

State of Andhra Pradesh

Vs

Dr. N. Ramachandra Rao and Others

And

State of Andhra Pradesh

Vs

M. Panduranga Raju and Others

Civil Appeal Nos. 3131-32 of 1988

(Smt. M. S. Fathima Beevi, K. Jagannatha Shetty JJ)

03.05.1990

JUDGMENT

K. JAGANNATHA SHETTY, J. -

1. These appeals are directed against the order of the A.P. Administrative Tribunal, Hyderabad dated April 15, 1987 directing the State Government to consider the cases of officers for promotion to the category of Additional Director of Medical and Health Services and equivalent posts on the basis of seniority including service in their lower cadre.
2. The appointment in A.P. Medical and Health Services is regulated by the statutory rules called "the Special Rules for the A.P. Medical and Health Services, 1982" (called shortly as the "Rules").
3. All the respondents were originally recruited as Civil Assistant Surgeons upon selection by the State Public Service Commission. The minimum qualification for Civil Assistant Surgeon is MBBS. The posts of Civil Assistant Surgeon is equivalent to the post of Assistant Professor. They are inter-transferable posts but a post-graduate degree is necessary for posting as Assistant Professor. The Civil Assistant Surgeon is also posted as Tutor in the teaching side if he has no post-graduate degree qualification. In the select list prepared by the Public Service Commission, respondents 1 to 12 were ranked above the other respondents, but they were not considered for promotion to the category of Additional Director and other equivalent posts. Their juniors in the original cadre were appointed to such posts, and that was their grievance before the A.P. Administrative Tribunal.
4. All Civil Assistant Surgeons including Assistant Professors and Tutors are eligible for promotion as Deputy Civil Surgeon on the basis of seniority of Assistant Professors/Civil Assistant Surgeons and Tutors. It is said that the posts of Deputy Civil Surgeons are not cadre posts. They are just like Selection Grade posts covering 15 per cent of total cadre strength in Civil Assistant Surgeon posts. They are common both in teaching cadre as well as in non-teaching cadre.
5. From the very beginning after formation of Andhra Pradesh State, the Civil Assistant Surgeons are appointed by direct recruitment except perhaps in the year 1984, when there was direct

recruitment of Assistant Professors with the minimum qualification of post-graduate degree in the concerned speciality.

6. The Rules contain their alia two parts; Part I and Part II. We are concerned with Part I only. It consists of the following three branches :

#Branch I Teaching cadreBranch I Non-teaching cadreBranch III Laboratories##

7. Branch I Teaching cadre again consists of Class I and Class II. Under Class I, there are six categories of posts. They are as follows :

#Category 1 Additional Director of Medical and Health Service (Medical Education) Principals of Medical Colleges, Superintendents of Medical Colleges, Superintendents of Teaching Hospitals and Principal, Government Dental College.Category 2 Professors - ClinicalCategory 3 Professors - Non-ClinicalCategory 4 Dental ProfessorsCategory 5 Deputy Civil Surgeons - Clinical and non-clinicalCategory 6 Deputy Civil Surgeon - Dental##

8. Class II consists of the following three categories :

#Category 1 Assistant Professors - Clinical and non-clinicalCategory 2 Assistant Professors - DentalCategory 3 Tutors##

9. Rule 2 under Branch I Teaching cadre provides for method of recruitment to different classes and categories. This rule is important and may be read in full :

"2. Appointment. - Appointment to the various classes and categories shall be made as follows :

#Class and Category Method of RecruitmentClass I Category 1 (i) By promotionAdditional Director from among theof Medical and holders of the postHealth Services of Professors(Medical Education) included in Class IPrincipals of Categories 2 and 3Medical Colleges, of this branch withSuperintendents of not less than threeTeaching General years service ofHospitals and which at least twoPrincipal, years service in theGovernment Dental said category onCollege. first year in which panel is prepared : Provided that the post of Principal, Government Dental College shall be filled in by promotion from among the holders of the posts included in Class I, Category 4. (ii) who have completed 45 years of age on January 1 or July 1 of the year in which panel is prepared.Category 2 (i) By promotion from among the holders of posts of Deputy Civil Surgeons (clinical) included in Class I, Category 5 of this branch; (ii) By promotion from the holders of posts of Assistant Professors (Clinical) included in Class II, Category 1 of this branch if persons from Item (i) are not available."##

10. Similar are the provisions for promotion to the posts of Professors (non-clinical) in Category 3:

#Category 3 (i) By promotion from among the holders of the posts of Deputy civil Surgeons (non- clinical) included in Class I, Category 5 of this branch; (ii) By promotion from the holders of posts of Assistant Professors (Non- clinical) included in Class II, Category 1 of this branch if persons from item (i) above are not

available."##

11. It will be convenient, if at this stage, we also read the amendment to the foregoing Rules made on March 29, 1988. they are as follows :

