
(1967) 12 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 607 and 938 of 1967

V.V. Sarma and Others

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 27-12-1967

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 309, 311, 311(2)
Hyderabad State and Subordinate Services Rules — Rule 37

Citation : AIR 1969 AP 118

Hon'ble Judges : Seshachelapathi, J

Bench : Single Bench

**Advocate : D. Narasaraju, for K. Raghav Rao and K.R. Swamy, for the Appellant;
T. Dhanurbhanudu and Principal Govt. Pleader, for the Respondent**

Judgement

1. W. P. No. 607 of 1967 has been filed by three petitioners seeking a writ of Mandamus to restrain the Government from implementing the G. O. Ms. No. 179 Public Works Department D/- 2-2-1966 in so far as it relates to them. W. P. No. 938 of 1967 has been filed by three petitioners seeking a writ of Mandamus to direct the respondents 1 and 2 to implement the G. O. Ms. No. 179. Public Works Department dated 2-2-1966 and the petitioners in W. P. No. 607 of 1967 have been made respondents 3 to 5 in this writ petition. It will be convenient to deal with the two writ petitions separately.

2. W. P. No. 607 of 1967: The Electricity Department had two wings (1) Office of the Chief Engineer. Electricity (Projects and Board) and (2) Office of the Chief Electrical Inspector to Government. By an appropriate order dated 14-8-1957, the post of the Chief Electrical Inspector to Government was merged with the post of the Chief Engineer, Electricity. These two wings had separate units. As a measure of policy, the Government of Andhra Pradesh decided to merge the non-technical staff of the Electrical Inspectorate with the office of the Chief Engineer (Projects and Board) with effect from 14-8-1957 and have issued G. O. Ms. No. 179, Public Works Department. dated 2-2-1966. The G. O. is in these terms.

Government of Andhra Pradesh Abstract

Electricity Department - Establishment - Chief Electricity Inspector to Government - Merger of Non-Technical Staff with staff of the office of the Chief Engineer, Electricity (Projects and Board) - Orders - Issued.

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Public Works Department.

G. O. Ms. No. 179

Dated 2-2-1966

Read the followings.

From the Chief Engineer (Projects and Board) Lr. No. Adm. Roc. 156- P5/59-99, dated 13-12-1965.

ORDER

1. The office of the Chief Electrical to Government continued to be a separate unit after 1-11-1956 and was under the control of an independent Officer. Subsequently, on 14-8-1957 the post of Chief Electrical Inspector to Government was merged with the post of the Additional Chief Engineer for Electricity. Consequently, the Additional Chief Engineer for Electricity was empowered to function as chief Electrical Inspector to Government. Later, on the abolition of the post of Additional Chief Engineer, the functions of Chief Electrical Inspector to Government and the Chief Engineer, Electricity were combined in one and the same officer and this position continues till now. IN these circumstances, it is considered that there is no need to keep the non-technical staff of the Electrical Inspectorate as a separate unit, and accordingly the Government accept the recommendations of the Chief Engineer, Electricity (Projects & Board) and direct that the non-technical staff of the Electrical Inspectorate be merged with the staff in the main office of the Chief Engineer (Projects & Board) with effect from 14-8-1957.

2. The combined inter se seniority list of the two offices as on 14-8-1957, as approved by the Government is appended to this order.

3. The chief Engineer (Projects & Board) is requested to review all the promotions, confirmations etc., made by him from 14-8-1957 on the basis of the combined list approved in para 2 above. (By order and in the name of the Governor of Andhra Pradesh)

N. K. Seth, Deputy Secretary to Government.

3. The petitioners challenge the legality and justice of the above G. O.

4. Mr. Narasaraju, the learned counsel, has contended firstly, that the direction that the Chief Engineer should review all promotions and confirmations effected

since 14-8-1957 on the basis of a combined seniority list will affect the rights already accrued to and vested in the petitioners secondly, that such a retrospective review of vested rights is repugnant to law and justice and thirdly that, in truth and substance, the places allotted to the petitioners in the combined seniority list amount to their demotion or reduction in rank, which is violative of Article 311(2) of the Constitution.

