

V. V. V. Satyanarayana

Vs

G. Ramachandra Naidu and Others

Civil Appeal No. 2530 of 1972

(CJI A. N. Ray, K. K. Mathew JJ)

16.08.1974

JUDGMENT

RAY, C.J. -

1. This is an appeal by special leave from the judgment dated June 28, 1972 of the High Court of Andhra Pradesh.
2. The only question for consideration is whether the Government was right in confirming the respondent as senior to the appellant.
3. The appellant was appointed by promotion as Assistant Secretary on June 1, 1956 in the Law Department. He was confirmed in the post of Assistant Secretary on October 11, 1957. He was temporarily promoted as a Deputy Secretary in the Law Department on July 10, 1961. His probation was declared on July 23, 1962. Then he went to serve in the Law Commission as Deputy Secretary.
4. The respondent Naidu was appointed as District Munsif in the State Judicial Service on February 16, 1956. On June 27, 1960 he was appointed as Under Secretary in the Law Department. With the concurrence of the High Court, he has temporarily appointed on July 10, 1961 as Deputy Secretary in Law Department.
5. On April 1, 1963, a substantive vacancy in the category of Deputy Secretary arose. The Government on October 4, 1966 confirmed the respondent as a Deputy Secretary with effect from April 1, 1963.
6. The post of a Deputy Secretary under Rule 2 of the Andhra Pradesh State Legal Service Rules (hereinafter referred to as the Rules) is a post in class II in that Service. Rules 2 and 3 of the Rules enumerate four classes of officers in the State Legal Service. Class I is for Secretary to Government, Law Department, and Legal Remembrancer of Legal Affairs. Class II consists of Draftsman to Government, Law Department. Class II consists of Deputy Secretary to Government, Law Department. Class IV consists of Assistant Secretary to Government, Law Department.
7. The appointment to Class III under the Rules shall be by promotion from among the officers in Class IV or by recruitment by transfer of a full member or an approved probationer in the State Judicial Service in the post of Subordinate Judge or District Munsif. The appointment to Class III is subject to two provisos. One is that an Assistant Secretary should ordinarily have put in a service for a period of not less than five years in that post for promotion as a Deputy Secretary. The other is that a member of the State Judicial Service so appointed as Deputy Secretary shall not, by reason of

such appointment, cease to be a member of the Service from which he was appointed, nor shall such appointment confer on him any claim for substantive appointment to Class III or to appointment thereto in any subsequent acting or temporary vacancy.

8. In answering the question as to whether the Government was right in confirming the respondent as senior to the appellant it is necessary to find as to whether the respondent was appointed as Deputy Secretary on July 10, 1961 by promotion from Class IV or by transfer of a full member or an approved probationer in the State Judicial Service. The respondent was a District Munsif in the State Judicial Service. On July 10, 1961 when the respondent was appointed as Deputy Secretary in Class III he did not cease to be a member of the State Judicial Service in the category of District Munsif. He was then serving in the Law Department as an Under Secretary with a lien on his post in the State Judicial Service. He could not have been promoted from Class IV to Class III because as an Under Secretary he had not completed five years service in the Law Department. The order appointing the respondent Naidu does not specifically mention whether he was promoted or whether he was appointed by transfer. According to the Rules he could not have been promoted. The other mode of appointment was by transfer. The trial Court held that the appointment of the respondent was by promotion. The High Court rightly set aside that finding and held that the appointment of the respondent was by transfer.

9. The proviso to Rule 29(a) of the Andhra Pradesh State and Subordinate Rules provides that when than one approved probationers are available for appointment as full members the senior most approved probationer on the date of vacancy shall be appointed. In the present case, when both the appellant and the respondent commenced their probation on the same date in the same class the proviso to Rule 29(a) is of no aid. There are no rules to govern this class of cases.

10. On behalf of the appellant it was said that the respondent was appointed on July 10, 1961, but was confirmed with effect from April 1, 1963 and, therefore, that should be taken as the date of appointment of the respondent. That is ignoring the fact that the respondent was appointed in fact by transfer on July 10, 1961. The High Court rightly said that if both the appellant and the respondent completed the probation before April 1, 1963 and if there are no rules or regulations in that behalf it will be open to the Government in the performance of its executive functions to consider the respective merits and determine the inter se seniority. The Government consulted the Public Service Commission. The Commission considered the respondent as suitable and agreed to his absorption as regular Deputy Secretary to Government, Law Department.

11. In the second proviso to Rule 3(3) of the State Legal Service Rules which was in force at the time of the appointment of the respondent as Deputy Secretary it is provided that of the two posts of Deputy Secretaries in the Law Department one post shall be held by a members of the State Judicial Service. At the time of the appointment of the respondent as Deputy Secretary in the Law Department on July 10, 1961 he continued to be a member of the State Judicial Service. The benefit of any rights or privileges which had accrued by virtue of the first proviso to General Rule 3 prior to its deletion in January, 1963 cannot be denied to the respondent inasmuch as there could hardly be any doubt that the respondent would have been entitled to continue to hold the post reserved for the State Judicial Officer and entitled to the benefits and privileges, including confirmation by virtue of the proviso to General Rule 3.

12. For these reasons we uphold the judgment of the High Court and dismiss the appeal. Each party will pay and bear his own costs.

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