

Y. V. Rangaiah and Others

Vs

J. Sreenivasa Rao and Others

State of Andhra Pradesh and Others

Vs

J. Sreenivasa Rao and Others

Civil Appeals Nos. 2954-2955 and 2956-2957 of 1980

(D. Chinnappa Reddy, R.B. Misra JJ)

24.03.1983

JUDGMENT

R. B. MISRA, J. –

1. These two sets of appeals by special leave are directed against a common order of the Andhra Pradesh Administrative Tribunal. Hyderabad dated August 20, 1980; the first one by Y. V. Rangaiah and others, and the other by the State of Andhra Pradesh and another. By the said order the Administrative Tribunal disposed of two representation petitions Nos. 302 of 1978 and 1036 of 1978. As the two sets of appeals raise common questions of law, they are being disposed of by a common judgment.

2. The petitioners in the two representation petitions are working as Lower Division Clerks in the Department of Registration and Stamps, Andhra Pradesh. Rule 4 (a) (1) (i) of the Andhra Pradesh Registration and Subordinate Service Rules, lays down that all first appointments to a service, State or subordinate, and all promotions in a service otherwise than in accordance with clause (ii) of sub-rule (b) of Rule 34 shall be made by the appointing authority or the authority specified in sub-rule (c), as the case may be, from a list of the approved candidates. The rule further provides that such list shall be prepared in the prescribed manner by the appointing authority or any other authority empowered in the special rules in that behalf. The rule further requires that the list of approved candidates for appointment by transfer, where the Public Service Commission is not consulted on the suitability of a candidate, shall be prepared in the month of September every so as to be in force until the list of approved candidates for the succeeding year is prepared and for the purpose of preparing the said list the claims of as many eligible candidates as such authority considers necessary shall be considered. This rule further enjoins that the list of approved candidates shall contain such number of candidates as is approximately equal to the number of vacancies expected to arise during the currency of that list. Rule 4 (a) (2) requires that persons who are included in the previous year's list. The explanation under the rule further clarifies that in considering the inclusion of such persons in the current year's list, it shall not be necessary to carry forward the names of all such persons without having regard to the relative merit and ability.

3. Apart from the aforesaid rules, the Government have also issued very clear instructions from time

to time viz., G. O. Rt. No. 1042-G. A. (Ser-A) Department dated June 15, 1966, G. O. Ms. No. 485-G. A. (Ser-A) Department dated July 26, 1968, G. O. Ms. No. 202-G. A. (Ser-A) Department dated April 4, 1968, and Memo No. 1476/Service/A/72-2 dated November 7, 1975. The Memo dated November 7, 1975 in paragraphs 5 and 6 states :

5. It needs hardly be urged that prompt preparation of panel is essential both for increasing administrative efficiency, and also for filling up vacancies without delay.

6. All the appointing authorities are directed to bear in mind the instructions issued on the preparation of panels and ensure that the panels are prepared in the month of September every year.

4. In the light of the rules and instructions mentioned above, a list of approved candidates should have been prepared as on September 1, 1976 for making appointments to the grade of Sub-Registrars Grade II by transfer. The grievance of the petitioners is that contrary to the rules and instructions a list of the approved candidates was not prepared as on September 1, 1976; instead it was considerably delayed and drawn up only in the year 1977 when an amendment to the rules had been incorporated by G. O. Ms. No. 265-Revenue (UI) dated March 22, 1977 whereby the original rules, providing for consideration of Lower Division Clerks for appointment as Sub-Registrars Grade II were done away with and promotion or transfer to that category was to be made from amongst Upper Division Clerks employed in the Registration and Stamps Department. The complaint of the petitioners in the two representation petitions is that by delaying the preparation of list of approved candidates till after the rules were amended their chances for consideration for appointment to the higher post were adversely affected in as much as the petitioner in Representation Petition No. 302 of 1978 ranked as serial No. 2 in Zone IV and the two petitioners in Representation Petition No. 1036 of 1978 stood at serial Nos. 9 and 10 in the category of Lower Division Clerks, i.e. much higher to respondents 3 to 15. Had a list been prepared as on September 1, 1976 in accordance with the prescribed rules and instructions the petitioners by virtue of their high seniority among the Lower Division Clerks stood a fair chance of being appointed to the higher grade. The inevitable result of the delay in the preparation of the list has been that respondents 3 to 15, who were juniors to the petitioners in the category of Lower Division Clerks, have been promoted as Sub-Registrars Grade II and the petitioners who were senior to those respondents have been denied their legitimate chance of promotion. The petitioners in the two representation petitions, therefore, prayed for cancellation of the appointment of respondents 3 to 15 and for their appointment in the vacancies that existed from September 1, 1976 to August 31, 1977. The petitioners further sought direction to respondents 1 and 2 to prepare a panel or list of the Upper Division Clerks and Lower Division Clerks eligible for appointment by transfer as Sub-Registrar Grade II according to old Rule 5 of Andhra Pradesh Registration and Subordinate Service Rules and to make appointments by transfer with retrospective effect out of the panel for vacancies arising during the said period.

