The State of Andhra

Vs

Gaddam Venkatappayya

Civil Appeal No. 506 of 1957

(CJI B.P. Sinha, S.K. Das, A.K. Sarkar, N. Rajgopala Ayyangar, J.R. Mudholkar JJ)

08.12.1960

JUDGMENT

AYYANGAR, J. -

This appeal by the State of Andhra is from the judgment of the High Court, Andhra, dated July 21, 1955, on a certificate under Art. 133(1)(c) of the Constitution.

The respondent joined the Madras Police Force as a Constable on September 1, 1939. He became a permanent Head Constable in 1946 and was promoted to officiate as a Sub-Inspector on October 1, 1947, when his probation commenced. By order dated September 24, 1950, he was declared to have satisfactorily completed his period of probation and was brought to the "A" list with effect from September 10, 1950. He was still merely officiating as a Sub-Inspector, the effect of his being placed in List "A" being that he came into the category of an "approved probationer", i.e., fit for being confirmed as Sub-Inspector when substantive vacancies arose. On August 3, 1952, the District Superintendent of Police, Krishna, issued an order reverting the respondent to the rank of Head Constable with effect from August 14, 1952, i.e., to the post which he substantively held, for the reason that there was not a sufficient number of vacancies in the post of Sub-Inspectors for being filled by him. It may be mentioned that such reversion was not confined to the respondent alone but extended to a very large number of officiating Sub-Inspectors who were similarly promotees from the rank of Head Constables. The reverted officers petitioned to the Inspector-General of Police and in reply thereto and in further explanation and clarification of the reasons for the reversions the Inspector-General of Police, Madras, issued a memorandum on January 15, 1953, in the following terms :

> "MEMORANDUM.
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> Sub : Officiating Sub-Inspector - Reverting as Head Constables - Seniority over direct recruits - Petitions.
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> As direct recruits are recruited against vacancies specially reserved for them and cannot be reverted for want of vacancies, seniority between directly recruited Sub-Inspectors and promoted Sub-Inspectors should be determined separately. Their contention that they should not have been reverted in preference to direct recruits is not, therefore, correct. Their reversion as Head Constables is in order."

The respondent thereafter submitted a memorial to Government in which the principal challenge was to the view of the Government that the directly recruited Sub-Inspectors formed a category

distinct from the promotee-Sub-Inspectors as not being countenanced by the relevant rules relating to the constitution of the Police Establishment. Not having obtained any redress by reason of his memorial, the respondent filed before the High Court of Madras a petition under Art. 226 of the Constitution (Writ Petition No. 524 of 1953) and prayed therein that the State of Madras may be directed by the issue of a writ of mandamus to refrain from enforcing the order reverting him as Head Constable but to consider his claim to be confirmed as Sub-Inspector on the basis of his seniority in the list of approved probationers. Balakrishna Iyer, J., who heard the petition allowed it and issued a direction to the State "to forbear from giving effect to the order of reversion if the petitioner by virtue of his seniority among promotees can be included in the 30 per cent. already referred to". We shall be dealing in detail with the nature and scope of the rule as to the 30 per cent. referred to have, which formed the basis of the learned Judge's order in its proper place and will not interrupt the narration of the events which have led to the appeal now before us. The State preferred an appeal from this judgment which was transferred to the High Court of Andhra after that Court was formed. The learned Judges who heard the appeal differed from the learned Single Judge in his view as to the scope of the rule as to 30 per cent. but dismissed the appeal holding that the Government in directing the reversion of the promotee-probationers had not observed strictly the relevant rule as to juniority prescribed in rule 5 of the Service Rules, to which rule we shall refer in due course. The State of Andhra thereafter moved the High Court for the grant of a certificate and having obtained it, has filed this appeal.

Though in his petition under Art. 226 filed before the High Court of Madras, the petitioner had alleged that his reversion from the officiating post of Sub-Inspector to his substantive post as Head Constable was a reduction in rank within the meaning of Art. 311(2) of the Constitution, i.e., a reduction by way of punishment effected without giving him an opportunity to show cause therefor, this contention was abandoned early in the proceedings before the Court and the case has proceeded throughout on both sides on the footing that the reversion was effected solely for administrative reasons and not for any misconduct by way of punishment. Indeed, it may be mentioned that when the respondent was normally due for promotion to the substantive post of Sub-Inspector - without reference to the judgment of the High Court - he was duly promoted to that post and he now occupies the post of a Sub-Inspector drawing the increments and salary fixed therefor.