5. The case of the Government is that the merger of the two units of the Department was made for administrative convenience and in public interest to achieve uniformity and that such a policy decision is well within their powers and that the preparation of a provisional common gradation list does not visit the petitioners with any penalty or infringement of their rights. IT is also urged that the present writ petition is not only misconceived but premature as, in fact, the petitioners have not yet been reverted.

6. Mr. Dhanurbhanudyu, the learned Counsel, for the petitioners in W. P. No. 938 of 1967 has addressed lengthy arguments generally supporting the contentions of the Government Pleader that the petitioners in W. P. No. 607/67 have no right to interdict the implementation of the G. O. because first, the Government have plenary power to regulate the working of any department under their control either by effecting a division of the departments or the merger thereof; secondly, the impugned G. O. not being a rule or regulation but only an administrative order, the contention that it cannot be retrospectively applied is untenable and thirdly, the petitioners are not permanently appointed to the category of Superintendents and as such, they are have no grievance with the terms of the G. O. and the review of the seniority of all the non-technical staff as on 14-3-1957.

7. AT the very outset, it may be necessary to deal with the point raised by the learned Government Pleader that, inasmuch as the petitioners have not yet been reverted to the position of Typists or Upper Division Clerks, they cannot maintain this writ petition. It is no doubt true and that a man need not cry before he is hurt and a mere possibility of a threat may not normally justify the intervention of this Court in a petition filled under Article 226 of the Constitution. But it must also be borne in mind that if the impugned order carries with it a real and substantial threat to the rights accrued to the petitioners, it is permissible for the Courts to interdict the trespass on such rights. This question can only be considered in the context of the actual rights which the petitioners have nature of the threat of trespass on those rights implicit in the impugned G. O.

8. The three petitioners, V.V. Sarma, G. R. Govinda Reddy and M. V. R. C. Mouleswara Rao, Were appointed as Superintendents under emergency provisions. Their services were regularised and they were placed on probation for a period of two years and they were declared to have satisfactorily completed their probation in the category of Superintendents. I shall refer to the orders issued in connection with the first petitioner. V.V. Sarma, The order dated 6-4-1963 with respect to the first petitioner, V.V. Sarma, is as follows:

"GOVERNMENT OF ANDHRA PRADESH ELECTRICAL INSPECTORATE.

Office of the Chief Electrical Inspector to Government, Khairathabad Hyderabad,
Memo. No. Adm. D. Dis 205-E3/63 dated 6-4-1963.

Sub-Establishment-Andhra Pradesh Ministerial Service Sri V.V. Sarma,
Superintendent, Office of the Chief Electrical Inspector to Government -
Regularisation of Services - Orders - Issued.

Under Rule 32(a) of Special Rules for Andhra Pradesh Ministerial Service Rules,
Sri V.V. Sarma, Who is working as Superintendent under emergency provisions in
this office is placed on probation with effect from 30-4-1960. A. N. i.e. 1-5-1960
F. N. for a period of two years on duty within a continuous period of three years.

Sd/ S. A. Quader Chief Electrical Inspector to Govt."

Subsequently, on 27-5-1963, it was declared that the first petitioner, Sri V.V.
Sarma, had satisfactorily completed his probation. That order is in these terms:

"Office of the Chief Electrical Inspector to Government, Khairathabad,
Hyderabad- Dn.

Memo. No. Adm. D. Dis. 392E3/63 dt. 27-5-1963.

Sub:- Establishment - Andhra Pradesh Ministerial Service - Sri V.V. Sarma,
Superintendent - Declaration of Completion of probation - Orders - Issued.

Under Rule 32(a) of the Madras Ministerial Service Rules as adopted by Andhra
Pradesh Government, Sri V.V. Sarma, Superintendent of this office is declared to
have completed his probation satisfactorily with effect from 1-2-1962. A. N. in
the category of Superintendents.

Sd/- S. A. Quader Chief Electrical Inspector to Government."

