

(2013) 09 AP CK 0110

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 38596 of 2012 and 6886 of 2013

V. Srinivasan

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2013) 6 ALD 526

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

Bench : Division Bench

Advocate : P. Venugopal, for the Appellant; J. Sudheer for Respondent No. 4 and Government Pleader for Services for Respondents 1, 2, 3 and 5, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner herein joined the service of the S.V. Medical College, Tirupati, Chittoor District, as Typist in the year 1987. The promotion from that post is to the post of Senior Assistant in the office of Regional Joint Director, Medical and Health, Kadapa. While the Medical College is the unit of appointment for the post of Junior Assistant, the post of Senior Assistant is zonal in nature. Through proceedings dated 04.01.1996, the Regional Joint Director promoted the petitioner to the post of Senior Assistant and posted him in the Primary Health Centre in D Harihal, Anantapur District. Citing reasons of health, the petitioner sought for reversion from that post. His request was acceded to and he was reverted through proceedings dated 31.05.1996; and was posted in the original place of appointment i.e., S.V. Medical College. The 4th respondent was initially appointed as Watchman on 23.11.1992 in the S.V. Medical College. Thereafter he was promoted as Record Assistant on 10.10.2002 and as Junior Assistant on 17.04.2008. The petitioner as well as the 4th respondent acquired the qualification of B.L.Sc. through distant mode. In addition to that, the petitioner has acquired the qualification of M.L.Sc. in the year 1997.

2. The post of Assistant Librarian in the S.V. Medical College, the 3rd respondent herein became vacant. In service candidates with B.L.Sc., qualification are eligible to be considered for that post. When the petitioner as well as the 4th respondent laid claims for that post, the 3rd respondent entertained some doubt about the eligibility of the petitioner for that post. The basis was that, at one point of time, petitioner was promoted to the post of Senior Assistant and then reverted at his request. Therefore, he addressed a letter to the Secretary, Medical and Health Department i.e., 1st respondent, soliciting opinion. The 1st respondent issued a memo dated 26.12.2011 taking the view that the petitioner is not entitled to be considered for the post of Assistant Librarian on account of the fact that he relinquished his promotion on an earlier occasion. It was pointed out that after relinquishment, he became the junior most Typist in the Medical College.

3. The petitioner filed O.A. No. 10263 of 2011 challenging the said memo. After hearing the parties before it, the Tribunal allowed the O.A. through order dated 29.05.2013 and the memo dated 26.12.2011, issued by the 1st respondent was set aside. The respondents were directed to consider the case of the petitioner. In the body of the order, the Tribunal observed that the petitioner is senior to the 4th respondent.

4. The 4th respondent filed Review M.A. No. 1615 of 2012 feeling aggrieved by the order of the Tribunal that the petitioner is senior to him. The Review M.A. was allowed through order dated 11.10.2012 and the observation as regards the inter se seniority between the petitioner and the 4th respondent was deleted.

5. On the basis of the order in Review M.A., the Director of Medical and Health i.e., 2nd respondent, passed an order dated 12.12.2012 taking the view that the case of the petitioner cannot be considered, for promotion to the post of Assistant Librarian. Challenging the same, the petitioner filed O.A. No. 9885 of 2012. The O.A. was dismissed through order dated 01.03.2013. While W.P. No. 38596 of 2012 is filed against the order in Review M.A. No. 1615 of 2012, W.P. No. 6886 of 2013 is filed against the order in O.A. No. 9885 of 2012.

6. Sri P. Venugopal, learned counsel for the petitioner submits that there is absolutely no comparison whatever between the petitioner on one hand and 4th respondent on the other hand in the context of seniority for the post of Junior Assistant. He submits that the petitioner was appointed in the year 1987 whereas the 4th respondent was appointed to that post nearly two decades thereafter in the year 2008. He contends that a totally distorted interpretation was placed on various provisions and proceedings and it was treated as though the petitioner was transferred on request from another unit of appointment, to S.V. Medical College on the eve of his reversion from the post of Senior Assistant. He submits that much before the promotion of the petitioner to the post of Senior Assistant was confirmed or his, services therein were regularized, the petitioner sought his reversion and as a result he continued to be the Typist in the S.V. Medical College. According to him, the view taken by respondents 1 and

2 in this regard is totally untenable and it has given rise to an avoidable litigation, apart from denying promotion to the petitioner for several years.

7. Sri J. Sudheer, learned counsel for the 4th respondent, submits that though the petitioner was appointed several years ahead of the 4th respondent as Typist, once he was reverted in the year 1996, his case is governed by Rule 35 (b) of the A.P. State and Subordinate Service Rules and his seniority has to be reckoned from the date of reversion. He contends that there is no specific feeder category for the post of Assistant Librarian and anybody holding a substantive post, irrespective of category, but possessing the educational qualifications is eligible to be considered for the appointment by transfer to that post. He submits that the view taken by the Tribunal in O.A. No. 9885 of 2012 and in the Review M.A. is in accordance with the relevant rules, and no interference is warranted.

