
(1960) 01 AP CK 0003
In the Andhra Pradesh High Court

Veereshwar Rao

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 22-01-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 310, 311

Citation : (1960) 2 LLJ 391

Hon'ble Judges : Satyanarayana Raju, J;Anantanarayana Ayyar, J

Bench : Division Bench

Judgement

Satyanarayana Raju, J.—This is a petition, under Article 226 of the Constitution of India, for the issue of a writ of mandamus or any other appropriate writ directing the State of Andhra Pradesh to reinstate the petitioner in service.

2. The circumstances giving rise to this petition are somewhat exceptional and must be stated in detail. On 6 September 1946, Veereshwar Rao, the petitioner before us, was appointed to the post of permanent third grade typist in the office of the Hyderabad Municipal Corporation. While he was so employed, the Government appointed biro, on 30 April 1947, as a clerk in the Palshi office of the Deputy Minister for Supply and Agriculture. Subsequently, on 14 August 1947, he was appointed as a second grade clerk in the Supply Secretariat. On 16 September 1948 the Government informed the Commissioner, Hyderabad Municipal Corporation, that the petitioner's lien on the substantive post which he held in the Corporation might be cancelled. On the abolition of the Palshi office, his lien in the Municipal Corporation office was revived on 9 October 1949. The petitioner thereupon made a representation to the "Grievances Committee" and as is clear from its proceedings, the Committee decided on 10 November 1949 that he should be promoted as second grade typist in the Supply Department. On 1 May 1950, he was promoted to the post of second grade clerk in the Agricultural Marketing Fund. He was again appointed as a second grade typist in the Supply Department with effect from 1 April 1952. On 31 March 1953 he was absorbed as a second grade clerk in the Rural Reconstruction and Supply

Department. On 29 January 1955, he was served with a notice that his service would be terminated with effect from 1 April 1955. On receipt of this notice, the petitioner made representations to the concerned authorities. While so, on 30 March 1955, the Secretary to Government in the Supply Department wrote to the Private Secretary to the Minister for Supply Agriculture and Planning, as follows:

As per the above endorsement, Sri Veereshwar Rao, second grade clerk of this department, is being directed to report to you for duty in the afternoon of 31 March 1955.

3. On 29 September 1956, the petitioner received a communication from the General Administration Department of the erstwhile Government of Hyderabad that he should contact the Employment Exchange office so that he might be absorbed in a suitable post.

4. On 10 October 1956, he was given an efficiency certificate signed by the Private Secretary to the Minister for Supply, Agriculture and Rehabilitation, which reads:

Sri Veereshwar Rao, second grade clerk of the Palshi office of the Deputy Minister for Supply and Agriculture, is due an annual grade increment on 22 August 1955. His services during the last one year found satisfactory. Therefore, he is granted an annual increment and is allowed to cross the efficiency bar. His pay on 22 August 1955 will be Rs. 136 plus Rs. 3-9-0 personal pay per mensem."

5. Against the order terminating his services, the petitioner appealed to the Government on 26 November 1955 (sic). He made further representations and on 17 May 1957, he was informed that his case was receiving attention. He again addressed the Government on 1 July 1957 setting forth the above facts and praying for an early redress. Having waited for about eight months, he filed this writ petition on 11 March 1958.

6. In the counter-affidavit filed on behalf of the respondent, it is stated that the petitioner's initial appointment in the Palshi office of the Deputy Minister for Supply and Agriculture was irregular and without Government's sanction, as all orders regarding appointment of Palshi staff had to be issued by the General Administration Department and as per Finance Department's circular No. 17, dated 3 March 1952, no person who did not possess a lien on a post in the Secretariat should be appointed to a post in the Paishi office. It is further stated that the Public Service Commission of Hyderabad did not agree to his absorption in a Secretariat department. With regard to the petitioner's allegation that he was a permanent employee, it is stated that on the abolition of the Palshi office after the "police action" he lost his permanent status, if he had any, and that his subsequent employment in the Supply Secretariat was only temporary.

7. On behalf of the petitioner, it is contended that he held a permanent post in the Municipal Corporation, Hyderabad, to which he was originally appointed and,

therefore, he had a right of which he could not be deprived except in accordance with the rules governing his service and that his services were terminated is derogation of his rights. On behalf of the State, the argument is that the petitioner's appointment in the Supply Secretariat was made under a misapprehension and when the correct position was pointed out by the public Service Commission, the Government passed the impugned order.