Article 311(2) being out of the way, the questions that arise fall under two heads : (1) Was there a violation of the Service Rules when the respondent was reverted as Head Constable ? (2) If there was such a violation, do breaches of Service Rules by themselves constitute an infringement of the legal rights of officers to whom they apply, entitling them to seek remedies therefor before Courts.

The rules on the construction of which the answer to the first point depends are those framed, inter alia, under s. 243 of the Government of India Act, 1935, entitled "Rules relating to the Madras Police Subordinate Service". Rule 3 which relates to recruitment and which was held to be violated, by the learned Single Judge ran in these terms :

> "Rule 3. Method of appointment and promotions :-
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> (a) Appointment to the several classes and categories shall be made as indicated in Annexure I.
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> # ANNEXURE I Category 2 Method of Limitation Appointing appointment authority (1) (2) (3) (4)Sub-Inspectors Promotion Up to not In the mofussil from Head more than the D.I.G. Constables 30% of the Police concerned Cadre Direct

recruitment Nil do##

This is followed by rules 4 and 5 which read :

"Rule 4. Right of probationers and approved probationers to appointment to vacancies :- A vacancy in any class or category shall not be filled by the appointment of a person who has not yet commenced his probation in such class or category when an approved probationer or a probationer therein is available for such appointment."

"Rule 5. Order of discharge of probationers and approved probationers :-

(a) The order in which probationers and approved probationers shall be discharged for want of vacancies shall be -

first, the probationers in order of juniority; and second, the approved probationers in order of juniority.

(b) The order of discharge laid down in sub-rule (a) may be departed from in cases where such order would involve excessive expenditure on travelling allowance or exceptional administrative inconvenience."

The other rules merely carry out the principles underlying those extracted and do not need to be set out.

To appreciate the points urged before us by the learned counsel for the appellant-State on the proper interpretation of these rules, it is necessary to set out the contentions respectively urged by the two parties in the Courts below and how they were dealt with. On behalf of the respondent the points urged were :

(1) That on a proper construction of Rule 3, promotee-Sub-Inspectors referred to in departmental parlance as rank-promotees, as distinguished from those directly recruited were entitled to be appointed to a minimum of 30 per cent. of the cadre strength and that this rule was violated in that at the time of the respondent's reversion the force consisted only of less than 25 per cent. of rank-promotees and more than 75 per cent. of those directly recruited. If the rule as to the proportion of appointments as laid down in Rule 3 had strictly been followed there would have been no necessity for reverting the respondent as Head Constable.

(2) The 30 per cent. and the 70 per cent. laid down in r. 3 applied only at the stage of the initial recruitment of Sub-Inspectors and that when once that recruitment was made and the probation of the officers started, no difference could under the rules be thereafter made between the two classes of appointees but that both of them constituted one unified force the members of which were entitled to be appointed to substantive posts as full members of the Service solely on the basis of their inter se seniority (apart from misconduct or inefficiency, etc.). The appointment to substantive posts of officers directly recruited in preference to persons like the respondent whose probation had commenced at an earlier date was therefore a violation of r. 4 of the Service Rules.

(3) If at any time the cadre strength was reduced by the abolition of temporary posts

there might have to be reversions, but in reverting officers the rule as to juniority laid down by r. 5(a) had to be strictly followed. This rule made no distinction between Sub-Inspectors appointed directly and rank-promotees. Both formed a single category and among them those who had not completed their probation had to be reverted first and thereafter the approved probationers in the order of their juniority. In the present case the respondent urged that approved probationers like himself who were senior to several of the officiating Sub-Inspectors directly recruited had been reverted out of turn in violation of r. 5(a).

(4) If in the circumstances stated by the Government (which would be mentioned later), the directly recruited Sub-Inspectors could not properly be reverted because of the assurances given to them, Government were bound to retain all rank-promotee approved probationers as officiating Sub-Inspectors until they could be appointed in substantive vacancies as full members thereof.