Similarly, by an order dated 6-4-1963, the Services of the Second petitioner, Sri
C. R. Govinda Reddy, were regularised under Rule 32(a) of Special Rules for
Andhra Pradesh Ministerial Service Rules and he was placed on probation as
Superintendent with effect from 7-5-1960 for a period of two years on duty
within a continuous period of three years. By an order dated 28-5-1963, he was
declared to have completed his probation satisfactorily with effect from
1-2-1962. Similarly, by an order dated 6-4-1963, the services of the third
petitioner, Sri M. V. R. Chandramouleswara Rao, were regularised and he was
placed on probation as Superintendent with effect from 3-5-1961 for a period of
one year on duty within a continuous period of two years. By an order dated
27-5-1963 it was declared that he had completed his probation satisfactorily with
effect from 4-4-1963.

9. The petitioners were recruited under the Hyderabad Civil Service Rules. So far
as the emergency provisions in regard to the appointments and promotions are
concerned, there is, in substance, no difference between the provisions of the

Hyderabad Civil Service Rules and the corresponding provisions of the State and Subordinate Service Rules. The relevant rule of the State and Subordinate Services Rules regarding promotions is Rule 37. It is in the following terms:

"Temporary promotions:- (a)(i)Where it is necessary in the Public interest to fill emergently a vacancy in a post borne on the cadre of a higher category in a service or class by promotion from a lower category and if the filling of such vacancy in accordance with the rules is likely to result in undue delay, the appointing authority may promote a person temporarily otherwise than in accordance with the said rules.

(iii) No person who does not possess the qualifications, if any, prescribed for the said service, class or category, shall ordinarily be promoted under clause (I). Every person who does not possess such qualifications and who has been or is promoted under clause (i) shall be replaced as soon as possible by promoting a person possessing such qualifications.

(b) Where it is necessary to fill a short vacancy in a post borne on the cadre of a higher category in a service or class by promotion from a lower category and the appointment of the person who is entitled to such promotion under the rules would involve excessive expenditure on traveling allowance or exceptional administrative inconvenience the appointing authority may promote any other person who possess the qualifications. if any, prescribed for the higher category.

(c) A person temporarily promoted under clause (I) of sub-rule (a) shall, whether or not he possesses the qualifications prescribed for the service, class or category to which he is promoted, be replaced, as soon as possible, by the member of the service who is entitled to the promotion under the rules.

(d) A person promoted under sub-rule(a) or (b) shall not be regarded as a probationer in the higher category or the entitled by reason only of such promotion to any preferential claim to future promotion to such higher category.

(dd) The appointing authority shall have the right to revert to a lower category or grade any person promoted under sub-rule (a) or sub-rule (b) at any time without assigning any reason and without notice.

(e) If such person is subsequently promoted to the Higher category in accordance with the rules he shall commence his probation, if any, in such category from the date of such subsequent promotion or from such earlier date as the appointing authority may determine."

10. A combined reading of sub-rules (d) and (e) of Rule 37 would show that a person promoted under sub-rule (a) or (b) shall not be regarded as a probationer in the higher category. But, if such a person i.e. a person promoted under sub-rule (a) or (b) is subsequently promoted to the higher category, he will be deemed to be a probationer in such category from, the date of such promotion or from such earlier date as the appointing authority may determine. It is true, as contended by the learned Government Pleader, that a promotion under sub-rule

(a) or (b) of Rule 37 will not certainly entitle the person so promoted to any preferential claim to future promotion to the higher category. But in the case as is stated supra, the promotions of these three petitioners, though made under the emergency provisions, were, in fact, regularised. They were placed on probation for a period of two years in the category of Superintendents. By appropriate orders it was declared that they had satisfactorily completed their probation. In the events that have happened, therefore, it is not correct to say, as the Government Pleader has attempted to say, that they should still be considered as persons promoted under sub-rule (a) or (b) and are, therefore, not entitled to claim as of right to continue as Superintendents. I hold that, by reason of the orders regularising their services placing them on probation and eventually declaring them to have satisfactorily completed their probation they must be deemed to be approved probationers in the category of Superintendents within the meaning of sub-rule (3) of Rule 3 of the State and Subordinate Service Rules.