8. The learned Government Pleader for Services advanced arguments on the same lines.

9. The particulars of the service of the petitioner on the one hand and the 4th respondent on the other hand in the S.V. University have already been furnished in brief, in the preceding paragraphs. The petitioner became eligible for promotion to the post of U.D.C. in the year 1996 and though he was promoted through proceedings dated 08.01.1996. However, he sought reversion and his request was acceded to through proceedings dated 10.06.1996. Straightaway on reversion, he was posted in his original unit of appointment, namely, S.V. Medical College, Tirupati. The 4th respondent on the other hand joined the service of the University first as Watchman in the year 1992 and became Junior Assistant only in the year 2008. Assuming that even a Watchman of the University is eligible to be considered for the post of Assistant Librarian if he possesses the qualification, his seniority is to be reckoned from 23.11.1992.

10. In the context of making appointment to the post of Assistant Librarian, the Principal of the College entertained a doubt as to the entitlement of the petitioner on the one hand and relevant claims of the petitioner and the 4th respondent on the other hand. The 1st respondent in his memo dated 26.12.2011 clarified both the aspects. He took the view that once the petitioner has relinquished his right to promotion, he is not eligible for promotion to any other post. Secondly, he took the view that on being reverted, he has to take the last place in the seniority of the Typists and thereby he is junior to the 4th respondent.

11. On both counts, the 1st respondent was not correct. The relinquishment of the petitioner was only in respect of post of Senior Assistant. He may be barred from claiming promotion to the post of Senior Assistant, even for the rest of his service. However, his relinquishment for that post cannot be a bar for his claim for any other post. An employee has every right to choose as and when opportunities come to him. It is not necessary that either he should accept all or relinquish everything. Depending upon the nature of work or other conditions of service, one may choose to relinquish a particular avenue even while keeping the

option for the others, open. There is phenomenal difference between the post of Senior Assistant in the office of Regional Joint Director on the one hand, and the post of Assistant Librarian in the University on the other hand. While the former is administrative, the latter is purely academic, in nature. Therefore, the view taken by the 1st respondent that the relinquishment of the petitioner for the post of Senior Assistant would disentitle him from being considered for the post of the Assistant Librarian, cannot be countenanced.

12. The consideration of the question of seniority of the petitioner vis-?-vis the 4th respondent was totally uncalled for. The initial appointment of the petitioner was in the year 1987. Assuming that he was transferred and posted against the same vacancy on being reverted from the post of Senior Assistant, the same cannot be treated as a transfer on request.

13. Rule 35(b) of the State and Subordinate Service Rules relied upon by the 4th respondent reads:

Rule 35: Fixation of seniority in the case of transfers on request or on administrative grounds:-

(b) The seniority of a member of a service, class or category, who is transferred on his own request from one unit of appointment to another unit of appointment shall be fixed with reference to the date of his joining duty in the latter unit of appointment.

14. The important expression that is employed in this rule is "Unit of appointment". The rule gets attracted if only a person seeks transfer from one unit of appointment to another unit of the same category. The rule does not take within its fold, any instance where the transfer of one employee is from one category to another category particularly where an element of reversion is involved.

15. Assuming that posting of the petitioner in the year 1996 at Tirupati on being reverted is on his request, and the Rule 35 (b) is attracted, the only person who could have expressed any genuine concern would have been a Typist or L.D.C. who was appointed earlier to that date. The 4th respondent herein became Junior Assistant only in the year 2008. It is just un-understandable, as to how the principle underlying in Rule 35(b) gets attracted.

16. Reliance is placed upon the Judgment of the Supreme Court in K.P. Sudhakaran and Another Vs. State of Kerala and Others, . That was a case where two Lower Division Clerks appointed in different units were transferred on their request, to a third unit and they claimed benefit of their seniority in their original units of appointment, in the context of promotion to a higher post at the State level. Since their transfer was on request, they were to take their places after the junior most LDC, in the seniority list in the unit, to which they were transferred; and if so done, they were to take their chances after the junior most in such unit. The Supreme Court took the view that the person, who is transferred on request,

must take the seniority after the last of the candidates in the unit to which he is transferred.

17. There is no quarrel with the principle. As has already been explained that the petitioner was not transferred on request from one unit of appointment to another unit and he remained as Typist in the same unit throughout.

18. Hence, the Writ Petitions are allowed and the orders under challenge are set aside. We hold that the petitioner is entitled to be considered for promotion to the post of Assistant Librarian in preference to the 4th respondent. There shall be no order as to costs. The miscellaneous petitions filed, if any, in these writ petitions shall stand disposed of.