
(1999) 12 AP CK 0101

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11543 of 1996

U.R.K. Prasad and Others

APPELLANT

Vs

Managing Director, A.P.S.R.T.C. and Others

RESPONDENT

Date of Decision : 31-12-1999

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Recruitment) Regulations, 1966 — Regulation 30

Citation : (2000) 2 ALT 440

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : A. Hanumantha Reddy, for the Appellant; A.V. Sivaiah, SC for APSRTC for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Goda Raghuram, J.—The petitioners assail the proceedings dated 15-6-96 directing the reversion of the petitioners to the posts of Stenographers, and seek a consequential direction to the official respondents to regularise their services as Head Clerks with effect from 15-8-1994 with consequential benefits.

2. All the petitioners have been substantially appointed as Stenographers on various dates during 1978 to 1984 either by direct recruitment to the said category or by promotion thereto from lower categories.

3. Under the Andhra Pradesh State Road Transport Corporation Employees (Recruitment) Regulations, 1966 (for short the Regulations) the posts of Head Clerks hitherto known as Deputy Superintendent (Personnel), are to be filled up inter alia by promotion from the category of Stenographers. The prescribed eligibility for such promotion is completion of 5 years of service and passing of the qualifying examination viz., the Lower Personnel Management Test and if no such suitable candidate is available for such promotion, the promotional posts may be filled up by direct recruitment.

4. All the petitioners have passed the qualifying examination of Lower Personnel Management Test during the years 1986 to 1991 and having put in the requisite 5 years of service were all eligible to be considered for promotion as Head Clerks.

5. By proceedings dated 15-8-94 nine of the Head Clerks in the service of the Corporation in Cuddapah Zone were promoted as Senior Head Clerks and as a consequence 9 vacancies arose in the post of Head Clerks in Cuddapah Zone. By two office orders both dated 15-8-94, 11 Stenographers including the petitioners herein were promoted to the category of Head Clerks. The orders stated that the promotions are on emergency basis under Regulation 30 of the Regulations, that they are liable for reversion to the former post without any notice or assignment of any reason if their work is found not to be satisfactory and that the promotion does not confer on them any right for regularisation at a later date. Prior to the aforesaid orders of temporary promotion. Respondent No. 2 by his letter dated 19-7-94 called for the personal records of certain specified employees in the category of Senior Assistant (Personnel) and Stenographers from the Personnel Officer of Cuddapah, Kurnool and Anantapur for the purpose of considering their cases for promotion. Among the employees whose records were sought by the above letter of the 2nd respondent, were petitioners 1, 2 and 4. The records of petitioners 3, 5 and 6 are stated to have been available at the Head Office and as such were not called for.

6. While the petitioners were continuing as Head Clerks the official respondents conducted another qualifying test-lower Personnel Management Examination in February, 1996 at the Zonal level. Apprehending that consequent on such examination persons passing out therein would be considered for promotion to their detriment the petitioners filed W.P. No. 4781/96, in substance seeking continuation in service. This writ petition was dismissed on 13-3-96. Aggrieved W.A. No. 357/96 was filed, which was also dismissed by the order dated 19-4-96 as infructuous on the ground that the petitioners were neither superseded nor denied their due and for the further reason that it is not proper to continue temporary/ ad hoc appointment/promotions for unduly long durations. The appellate Court however reserved liberty to the appellants therein to make representations for their substantive appointments/promotions to the competent authority.

7. Accordingly the petitioners made representations dated 20-5-96 and 21-5-96 to the 2nd respondent requesting consideration of their cases before proceeding with selection of other candidates who acquired eligibility subsequently.

8. In the examination conducted in February, 1996 for the qualifying test the petitioners' seniors who were not qualified at the time the petitioners were temporarily promoted by the proceedings dated 15-8-94, got themselves qualified.

9. By on office order dated 15-6-1996 the 2nd respondent directed the reversion of the petitioners from the officiating post of Head Clerks to their substantive

post of Stenographers. This order is assailed in the writ petition. By two more office orders also dated 15-6-96 five officiating Head Clerks have been declared to have been regularised pursuant to the recommendations of the Departmental Selection Committee in one of the orders and five Senior Assistants (Personnel) were promoted as Head Clerks substantially, also on the recommendation of the Departmental Selection Committee. The Senior Assistants so promoted were put on probation.