5. The claims of the petitioners in the representation petitions were resisted on various grounds : (1) that the Inspector-General of Registration and Stamps was under an obligation to prepare the panels of the Sub-Registrars from time to time, but he was not obliged to prepare the same annually; (2) that the delay in the preparation of the panel as on September 1, 1976 was not actuated by any motive but it was consequent upon the implementation of the new rule whereunder the posts of Sub-Registrars which were of State-wide cadre, were made zone-wise with effect from October 18, 1975; and (3) that the allocation of posts and personnel among the zones had to be made by the Government.

6. The Tribunal on consideration of the materials on record came to the conclusion that the vacancies that arose between the preparation of the panels in December, 1975 and April, 1977 were eight, and that there was no reason why panel for that period should not have been drawn up at all. It is true that after October 18, 1975 the zones came into existence and, therefore, promotions to the grade of Sub-Registrar were required to be made on zonal basis, but after the personnel had been allocated to various zones, the task of preparing the annual panel with reference to the vacancies arising during the period 1976-77 should have been taken up on the basis of the seniority list for Zone IV. Had such a list been prepared according to the Andhra Pradesh Registration and Subordinate Service Rules, the eligibility of the candidates would naturally have been considered without reference to the amendment issued in March, 1977. On these findings the Tribunal held that the action taken by the Inspector-General of Registration and Stamps to make appointments against vacancies arising during the period 1976-77 from amongst the 'left-overs' of the panels drawn up in April, 1975 and to dispense with the preparation of panel for 1976-77 was in violation of the rules and thus liable to be set aside, and it directed the State of Andhra Pradesh and the Inspector-General of Registration and Stamps to draw up a fresh panel for the year 1976-77 with reference to the vacancies that arose during that period, strictly in accordance with the rules as they existed at the time, and the vacancies pertaining to that period should be filled on the basis of such a panel. Since the amendment to the rules was made in March, 1977, it follows that for vacancies relating to the panel year 1977-78 and subsequent years the panels will have to be prepared in accordance with the rules as they were amended by G. O. Ms. No. 265-Revenue (UI) dated March 22, 1977.

7. The order of the Tribunal has given rise to two sets of appeals mentioned above, one by Y. V. Rangaiah and others, and the other by the State of Andhra Pradesh and another.

8. The contention on behalf of the appellants herein is that by the time the list was prepared in May, 1977 Rule 5 of the Andhra Pradesh Registration and Subordinate Service Rules was amended and the list was prepared in May, 1977 Rule 5 of the Andhra Pradesh Registration and Subordinate Service Rules was amended and the list prepared was in accordance with the rules then prevailing at the time of preparation, and therefore there was nothing wrong with the preparation of the panel. It was further contended that the petitioners in the two representation petitions having not challenged the validity of the amendment to Rule 5 of the Andhra Pradesh Registration and Subordinate Service Rules, it was not open to them to challenge the list prepared in May, 1977 which is in accordance with the rules prevailing at that time.

9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

10. For the reasons given above, we find no force in the contentions raised on behalf of the appellants. Both the sets of appeals, therefore, must fail. They are accordingly dismissed. There is,

however, no order as to costs.

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