Amendment to Special Rules for the Andhra Pradesh Medical and Health Services
(G.O.M. No. 182, Health, Medical and Family Welfare (A-1) 29 March, 1988)

1. Constitution

2. Appointment : Appointment to the various categories of posts shall be made as shown in the Table below :

#Category of Post Method of Recruitment Category : 1 By promotion from Additional Director among the holders of Medical and the post of Health Services Professors in (Medical Education) Categories 2 and 3 Principals of with not less than Medical Colleges, three years of Superintendents of service of which at Teaching General least two years Hospitals and shall be in one of Principals the said categories Government Dental as on January 1 or College. July 1 of the year in which panel is prepared.##

12. There are three requirements for eligibility for consideration for promotion to the category of Additional Director and equivalent posts : (i) He should be in cadre 2 and 3 in Class I; (ii) He should have a minimum service of two years in the said categories; and (iii) He should have a total service of not less than three years.

13. Two years service in the category appears to mean two years service as Professor and this is not in doubt or dispute. The dispute, however, is about the requirement of service of three years. Whether that service should be only in Class I categories 2 and 3 or inclusive of service in Class II is the question for consideration. The Tribunal appears to have accepted the latter view. It has been held that promotion to the post of Additional Director and equivalent posts is to be made on the basis of total period of service in including service in the lower categories subject to the condition that the person should be holding the post of Professor or equivalent post for at least two years.

14. Mr. Madhava Reddy, learned counsel for the appellant argued that the view taken by the Tribunal would be contrary to the rule of seniority in the cadre of Professors. The seniority for zone of consideration for promotion should always be of the feeding cadre and not from any other cadre. Reference was made to Rule 10 of the Rules and also to Rule 33(a) of the Andhra Pradesh State and Subordinate Services Rules. Counsel also contended that the minimum three years of service provided under Rule 2 in any event must be in Class I in any category and it can never be in Class II service.

15. We are unable to accept the submission of learned counsel for the appellants, having regard to the facts and circumstances of this case. Rule 10 of the Rules requires determination of seniority on unit wise. It reads :

"10. Seniority. - For purposes of seniority and appointment as full members the posts included in this branch shall constitute separate units as indicated below :

#Unit 1 Class I Category 1, viz. Additional Director of Medical and Health Services

(Medical Education) Principles of Medical Colleges, Superintendents of Teaching General Hospitals. Unit 2 Class I Category 2 viz. (i) Professors (Clinical and non-clinical) Unit 3 Class I Dental Professors##

Provided that Deputy Civil Surgeons and Assistant Professors shall have separate seniority in order of speciality."

16. Rule 33(a) of the A.P. Subordinate Service Rules provides that seniority of a person in service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class category or grade. It seems to us that the seniority in the category of professors in the teaching and non-teaching cadre or in the lower cadre based on specialitywise may not be relevant for preparation of a panel for promotion to the cadre of Additional Director and other equivalent posts in Category I. Equally the service rendered as Deputy Civil Surgeon in Category 5 cannot also be the basis for preparing the panel for consideration. As observed earlier, Deputy Civil Surgeon is a common category in all the branches; Branch I teaching cadre; Branch II non-teaching cadre and Branch III Laboratories. It is a part of the category of Civil Assistant Surgeons, and not cadre post. It is just like selection grade post covering in all 15 per cent of total cadre strength of Civil Assistant Surgeons. The posts are distributed in all the three branches and promotion to the posts depends upon the available vacancies in every branch.

17. Furthermore, Rule 2 does not expressly exclude the service in Class II cadre for preparing panel for consideration for promotion to posts with which we are concerned. We also consider that it would be unreasonable and unjust to exclude the service and overlook the vertical seniority in the substantive cadre to which everyone was selected by the Public Service Commission. In medical profession there are specialities and specialities, but it is generally accepted that they are not of equal importance or utility. However, the promotions are allowed on the basis of the respective specialities and the availability of promotional vacancies in such specialities. A junior with relatively less important speciality may be fortunate enough to get quick promotion than his senior with a different speciality. We are of the opinion that the juniors who get accelerated promotion on account of fortuitous circumstances depending upon their speciality and availability of vacancies in such speciality should not be allowed to march over their seniors for appointment to administrative posts. Any advantage gained by juniors on such fortuitous circumstances of having some speciality and promotion should not impair the rights of their seniors for promotion to posts where speciality or teaching experience is not called for. The seniority determined in order of speciality should not therefore be the basis for promotion to administrative posts. Any rule providing for the contrary may be vulnerable to attack on the ground of arbitrariness.

18. We therefore, concur with the view expressed by the Tribunal and dismiss there appeals with costs.

19. Before parting with the case, however, it is necessary to point out that the imprecise drafting of the present Rules has led to misunderstanding and litigation and it would be proper for the State Government to have the wordings of the Rules properly amended with perspicuity to give effect to the view indicated.

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