

Government of Andhra Pradesh and Others

Vs

Sri. D. Janardhana Rao and Another

Civil Appeal No. 704 of 1975

(Y.V. Chandrachud, P.K. Goswami, A.C. Gupta JJ)

23.09.1976

JUDGMENT

GUPTA, J. -

1. This appeal by special leave arise out of a writ petition made by the respondents before us in the Andhra Pradesh High Court questioning the inclusion in the list of Deputy Tahsildars eligible for promotion to the post of Tahsildar of the names of 63 persons impleaded as respondents 4 to 66 in the writ petition. These 63 persons were working as Upper Division Clerks in the erstwhile State of Hyderabad when, on November 1, 1956, the State of Andhra Pradesh was formed. The State Government in consultation with the Government of India issued an order on April 7, 1960 stating that the first state promotion of the employees of the erstwhile Government of Hyderabad, that is, promotion to posts one stage above those held by them prior to November 1, 1956, would be governed by the Hyderabad Cadre and Recruitment Rules for Promotion which were applicable to them before that date, but subsequent promotions after the first stage of promotion would be governed by the relevant rules in force in the newly formed State. By virtue of this order the aforesaid 63 employees were promoted to the post of Deputy Tahsildar which was the first stage promotion for them. Later, this order dated April 7, 1960 was made a statutory rule, namely, rule 42(h)(i) of the Andhra Pradesh State and Subordinate Services Rules which came into force on March 7, 1962. The Andhra Pradesh Civil Services (Executive Branch) Special Rules Revenue Department, hereinafter referred to as the Special Rules, were made on July 17, 1962 but made effective retrospectively from November 1, 1956. These rules cover two categories of service; we are concerned here with category 2 - Tahsildars. Rule 4(a) of the rules says inter alia that the qualification of a candidate for appointment to the post of Tahsildar shall be as specified in the annexure to the rules. The annexure provides that a Tahsildar recruited by transfer from the category of Deputy Tahsildars must be a permanent Deputy Tahsildar or an approved probationer in the category of Deputy Tahsildars and should have exercised the powers of a magistrate of the third class and also of the second class for a period of six months in which capacity. Only these candidates who have passed a criminal judicial test can be invested with magisterial powers under the orders in force. Under Rule 4(a) the State Government has to prepare in consultation with the Public Service Commission a list of persons eligible for appointment as Tahsildars, and no Deputy Tahsildar is eligible for appointment as Tahsildar unless his name is included in such List.

2. The two respondents before us were directly recruited to the post of Deputy Tahsildar in the year 1962 and completed their period of probation in 1965. Both of them were declared as approved probationers in 1965 and were invested with the powers of a magistrate of the third class, and then of the second class. They became eligible for appointment as Tahsildars on November 14, 1966 and June 18, 1969 respectively.

3. The respondents and the said 63 Deputy Tahsildars all belongs to the Telangana area of the State. The 63 erstwhile employees of the Government of Hyderabad did not have the opportunity to acquire the qualifications prescribed by Rule 4(a) of the Special Rules on their promotion as Deputy Tahsildar. The Government felt that they should not be left out of consideration for appointment as Tahsildars and asked the Public Service Commission to consider the names of such Deputy Tahsildars for inclusion in the lists of eligible candidates assuring the Public Service Commission that the Government would relax the requirement as to qualification in favour of such Deputy Tahsildars provided they were otherwise found suitable by the commission. The Public Service Commission accordingly included the names of these 63 employees in batches in the lists prepared for the years 1965, 1966, 1968 and 1969. By an order dated June 30, 1971 the Governor of Andhra Pradesh relaxed the provisions of Rule 4(a) of the Special Rules relating to the qualifications required of Deputy Tahsildars for being appointed as Tahsildars in favour of these 63 employees of Tahsildar in the Telangana area according to the order in which the names had been indicated in the panels for the aforesaid years against the vacancies. The order traces the background of facts and states the reasons for relaxation of Rule 4(a) of the Special Rules in the case of these employees. The material part of the order is as follows :