11. It is in the context of the character of the offices that are now held by these three petitioners that the directions in the impugned G. O. have to be understood. The cases of all the persons, who have been promoted or confirmed since 14-8-1957, are directed to be reviewed. In the combined seniority list the three petitioners are shown only as Typists in the non-technical staff. The subsequent events viz. the regularisation of services of the petitioners and their having become approved probationers in the category of Superintendents within the meaning of sub-rule (3) of Rule 3 have been ignored. This certainly is not a case of reviewing and refixing seniority of persons, in the same category of service, as was held by the Madras High Court in the well-known decision in *N. Devasahayam Vs. The State of Madras and Others*, . By treating these three petitioners as Typists, they are certainly shown as persons belonging to a lower category of Service than the one to which they became entitled to by the regularisation of their services and the declaration of their having satisfactorily completed their probation. IN such a situation the petitioners are justified in complaining that the present are justified in complaining that the present G. O. affects their vested rights as approved probationers.

12. In *State of Andhra Pradesh Vs. Y. Chinna Reddi*, , a Bench of this Court consisting of Satyanarayana Raju, J. (as he then was) and Mohammed Mirza, J. had to deal with a case where an approved probationer waiting for appointment as a full member of the service in a particular cadre could not be transferred to his original post without giving him any opportunity of showing cause and though in the garb of a transfer, it amounted to a reduction in rank. The following passage may be usefully extracted

"In the present case, the respondent was declared to have satisfactorily completed his probation. He was therefore an approved probationer within the meaning of Rule 2(3) of the State Service Rules. He was awaiting appointment as a full member of the service in which he was declared as an approved

probationer. under. 40 of the Rules, therefore he can only be transferred to serve in a post borne on the same cadre or class. This is subject to certain exceptions. such as, that the Government servant can be reverted for want of a vacancy, Such is not the case here. It was at no time stated that the respondent was being reverted to his post in the district revenue establishment on the ground of want of a vacancy in the Secretariat Service. While it is no doubt true that an approved probationer does not eo instanti acquire the statues of a permanent member of the service the fact does remain that he waits appointment. as a full member of his service. Their Lordships of the Supreme Court in the Parshotam Lal Dhingra Vs. Union of India (UOI), have held that the real test would be to find out whether the Government servant suffers loss in emoluments and chances of promotion. That test has been satisfied in this case. It is no doubt, true that no reasons were given in the order reverting the respondent but the only reasonable inference which could be drawn from the sequence of events mentioned above, is that the order of reversion though innocuous in its apparent tenor, does really amount to a reduction in rank."

In Parshotam Lal Dhingra Vs. Union of India (UOI), the Supreme Court observed as follows:

"If the Government servant has right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty."

13. In Divisional Personnel Officer, Southern Railway Vs. S. Raghavendrchar, , their Lordships of the Supreme Court have reiterated the principle enunciated in the decision in Parshotam Lal Dhingra Vs. Union of India (UOI), that, if the order entails the forfeiture of his pay and allowances or the loss of his seniority in is substantive rank or the stoppage or postponement of his future chances of promotion, that circumstance may indicate that although in form the Government had exercised an innocuous right of terminating the employment or

reducing the servant to a lower rank under the terms of the contract of employment, in truth and reality. It had been done as a penalty. In other words, if a particular Government servant is entitled to hold a substantive post in a category of service, his demotion to a lower category entailing evil consequences will prima facie mean a penalty to which the provisions of Article 311(2) of the Constitution could be attracted.

14. Applying those well settled principles the G. O. in so far as it directs the review of the seniority and confirmations of all persons (obviously including the petitioners) from 14-8-1957 carries with it a denial of the rights already accrued to the petitioners and a threat of their forfeiture.

