

K. Siva Reddy and Others

Vs

State of Andhra Pradesh and Others

M. Gangadharam and Others

Vs

State of Andhra Pradesh and Others

Writ Petition Nos. 17165-86 of 1984 and 12401 of 1985

(Ranganath Misra, G.L. Oza, M.N. Venkatachaliah JJ)

24.02.1988

JUDGMENT

RANGANATH MISRA, J. -

1. The group of writ petitions under Article 32 of the Constitution is at the instance of several directly recruited Assistant Engineers now designated as Deputy Executive Engineers in the Engineering Service of the Roads and Buildings division of Andhra Pradesh Government. Writ Petition No. 12401 of 1985 is by 13 Assistant Engineers of the same service who were also directly recruited. The challenge in the batch of writ petitions is mainly to an order of the Chief Engineer, respondent 2 therein, by asking for quashing of his order dated June 8, 1984 by which he regularised temporary service of promotees in the years 1972-73, 1973-74 and 1974-75 to the cadre of Assistant Engineers (Deputy Executive Engineers). According to the petitioners, the retrospective regularisation made by the Chief Engineer of the promotees to the posts of Assistant Engineers is without authority and is in gross violation of the prescription of the Rules. They have asked for a direction to the State Government and its authorities in Writ Petition No. 12401 of 1985 to consider the claim of direct recruits for promotion as Executive Engineers and consequential reliefs. In the batch of writ petition as also in the order writ application some promotee engineers have been impleaded as representatives of promotees and transferees in the division.

2. There are two sets of rules operating side by side in the State of Andhra Pradesh which are relevant. The first is known as the Andhra Pradesh State and Subordinate Services Rules promulgated with effect from March 7, 1962 under the proviso to Article 309. These have been referred to as 'General Rules' and for convenience we maintain the same term in our judgment. On June 27, 1967, another set of rules known as Andhra Pradesh (Roads and Buildings) Engineering Service Rules with retrospective effect from April 1, 1965, were promulgated. These have been referred to as 'Special Rules' by the Administrative Tribunal and in our judgment those will also be referred to that way. Under Rule 3(1) of the Special Rules the method of recruitment to the category of Assistant Engineers has been provided and the methods are :

(i) By direct recruitment; or

(ii) By promotion of Junior Engineers; or

(iii) By recruitment by transfer from Supervisor or Draughtsman Special Grade or Draughtsman Special Grade I of the Andhra Pradesh (R & B) Engineering subordinate Service.

Sub-rule (3)(a) of Rule 3 prescribes that of the substantive vacancies in the category of Assistant Engineers, 37 1/2 per cent shall be filled up by direct recruitment and the remaining 63 1/2 per cent by transfer of Supervisors and Draughtsmen and by promotion of Junior Engineers. The main complaint of the direct recruits had been that notwithstanding this prescription in the rules, there has been under-recruitment of Assistant Engineers by direct recruitment and the recruits through the other two modes have come into the cadre far in excess of the limit provided by the rule and regularisation of such recruitment has been made by exercising powers under Rule 23 of the General Rules. In the writ petition it has been pleaded that though five year qualifying service was necessary in the lower service for entitlement to consideration for promotion as Assistant Engineer, the period has been reduced to three years to enable larger recruitment from the alternates sources to the prejudice of direct recruits. Reference has been made in the writ petition to the decision of the Andhra Pradesh Administrative Tribunal and it has been contended that in spite of such decision and in the teeth of the rules, government has failed to make direct recruitment and have prejudiced their claim to seniority. The respondents have controverted these allegations.

3. By a separate judgment delivered today, we have dismissed Civil Appeal No. 1995 of 1977 (Desoola Rama Rao v. State of A.P., 1988 Supp SCC 221) which was by two direct recruits to the post of Assistant Engineer. The conclusion has been on the basis of the facts stated therein.

4. A reference to the Tribunal's decision against which the two connected appeals have been filed would show that the matter was examined by a Full Bench of the Tribunal and the Tribunal did point out that the direct recruits were placed at a disadvantageous position and the seniority rule should not be allowed to override the recruitment rules. The Tribunal found that the Full Bench decision had not been annulled by the State Government or set aside by this Court and was, therefore, binding on the State of Andhra Pradesh. In the impugned decision, the Tribunal, therefore, held :

I would not like to issue directions straightway to prepare the seniority list on the basis of the decision rendered in the Full Bench decision but while allowing the revision petition direct the government to prepare the seniority keeping in mind the principle laid down in the Full bench decision. The petitioners if feel aggrieved against the decision are given the liberty to approach this Tribunal for redressal of their grievance.

The scheme contained in the sub-rule, as indicated above, is that 3 1/2 per cent of the substantive vacancies are to be filled up by direct recruitment. There is no justification at all for the State Government not to work out this provision of the rule. The direct recruits have been agitating over their rights arising out of this rule and government have turned their deaf ear. At least from 1982 the dispute has been systematically raised and by the impugned decisions the Tribunal has called upon the State to work out the said rule properly.

5. Reopening the question of inter se seniority on the basis of nonenforcement of the rule from the very beginning may create hardship and that would be difficult to mitigate but we see no

justification as to why the benefit of the scheme under the rules should not be made available to direct recruits at least from 1982. When the State Government by rules duly framed prescribed the method of recruitment and put the scheme into operation it had the obligation to comply with it. The explanation offered by the State Government for non-compliance of the requirements of the rules does not at all impress us. We, therefore, direct that as on December 31, 1982, the State Government must ascertain the exact substantive vacancies in the category of Assistant Engineers in the service. On the basis that 37 1/2 per cent of such vacancies were to be filled up by direct recruitment, the position should be worked out. Promotees should be confined to 62 1/2 per cent of the substantive vacancies and in regard to 37 1/2 per cent of the vacancies the shortfall should be filled up by direct recruitment. General Rules shall not be applied to the posts within the limits of 37 1/2 per cent of the substantive vacancies and even if promotees are placed in those posts, no seniority shall be counted. The State Government shall taken steps to make recruitment of the shortfall in the direct recruitment vacancies within the limit of 37 1/2 per cent of the total substantive vacancies up to December 31, 1987 within four months from today by following the normal method of recruitment for direct recruits. The seniority list in the cadre of Assistant Engineers shall be redrawn up, as directed by the Tribunal, by the end of September 1988, keeping the directions referred to above in view. There shall be a direction issued to the State of Andhra Pradesh to make recruitment to the category of Assistant Engineers by strict compliance of Special Rules henceforth.

6. In view of what we have stated above and following the principle indicated in the connected civil appeal which we have separately disposed of today, we are of the view that the regularisation made in respect of the promotees of the years 1975 should not at this point of time be disturbed particularly when the regularisation has been subsequent to the actual commencement of continuous service in the post of Assistant Engineer. We would, however, reiterate that the directions given in Writ Petition No. 12401 of 1985 is equally applicable to the petitioners in this group and the State Government is directed to give effect to the judgment with meticulous care.

7. There would be no other direction in the batch of writ petition nor would there be any direction for costs therein but Writ Petition No. 12401 of 1985 is allowed to the extent indicated above. Hearing fees therein is assessed at Rs. 3000 to be pad by the State of Andhra Pradesh.

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