

Mallikarjuna Rao and Others

Vs

State of Andhra Pradesh and Others

Civil Appeal No. 3677 of 1987 with Civil Appeal Nos. 1519 of 1986 and 124 of 1987

(S. C. Agarwal, Kuldip Singh JJ)

10.04.1990

JUDGMENT

KULDIP SINGH, J. -

1. The questions arising for our consideration in these appeals are as under :

(1) Can the High Court/Administrative Tribunal direct the State Government to frame or amend the existing statutory rules to alter the conditions of service of the civil servants in terms of the directions ?

(2) When there are specialised posts in a feeder cadre and also in the higher cadre, can the government restrict the promotions from feeder cadre to the higher cadre only speciality-wise irrespective of the seniority ?

2. The conditions of service of the Andhra Pradesh Animal Husbandry Department were initially governed by the Andhra Pradesh Animal Husbandry Service Rules, 1961 (hereinafter called '1961 Rules'). Under these Rules Veterinary Assistant Surgeons were eligible for promotion to three different categories of posts called class IV posts and Rule 6 provided special eligibility qualifications for those posts. Only those Veterinary Assistant Surgeons were considered for promotion to class IV posts who fulfilled the qualifications/specialised training prescribed under Rule 6 of the 1961 Rules.

3. Some of the Veterinary Assistant Surgeons challenged the vires of Rule 6 of the 1961 Rules by way of Civil Writ Petition No. 4532 of 1971 in the Andhra Pradesh High Court. It was alleged that at the time of recruitment all the Veterinary Assistant Surgeons possessed Bachelor Degree in Veterinary Science and the special qualifications and training prescribed under Rule 6 could only be acquired after joining as Veterinary Assistant Surgeon and that also at the discretion of the government. It was open to the government to choose any person for the specialised training and may deny such an opportunity to another person who may be equally or better suited for such training. Since the imparting of specialised qualifications/training was under the control of the government it could pick and choose persons for the purpose and in the process making favoured persons eligible for promotion to class IV posts under the 1961 Rules. Learned Single Judge by his judgment dated August 24, 1973 rejected the contentions of the writ petitioners in the following words :

"I do not find it possible to agree with the board contention that Rule 6 is ultra vires and unconstitutional for the reasons stated by the petitioners. As stated earlier, Rule 6

merely prescribed certain qualifications for promotion to certain posts by way of experience in a particular specialised service or of undergoing training in a particular field. It cannot be argued and in fairness to the learned counsel for the petitioner it may be stated, it was not argued, that it is not permissible to prescribe such qualifications. The main reason for contending that Rule 6 is ultra vires was not that it prescribed certain qualifications but because in the absence of any guiding principles the government would be enabled to pick and choose persons who would be given opportunities to obtain those qualifications which would enable them to get promotion. This circumstance cannot in my view render the rule itself ultra vires. If the government or the authorities concerned posted certain employees in the special sections or gave them opportunity to undergo a service in a special section for a particular period or denied similar opportunity to deserving candidates with the oblique motive of preferring one set of persons to another for the purposes of promotion, it was open to the aggrieved officer to challenge the act of the government in each particular case. The postings and directions have been made from time to time from 1962 and none of these petitioners approached this court questioning the denial of the posting as the case may be all these years ...."

"I therefore see no reason for declaring Rule 6 as ultra vires and unconstitutional."

4. While holding that Rule 6 was intra vires, the learned Judge also made the following observations :

"Though I have held that Rule 6 is not unconstitutional there cannot be any doubt that as this stands at present, it is left to the discretion of the authorities concerned to post any particular Veterinary Surgeon to any special section or to give him training in any advanced course. It is not surprising that such a state of affairs should result in dissatisfaction and suspicion in the mind of the officers concerned. Development of animal husbandry is extremely important in the interests of economy and a satisfied and contented service is a prerequisite for such development. It is not advisable to it that a particular authority however high placed he may be to choose persons at his sweet will and pleasure to undergo training in a particular field or have service in a particular sections especially when such training and service would affect the chances of promotion to higher posts. In this connection, it may be noted that in regard to higher posts. In this connection, it may be noted that in regard to the Andhra Pradesh Agricultural Service, it was realised that condition of separate section within the same service results in great injustice as several senior officers would be deprived of their promotion while the junior who happened to work in a specialised section get early promotion. By GO dated June 27, 1972 all these sections were merged into one unit and all the posts were brought under a common set of rules. It would be advisable to frame a similar rule for the Animal Husbandry Department also and see that as far as possible the area of discretion on the part of the authorities concerned is reduced if not eliminated altogether."

