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(2013) 09 AP CK 0075

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 27402 and 27403 of 2013

The Govt. of A.P. and Another APPELLANT

Vs

Babunaik and Others RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Citation : (2013) 6 ALD 653

Hon'ble Judges : S.V. Bhatt, J;L. Narasimha Reddy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The facts of both the writ petitions are similar in nature. Hence, they are disposed of through a common order. Respondents 1 to 3 in both the writ petitions (for short ''the respondents'') were appointed as Commercial Tax Officers in the year 2001. However, they did not pass departmental test within the stipulated time. They approached the Government, 1st petitioner herein, through the 2nd petitioner herein, with a request to relax the relevant conditions to enable them to complete the probation. The 1st petitioner issued G.O.Rt. No. 633, dated 22.03.2006 in respect of respondents 1 to 3 in W.P. No. 27402 of 2013 and G.O.Rt. No. 1228, dated 30.05.2006 in respect of respondents 1 to 3 in W.P. No. 27403 of 2013. That enabled the respondents to complete the probation and they were also promoted to the posts of Deputy Commercial Tax Officers.

2. Citing G.O.Rt. Nos. 633 and 1228, some more Commercial Tax Officers of the same batch approached the 1st petitioner with similar requests. The Association of the A.P. Commercial Tax Non-Gazetted Officers submitted a representation, dated 12.02.2009 to the petitioners with a request to adopt uniform yardstick in the matter of relaxation, so that there would not be any advantage to some and disadvantage to others. Taking note of these aspects, the 1st respondent issued G.O.Rt. No. 275, dated 19.02.2009 directing that the G.O.Rt. Nos. 633 and 1228 be reviewed. The 2nd petitioner was required to submit proposals to the

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Government for this purpose. The necessary particulars were appended to the G.O.

3. The Respondents filed O.A. Nos. 3484 and 3493 of 2009 respectively challenging the G.O., by raising several grounds. They have pleaded that in case, the 1st petitioner wanted to review or cancel G.O. Nos. 633 and 1228, they could have done so within six months as provided for under Rule 32(b) of the A.P. State and Subordinate Service Rules, 1996 (for short ''the Rules''). The Tribunal allowed the O.As. through separate orders, dated 15.10.2012. Hence, these two writ petitions.

4. Learned Government Pleader for Services-II appearing for the petitioners submits that it is the prerogative of the Government whether or not to grant relaxation and G.O.Rt. Nos. 633 and 1228 were issued in exercise of the executive power under Article 162 of the Constitution of India and that the view expressed by the Tribunal cannot be sustained in law. He further submits that even if the G.Os. are referable to Rule 31 of the Rules, the power of the Government to withdraw them cannot be denied. He contends that no serious prejudice was caused to the respondents, since their dates of commencement of probation have been extended, enabling them to successfully complete it, notwithstanding the fact that they did not clear the test within the stipulated time.

5. The respondents were appointed as Commercial Tax Officers in the year 2001. They are under obligation to clear the test prescribed under Rule 9 of A.P. Commercial Tax Subordinate Service Rules, before their probation is not completed. They made a representation for relaxing the relevant Rules enabling them to overcome the hurdle. G.O.Rt. Nos. 633 and 1228 were issued in the year 2006 relaxing Rules 24(c) and 26 of the Rules and Rule 9(a) of the A.P. Commercial Tax Subordinate Rules, to enable them to complete probation in the normal time. The basis for extending the facility was the instances of similar facility having been extended to others on earlier occasion.

6. No one felt any grievance on account of the relaxation granted in favour of the respondents. As is expected, the Commercial Tax Officers of the same batch, who were similarly situated as the respondents, approached the 1st petitioner for similar facility. As many as 9 persons wanted that benefit and it was pointed out that 18 more were waiting in the line. Obviously sensing that large scale relaxation would render the very Rule nugatory, the 1st petitioner did not want to extend the facility to others. In the process, it has virtually cancelled G.O.Ms. Nos. 613 and 1228 and the 2nd petitioner was directed to review the seniority. The Tribunal has interfered and set aside G.O.Rt. No. 275, dated 19.02.2009.

7. The principal ground that weighed with the Tribunal was that the impugned G.O. was issued beyond the time stipulated under Rule 32(b) of the Rules. Though it is the plea of the petitioners that the G.O. cannot said to be the one issued under Rule 31 of the Rules, but in exercise of executive power under

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Article 162 of the Constitution of India, the time stipulated under Rule 32(b) of the Rules cannot be said to be so sacrosanct that with the passage of six months, the Government looses its power to review its orders. In case any serious error has crept into the orders that are referable to Rule 31 of the Rules or they have been obtained by fraud or misrepresentation, the mere fact that more than six months have elapsed cannot come in the way of the Government to take corrective steps.

8. There are certain other grounds on account of which the action of the petitioners cannot be sustained. In case, the 1st petitioner wanted to cancel G.O.Rt. Nos. 633 and 1228, the first and foremost requirement was that show cause notices ought to have been issued to the respondents duly indicating the reasons. Secondly, if the objective is only to deny the benefit to others, who were claiming it, a policy decision can certainly be taken and even the grounds of delay and laches or other distinguishing features can be cited. It is too difficult to brand the impugned order as the one reflecting any policy. When it deals with the individual cases, and even the necessary steps to be initiated in this behalf are mentioned, it is difficult to assume that the intention of the 1st petitioner was just to close the doors for others. That result could have been secured by adopting a different course altogether.

9. From the point of view of the respondents, adverse action was initiated against them without notice to them. On that short ground, G.O.Rt. No. 1228, dated 30.05.2006 can be set aside.

10. Hence, the writ petitions are dismissed, however by holding that the interference with G.O.Rt. No. 1228, dated 30.05.2006 shall be only to the extent of protecting the interests of the respondents and not beyond that. The miscellaneous petitions filed in these writ petitions shall also stand disposed of. There shall be no order as to costs.

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