

Desoola Rama Rao and Another

Vs

State of Andhra Pradesh and Others

Civil Appeal No. 1995 of 1997

(Ranganath Misra, G.L. Oza JJ)

24.02.1988

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal is by special leave and is directed against the appellate judgment of a Division Bench of the Andhra Pradesh High Court upholding the rejection of the writ petition by a Single Judge of that High Court. Appellants are engineers in the establishment of the chief Engineer (Road and Building) of the Andhra Pradesh Government and the dispute is one of inter se seniority between them on the one side and respondents 3 and 4 on the other.

2. Appellant filed a writ petition being No. 4151 of 1972 in the High Court of Andhra Pradesh claiming a direction to the State Government for considering them for promotion to the post of Executive Engineer on the basis that they were senior to five promotee Assistant Engineers. A learned Single Judge disposed of the said writ petition by judgment dated March 29, 1973, and gave the following directions :

The respondents 1 and 2 (State of Andhra Pradesh and its Chief Engineer respectively) will, therefore, consider the claims of the petitioners for promotion as Executive Engineers having regard to their seniority in the cadre of Assistant Engineers in relation to the seniority of respondents 3 to 7. I, therefore, direct respondents 1 and 2 to take the seniority of the petitioners, who were full members of service, in relation to the seniority of respondents 3 to 7 in the cadre of Assistant Engineers and consider the case of the petitioners for promotion to the posts of Executive Engineers in accordance with the rules.

The State Government, in compliance with the directions issued to it, by order dated August 10, 1983, made an order stating :

As per Rule 5 of the said Special rules, for promotion to the post of Executive Engineers (ordinary Grade) a Graduate Assistant Engineer should be :

- (a) a full member or approved probationer;
- (b) a direct recruit should put in six years service as Assistant Engineer; and
- (c) a promotee Assistant Engineer should put in five years service.

No preference is provided for persons, who were either direct recruit Assistant Engineers or who

secured earlier confirmation. In the absence of specific provision in the Special Rules for giving any preference to direct recruit Assistant Engineers in the matter of promotion to the category of Subordinate Services have to be applied therefor. According to Rule 33(a) of General Rules for Andhra Pradesh State and Subordinate Services, the seniority of a person in a service, class, category or grade, shall unless he has been reduced to a lower rank as a punishment, be determined by the date of first appointment to such service, class, category or grade. So, the seniority of the writ petitioners and the respondents has to be considered with reference to their dates of regular appointment to the category of Assistant Engineers (R & B) but not from the date of confirmation in the said category, for purpose of promotion as Executive Engineers. The dates of commencement of probation of the respondents and writ petitioners is as indicated below :

#-----	Serial Name of the Assistant Engineer	Date of commencement	No.	Serial Name of the Assistant Engineer	Date of commencement	No.
				Respondents 1	Sh. B. V. Venkataramana	May 19, 1961
			2	Sh. C. M. Ramachandramurthy	May 19, 1961	Writ petitioners 1
				Sh. Desoola Rama Rao	July 18, 1966	2
				Sh. V. Murahari Reddy	June 30, 1966	

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(Names of the three others stated in the order are not extracted as are not relevant)

Thus the respondents commenced their probation between 1959 to 1963 while the writ petitioners commenced their probation in 1966 and their seniority is far below the respondents.

The government, after careful examination of the judgment of the High Court, with reference to the statutory rules and in relation to the seniority obtaining between the respondents and the writ petitioners, decided that the turn of the two writ petitioners for promotion has not yet come and that their claims shall be considered for promotion as Executive Engineers (Ordinary Grade) in their turn, along with others according to their seniority as per rules and eligibility.

The appellants thereafter filed a second writ petition being Writ Petition No. 6157 of 1973 before the High Court challenging the government order. As already stated, the learned Single Judge has dismissed the writ petition and such dismissal has been upheld in appeal.

3. Appellants were directly recruited as Assistant Engineers on April 29, 1966 and Special Rules for Roads and Buildings Division of the Public Works Department were made on June 27, 1967, but were given effect from April 1, 1965. According to the Rules, appointment to the posts of Assistant Engineers can either be by direct recruitment or by recruitment by transfer of Junior Engineers and Supervisors of Draftsmen (Special Grade) or Draftsmen (Grade I). Under the Rules, appellants became eligible for promotion to the post of Executive Engineer in 1971 and when their claim for promotion was overlooked the first writ petition, as already stated, was filed. According to the appellants, respondents 3 and 4 were appointed by transfer under Rule 10-A of the Rules and were approved probationers. They contend that the promotees are approved probationers and until confirmation as full members of the service, they would not be entitled to the benefit of seniority in service and, therefore, the appellants were senior to them. They, therefore, challenged the government order referred to above and contended that the High Court went wrong in not holding that appellants were senior to the two respondents and on that basis they were entitled to consideration for promotion to the post of Executive Engineer in preference to those respondents.

4. There is no dispute that both directly recruited Assistant Engineers was also promotee Assistant Engineers are entitled to promotion as Executive Engineers. The rule requires direct recruits to have

put in six years of service while for promotees the prescription is five years of service for being eligible to be considered for promotion. As in many other service rules, there is no provision in the Rules under consideration that direct recruits would have preference over promotees for purposes of inter se seniority. In the absence of such a rule the High Court followed the guideline indicated in the General Rules which provides that seniority shall be determined by the date of first appointment to the service. The High Court found that respondents 3 and 4 came to serve as Assistant Engineers long before the appellants were recruited as Assistant Engineers. In fact in paragraph 6 of his judgment, the learned Single Judge in the second writ petition has indicated that respondents 3 and 4 were temporarily appointed as Assistant Engineers on August 14, 1959 and May 19, 1960 respectively. In exercise of power under Rule 23(a) of the General Rules, the services of the two respondents had been regularised retrospectively with effect from May 19, 1961 and the order of regularisation had been passed by the Chief Engineer on May 3, 1967. In the instant case the date from which regularisation has been directed to take effect is not anterior to their appointment as Assistant Engineers. That being the position, regularisation is not vitiated on account of arbitrariness. The only other aspect argued on this score was that the Chief Engineer was not competent to make the order. Rule 23(a) of the Andhra Pradesh State and Subordinate Services Rules provides :

If a person, having been appointed temporarily under sub-rule (a) or sub-rule (c) of Rule 10 post borne on the cadre of any service, class or category or having been appointed to any service, class or category otherwise than in accordance with the rules governing appointment thereto is subsequently appointed to any service, class or category in accordance with the rules, he shall commence his probation from the date of such subsequent appointment or from such earlier date as the appointing authority may determine.

The vires of this rule had not been challenged but the only contention in this regard was that the appointing authority being the State Government, Chief Engineer should not have made the order fixing the date of commencement of probation. It is the case of the respondents that the State Government has delegated that power to the Chief Engineer and the order of delegation of that power is in record.

5. The law relating to inter se seniority in a cadre is well settled. If there be a rule indicating the manner in which such seniority has to be fixed, that is binding. In the absence of such a rule, length of service is the basis for fixing inter se seniority. The High Court has found, and there is no longer any dispute, that respondents 3 and 4 have put in longer service than the appellants in the post Assistant Engineer. In that view of the matter, the State Government was right, and the High Court appropriately approved it, that the appellants would rank below the respondents 3 and 4 in the cadre and the promotional benefit would be given to them after the claim of the respondents 3 and 4 has been duly considered.

6. We see merit in the appeal. It is accordingly dismissed. There would be no order for costs.

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