

R. K. Rama Rao and Another

Vs

State of Andhra Pradesh and Others

Andhra Provincial Village Officers' Association and Another

Vs

State of Andhra Pradesh

Special Leave Petitions (Civil) Nos. 846

(O. Chinnappa Reddy, K. Jagannatha Shetty JJ)

08.05.1987

ORDER

CHINNAPPA REDDY, J. -

1. Special leave granted.

2. These two appeals are the aftermath of the decision of this Court in *T. Venkata Reddy v. State of A. P.* ((1985) 3 SCR 509 : (1985) 3 SCC 198 : 1985 SCC (L&S) 632 : 1986 Lab IC 357) and the order rejecting S.L.P. Nos. 4417 to 4447 of 1986. By the Andhra Pradesh Abolition of Posts of Part-time Village Officers Ordinance, 1984, the posts of part-time Village Officers stood abolished with effect from the date of the commencement of the Ordinance, which was January 6, 1984. The Ordinance defined 'Part-time Village Officer' as a person who held any of the Village Offices of Headman, Munsif, Reddy, Monagir, Peddakapu, Patel, Karanam or Patwari or triune officer or holder of any such village office by whatever designation locally known. The constitutional validity of the Ordinance was questioned in several writ petitions filed in the Supreme Court. In *Venkata Reddy v. State of A. P.* ((1985) 3 SCR 509 : (1985) 3 SCC 198 : 1985 SCC (L&S) 632 : 1986 Lab IC 357), the Constitutional validity of the Ordinance was upheld by this Court. At the hearing of the writ petitions, a question was mooted whether the erstwhile Village Officers could be absorbed as Village Assistants who were to replace the Village Officers. When a similar question arose in connection with the abolition of the posts of Village Officers of Tamil Nadu in *K. Rajendran v. State of Tamil Nadu* ((1982) 3 SCR 628 : (1982) 2 SCC 273 : 1982 SCC (L&S) 208 : (1982) 2 LLJ 259), the learned Attorney General on behalf of the Tamil Nadu Government filed a memorandum assuring the court that all erstwhile Village Officers possessing the minimum general qualification as required under the Abolition Act and irrespective of their age would be screened by a committee appointed by the government and those found suitable would be appointed to the new posts without the necessity of their having to make applications or having to appear for a test. When the Andhra Pradesh writ petitions were being heard by the Supreme Court there was some correspondence between the Advocate General and the Government of Andhra Pradesh and the Advocate General was authorised to give an assurance, if necessary, on the same lines as that given by the Attorney General in the Tamil Nadu case. An affidavit was filed on behalf of the Government of Andhra Pradesh before the court in those writ petitions and the relevant portion of the affidavit was also

recorded by the court in its order. The court said : (SCC pp. 216-17, paras 24-25)

It is lastly urged that the State Government may be asked to consider the cases of those petitioners who possess the prescribed qualifications for appointment as Village Assistants. We are informed that the number of posts of Village Assistants that are going to be created would be about one-eighth of the number of posts of part-time Village Officers which are abolished. It is also difficult in law to issue any direction in that behalf in the facts and circumstances of this case. We, however, record that in paragraph 21 of the counter-affidavit filed by B. V. Janardhan Reddy, Deputy Secretary to the Government, Revenue Department, Government of Andhra Pradesh it is stated thus :

In addition, the government is of the view that such of those Village Officers who possess the required qualifications as prescribed and otherwise found suitable will also be considered for appointment of Village Assistants subject to the availability of the posts.

We trust that the State Government will give due regard to the abovesaid statement while making appointments. Statements contained in affidavits are meant to be honoured.

What is important to be noted here is that at that stage there was no prescription of any age limit and nobody even hinted at any maximum age limit in the case of these erstwhile Village Officers. On the other hand, the assurance was assumed to be as in the Tamil Nadu case ((1982) 3 SCR 628 : (1982) 2 SCC 273 : 1982 SCC (L&S) 208 : (1982) 2 LLJ 259) that all those erstwhile Village Officers found eligible and suitable would be appointed irrespective of their age.