10. The petitioners challenge the orders of their reversion dated 15-6-96 briefly on the grounds as under:

(a) that under Regulation 30 of the Regulations ordinarily unqualified persons shall not be promoted and if any is so promoted, he shall be replaced as soon as possible by promoting a qualified person.

(b) that circular dated 26-4-75 of the Corporation directs review of temporary appointments promotions made under Regulation 30 of the Regulations so as to ensure that temporary promotions are not continued beyond six months and another circular dated 1-9-98 directs that all temporary promotions under Regulation 30 shall be made after recording reasons for making emergency promotions and further that promotions under Regulation 30 be reviewed within three months duly considering candidates already promoted under this Regulation together with other eligible persons;

(c) that Senior Head Clerks who were promoted under Regulation 30 as on 15-8-94 were considered for regularisation along with others in accordance with the Circular instructions and their promotions were regularised by order dated 17-12-94 but no such review was made in case of others including the petitioners. Had such review been made the petitioners would have been regularised;

(d) that since the petitioners were promoted by orders dated 15-8-94 after a process of selection duly considering their bio data, confidential reports and service registers, their promotions should be construed as regular and substantive notwithstanding that the orders were issued purportedly under Regulation 30, more so since the vacancies to which they were promoted were substantive vacancies caused by promotions of the Head Clerks as Senior Head Clerks.

11. The official respondent filed a counter affidavit stating that the petitioners were promoted by orders dated 15-8-94 temporarily under emergency provisions of Regulation 30 as there was no panel prior to formation of Zonal set up in May, 1994. It is also stated that as there was an acute need to fill up the posts of Head Clerks and as no regular promotions could be made due to the administrative rearrangement of constituting a Zonal set up in the Corporation in May, 1994, the promotions were made on temporary basis under Regulation 30 of the Regulations. The counter affidavit further states that consequent on the constitution of the Departmental Selection Committee during August 1995 and

on the basis of instructions qualifying test should be conducted for all eligible candidates before preparation of panel by the Selection Committee, the qualifying test was conducted in February, 1996 at the Zonal level. The qualifying test was conducted on 16-2-96 and the results were published on 19-4-96. Thereafter regular selection was made and the case of the petitioners was also considered. However, they could not come up for selection and the Respondent Nos. 4 to 9 came to be regularly appointed and hence the petitioners had to be reverted to their substantive posts of Stenographers by the impugned order. On these contentions the official respondents state that there are no merits in the writ petition and it should be dismissed.

12. It is now stated at the Bar that subsequent to the institution of this writ petition all the petitioners have been promoted as Head Clerks on subsequent dates. In the circumstances the only grievance of the petitioners surviving would be loss of seniority if their contention that they are regularly deemed to have been promoted with effect from 15-8-94 (the date of their initial temporary promotion), commends itself to this Court.

13. The petitioners' grievance that they should be deemed to have been regularly promoted as on 15-8-94 on the basis of the grounds urged by them, is a grievance that was in existence as on the date they filed W.P. No. 4781/96 aggrieved by the qualifying examination test conducted by the official respondents on 19-2-96. This issue was either not urged or adjudicated in the petitioner's favour and the said writ petition was dismissed on 13-3-96. Writ Appeal 357/96 filed by them against the judgment dated 13-3-96 was also dismissed recording the finding that they were neither superseded nor denied their due and what is more, clearly holding that it is not proper to continue temporary or ad hoc appointees for an unduly long duration. The temporary nature of the petitioners' appointments under the promotional orders dated 15-8-94 having been clearly recorded by this Court by order dated 19-4-96 in W.A. 357/96, the petitioners' contention that their promotions by the orders dated 15-8-94 must be deemed to be regular promotions would be a relief that would be barred by principles of res judicata as well as constructive res judicata. Apart from the above technical infirmity coming in the way of granting them relief, the petitioners' cases were also considered along with those of the party-respondents by the Departmental Selection Committee in 1996 and they were also called for the selection interview. Having submitted themselves to the process of interview for substantive promotion, the petitioners cannot be heard in law to claim that their earlier temporary promotions by orders dated 15-8-94 are substantive. They are estopped by conduct from doing so and must be deemed to have any nebulous right they had to contend that their earlier promotions dated 15-8-94 were substantive in nature.

14. In the totality of circumstances adverted to above and on the basis of principles enunciated, this Court is of the considered view that there are no merits in the writ petition and it is accordingly dismissed, but in the

circumstances without Costs.