

(1998) 09 AP CK 0088

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1156 of 1989

T. Surendranath Babu

APPELLANT

Vs

Vice-Chairman and Managing Director, APSRTC and Others

RESPONDENT

Date of Decision : 02-09-1998

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Service) Regulations,
1964 — Regulation 3
Recruitment Regulations — Rule 17

Citation : (1998) 5 ALD 588 : (1998) 6 ALT 118

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : Mr. A. Bhaskara Chari, for the Appellant; Mr. A.V. Sivaiah, SC for APSRTC, for the Respondent

Judgement

1. In this writ petition, the petitioner seeks to challenge the seniority list dated 20-9-1984 according to which, he was placed at Serial No.7 and the fourth respondent was placed at serial No. 1 in the category of Artisan Grade-II.

2. The petitioner was initially appointed as a cleaner in the APSRTC on 19-6-1975. He was subsequently promoted as Helper on 1-4-1977 and further promoted as Artisan Grade-II (Electrician) on 30-9-77. The fourth respondent was temporarily appointed under Rule 17 of the Recruitment Regulations of the Corporation as Artisan Grade-II on 23-11-76. His services were however regularised vide proceedings dated 2-9-1978 with effect from the date of his initial appointment i.e., 23-11-1976. The provisional seniority list was circulated on 26-4-1982 in which the fourth respondent was placed at Serial No.1 and the petitioner was placed at Serial No.7. The petitioner is stated to have filed objections to the said provisional seniority list. The final seniority list was published on 20-9-1984. Thereafter the petitioner is stated to have made a number of representations from time to time and also sent a legal notice on 6-11-1988, to which there was no response. Hence, the petitioner filed the present writ petition on 23-1-1989.

3. No counter-affidavit has been filed on behalf of any of the respondents.

4. The main contention of the petitioner is that the impugned seniority list is in violation of the Quota Rule issued by the Corporation vide Circular dated 13-7-1979, by which the ratio between the promotees and direct recruits to the post of Artisan Grade-II is fixed. According to the circular, in every cycle of 4 posts, post 1, 3 and 4 are promotional posts which are to be filled from the departmental employees in the category of Helpers and Kalasis, while the second post can be filled up either by eligible departmental candidates who are holding ITI certificate as per departmental rules and then come out successfully against direct recruitment quota. The contention of the petitioner is that he being a promotee from the category of Helper, he should have been placed at serial No. 1 in the seniority list as per the Quota Rule and the placement of the fourth respondent who is a direct recruit at serial No.1 is illegal. In support of the said contention, the learned Counsel for the petitioner seeks to place reliance on the judgments of the Supreme Court in S.G. Jaisinghani Vs. Union of India (UOI) and Others, , The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, , T.N. Saxena and others Vs. State of Uttar Pradesh and others, , which laid down that when a Quota Rule is fixed it must be followed strictly and the inter-se seniority has to be guided by Quota Rule. There can be no dispute about the said proposition. However, on the facts of the instant case, I am of the view that the said principle has no application and the petitioner cannot derive any assistance from the above rulings, Though the fourth respondent was temporarily appointed as Artisan Grade-II on 23-11-1976, his services were regularised on 2-9-78 with effect from the date of his initial appointment i.e., 23-11-1976. The petitioner has not questioned the said order of regularisation of the services of the fourth respondent. Regulation 3 of the A.P. State Road Transport Corporation Employees (Service) Regulations, 1966 which deals with "seniority" provides that the seniority of a person in service, class, category or grade shall unless he has been reduced to a lower rank as punishment, be determined by the date of his first appointment to such service, class, category or grade. If any portion of the service of such person does not count towards probation his seniority shall be determined by the date of commencement of his service which counts towards probation. In view of this statutory rule, I do not find any illegality in placing the fourth respondent above the petitioner in the seniority list. That apart, the quota rule was issued by an executive instruction vide circular dated 13-7-1979 which is subsequent to the date on which the fourth respondent was regularised as Artisan Grade-II. It is well settled that an executive instruction cannot over-ride the statutory rule. Learned Counsel for the petitioner however contends placing reliance on a judgment of the Division Bench of this Court in General Manager APSRTC v. S.K. Mathur, 1976 (2) APLJ (SNRC) 35, that inspite of the regularisation of the service, the appointment of the fourth respondent must be deemed to be only temporary and he must make way to the petitioner on his (petitioner) promotion as Artisan Grade-II. I do not however think that this judgment has any

application to the instant case. That was a case where the temporary promotions were made to the posts of Assistant Traffic Managers and Assistant Mechanical Engineers when the direct recruitees have not completed their training. It was held that the promotees have no right to hold the posts after the completion" of training of approved probationers and the seniority among promotees and direct recruits should be fixed as per Quota Rule. It is not shown that the fourth respondent was appointed to a post which was meant for promotees. As already stated above the fourth respondent was already regularised as Artisan Grade-II even before the circular dated 13-7-1979 was issued fixing the quota.

5. There is one more reason why the claim of the petitioner cannot be upheld. Though the petitioner states that he filed objection to the provisional seniority list dated 26-4-1982 the same is not borne out by any material on record. Further when the final seniority list was published in September, 1984 the petitioner has waited for more than 4 years for filing this writ petition. Though the petitioner is stated to have made a number of representations from time to time objecting to the seniority list, he approached the Court only after the delay of four years. A party cannot rest content by merely making some representations. When there was no response to his representations, it is expected that the petitioner would have approached the Court early. I do not think that a party can be permitted to question a seniority list after a long lapse of four years.

6. For all the foregoing reasons, I do not find any merit in this writ petition. It is, accordingly, dismissed. There will be no order as to costs.