

(2017) 10 AP CK 0001
In the Andhra Pradesh High Court
Case No : 22602 of 2017

T. Yogeeshwara Reddy & others	Vs	APPELLANT
The District Educational Officer & others		RESPONDENT

Date of Decision : 03-10-2017

Acts Referred:

Constitution of India, Article 14, Article 16 -
Andhra Pradesh Registration and Subordinate Service Rules, 1976, Rule 5, Rule 4(A)(1)
(I)

Citation : (2017) 10 AP CK 0001

Hon'ble Judges : C.V.Nagarjuna Reddy, Kongara Vijaya Lakshmi

Bench : DIVISON BENCH

Advocate : P. Nagendra Reddy, P. Veerabhadra Reddy

Final Decision : Dismissed

Judgement

1. These three writ petitions have been filed with leave by the petitioners, who are not parties to O.A.No.317 of 2017 in order to question the order dated 10.02.2017 passed in the said O.A by the Andhra Pradesh Administrative Tribunal (for short, the Tribunal).
2. The brief facts, leading to filing of these writ petitions are stated herein.
3. Respondent Nos. 5 to 12 in W.P.No.22602 of 2017, who are also impleaded as respondents in other two writ petitions (herein after referred to as private respondents) are working as Secondary Grade Teachers in different districts under the Andhra Pradesh Teachers (General Promotions and Regulation of Transfers) Rules, (for short the Rules), notified in G.O.Ms.No.15 dated 26.01.2009, the Secondary Grade Teachers were eligible for promotion to the post of School Assistants. As per the Rules, as they originally stood, panels of all the eligible candidates for the promotion to the post of Head Master, Grade-II Gazetted and also to the post of School Assistant and equivalent categories must be prepared every year duly assessing the vacancies from the 1st September to

31st August of every succeeding year and the 1st September of the year will be reckoned as qualifying date to determine the eligibility of the candidates. The said Rule was amended by G.O.Ms.No.31 dated 23.06.2010, as per which the schedule for promotion for the post of Head Master, Grade-II and the School Assistants/equivalent categories will be issued by the department from time to time and the date of reckoning for assessing the number of vacancies will also be issued by the Government as per the schedule. The Rules were further amended by the G.O.Ms.No.67 dated 20.11.2010. In para No.3 of the said G.O, it is stated that the Government have decided to effect promotions on the first working day of every month by reckoning, for arrival of number of vacancies, on the first day of the month as per Rules. By G.O.Ms.No.15 dated 05.02.2017, the Rules were amended which inter-alia rendered the Secondary Grade Teachers ineligible for being promoted as School Assistants. When the official respondents stopped to fill up the vacancies of the School Assistants which arose prior to coming into force of the amended Rules as notified in G.O.Ms.No.15 dated 05.02.2017, the private respondents have filed O.A.No.317 of 2017 before the Tribunal with the following relief: to declare that by the impugned action of the respondents in not filing the vacancies of School Assistants (Hindi) existing as on 4. 2.2017 i.e., prior to the amended Rule issued vide G.O.Ms.No.15, Education Department, dated 5.2.2017 with the old rules of A.P. School Educational Subordinate Service Rules issued vide G.O.Ms.No.12 School Education Department, dated 23.1.2009 as illegal, arbitrary, discriminatory against G.O.Ms.No.67, Education, dated 20.11.2010 provisions of A.P. School Educational Subordinate Service Rules issued vide G.O.Ms.No.12, dated 23.01.2009 and A.P. State and Subordinate Service Rules, 1996 and the law laid down by the Apex Court and the Honble High Court of Andhra Pradesh and in violation of Articles 14 and 16 of the Constitution of India and consequently hold the applicants are entitled for promotion to the vacancies of School Assistant (Hindi) existing as on 4.2.2017 with all consequential benefits and to pass such other order or orders as this Honble Tribunal deems fit and proper.

