

V. S. Murty and Others

Vs

Deputy Chief Accounts Officer and Others

Civil Appeal No. 263 of 1982

(D.A. Desai, V.B. Eradi JJ)

22.02.1983

JUDGMENT

DESAI, J. –

1. This appeal by special leave is directed against the decision in Writ Petition No. 1021 of 1975 filed in the Andhra Pradesh High Court at Hyderabad which came to be transferred under para 14(1) of the Andhra Pradesh Administrative Tribunal Order, 1975 and which was numbered as Transferred Writ Petition No. 1663 of 1976, by which Andhra Pradesh Administrative Tribunal ('Tribunal', for short) allowed the writ petition and quashed the orders permanently absorbing respondents 2 to 10 in the various posts in the office of Deputy Chief Accounts Officer, Nagarjuna Sagar Project. Respondents 2 to 10 in the High Court are the appellants in the present appeal, and original petitioners are respondents 2 to 108. Deputy Chief Accounts Officer is respondent 1.

2. Nagarjuna Sagar Control Board was constituted in the year 1955 charged with a duty to implement N. S. Project. The Board had the power to recruit required ministerial staff on purely temporary basis. On August 1, 1959, a decision was taken by the Andhra Pradesh Government to disband the autonomous Board and to convert it into a department of the Government. On the conversion of the set up of the Board into a department of the Government, it became necessary to devise ways and means to absorb the employees recruited by the Board. Number of controversies surfaced and to some extent the present one is one such controversy. There was an office styled as the office of the Chief Engineer, N. S. Dam with the Chief Engineer as Head of the Department. Appellants were serving in the office of the Chief Engineer, N. S. Dam Unit. By the order dated February 8, 1964 appellants were transferred to the office of the Pay and Accounts Officer, N. S. Project. At the time of transfer, appellants were officiating as UDC and were directed to report to the Deputy Chief Accounts Officer, N. S. Project to be posted as UDCs. Since then appellants have been working in the office of the Dy. CAO and some of them have been even promoted, maybe temporarily, to the post of Superintendent. By the G. O. Ms. No. 27 PWD dated February 3, 1972, the State Government accorded sanction to the permanent retention of the posts set out in the order with effect from April 1, 1967 in the office of Dy. CAO. Amongst other 38 posts of UDCs were thus made permanent by this order. The aforementioned order further provided that the posts so made permanent shall be filled in by personnel already working in the Accounts Organisation. It appears that some of the appellants made a representation to the Dy. CAO for the permanent absorption in his office. Ultimately by various orders made in February 1975, appellants were permanently absorbed as UDCs in the establishment of Dy. CAO and they were given seniority as provided in Rule 27 of Andhra Pradesh Ministerial Service Rules. Respondents 2 to 108 who were petitioners before the Tribunal were working as UDCs or LDCs since the inception of their career in the office of Dy. CAO. They were initially recruited as LDCs during the period 1959-65. Some of

them were promoted as UDCs from 1961 onwards. They were aggrieved by the permanent absorption of the present appellants who were respondents in the High Court. They accordingly filed the writ petition from which this appeal arises, contending that the appellants were holding substantively post of UDC in the office of the Chief Engineer and they were not transferred but sent on deputation in the Pay and Accounts Office as per the order dated February 8, 1964 and other like orders by the Chief Engineer, N. S. Dam and they had a permanent lien in the parent department and therefore, they could not be absorbed in the office of the Dy. CAO. It was, therefore, contended that they may be repatriated to the parent department but in any even even if they are not to be repatriated, they could not claim to be absorbed permanently over the respondents who have been since the inception of their career working in the office of Dy. CAO. The specific contention was that the Dy. CAO not being the Head of the Department, the provision contained in Rule 3(2) of Andhra Pradesh Ministerial Service Rules, 1961 would not be attracted and therefore the appellants could not be said to have been recruited by transfer and therefore, could not have been absorbed and they had no right to either claim any permanent post or promotion in the office of the Dy. CAO. The submission was that the permanent retention and absorption of the appellants adversely affected the promotional prospects of the present respondents and the retention and absorption and consequent seniority being contrary to relevant rules must be struck down as invalid.

3. The learned member of the Tribunal held that the Dy. CAO had not the powers of the Head of a Department. It was not therefore, within his competence to absorb and retain the appellants in his office and confirm them against the posts made permanent by the G. O. Ms. No. 27 dated February 3, 1972. As a corollary it was held that the various orders made in February 1975 permanently transferring, absorbing and retaining and consequently granting seniority to the appellants were violative of the rules and were struck down. Hence this appeal by the original respondents 2 to 10.