8. As has been laid by their lordships of the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India* (UOI), at 551:

A substantive appointment to a permanent post in public service confers normally on the servant so appointed a substantive right to the post and he becomes entitled to hold a "lien" on the post?. The Government cannot terminate his service unless it is entitled to do so

(1) by virtue of a special term of the contract of employment, e.g., by giving the requisite notice provided by the contract, or

(2) by the rules governing the conditions of his service, e.g., on attainment of the age of superannuation prescribed by the rules, or on the fulfilment of the conditions for compulsory retirement or, subject to certain safeguards, on the abolition of the post or on being found guilty after a proper enquiry on notice to him, of misconduct, negligence, inefficiency or any other disqualification.

9. The principle embodied in Article 310(1) that Government servants hold office during the pleasure of the President or the Governor, as the case may be, is qualified by the provisions of Article 311 which give protection to Government servants. Under Article 311(1) the punishment of dismissal or removal cannot be inflicted by an authority subordinate to that by which the servant was appointed ; and under Article 311(2) the punishment of dismissal, removal and reduction in rank cannot be meted out to the Government servant without giving him a reasonable opportunity to defend himself.

10. Now, it is beyond dispute, and in fact admitted, that the petitioner was holding a substantive appointment in a permanent post in the Hyderabad Municipal Corporation before his services were transferred to the Government for appointment in the Paishi office. He was entitled to hold a Hen on that post. It is, however, contended by the learned Government Pleader that the petitioner cannot obtain any relief in the present writ petition by reason of the Hyderabad Municipal Corporation not having been made a party thereto. It may be stated that this objection is untenable. Section 3 of the Hyderabad Act 20 of 1956, entitled "the Hyderabad local Government Service (Declaration as State Civil Services) Act, provides as follows :

Notwithstanding anything to the contrary contained in any law for the time being in force?

(i) the local Government service la hereby declared to be and shall be deemed always to have been a civil service of the State;

(ii) with effect from the commencement of this Act, the local Government service fund shall form a part of the consolidated fund of the State and all expenditure in respect of the said local Government service, which is by this Act declared to be a civil service of the State, shall be charged on the consolidated fund of this State;

(iii) the law for the time being in force regulating the recruitment and conditions of service of persons appointed to civil services of the State shall apply and shall be deemed always to have applied to persons appointed to the said local Government service which is by this Act declared to be a civil service of the State ;

(iv) On the commencement of this Act, any provision in any law for the time being in force which is inconsistent with the provisions of this Act, shall to the extent of the inconsistency, stand repealed.

11. The Act defines "local Government service" as meaning the service constituted under the Hyderabad Municipal and Town Committees Act, the Hyderabad District Boards Act and the Hyderabad Municipal Corporations Act. Indisputably under the above provisions the petitioner must be deemed to be in the civil service of the State.

12. It is common ground that the termination of the services of the petitioner was not because of the abolition of the post on which he had a lien in the Hyderabad Municipal Corporation. It is undisputed that the services of the petitioner were not dispensed with as a result of any disciplinary proceedings taken against him. It is, therefore, clear that the termination of the petitioner's service attracts the provisions of Article 311 of the Constitution. Whether the Public service Commission is right in its view or not, we are not called upon to decide for, as rightly pointed out by the learned Government Pleader, there is now no question of the petitioner being: absorbed in the Secretariat and his prayer for reinstatement in a Secretariat post cannot be granted. It cannot, however, be denied that the right of the petitioner to the permanent post which he held in the Municipal Corporation could not be taken away. The Government should have informed the Municipal Corporation that his lien on its service should be revived and that it should reinstate the petitioner in its service. This was indeed recognized by the Government at an early stage but curiously, however, nothing was done in that direction.

13. Under all the circumstances of the case, we hold that the respondent 1, the State of Andhra Pradesh, should pass appropriate orders directing the reinstatement of the petitioner in his permanent service in the Hyderabad Municipal Corporation, and a writ of mandamus will accordingly issue. Here, it is necessary to note that if the petitioner had continued in the post in the parent department, on which he held lien, he would have by now earned some increments and promotions. The fact that the petitioner's services were lent to the Government at an earlier stage, should not deprive him of those benefits.

We, therefore, hold that the petitioner's reinstatement in his former service should carry with it all the benefits he would have earned but for the deviation from the parent department, viz., the Hyderabad Municipal Corporation.

14. The petitioner will have his costs from the respondent 1. Advocate's fee Rs. 100.