In answer to these contentions the case which the State put forward was as follows :-

(1) The rule as to the proportion between the rank-promotees and direct recruits laid down by r. 3 read with the Annexure, fixed only the maximum percentage of rank-promotees. The words "up to, not more than" meant and could in the context mean only, that the maximum proportion of rank-promotees could be only 30 per cent. This was made clear by there being to limitation placed on the proportion of direct recruits. In other words, the 30 per cent. was the ceiling fixed and not any minimum and the rule in effect guaranteed direct recruits a minimum proportion of 70 per cent. There was therefore no violation of this rule when the proportion of rank-promotees fell to a little below 25 per cent. at the relevant date.

(2) Even if r. 3 had been strictly followed the respondent would have derived to benefit from the operation of that rule because he was well below the level of rank-promotees who would even then had to be absorbed. It may be mentioned that it was because of this feature that the order of Balakrishna Iyer, J., took the form of directing the Government "to forbear from giving effect to the order of reversion if the petitioner by virtue of his seniority among promotees can be included among 30 per cent."

(3) On a proper construction of the rules, the proportions laid down in r. 3 applied whether or not at the stage of the initial recruitment, certainly at the stage of appointments to substantive posts, i.e., absorption as full members of the permanent strength of the cadre. It was their further contention based on the above, that for considering confirmations provided for by r. 4 the category of direct recruits had to be treated as a class different from the category of rank-promotees and there was no question of seniority as between members of the two groups but only within each group. On this basis the State Government urged that at the stage of absorption governed by r. 4 the rule as to proportion had to be worked out and that consequently there had been no violation of that rule.

(4) There had been no violation of r. 5 either, on two grounds (i) based on denying that there was a unified category of Sub-Inspectors and in putting forward that the two classes which made up the Service, viz., direct recruits and rank-promotees

formed different categories, and (ii) that even if they formed a single category of officers after their initial appointments, there had been no violation of the rule fixed for reversion by r. 5(a) by reason of the special circumstances of the case which brought their action within the specific provision in r. 5(b). In connection with this last submission it was pointed out that at the time of the police action in Hyderabad a large number of persons were recruited direct as Sub-Inspectors to whom an assurance had been given that they would not be reverted. A large number of such temporary appointments were made and these directly recruited Sub-Inspectors had to be provided with posts when temporary posts were getting abolished. This introduced an administrative problem which could be solved only by reverting the rank-promotees.

We shall not proceed to a consideration of the points thus in controversy between the parties and which were urged on either side before us. The first point to be dealt with is as to whether there had been an infraction of r. 3 of the Service Rules by reason of the proportion of rank-promotees being less than 30 per cent. of the total number of Sub-Inspectors in service at the date of the respondent's reversion. As has already been pointed out, the learned Single Judge had rested his decision in favour of the respondent on an infraction of this rule, but the learned Judges of the High Court in appeal had taken a different view. Learned Counsel for the respondent sought to support the view that the words "up to, not more than 30 per cent" in the rule meant up to a minimum of 30 per cent. the effect of the addition of the words "not more than" being merely to eliminate fractions and permit the number to be rounded off to the nearest lower integer. It would be seen that the learned Single Judge had stressed the use of the words "up to" and practically gave no effect to the words "not more than" in arriving at the construction that he adopted. We consider that this construction is erroneous, particularly in the context of the provision as regards direct recruits, in regard to whom there is no limitation placed on the proportion which they could have in the Service. Taken in conjunction with this provision it is clear that the words "up to, not more than" merely fix the maximum percentage of rank-promotees in the category, leaving it to the appointing authorities to adopt any percentage below this figure. We consequently endorse the view which the learned Judges of the Andhra High Court took in dissenting from the construction which the learned Single Judge placed on the scope of r. 3. The reversion of the respondent cannot, therefore, be challenged on the ground that there had been an infraction of r. 3 of the Service Rules.