4. Appellants indisputably were working as UDCs for a period of more than three years before they came to be transferred by the Chief Engineer to the office of Dy. CAO in February 1964. This order clearly shows that the transfer was for administrative convenience. Nowhere the orders recite that the transfer was at the request of the transferred personnel. The order is the usual short cryptic government order which recites that the UDCs whose names were set out in the order were transferred to PAO's office, N. S. Project. The order directs all the transferred to UDCs to report for duty to Dy. CAO, N. S. Project immediately on their relief. The language of this order leaves no room for doubt that the head of the department under who, the appellants were working, transferred them for administrative reasons and for exigencies of service. Complying with this order, the appellants reported for duty to the Dy. CAO and since then, except appellant 9, the rest of them have been continuously working as UDC and have earned temporary promotion as Superintendent. So far there is no controversy.

5. The Tribunal nowhere examined the power of the Chief Engineer, N. S. Dam Project to transfer person working under him to the office of Dy. CAO. It must therefore, be assumed that he had the power to transfer appellants to the office of the Dy. CAO. It does not transpire from the record that the transfer was at the request of transferees. It does not appear that these persons held the lien in the parent department. It does not transpire from the record that they were given any proforma promotions in the parent department. Virtually, since the transfer, they have been treated as part and parcel of the establishment of Dy. CAO. The appellants were holding the post of UDC for a period of more than three years prior to their transfer from the officers of the Chief Engineer to the office of the Dy. CAO. Indisputably, therefore, when they were transferred and occupied the identical post in the office of the Dy. CAO, some of the respondents working in the office of the Dy. CAO would have been adversely affected because in the absence of the appellants, if it becomes necessary to

have more posts in the category of UDC, obviously some of the LDCs working in the office of the Dy. CAO could have been promoted. This becomes manifest from the judgment of a Division Bench of the Andhra Pradesh High Court in Writ Appeal No. 96 of 1970. After the appellants were transferred, their services were regularised by the Chief Engineer as per his proceedings dated August 11, 1968. This proceeding was challenged by some of the persons similarly situated like the present respondents on the ground that the present appellants had come on deputation and not on transfer and they cannot be given seniority over those who joined service in N. S. Dam Unit from the inception of their career. The learned Single Judge dismissed the petition holding that the present appellants were transferred on administrative ground; that the temporary posts which they filled in were converted into permanent posts and the appointments of the appellants in those posts were regularised. It was held that the transfer was on administrative ground, and therefore, their length of service in the parent department had to be taken into account for the purpose of determining their seniority. On this finding, the writ petition was dismissed, and the appeal met with the same fate. thus the first challenge failed. Appellants were thus given seniority over respondents in the office of the Dy. CAO. We have serious doubts whether the Tribunal had jurisdiction to reopen the settled question about the status of the present appellants in the office of the Dy. CAO, which would incidentally be the effect of the judgment of the Tribunal. We would presently examine the contention which has found favour with the Tribunal and which in our opinion is wholly untenable.

6. After reciting the various contentions, the Tribunal addressed itself to the question which in its view was a primary question whether the Dy. CAO was the Head of the Department. The Tribunal observed that it is only if it is held to the office of Had of a Department that the transfer of the present appellants in one out of four vacancies of UDC under Rule 3(2) can be justified.

7. Frankly we are of the opinion that this question hardly arises in this case in view of the earlier decision of Andhra Pradesh High Court determining the status of the appellants in the establishment of Dy. CAO. However, keeping aside for the time being the decision of the High Court, we would proceed to examine the contention which found favour with the Tribunal on merits.

8. The question of ascertaining whether Dy. CAO was the Head of the Department arises in view of the provision contained in Rule 3(2) of the Andhra Pradesh Ministerial Rules, 1961. Before we extract Rule 3(2), it may be mentioned that Rule 4 provides for recruitment by promotion. Rule 3(2) provides that "besides promotion as provided in Rule 4 the first vacancy out of every four successive substantive vacancies of Upper Division Clerks in the offices of Heads of Department and Directorates shall be reserved to be filled only from among the suitable Upper Division Clerks working in the subordinate offices of the concerned Head of the Department or Directorate". There is a proviso which provided that : "where any Head of the Department or Directorate has no subordinate office under its administrative control, the vacancy shall be filled by a suitable Upper Division Clerk working in the office of any other Head of the Department or Directorate or any other subordinate office, as the case may be, in this service."

