
(2009) 05 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9104 of 2009

Superintending Engineer, AMRP Circle, Nalgonda and others

APPELLANT

Vs

B. Sudhakar Rao

RESPONDENT

Date of Decision : 01-05-2009

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2009) 4 ALT 209 : (2009) 122 FLR 880

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—This writ petition has been filed challenging the order dated 14.10.2008 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad in O.A. No. 65 of 2004, wherein the Tribunal allowed the O.A by setting aside the proceedings dated 2.1.2004.

Brief facts of the case are that the respondent-applicant approached the Tribunal u/s 19 of the Administrative Tribunals Act, challenging the order dated 15.12.2003 issued by the second respondent and its consequential proceedings dated 2.1.2004 issued by the first respondent and quash the same as illegal.

2. The father of the applicant, while he was working as Work Inspector Grade II in A.M.R.P. Division No. 1, Gurrampadu was permitted to retire from service on medical invalidation with effect from 13.10.2000 as per proceedings dated 8.1.2002 of the District Collector, Nalgonda. Thereupon, the applicant was appointed as Junior Assistant on compassionate grounds in view of the medical invalidation of his father as per proceedings dated 4.5.2002 issued by the 1st respondent-Superintending Engineer, AMRP Circle No. 1, G.V. Gudem, Nalgonda and the applicant joined duty on 4.5.2002. It is stated, subsequently a Full Bench of this Court held that the scheme of compassionate appointment on medical invalidation is unconstitutional. Thereupon, the Government issued G.O. Ms. No.

202, General Administration Department dated 27.4.2002, dispensing with the scheme of compassionate appointment on medical invalidation. The Government also issued G.O. Ms. No. 203 dated 27.4.2002 directing that the appointments so far not made shall be stopped. Later, the Government issued, G.O. Ms. No. 305 dated 17.7.2002 stating that no compassionate appointment could be given even in the pending cases also. Then the Engineer-in-Chief (Admn. Wing) I & CAD Department, Hyderabad addressed a letter dated 15.12.2003 to the Secretary to Government, Irrigation and CAD Department, stating that the Superintending Engineer issued termination orders of the applicant in accordance with the advice of the learned Government Pleader and the Superintending Engineer, AMRP Circle issued order dated 2.1.2004 terminating the services of the applicant in view of withdrawing the scheme of compassionate appointment. Assailing the same, the applicant filed O.A contending that the applicant's father was permitted to retire long prior to the decision of the Hon'ble High Court and withdrawing the compassionate appointment scheme and the delay is on the part of the respondent and the impugned order is bad under law. The Tribunal following the judgment of the Supreme Court in Civil Appeal No. 4993 of 2008 dated 12.8.2008, and also Civil Appeal No. 4210 of 2003 set aside the impugned order 2.1.2004 terminating the services of the applicant and directed that the applicant shall be continued in service as Junior Assistant, with all consequential benefits.

3. We have heard the learned Counsel appearing for both sides.

4. The Tribunal followed the decision of the Supreme Court in Civil Appeal No. 4210 of 2003, wherein the Supreme Court set aside the judgment of the High Court by judgment dated 12.8.2008. The relevant paragraph, (paragraph No. 21) of the judgment reads as under:

We therefore allow these appeals, set aside the judgment of the High Court. We also set aside the orders of the Tribunal though on different grounds. We uphold the validity of the compassionate appointment scheme contained in the GO dated 30.7.1980, 4.7.1985 and 9.6.1998 as clarified by Memo, dated 25.6.1999 providing that the period of five years of left over service should be reckoned from the date of issue of the order of retirement on medical invalidation and not from the date of application for retirement on medical invalidation".

5. The same question was also considered in Civil Appeal No. 4993 of 2008 and following the judgment in Civil Appeal No. 4210 of 2003 the Hon'ble Supreme Court has passed the following order:

The appellant challenged his termination order in O.A. No. 5902 of 2003 before the Andhra Pradesh Administrative Tribunal. The Tribunal dismissed the said application on 28.2.2006. The appellant challenged the order of the Tribunal in W.P. No. 4983/2006. The High Court dismissed the said petition by order dated 17.3.2006 in view of the decision, dated 12.10.2001 of the Full Bench in the case of D. Gopaiah (supra). The said order is challenged in this appeal by special leave.

We have today rendered a separate judgment in v. Sivamurthy v. State of

Andhra Pradesh (C.A. No. 4210 of 2003 decided on 12.8.2008) (2008 (6) SCJ 845), wherein we have set aside the judgment, dated 12.10.2001 (in W.P. Nos. 12253/2001) of the Full Bench of Andhra Pradesh High Court in D. Gopaiah. We have also held that the scheme for compassionate appointment of dependents of Government servants on medical invalidation as per GOs., dated 30.7.1980 dated 4.7.1985 and 9.6.1998 is valid. It, therefore, follows that the termination of services of the appellant by order, dated 1.9.2003 (in pursuance of the Full Bench decision, dated 12.10.2001) cannot stand and requires to be set aside.

The appeal is therefore allowed. The judgment of the Tribunal, dated 28.2.2006 and judgment of the High Court, dated 8.3.2006 are set aside. The OA filed by the applicant before the Tribunal is allowed and the termination of the appellant's service by letter dated 1.9.2003 is set aside. As a consequence the appellant shall be reinstated in service. On the facts and circumstances, though the appellant will be entitled to continuity of service and notional increments, he will not be entitled to any salary for the period he has not worked.

6. In pursuance of the judgment of the Supreme Court the Government itself has restored the scheme of providing employment to the dependents of the employees, who retired on medical invalidation. Therefore, we do not see any infirmity or illegality so as to disqualify the finding given by the Tribunal.

Accordingly, the writ petition is dismissed. There shall be no order as to costs.