The Government have had under consideration for some time past the preparation of panels of Tahsildars of the Telangana Region. According to Rule 4(a) read with the Annexure thereto of the Andhra Pradesh Civil Service (executive Branch) Special Rules, a candidate for appointment to the category of Tahsildars by transfer should in addition to the other qualification, be a permanent Deputy Tahsildar or an approved probationer in the category of Deputy Tahsildars of the Andhra Pradesh Revenue Subordinate Service by the July 1 of the year to which the list relates and should have exercised III class and II class magisterial powers respectively for a period of six months each. According to the orders in force, only those candidates who have passed the criminal judicial tests can be invested with magisterial powers. Allotted officers from Telangana for whom promotion to the category of Deputy Tahsildars constitutes the first stage of promotion after November 1, 1956 (viz Upper Division Clerks) are governed by the Hyderabad Cadre and Recruitment Rules for appointment as Deputy Tahsildar. There is no probation prescribed in the Hyderabad Cadre and Recruitment Rules for II Grade Clerks (Upper Division Clerks) on their promotions to the post of Deputy Tahsildars. Therefore, the question of their becoming approved of probationers in the category of Deputy Tahsildars does not arise. Further, the Hyderabad Cadre and Recruitment Rules do not lay down that the II Grade Clerks (Upper Division Clerks) should pass the Criminal Judicial Test as a condition precedent for promotion to the category of Deputy Tahsildars and, therefore those who did not pass the said tests could have had no opportunity of exercising magisterial powers while working as Deputy Tahsildars. In the circumstances it was felt that it would be unfair to exclude such persons from consideration for promotion to the category of Tahsildars on the ground that they were not approved probationers and/or had not exercised magisterial powers. The Public Service Commission was therefore, requested to consider the names also of the Deputy Tahsildars of the Telangana Region of the above category for inclusion in the panels for the respective years, regardless of whether or not they possessed above qualifications with in assurance that the Government would be prepared to relax the rules relating to above requirements in favour of the candidates who would be otherwise found suitable by the Commission.

4. Rule 4(a) of the Special Rules was relaxed by the Governor in favour of the aforesaid Deputy Tahsildars in exercise of the power conferred by Rule 47 of the Andhra Pradesh State and Subordinate Services Rules. Rule 47 reads as follows :

47. Relaxation of rules by the Governor - No rule made under the proviso to Article 309 of the Constitution of India or continued under Article 313 of the Constitution shall be construed to limit or abridge the power of the Governor to deal with the case of any class or category of person for being appointed to any civil post, or of any person serving in a civil capacity under the Government of Andhra Pradesh in such manner as may appear to him to be just and equitable :

Provided that, where any such rule is applicable to the case of any person or a class of persons the cases shall not be dealt with in any manner less favourable to the person or class of persons than that provided by that rule.

5. The respondents before us files a writ petition for quashing the order dated June 30, 1971 in so far as it relates to the said 63 employees who were impleaded as respondents 4 to 66 in the writ petition. The writ petitioners complained that as a result of the order their claims for appointment to the post of Tahsildar had been passed over in favour of unqualified persons, and the petitioners asked for a direction on the Government of Andhra Pradesh, the Board of Revenue, and the Andhra Pradesh Public Service Commission, who are the appellants before us, to include the names of the petitioners in the panel for the years 1968 and 1969, as the case may be, and fix their seniority at the appropriate places which they would have occupied had they been promoted at the relevant time. The learned Judge who heard the writ petition allowed the same and directed that the claims of the petitioners for inclusion of their names in the panels from the respective dates they had acquired the requisite qualifications, should be considered on merits. It was held that Rule 47 of the Andhra Pradesh State and Subordinate Services Rules did not confer any power to relax a rule retrospectively as had been done by the order dated June 30, 1971. It was further held that under Rule 47 power was given to the Governor personally to relax the rules and the impugned order dated June 30, 1971 which was passed not by the Governor really but by the Government of Andhra Pradesh was, as such, invalid. In the letters patent appeal preferred by the State, a Division Bench affirmed the judgment of the single Judge.

6. The view taken by the High Court that the power conferred by Rule 47 of the Andhra Pradesh State and Subordinate Services Rules is exercisable by the Governor personally is based on the judgment of this Court in *Sardari Lal v. Union of India* ((1971) 3 SCR 461 : (1971) 1 SCC 411). But *Sardari Lal's* case has been overruled by the later decision of this Court in *Shamsher Singh v. State of Punjab* ((1975) 1 SCR 814 : (1974) 2 SCC 813 : 1974 SCC (L&S) 550), and counsel for the respondents rightly conceded that the impugned order cannot be assailed on this ground after *Shamsher Singh's* case.

7. The real question that requires to be decided in this appeal is whether Rule 47 permits relaxation of any rule with retrospective effect. Before proceeding to consider this aspect, it is necessary to dispose of one small point raised on behalf of the appellants that the impugned order was not really retrospective but prospective in operation because it was only from the date of the order that the inclusion of the names of the said 63 employees in the panels for the different years was regularised. The order made on June 30, 1971 relaxed Rule 4(a) of the Special Rules in the case of these employees to validate the panels for the years 1965, 1966, 1968 and 1969. The impugned order thus regularised the inclusion of the names in the panels which was done long before the order was

made. The order is therefore clearly retrospective and not prospective in operation.