5. The State Government amended Rule 6 of the 1961 Rules on May 10, 1976 by which the categories of class IV posts were increased to thirteen. The 1961 Rules were superseded by the Andhra Pradesh Animal Husbandry Service - Special Rules, 1977 (hereinafter called 'the Special Rules') which came into force on September 24, 1977. Rule 1 of the Special Rules provides for the constitution of the service. Class IV posts, which were re-designated as Assistant Directors, were

divided into eight categories. Similarly, veterinary Assistant Surgeons come under the heading class V and are divided into seven categories. Rule 2 of the Special Rules provides method of promotion from class V to class IV. The relevant provisions of these Rules are reproduced as under:

## 1. Constitution

### Class IV

#Category (1) Assistant Directors of Animal Husbandry (formerly District Veterinary Officers and Livestock Officers Incharge Key Villages and Regional Cattle Development Units) including Superintendents, Veterinary Hospitals and Polyclinics, Assistant Directors of Animal Husbandry, Liverfluke Control Scheme; Anti-Liverfluke Control Scheme; Dairy Extension Rinderpest; Animal By-products Plant, Zoo Park, Assistant Director of Animal Husbandry (Technical) in Directorate and Gazetted Instructors in Animal Husbandry, Village Development Officers Training Centre.

Category (2) Assistant Directors of Animal Husbandry, Government Livestock Farms including Assistant Directors of Animal Husbandry Progeny Testing Unit, Feed Mixing Plant; Livestock Assistants training Centre; Goshalas and Assistant Director of Animal Husbandry (Farms) in Directorate.

Category (3) Lecturers, Institute of Animal Reproduction, including Assistant Director of Animal Husbandry (Cattle Development) and Centralised Semen Collection Centre.

Category (4) Assistant Directors of Animal Husbandry, Sheep Farms including Assistant Directors of Animal Husbandry (Sheep Development) and Officers of similar rank in Sheep Section.

Category (5) Assistant Directors of Animal Husbandry, Pig Breeding Station; Piggery Development Officer and Officers of similar rank in piggery section.

Category (6) Assistant Directors of Animal Husbandry, Regional Poultry Demonstration and Research Farm and Assistant Directors of Animal Husbandry, Poultry Marketing Centres.

Category (7) Assistant Directors of Animal Husbandry (Formerly Disease Investigation Officers and Research Officers) and Officers of similar rank in Veterinary Biological Institute, Hyderabad; Assistant Directors of Animal Husbandry, Animal Health Centres, and Officers of similar rank in Municipal Corporation of Hyderabad such as Public Health Veterinarian.

Category (8) Assistant Director of Animal Husbandry (Statistics)Class V Category (1) Veterinary Officers Category (2) Veterinary Officers (Cattle Farms)Category (3) Assistant Lecturers, Institute of Animal Reproduction and Veterinary Officers, Centralised Semen Collection Centres Category (4) Veterinary Officers (Sheep Farms)Category (5) Veterinary Officers, Pig Breeding StationsCategory (6) Veterinary Officers, Poultry FarmsCategory (7) Veterinary Officers in Veterinary Biological and Research Institute; Animal Health Centres, Clinical Laboratories and

Municipal Corporation of Hyderabad."2. Appointment Class IV Category (1) Assistant Directors of (i) .... (ii) by promotion from among the Veterinary included in category (I) of class V of the said service (iii) ...Category (2) Assistant Directors of (i) ... (ii) by promotion from among the Veterinary Officers included in category (2) of class V of the said service (iii) ....Category (3) Lecturers (i) .... (ii) by promotion from among the Veterinary Officers included in category (3) of class V of the said service (iii) ....Category (4) Assistant Directors of (i) ... (ii) by promotion from among the Veterinary Officers included in category (4) of class V of the said service (iii) ....Category (5) Assistant Directors of (i) .... (ii) by promotion from among the Veterinary Officers included in category (5) of class V of the said service (iii) ....Category (6) Assistant Directors of (i) .... (ii) by promotion from among the Veterinary Officers included in category (6) of class V of the said service (iii) ....Category (7) Assistant Directors of (i) .... (ii) by promotion from among the Veterinary Officers included in category (7) of the class V of the said service (iii) ....Category (8) Assistant Directors of (i) .... (ii) by promotion from the Veterinary Officers in class V of Andhra Pradesh Animal Husbandry Service (iii) ....##

6. It is obvious from the provisions of the Special Rules reproduced above that the Veterinary Assistant Surgeons who are class V are only eligible for promotion to class IV in their respective categories. Category 1 class V is only eligible for promotion to category 1 class IV and similarly category 2 of class V is eligible for category 2 of class IV and so on. Although there is one common seniority of class V officers but the promotion being categorywise the seniority becomes irrelevant as a senior man in category I class V cannot be promoted to any other category in class IV except category 1 and 8.

