the Revenue Department. However, since the Government felt that it is not desirable to retrench all the surplus staff in the Revenue Department, though in fact they were treated as retrenched, on humanitarian grounds wanted

to absorb them in different departments of the Government by creating supernumerary posts. In that behalf Government have issued G.O.Ms.No. 36 GAD dated 25-1-1990 and memo dated 25-1-1990 directing that the staff rendered surplus should as far as possible be absorbed first before the direct recruitment is taken up. As per G.O.Ms. No. 36 dated 25-1-1990, the absorption of such surplus staff is subject to certain conditions and they will be referred to in the later part of the judgment. As per the G.O., the unofficial respondents were absorbed in Excise Department.

3. The case of the unofficial respondents who are applicants before the Tribunal is that they were initially recruited by regular selection conducted by the Public Service Commission during the period between 1980 - 1981 as Junior Assistants. Their services were regularized in 1986 and probation was declared. During 1990, they were transferred to the Excise Department on the ground that they gave willingness for taking last rank among the regular candidates in the Excise Department, even though they have not given any such willingness. Therefore, their case is that in computing seniority in the Excise Department, their earlier service should also be taken into consideration. As stated earlier, the Tribunal has allowed their claim.

4. The facts in the present case are similar to the case decided by a Division Bench of this Court in a batch of writ petitions in W.P.NOS. 2446/1999, 1136, 1426 and 4500 of 2000 dated 12-12-2001. The facts of the said batch of cases reveal that the petitioners therein were appointed as Junior Assistants in the year 1987 in the Commercial Tax Department, having been selected by the District Selection Committees and they have been working as such. Some of the candidates who appeared before the Andhra Pradesh Public Service Commission in the year 1984 could not come up for selection, vis-a-vis the available vacancies, were kept in the waiting list. In the meanwhile, the Government abolished the system of Village Officers and decided to get the work done by the Junior Assistants to be designated as Village Assistants and for that purpose issued G.O.Ms.No. 622 dated 6-4-1984, creating 4000 posts of Junior Assistants. The posts created under G.O.Ms.No. 622 were for a period of less than one year. In order to fill up the said 4000 posts, the candidates who were in the waiting list were called for. When the process of appointment is going on, the High Court granted stay and ultimately 2229 candidates in the waiting list could join as Village Assistants. Subsequently, the Hon''ble Supreme Court had set aside the decision of the Government in abolishing the system of Village Officers. This setting aside, had necessitated the Government to continue the erstwhile Village Officers in a modified scheme. This in turn resulted in displacement of Village Assistants who were recruited from the waiting list. In order to accommodate the displaced Village Assistants, the Government issued G.Os. creating supernumerary posts in the Revenue Department and it has also issued G.Os. extending the lift of supernumerary posts and one such G.O is G.O.Ms.No. 1610 dated 24-12-1986. However, since it was felt difficult to absorb such large number of Village Assistants, the Government started efforts to accommodate

them in other departments, in order to avoid retrenchment. In that behalf, the Government formulated many schemes one such scheme was formulated under G.O.Ms.No. 100 dated 2-2-1989. This G.O. is akin to G.O.Ms.No. 36 G.A.D dated 25-1-1990, in the present case. To put it more lucidly, G.O.Ms.No. 100 dated 22-2-1989 relates to accommodation of Junior Assistants in Commercial Tax Department, who were rendered surplus and G.O.Ms.No. 36 relates to accommodation of Junior Assistants in Excise Department, who were also rendered surplus. A comparison of both the G.Os. would disclose that accommodation under the said G.Os. is subject to certain qualifications and the significant conditions which are common in both the G.Os. are that the surplus staff were being accommodated by re-allotment to other departments only on humanitarian grounds and also subject to taking of last rank by them in the re-allotted department.

5. The Division Bench taking into all the facts and circumstances, held that the surplus employees are not entitled for the seniority for the service rendered in the earlier department, when they are appointed to another department.

6. Coming to the present case, the specific case of the petitioners is that after giving willingness by the unofficial respondents for accepting the last rank in the re-allotted department, they were absorbed. However, the unofficial respondents denies the same.

7. In G.O.Ms.No. 36, the Government has specifically referred to various difficulties being faced by it owing to administrative reorganizations like introduction of mandals, economy measures and zero based budgeting, reorganization of mandal set-up in pursuance of the judgment of Supreme Court. However, on humanitarian grounds, the Government have decided as a special case, to re-absorb the surplus staff in other departments. In fact as per the said G.O., the Government have treated the surplus staff as retrenched employees and considered for direct recruitment to existing vacancies in other departments and laid down certain guidelines.

8. However, the fact remains that the unofficial respondents were absorbed in pursuance of G.O.Ms.No. 36 which contemplates that the surplus staff absorbed in the respective departments shall have to take last rank in the seniority in the re-allotted department. Further as per the proceedings of the District Collector, Nizamabad in A2/2176/90 dated 18-7-1990, it was indicated that the surplus Junior Assistants who are working on supernumerary posts have given consent to be absorbed in other departments in the district and also willing to take last rank among the regular candidates. Even in the orders of appointment, this fact was specifically indicated and the unofficial respondents accepted the same and they accordingly joined. Therefore, much significance as regards the willingness need not be attached.

9. Another aspect is that the seniority list in the Excise Department was already prepared in the year 1991-1993 and the unofficial respondents did not challenge

the said seniority list, which has become final.

10. The Division Bench of this Court in the batch of cases, referred to above, has taken into account various judgments of the apex Court and had categorically held that the surplus employees who are accommodated in other departments, are not entitled to claim their earlier service rendered in their original/parent department and claim seniority in the latter departments.

11. The Tribunal while passing the impugned order has not taken into account the real back ground and the facts and circumstances under which the appointments of unofficial respondents came to be made and ultimately jumped to the conclusion that the unofficial respondents were transferred to the Excise Department on administrative grounds. No reasons whatsoever were given by the Tribunal in coming to the said conclusion.

12. Therefore in view of the facts and circumstances and also following the judgment of the Division Bench of this Court, we are constrained to set aside the judgment of the Tribunal.

13. For the foregoing reasons we pass the order as under:--

The impugned common order of the Tribunal is set aside and the writ petition is allowed. No costs.