8. Rule 47 of the Andhra Pradesh State and Subordinate Services Rules gives power to the Governor to relax the rigour of the general rules in such manner as may appear to him to be just and equitable. To show that Rule 47 giving such wide power to the Governor is not unique of its kind, counsel for the appellants referred to similar provisions in several other Service Rules like, Rule 13 of the Secretary of State's Services (Medical Attendance) Rules, 1938, Rule 10 of the Indian Administrative Service (Pay) Rules, 1954, Rule 15 of the Indian Police Service (Probation) Rules, 1954, Rule 10 of the Indian Police Service (Pay) Rules, 1954, and Rule 10(b), proviso of the Indian Forest Service (Appointment by Competitive Examination) Regulations, 1967. Clearly, the power under Rule 47 is to be exercised in the interest of justice and equity. It is not difficult to see that the occasion for acting under Rule 47 may well arise after the attention of the Government is drawn to a case where there has been a failure of justice. In such cases justice can be done only by exercising the power under Rule 47 with retrospective effect, otherwise the object and purpose of the rule will be largely frustrated. The view we take finds support from the decision of this Court in *R. P. Khanna v. S. A. F. Abbas* ((1972) 3 SCR 584 : (1974) 1 SCC 784. In that case the Court was dealing with Rule 4(3)(b) of the Indian Administrative Service (Regulation of Seniority) Rules, 1954 which lays down that the year of allotment of an officer who was appointed to the service by promotion shall be the year of allotment of the junior most among the officers who entered the service by direct recruitment who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former. The second proviso to the rule states that a promotee shall be deemed to have officiated continuously in a senior post prior to the date of inclusion of his name in the select list prepared in accordance with the requirements of the Indian Administrative Service (Appointment by Promotion) Regulations, if the period of such officiation prior to that date was approved by the Central Government in consultation with the Union Public Service Commission. Overruling a contention raised on behalf of the direct recruits that it was not open to the State to make a retrospective declaration with regard to posts being made equivalent to senior posts, this Court observed : [SCC p. 793, para 21]

From the point of view of workability of the rule as well as the circumstances and the conditions of service it may out always be practicable to make such prospective declaration. It is only when the Government has found that it is necessary or desirable to declare such posts equivalent to senior posts that the Government will do so. That will be usually possible after the Government will have considered several factors namely finance, structure of the service the personnel fit for undertaking the post. Normally the promotees obtain promotion from the State Civil Service after long service. That is why Rule 3(3)(b) of the Regulation of Seniority Rules is designed to arrive at a fair adjustment of the competing claims of the direct recruits and the promotees. To hold that a promotee could not get the benefit of officiation unless the post was declared as equivalent to a senior cadre post before the promotee may be officiating continuously for a long period and his name may be included in the select list after some time. Again a person which officiates continuously for a long time may thereafter be not included in the select list. Such a person might deprive a person who would otherwise be found suitable for appointment by promotion after similar officiation in a similar post. It is only when the State Government finds that is desirable to declare the post equivalent to a senior post inter alia by reason of the efficiency of the person which has entitled him to promotion that the consequential necessity arise for giving him that senior post by requisite declaration of a senior post. A retrospective declaration therefore is in the scheme of

things practical as well as reasonable.

9. Counsel for the respondents drew our attention to the words "for being appointed" in Rule 47 to contend that the rule was meant to be applied only prospectively. According to counsel the rule when it says that nothing in the general rules shall limit or abridge the power of the Governor to relax the rigour of these rules in the case of any class or category of persons "for being appointed to any civil post", it contemplates an appointment in future. We do not think that this contention has any force. The words "for being appointed" in the context in which they appear, do not necessarily refer to a future appointment. The validity of an appointment to any civil post may be questioned after the appointment has been made and there is nothing in Rule 47 to indicate that the Governor in exercise of power under this rule cannot deal with such a case, if this was required in the interest of justice and equity.

10. It appears that after the judgment of the Division Bench of the High Court was delivered on November 11, 1974 by a notification dated November 25, 1974 the provision in the Special Rules setting out the qualifications required for the post of Tahsildar was amended by adding a proviso saying that the requirement in regard to being an approved probationer and the exercise of powers of magistrate shall not apply in respect of those Deputy Tahsildar in the Telengana area for whom promotion to the category of Deputy Tahsildar was or is the first stage of promotion after the 1st November 1956.

The notification states that the amendment shall be deemed to have come into force on June 1, 1961. The amendment thus appears to cover the cases of the said 63 Deputy Tahsildars. However the rule as amended does not arise for consideration in this appeal which is directed against the judgment of the High Court based on the rule as it stood prior to the amendment and we do not express any opinion on the amended rule.

11. The appeal is allowed the judgment of the High Court is set aside and the writ petition is dismissed. In the circumstances of the case we make no order as to costs.

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