9. The Tribunal after referring to this rule took notice of the recital in the impugned order dated February 28, 1975 wherein the Dy. CAO purported to exercise the powder under Rule 3(2) of the Andhra Pradesh Ministerial Service Rules. The Tribunal therefore, concluded that apart from any other consideration unless all the conditions for attracting Rule 3(2) are satisfied, the order must fail. Undoubtedly, before Rule 3(2) could be attracted, it must be shown that the vacancies in which appellants were absorbed were in the cadre of UDC and were in the office of the Head of the Department. If it be so, then out of four successive substantive vacancies, the first one is to be

reserved to be filled in either from amongst suitable Upper Division Clerks working in the subordinate office or if there is no such office, then according to the proviso, from the office of the other Head of the Department or Directorate.

10. To ascertain whether Dy. CAO is the Head of the Department, the Tribunal has referred to the definition of the expression 'Head of a Department' as set out in Article 6, Chapter II of the Andhra Pradesh Financial Code, Volume 1, which provided that 'Head of Department to be the head of a department'. Assuming that the definition of the expression 'Head of a Department' in the Financial Code which is relevant to ascertain the financial powers of a Head of a Department holds good or all other powers conferred on a Head of Department under other rules, this definition merely provides that any one would be a Head of a Department who is specially declared by the Government to be the Head of a Department. The declaration if and when made under the Financial Code and unless expressly provided, it cannot be extended to comprehend the Head of Department under other rules. With this limitation let us examine whether Dy. CAO is the Head of the Department.

11. To begin with the Tribunal records a concession by the learned Government Pleader appearing for the Dy. CAO that no order has been issued declaring the office of the Deputy Chief Accounts Officer, Nagarjuna Sagar Organisation as Head of Department. We are a little surprised at the stand taken on behalf of the Dy. CAO in the High Court and in this Court. In the High Court an affidavit meaning thereby justifying the order in favour of the appellants. After the Tribunal quashed the orders and respondents 2 to 10 filed the present appeal, an affidavit has been filed by one Shri T. Venkatanarayana, styling himself as Director of Accounts which seems to be the new designation for the former designation of Dy. CAO opposing the appeal of the present appellants. He desires the present appeal to be dismissed on the ground that original transfer orders were only for one year and there was no order extending the period of transfer. He also stated that R. V. Surya Rao one of the appellants left the Organisation of Dy. CAO on February 9, 1972 and was again taken in the year 1975 at his request. The stand appears to be selfcontradictory and it has left us guessing about this volte face. Out of abundant caution we have decided to keep aside the stand of the Dy. CAO in this behalf. More so because there is inexplicable silence on the point whether the Dy. CAO was or was not the Head of the Department.

12. It is therefore, necessary to independently examine whether Dy. CAO virtually enjoys the powers of the Head of a Department, so as to be treated as Head of the Department for the purpose of Rule 3(2). When the appellants came to be transferred by the Chief Engineer on February 8, 1964, it appears that the office of the Dy. CAO was administratively subordinate to the Chief Engineer, N. S. Dam Project. If it were otherwise, the Chief Engineer could not have transferred the appellants who were borne on his establishment to the office of the Dy. CAO. As pointed out earlier, the transfers were on administrative ground and certainly not at the request of the appellants. Further the transferred personnel could not have been considered as on deputation because if a government servant is sent outside his office on deputation, there are certain benefits to which he would be entitled, which in this case are not shown to have been made available to the appellants. They were transferred from the post of UDC to the corresponding post of UDC. In 1964 it at least appears that Dy. CAO was not the Head of the Department.

13. On May 3, 1966 by G. O. Ms. No. 178, it was, inter alia, directed that the staff working in the office of Deputy Chief Accounts Officer and Pay and Accounts Officers may be treated as Ministerial Service and will be given the scales of pay applicable to the staff in the offices of the Heads of Departments. It appears that there was difference in the pay scales available to the staff in

the office of Dy. CAO was held eligible for scales applicable to the staff in the office of the Head of the Department. This will impart a flavour to the Dy. CAO as being the Head of the Department.