7. M. Srinivasan and 44 other class V officers filed Representation Petition No. 578 of 1978 before the Andhra Pradesh Administrative Tribunal seeking a direction that the Special Rules be amended or modified in terms of the observations made by the Andhra Pradesh High Court in Civil Writ Petition No. 4532 of 1971. In other words, it was prayed that the State Government be directed to merge all the respective categories in class IV and class V of the Special Rules and promotions from class V to class IV be made on the basis of seniority alone. The Administrative Tribunal by its judgment dated July 4, 1985 allowed the petition and issued the directions asked for by the petitioners. The Tribunal in its judgment posed the question to be decided in the following manner :

"The question to be decided is whether the Department of Animal Husbandry is justified in not following the directions of the A.P. High Court referred to above."

8. The Tribunal then answered the question as under :

"It must be observed that not to speak of direction, even an observation from the High Court of the land is binding on the State Government when the State Government had not chosen to set aside the said observations in the Supreme Court.

The petitioners are, therefore, entitled to the relief asked for and I find no good reasons not to grant the same. The RP, is accordingly allowed and once again directions are issued to the respondents to evolve and rational method of determination of seniority among the Veterinary Assistant Surgeons in the matter of promotions to the next higher rank of Assistant Director of Veterinary Surgeons in the light of the one framed under GOMs No. 1 supra."

9. It may be mentioned that GOMs No. 1 dated January 1, 1976 which was directed to be adopted and followed in the Animal Husbandry Department related to the Agriculture Department. It was argued before the Tribunal that because of functional differences between the two departments it would not be possible to adopt the conditions of service prevalent in the Agriculture Department. The Tribunal, however, issued the above-quoted directions primarily on the ground that the State Government was bound to follow the observations of the High Court made in Civil Writ Petition No. 4532 of 1971.

10. The State of Andhra Pradesh has challenged the judgment of the Tribunal in Civil Appeal No. 1519 of 1986, Civil Appeal No. 124 of 1987 and Civil Appeal No. 3677 of 1987 have been filed by the officers who have been affected by the judgment of the Tribunal but were not parties before the Tribunal.

11. The observations of the High Court which have been made as the basis for its judgment by the Tribunal were only of advisory nature. The High Court was aware of its limitations under Article 226 of the Constitution of India and as such the learned Judge deliberately used the word "advisable" while making the observations. It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. Imagine the executive advising the judiciary in respect of its power of judicial review under the Constitution. We are bound to react scowlingly to any such advice.

12. This Court relying on *Narinder Chand Hem Raj v. Lt. Governor, Administrator, Upon Territory, Himachal Pradesh* ((1971) 2 SCC 747 : (1972) 1 SCR 940) and *State of Himachal Pradesh v. A Parent of a Student of Medical College, Simla* ((1985) 3 SCC 169), held in *Asif Hameed v. State of Jammu & Kashmir* (1989 Supp (2) SCC 364) as under : (SCC p. 374, para 19)

"When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive ...."

13. The Special Rules have been framed under Article 309 of the Constitution of India. The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the constitution of India. The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India.

14. We are therefore, of the view that the High Court in Civil Writ Petition No. 4532 of 1971 and

the Administrative Tribunal in the judgment under appeal transgressed its limits in issuing the impugned directions. We set aside the judgment of the Tribunal and dismiss the Representation Petition No. 578 of 1978 filed by M. Srinivasan and 44 others to the extent indicated above.

15. Mr. C. S. Vaidyanathan, learned counsel, appearing for the respondents, however, contends that the Special Rules are arbitrary and are violative of Articles 14 and 16 of the Constitution of India. He contends that at the time of initial recruitment to class V the government at its discretion picks up persons for appointment to any of the categories. According to him neither there are any statutory rules or executive instructions providing options to class V officers to join category of their choice nor in fact any such options were given at the relevant time. He has further argued that the posts in seven categories of class V are inter-transferable. He invited our attention to the documents on record showing transfers from one category to another. Mr. Madhava Reddy learned counsel appearing for the State of Andhra Pradesh on the other hand has controverted the above arguments. According to him options were not only given at the time of initial recruitment into class V service but also subsequently as and when the rules were amended. He categorically denied that the posts in various categories are interchangeable. The learned counsel on both sides wanted us to go into the various documents in support of their respective contentions. We do not have before us the factual matrix to appreciate the argument of Mr. Vaidyanathan that the Special Rules are arbitrary. We, however find from the judgment under appeal that all these points were raised before the Tribunal in one form or the other but the Tribunal based its judgment on the observations of the High Court in Civil Writ Petition No. 4532 of 1971 and did not go into any other point.

2. While setting aside the judgment under appeal we remit the case to the Andhra Pradesh Administrative Tribunal for decision on other points as indicated by us or as may be raised by the parties. The Tribunal shall give further opportunity to the parties to file additional affidavits/documents. We request the Tribunal to decide the matter expeditiously and if possible within three months. The appeals are disposed of in the above terms with no order as to costs.

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