4. The sheet anchor of the case of the private respondents before the Tribunal was that as the vacancies which were scheduled to be filled up on a monthly basis were not filled up, the official respondents cannot apply the amended rule for filling up the preexisting vacancies and thereby disqualify the private respondents. In support of their plea, they have placed reliance on the judgment of the Apex Court in Y.V. Rangaiah and others vs. J. Sreenivasa Rao and others . This plea of the private respondents was found acceptance by the Tribunal and accordingly it has allowed the O.A with a direction to the official respondents to consider the case of the private respondents for promotion to the post of School Assistant in the vacancies that arose prior to 5.2.2017, if they are otherwise eligible and qualified as per amended Rules issued in G.O.Ms.No.15, Education Department, dated 5.2.2017.

5. The petitioners, who are Language Pandits (Hindi), filed the present writ petition with leave, questioning the order of the Tribunal. It is their pleaded case

that no person has indefeasible right for promotion and that he cannot insist on filling up the vacancy as and when they arose and that in case any vacancy remains unfilled such a person cannot insist that they must be filled up by applying the rule which was in force at the time when the vacancy arose.

6. Sri P. Nagendra Reddy, learned counsel for the petitioners in all these writ petitions has advanced two submissions, namely 1) that though the petitioners are seriously affected by the order of the Tribunal, they have not been impleaded by the private respondents and that therefore, the O.A ought to have been dismissed for mis-joinder of necessary parties; and 2) that the private respondents have not challenged the amended rule and therefore they were not entitled for any relief. He placed reliance on the judgment of the Supreme Court in *Deepak Agarwal & another vs. State of Uttar Pradesh & others* .

7. Sri P. Veerabhadra Reddy, learned counsel for the private respondents opposed the above submissions and contended that his clients have no grievance against the petitioners, inasmuch as, they have neither challenged the inter se seniority between them and the petitioners nor promotions of the petitioners. If the success of the private respondents in the O.A. indirectly affected the interest of the petitioners, argued the counsel, the latter cannot claim to be either necessary or proper parties. He has placed heavy reliance on the judgment of the *Y.V. Rangaiah* (1 supra) and distinguished the said judgment with that in *Deepak Agarwal* (2 supra) and submitted that in the latter case, the Supreme Court rightly distinguished the judgment in *Y.V. Rangaiah* (1 supra) by holding that in a case where a schedule for filling up the vacancies for promotion is fixed and the vacancies are not filled up as per the schedule before the rule is amended, the same shall be filled up by applying the pre-amended rule.

8. We have carefully considered the respective submissions of the learned counsel for the parties. The issue raised by the private respondents before the Tribunal related to the applicability of the pre- amended rule for filling up the vacancies that arose prior to amendment of the rules by G.O.Ms.No.15 dated 5.2.2017. Thus, as rightly submitted by the learned counsel for the private respondents, there was no inter se dispute between the petitioners on one side and the private respondents on the other side. Therefore, if the interests of the petitioners are affected by the success of the private respondents, their non impleadment in the O.A cannot be considered fatal. The private respondents could not have assessed as to how many Language Pandits in the Unit are likely to be affected in the event of their success in the O.A. and impleaded all of them as parties to the O.A. Therefore, we do not find any merit in the submission of the learned counsel for the petitioners that the O.A ought to have been dismissed for non impleadment of the petitioners as necessary parties.

9. As regards the right of the private respondents to insist that the pre-amended rule must be applied for filling up the vacancies, which arose prior to 5.2.2017, in *Y.V. Rangaiah* (1 supra) an identical situation arose. That was a case where the annual panels for promotion to the post of Sub-Registrars were to be prepared

zone wise and promotions ought to be effected. Without preparation of such panels in respect of the vacancies that arose between December, 1975 and April, 1977, the rule was amended in March, 1977. When the new rule was sought to be applied for filling up the vacancies which arose prior to the date of amendment, the aggrieved parties approached the Tribunal which held that as the vacancies were not filled up as per the schedule, the application of the amended rule is arbitrary and a direction was accordingly issued to fill up the vacancies which arose prior to the coming into force of the amended rule by applying the pre-amended rule. The said order was confirmed by the Supreme Court in Y.V. Rangaiah (1 supra). Para Nos.7, 8 and 9 of the judgment reads as under: 7. The order of the Tribunal has given rise to two sets of appeals mentioned above, one by Y.V. Rangaiah and others, and the other by the State of Andhra Pradesh and another.