14. The Governor of Andhra Pradesh made what are styled as ad hoc rules for the temporary posts of ministerial staff in the offices of the Deputy Chief Accounts Officer and Pay and Accounts Officers under Financial Adviser and Chief Accounts Officer's Organisation, Nagarjuna Sagar Project, in exercise of the power conferred by the proviso to Article 309 of the Constitution. By Rule 1, the General and Special Rules commonly applicable to the holders of the permanent posts of the respective categories in the Public Works Department in the Andhra Pradesh Ministerial Service were made applicable to the holders of the temporary posts of Superintendents, UDCs, LDCs, and Typists and Steno- typists in the office of the Deputy Chief Accounts Officer and Pay and Accounts Officers subject to the modifications set out in the subsequent rules. One such modification worth noticing set out in the subsequent rules. One such modification worth noticing is that Dy. CAO was constituted as appointing authority for the aforementioned staff in his office. Further the Financial Adviser and Chief Accounts Officer, under whom Dy. CAO was directly working, were declared in 1966 as Secretariat Department. Accordingly Dy. CAO came directly under the Secretariat Department, and was invested with power of appointing authority which comprehended the power to appoint persons who would be eligible for pay scales applicable to the staff in the offices of the Heads of Departments.

15. It was however contended that G. O. Ms. No. 335 dated November 1, 1974 would leave no room for doubt that Dy. CAO is not the Head of the Department. The preamble this G. O. reads as under :

In the circumstances stated by the Financial Adviser and Chief Accounts Officer, N. S. Project in the U. O. Note read above, the Dy. Chief Accounts Officer, N. S. Project is delegated with the following powers instead of declaring him as the Head of Department.

16. The extent of delegation of power is irrelevant. It was submitted that the recitals herein extracted would put the matter beyond the pale of controversy that Dy. CAO was not only not the Head of the Department certain powers had to be specifically conferred upon him. On the contrary this would justify the belief that 'Head of Department' for Financial Code and for service rules are not terms of co-extensive connotation and they have different meaning in different context. For example, for service rules the Dy. CAO is declared an appointing authority, the power usually enjoyed by of a Department. But such Head of Department may not be so declared for the Financial Code. In the G. O. dated November 1, 1974, it was considered unnecessary to declare him Head of a Department for Financial Code and, therefore, certain powers had to be conferred upon him. A perusal of powers would reveal that they were financial powers. One can be a Head of the Department but powers may be curtailed under the Financial Code. Alternately, one may not be a Head of a Department for other purposes and yet may enjoy full financial control if declared to be 'Head of the Department' for Financial Code. We are concerned in this case with the meaning of the expression 'Head of a Department' in Rule 3(2). In this connection, if the Dy. CAO is shown to be directly working under a secretariat department without intervention of any higher office and if it is declared an appointing authority and the scales admissible to the ministerial service in its office are those admissible to the staff in the office of the Heads of Department, there is no escape from the conclusion that for purposes of Rule 3(2), he would be the Head of the Department.

17. We are fortified in this conclusion from U. O. Note dated June 11, 1969 of the Office of

Financial Adviser and Chief Accounts Officer, which is the secretariat department under which Dy. CAO is directly working. The Relevant portion of the Note may be extracted. It reads as under :

Hitherto, recruitment to the post of L. D. Clerks, U. D. Clerks in Deputy Chief Accounts Officer's Organisation Nagarjuna Sagar Project was done based on the allotment of candidates who passed Group II Services examination of the Andhra Pradesh Public Service Commission, since the offices of the Deputy Chief Accounts Officer and Pay and Accounts Officers, N. S. Project were considered to enjoy the status of the Heads of the Department Offices. In G. O. Ms. No. 178 PWD, Projects Wing, dated May 3, 1966 orders were issued that the office of the Financial Adviser and Chief Accounts Officer and Pay and Accounts Officers may be treated as Ministerial Service and will be given scales of pay applicable of staff in the offices of the Heads of Departments. Further the ad hoc rules issued in G. O. Ms. No. 337 PWD, Projects Wing dated September 24, 1968 stipulate that the Deputy Chief Accounts Officer, Nagarjuna Sagar Project is the appointing authority up to the level of Superintendents in his organisation.

If there was any lurking doubt whether the Dy. CAO is the Head of the Department, it stands wholly removed by the Note extracted hereinabove. It may be recalled that the power to declare Head of the Department as defined in the Financial Code vests in the Government and the Government acts on the advice of the concerned Secretariat Department. The concerned department is so Financial Adviser and Chief Accounts Officer, which is declared as the Secretariat Department. And this note shows that the Secretariat Department meaning thereby the Government treated the Dy. CAO as the Head of the Department. Therefore, for the purpose of Rule 3(2), there is no room for doubt that Dy. CAO was the Head of the Department.