15. MR. Narasaraju has contended that, in any view the G. O. in so far as it provides for a retrospective review of all the cases as from 14-8-1957 is obnoxious to the well settled principle that rights accrued cannot be retrospectively affected. IN this connection, strong reliance was placed by him on a recent decision of a Bench of this Court consisting of the learned Chief Justice and Kuppaswami, J. in K. Vishwanatham Vs. State of Andhra Pradesh and Another, where the learned Judges held that a rule made under Article 309 of the Constitution can have no retrospective operation. IN that case, the facts were these: The petitioner, who was a member of the Adi Andhra Community, claimed that his name should have been considered for appointment as Assistant Secretary in accordance with Rule 8 of the Andhra Pradesh Special Rules and Rule 22 of the General Rule in preparing a panel for appointment as Assistant Secretaries from among Section Officers for the year 1964-65. He claimed that he should be included in the panel. The principal contention raised on behalf of the Government was that Rule 8 of the Andhra Pradesh Special Rules was subsequently amended with retrospective effect and that the amendment was in the form of a statutory rule made by the Governor under Article 309 of the Constitution. The learned Chief Justice and Kuppaswamy, J. after a review of the legal position with reference to the several decided cases cited before them, held that the Governor has no power to make ex post facto or the retrospective rules.

16. On the basis of the above decision, Mr. Narasaraju has contended that the application of the rule against retrospective operation applies, with even greater force, to an executive fiat like the one contained in the impugned G. O. The position cannot seriously be contested that accrued rights cannot be retrospectively taken away.

17. For the reasons stated above, I hold that the petitioners are entitled to continue as approved probationers in the category of Superintendents and that those rights cannot be forfeited by any review of the confirmations and seniority as from 14-8-1957. A writ of mandamus will therefore, issue to the second respondent, the Chief Engineer, Electricity (Projects and Board) not to enforce the G. O. in so far as it relates to the petitioners adversely to this right to continue in the category of Superintendents, which they have already secured.

18. The writ Petition is, therefore, allowed with costs Advocate's fee Rs. 100.

Writ Petition No. 938 of 1967.

19. The petitioners in this writ petition were appointed as Upper Division Clerks in November and December, 1956 in the office of the Chief Engineer, Electricity (Projects and Board). They were subsequently promoted as Superintendent by a common order dated 30-8-1965 issued by the Chief Engineer, Electricity, They were placed on probation, By orders dated 21-4-1966, they were declared to have satisfactorily completed their probation with effect from 21-2-1966, 22-2-66 and 25-2-1966 respectively They are, therefore, approved probationers in the category of Superintendents.

20. IN this Writ Petition. they request that a direction in the nature of a Mandamus may be issued to the Second respondent. the chief Engineer, Electricity (Projects and Board) to implement the G. O. with reference to a correct and up to date seniority list.

21. Besides the Government and the Chief Engineer (Respondents 1 and 2). the petitioners have impleaded V.V. Sarma, G. R. Govinda Reddy and M. V. P. C. Mouleswara Rao, the petitioners in W. P. No. 607 of 1967, as respondents 3 to 5.

22. But the main point raised in this Writ Petition seems to be that the implementation of the G. O. strictly with reference to a combined seniority list would show that the three petitioners are seniors to the respondents 3 to 5 (Petitioners in W. P. No. 607/67). The petitioners in the present writ petition would appear to have become Upper Division Clerks earlier than the respondents 3 to 5 (Petitioners in W. P. No. 607/67). If strictly the rule of seniority is applied for reviewing promotions and confirmations from 14-8-1967, the three present petitioners, Venkateswara Rao, Sreeramamurthy and Vithaleswara Rao, would get an edge over the three petitioners in W. P. No. 607/67. But the fact remains that the respondents 3 to 5 (Petitioners in W. P. No. 607/67) had become Superintendents earlier than the petitioners. The rights they had secured may, to some extent, prejudice the chances of the petitioners but that seems to be inevitable as they had become Superintendents earlier. This writ petition is filed merely as a counter blast to the writ petition filed by Sri V.V. Sarma and others. In W. P. No. 607/67 I have held that the petitioners therein are entitled to the protection of the rights that they had acquired as approved probationers in the category of Superintendents and that the G. O. in so far as it relates to them should not be adversely implemented. These petitioners are also approved probationers in the category of Superintendents. They cannot, by this device, ask for the implementation of the G. O. to gain seniority over the petitioners in W. P. No. 607/67 in the category of Superintendents.

23. This writ petition is, therefore, dismissed. But in the circumstances, I make no order as to costs.

24. Order accordingly.