The next question is as to whether r. 4 of the Service Rules by which confirmations were regulated, had been violated in promoting the more junior direct recruits to substantive posts in preference to rank-promotees like the respondent who were senior to them in service in the sense that the latter's probation as officiating Sub-Inspectors commenced earlier. The application of these rules in the context of the facts of this case depends largely on whether rank-promotees and officers directly recruited form or do not form the same class or category becoming integrated into one Service on their initial appointment to the Service. It is common ground that the two classes become integrated as members of a unified Service after appointment as full members of the Service. The point in controversy is limited to the period between the date of their initial appointment and their absorption as full members. If up to that date they formed two categories and the seniority in each group has to be reckoned separately, the order of the Government would be perfectly in order and constitute no breach of the rules. But if on the other hand officers recruited by either of the two modes-promotions from the rank of Head Constables and Sub-Inspectors directly recruited - from an integrated and unified force from the very commencement of their appointments, then on the application of r. 4 confirmations ought to depend on mere seniority (subject to factors relevant to merit or demerit) as officiating Sub-Inspectors without regard to the manner in which they were

originally appointed. Though the learned Single Judge did not directly pronounce on the effect of r. 4, the Andhra High Court held that the rule of seniority prescribed by the rule had been violated. After expressing their disagreement with the learned Single Judge in his view that the minimum of 30 per cent. laid down by r. 3 had been violated, they observed :

> "Nor does it follow that we can countenance the argument of the learned Government Pleader that irrespective of the percentage of promotees on the cadre at a given time, all vacancies can be filled up, if the Government so chooses, only with direct recruits. We think that from both the classes of approved probationers, be it direct recruits or be it candidates from the ranks, selection should be made without any distinction, provided of course that so far as promotees are concerned the percentage of 30 is not exceeded. Now, it is admitted by the Government that the percentage of promotees, was only 24.5 at the time when the petitioner was sent back as Head Constable. That being so, it cannot be contended for the State that the ceiling will be exceeded if the petitioner is promoted. As we read the rules, when once an officer qualifies as an approved probationer, no distinction can be made between him and a direct recruit approved probationer."

We are unable to agree with the reasoning or the conclusion here expressed. It would be seen that the learned Judges have, though tacitly, accepted the case put forward by the Government, and in our view correctly, that the integration of the two groups is only after the stage of absorption as full members of the Service, and that at that stage the rule as to the proportion laid down in the annexure to r. 3 comes into operation. If the 30% which is the limit set for rank-promotees for absorption as full members is merely a ceiling imposed for the benefit of direct recruits, as rightly held by the learned Judges, it is difficult to see how the rule could be held to be violated because the proportion of rank-promotees confirmed fell below the figure of 30. We, therefore, consider that there was no violation of the rule as to seniority prescribed by r. 4 in the appointment of the direct recruits to substantive posts before the absorption of rank promotees like the respondent.

We shall next proceed to deal with r. 5 which deals with the power of Government to effect reversions and the conditions and limitations prescribed therefor.

It would be seen that cl. (a) of r. 5 substantially reverses for the purpose of discharge or reversion the order in which confirmations are to be made as set out in r. 4. We have held that the respondent had no right under the rules to insist on his being confirmed, on the terms of r. 4 read in the light of r. 3. On the same line of reasoning it would follow that as direct recruits and rank-promotees belonged to distinct classes the juniority for reversion had to be determined separately for each class and not on the basis of the two classes forming part of a unified force before confirmation. If this test were applied, it cannot be contended that the reversion of the respondent infringed r. 5(a).

But this apart, the impugned order could also be sustained on the basis of the provision contained in cl. (b) of r. 5 which reads :

> "The order of discharge laid down in sub-rule (a) may be departed from in cases where such order would involve excessive expenditure on travelling allowance or exceptional administrative inconvenience."

In the present case the Government explained their reason for the order for reversion of rank-promotees in the affidavit which they filed to the writ petition in these terms :

> "His reversion was necessitated by the fact that a large number of Sub-Inspectors on other duty in Hyderabad State reverted to this State and that a number of temporary posts created for special purposes during the disturbed period immediately following the police action in Hyderabad had to be abolished and that the direct recruited Sub-Inspectors had necessarily to be absorbed as Sub-Inspectors as they cannot be asked to work in any lower post being direct recruits to a particular category, viz., that of the Sub-Inspector. This reversion of rank-promoted Sub-Inspectors was rendered absolutely necessary in the exigencies of service and for administrative purposes and as such, it cannot be deemed to be arbitrary or contrary to rules or in the nature of punishment as alleged by the petitioner."