18. If Dy. CAO was the Head of the Department then in view of Rule 3(2) with regard to the recruitment in the cadre of UDC first out of every four successive substantive vacancies is to be filled in from the subordinate offices and according to the proviso to Rule 3(2), if there is no subordinate office, from any other office of the Head of the Departments or Directorate. There is recital to that effect in the impugned order which was questioned on the short ground that Dy. CAO was not the Head of the Department. One that ground is out of the way, the contention of the respondents must fail.

19. Briefly, we may point out that this very conclusion can be reached by a slightly different process of reasoning. Appellants were transferred to the office of Dy. CAO in 1964. The judgment of the High Court of Andhra Pradesh, practically inter partes, affirms the position that appellants were transferred and their appointments by transfer were valid. Their services were regularised and the High Court held regularisation valid and legal. They were given seniority over respondents in that organisation. It appellants have been working for so many years, they were entitled to be absorbed, if there was no legal bar against absorption. Their entry in office has been held by the Andhra Pradesh High Court in the earlier judgment as valid and regular and they having rendered service for 11 long years before the impugned action was taken they were entitled to be absorbed in the department. Now the present dispute arose when by G. O. dated February 3, 1972, 38 posts in cadre of UDC were made permanent. That very G. O. provided that the posts made permanent shall be filled in by the personnel already working in the Accounts Organisation. Appellants were working in the Accounts Organisation since 1964. Their services were regularised. They were given seniority. Therefore, at the relevant time in 1975 they were working in Accounts Organisation. They

could therefore, be absorbed without reference to Rule 3(2). The controversy arose because Dy. CAO referred to Rule 3(2) in the impugned order. In our opinion that was unnecessary. They could claim to be absorbed according to seniority in the posts made permanent. And therefore, also the impugned orders were valid but as the Dy. CAO proceeded to exercise power under Rule 3(2), we would uphold the validity for the reasons mentioned in the earlier portion of the judgment.

20. Before we conclude, we must advert to one contention, that as the appellants came at their own request, their seniority would be governed not by the first proviso to Rule 36(e) but by the second proviso. The relevant provisos to Rule 36(e) cater to the method of determining seniority of persons transferred on administrative ground or at request of government servant from one department to any other department. IF the transfer was on administrative ground from one department or office to another, the seniority of the transferred government servant shall be fixed with reference to the date of his first appointment in the former department or office from where he is transferred. If on the other hand, the transfer is at the request of the concerned government servant, his seniority will be determined with reference to the date of his appointment in the department to which he is transferred. After referring to these provisos, it was urged that the appellants were transferred at their request and therefore, their seniority has to be determined with reference to the date on which they came to be transferred to the organisation of Dy. CAO. In fact, this contention is concluded by the earlier decision of the Andhra Pradesh High Court. Even apart from that there is no merit in the contention. Appellants were transferred in February 1964 and we have referred to the transfer order more than once. There is not the slightest whisper of transfer on request in that order. But it was urged that initially transfer was for a period of one year only and the subsequent continuation in the office of the Dy. CAO does not prescribe the period of transfer. However, the respondents placed reliance on a corrigendum issued on March 3, 1964 by which following sentence was added to the order of transfer dated February 8, 1964. The addition reads as under :

The above transfers will be for a period of one year in the first instance.

It was then pointed out that in the subsequent order the expression used is not 'period of transfer' but 'period of deputation' and an used enquiry was made whether the further extension of period was necessary. This appears to us to be quibbling. Except for appellant 9, R. V. Surya Rao, all the appellants have been working in the office of the Dy. CAO since 1964 and it is too late in the day now to contend that the subsequent extension was at the request of the appellants. Therefore, the seniority would be governed by the first proviso to Rule 36(e) and not by the second proviso and that having been done no question arises of interfering with the same.

21. As we are of the opinion that the Tribunal was in error in holding that the Dy. CAO was not the Head of the Department, the decision of the Tribunal is unsustainable and the decision of the Andhra Pradesh Administrative Tribunal, Hyderabad in Transferred Writ Petition No. 1663 of 1976 dated September 1, 1980 is quashed and set aside and the writ petition filed by the respondents in the Andhra Pradesh High Court is dismissed with no order as to costs.

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