8. The contention on behalf of the appellants herein is that by the time the list was prepared in May, 1977 Rule 5 of the Andhra Pradesh Registration and Subordinate Service Rules was amended and the list prepared was in accordance with the rules then prevailing at the time of preparation, and therefore there was nothing wrong with the preparation of the panel. It was further contended that the petitioners in the two representation petitions having not challenged the validity of the amendment to Rule 5 of the Andhra Pradesh Registration and Subordinate Service Rules, it was not open to them to challenge the list prepared in May, 1977 which is in accordance with rules prevailing at that time.

9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Register Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub- Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules. (Emphasis is ours.)

10. In Deepak Agarwal (2 supra) on which the learned counsel for the petitioners placed heavy reliance, the Supreme Court has distinguished the judgment in Y. V. Rangaiah (1 supra) in para Nos.24 to 26, which read as under: 24. We are of the considered opinion that the judgment in Y.V. Rangaiah's case (supra) would not be applicable in the facts and circumstances of this case. The aforesaid judgment was rendered on the interpretation of Rule 4(a)(1)(i) of the Andhra Pradesh

Registration and Subordinate Service Rules, 1976. The aforesaid Rule provided for preparation of a panel for the eligible candidates every year in the month of September. This was a statutory duty cast upon the State. The exercise was required to be conducted each year. Thereafter, only promotion orders were to be issued. However, no panel had been prepared for the year 1976. Subsequently, the rule was amended, which rendered the petitioners therein ineligible to be considered for promotion. In these circumstances, it was observed by this Court that the amendment would not be applicable to the vacancies which had arisen prior to the amendment. The vacancies which occurred prior to the amendment rules would be governed by the old rules and not the amended rules.

25. In the present case, there is no statutory duty cast upon the respondents to either prepare a year-wise panel of the eligible candidates or the selected candidates for promotion. In fact, the proviso to Rule 2 enables the State to keep any post unfilled. Therefore, clearly there is no statutory duty which the State could be mandated to perform under the applicable rules. The requirement to identify the vacancies in a year or to take a decision how many posts are to be filled under Rule 7 cannot be equated with not issuing promotion orders to candidates duly selected for promotion. In our opinion, the appellants had not acquired any right to be considered for promotion. Therefore, it is difficult to accept the submissions of Dr. Rajeev Dhawan that the vacancies, which had arisen before 17th May, 1999 had to be filled under the unamended rules.

26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the 'rule in force' on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaiah's case (supra) lays down any particular time frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it can not be accepted that any accrued or vested right of the appellants have been taken away by the amendment. (Emphasis is ours.)

11. As noted herein before as per G.O.Ms.No.67, promotions ought to be effected on the first working day of every month by reckoning for arrival of number of vacancies on the first day of the month as per rules. Admittedly, the vacancies arose prior to 5.2.2017 when G.O.Ms.No.15 was issued were not filled up. Therefore, the ratio in Y.V. Rangaiah (1 supra) applies in all fours to the facts of the present case and the judgment in Deepak Agarwal where no schedule was fixed for filling up the vacancies has no application to the case on hand.

12. In the light of the above, the Tribunal has rightly allowed the O.A. Hence, we do not find any merit in these writ petitions and they are accordingly dismissed.

No order as to costs

13. As a sequel to dismissal of the writ petitions, interim orders dated 21.07.2017 are vacated. W.P.M.P.Nos.27824 and 27825 of 2017 in W.P.No.602 of 2017, W.P.M.P.No.29819, 29820, 29821 of 2017 in W.P.No.24102 of 2017, W.P.M.P.Nos.33914, 33915 and 33916 of 2017 in W.P.No.27294 of 2017 are dismissed and W.V.M.P.No.3266 of 2017 in W.P.No.24102 of 2017 is disposed of as infructuous.