3. Subsequent to the judgment in Venkata Reddy v. State A. P. ((1985) 3 SCR 509 : (1985) 3 SCC 198 : 1985 SCC (L&S) 632 : 1986 Lab IC 357), ad hoc rules were made for the recruitment of Village Assistants. The ad hoc rules did not provide for the absorption of erstwhile Village Officers in the post of Village Assistants. Instead a notification was issued by the Commissioner of Land Revenue, Andhra Pradesh inviting applications for appearing at a competitive examination for selection to posts of Village Assistants. Thereupon the erstwhile Village Officers filed several writ petitions in the High Court of Andhra Pradesh to direct the Government of Andhra Pradesh to act according to the undertaking given by the Government of Andhra Pradesh before the Supreme Court. These writ petitions were allowed by the High Court of Andhra Pradesh by a judgment dated February 4, 1986. The High Court observed :

From the letter dated January 10, 1984 addressed to the Advocate General from the government (the body of which has already been extracted in this judgment) which was read out before the Division Bench and which fact has been recorded by the order dated January 12, 1984 in WPMP 571/84 in WP 420/84 and connected cases, it is clear that the Advocate General had apprised the concerned Secretaries to the Government of the details of the undertaking given by the Attorney General on behalf of the Tamil Nadu Government, recorded by the Supreme Court in connection with the case challenging the constitutional validity of Tamil Nadu Act 3 of 1981 (vide para 45 of the judgment of K. Rajendran v. State of Tamil Nadu ((1982) 3 SCR 628 : (1982) 2 SCC 273 : 1982 SCC (L&S) 208 : (1982) 2 LLJ 259)). The query to the Chief Minister through the Secretaries made by the Advocate General was whether, as in the Tamil Nadu case, if any suggestion was made by the court, he could give a similar assurance if it was found necessary. The Chief Minister, to whom the position was explained by the Secretaries, had agreed to the suggestion.

The reference to qualification etc. in the latter part of the letter has to be read and understood in the context of the qualification and suitability stated in the undertaking given by the Attorney General which has been extracted above. This is particularly so with reference to the availability of posts, in view of the fact that as against 37,000 part-time Village Officers thrown out of their posts, what was proposed, and later created, was only 4800 posts of Village Assistants. If we may say so, as an afterthought, the government has decided to give a twist to what was stated before this court and the Supreme Court, casting aside the spirit behind the statement and the context in which it was made. This inference is further reinforced by the averment in paragraph 3 of the reply-affidavit dated January 20, 1986, wherein it has been stated that the Chief Minister at a meeting held on October 12, 1983, presided over by the first petitioner in WP No. 12620/85, had given an assurance that the Village Officers and village servants would not be thrown into the street, to which reference has already been made.

The State of Andhra Pradesh filed SLP Nos. 4417 to 4447 of 1986 against the judgment of the High Court and those petitions were dismissed by this Court by an order to the following effect :

Special leave petitions are dismissed subject to the observation that it will be open to the Government of Andhra Pradesh to move the High Court for appropriate directions in the matter to reserve some of the posts for the candidates belonging to the Scheduled Castes/Scheduled Tribes and the backward classes in accordance with the government instructions.

Thereafter on October 7, 1986, the government amended the ad hoc rules in the following manner :

1. In Rule 3, the following proviso shall be added, namely :

Provided that the initial recruitment to the posts shall be made from the erstwhile holders of the posts of part-time Village Officers who have the requisite age and educational qualifications as prescribed in the Andhra Pradesh Abolition of Posts of Part-time Village Officers Act, 1985 (Act 8 of 1985) and in these Rules and who are physically fit and have not incurred any punishment during their service as Village Officers.

2. In Rule 5, for the words "one MLA to be nominated by the government and the Joint Collector" the words, "Joint Collector and the District Development Officer", shall be substituted.

The amended rules while providing for the absorption of the erstwhile Village Officers as Village Assistants make it necessary that they should possess not only the educational qualifications prescribed for the post, but also the age qualification, the maximum age being 34 years. This requirement regarding age would eliminate most of the erstwhile part-time Village Officers. Writ petitions were once again filed challenging the requirement regarding age as being in breach of the undertaking given to the Supreme Court. This time instead of holding that according to the undertaking all erstwhile Village Officers who had not attained the age of superannuation and who possessed the educational qualification and were otherwise suitable were to be absorbed in the post of Village Assistants, the High Court held that the undertaking was subject to the age qualification but that it was necessary to give relaxation up to 5 years in regard to the maximum age limit. The

High Court observed that this was what they had in mind when they gave their earlier judgment. We do not think that we can uphold the view of the High Court in the light of the assurance given before the Supreme Court in Venkata Reddy case ((1985) 3 SCR 509 : (1985) 3 SCC 198 : 1985 SCC (L&S) 632 : 1986 Lab IC 357), no age qualification had been prescribed. If the undertaking was required to be subject to the maximum age limit prescribed for direct recruits under the ad hoc Rules, it would practically eliminate all the erstwhile Village Officers. We do not think that the government should be allowed to get round the undertaking given at that time by purporting to prescribe a maximum age limit which would have the effect of eliminating the majority of the erstwhile Village Officers. We have, therefore, no option but to allow the appeals and direct the respondents to absorb as Village Assistants all erstwhile part-time Village Officers who have not attained the age of 58 years if they possess the minimum educational qualification and are otherwise suitable for appointment, irrespective of their age.

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