It was this circumstance that was stated before the High Court of Madras in the Writ Petition as that which brought the impugned order of reversion within "exceptional administrative inconvenience" provided for by the last words of the rule. The learned Single Judge accepted as correct the facts stated by the Government as the reason for the reversion, stating :

> "Mr. Seshachalapathi explained that Government were in a difficult position as a consequence of the members taken in connection with the police action in Hyderabad. A large number of persons were directly recruited as Sub-Inspectors on the assurance that they would not be ousted. I do not suggest that Government should go back on any assurance that they may have given to these direct recruits. Far be it from me to encourage anything that might savour of bad faith on the part of Government..... But I would still say that in order that Government may keep faith with those whom they recruited directly as Sub-Inspectors they cannot break faith with or ignore the rights of those who were promoted as Sub-Inspectors."

If the facts were accepted as correct, and we might point out that their accuracy was never challenged at any stage either in the High Court or before us, it appears to us that the order of reversion passed would be justified as being covered by the last words of cl. (b) even if the order laid down in r. 5(a) were infringed. In these circumstances it is not clear why the learned Judge should have observed :

> "The Government do not rest their case on Rule 5(b)"

when the facts stated by Government and accepted by him brought their action well within the scope of that clause. In their memorandum of grounds in Writ Appeal No. 122 of 1954 which the State filed to the High Court the appellants urged : "The learned Judge failed to appreciate the special circumstances of the situation which rendered the reversion necessary in the instant case". When the matter was before the High Court of Andhra the learned Judges observed : "The learned Judge stated in his judgment that the Government do not rest their case on Rule 5(b)". In their turn they too accepted the case of the Government as regards the circumstances which necessitated the order of reversion and observed : "The Government frankly stated, however, that they were in a difficult position because of certain measures which they were compelled to take in connection with the police action in Hyderabad when a large number of persons were directly recruited as Sub-Inspectors with the assurance that they would be entertained permanently. In order to keep that assurance with such persons they were constrained to revert the rank-promotees but there is no rule which enables the Government to do so." We must express our dissent from the last sentence extracted above, because r. 5(b) makes specific provision for an order of discharge laid down in cl. (a) being departed from in cases where such order would entail "exceptional administrative

inconvenience" and on the facts accepted both by the learned Single Judge and by the High Court of appeal the words extracted were attracted.

Before leaving r. 5 there is one other matter to which we desire to advert and that relates to the observation of the High Court in the judgment now under appeal which seems to imply that if the Government found itself in difficulty owing to the assurances given to the officers directly recruited, they could under the rules have solved it, not by ordering the reversion of the rank-promotees but by the continuing them in their officiating posts until they could be absorbed as full members of the Service. This was one of the contentions urged by the respondent and the learned Judges say :

> "It seems to us clear that whether they imposed merely a ceiling or whether there is an obligation upon the Government to fill up 30 per cent. of the vacancies from among promotees, the State cannot say, on the facts, before us, that there are no vacancies for promotees as such."

It looks to us impossible to support this view on any construction of the rules. In effect it means either that temporary posts could not be abolished, or that approved probationers could not be reverted. The first alternative could not obviously have been meant and the other is plainly contrary to the terms of r. 5(a) which makes provision for the reversion of approved probationers. Of course, as a measure of relief to their subordinates and to avoid hardship to them Government might retain people in their officiating posts, but it is quite a different thing to import a legal and enforceable obligation on their part to do so.

In the view that we have taken that there has been no breach of the Service Rules in ordering the reversion of the respondent as a Head Constable, the question as to whether an infraction of a Service Rule confers a legal right which could be agitated in Court does not arise. We do not propose, therefore, to consider that question and indeed we did not call upon learned counsel for the appellant to argue that part of his case.

The appeal is accordingly allowed, the judgment of the High Court set aside and Writ Petition No. 524 of 1953 dismissed. In view of the order of the High Court dated February 3, 1956, by which the appellant was granted a certificate under Art. 133(1)(c) of the Constitution subject to the condition that the respondent would be entitled to his taxed costs incurred in this Court in any event from the appellant, there will be an order that the appellant will pay the costs of the respondents in the appeal, in this Court.

Appeal allowed.

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