

State of Andhra Pradesh

Vs

K. Ranganathan and Others

With

V. Ranga Rao and Others

Vs

State of Andhra Pradesh and Others

Civil Appeals Nos. 5336 and 5337 of 1983

(P. B. Sawant, S. C. Agarwal JJ)

21.08.1990

JUDGMENT

P. B. SAWANT, J. -

1. These matters have a chequered history. The appellants as well as most of the contesting respondents were appointed as Junior Engineers in the Andhra Pradesh Electricity Subordinate Service on emergency basis between 1959 and 1963. While they were in service on April 24, 1963, the Andhra Pradesh Public Service Commission (hereinafter referred to as the "Commission") invited applications for regular appointment by direct recruitment to 246 posts of Junior Engineers and on December 21, 1963, the Commission forwarded a list of selected candidates to the State Government. This list was, however, not arranged according to merits and therefore according to seniority inter se among the candidates. On April 15, 1964, the Commission forwarded to the government the list of selected candidates arranging their names according to merits and seniority and after complying with the reservation prescribed by Rule 22(ii)(c) of the Andhra Pradesh State and Subordinate Service Rules (hereinafter referred to as the "Rules") by which the relevant service was governed. On August 11, 1964, the State Government amended the said Rules by deleting the said Rule 22(ii)(c) with retrospective effect from April 1, 1964. This amendment was effected to comply with the decision of this Court in *M. R. Balaji v. State of Mysore* (AIR 1963 SC 649 : 1963 Supp 1 SCR 439). In spite of the fact that the Rules were so amended on August 11, 1964 with retrospective effect, the State Government on April 29, 1965 gazetted the list of selected candidates as was sent to them by the Commission on April 15, 1964. The result was the list as gazetted was in breach of the said Rules. After the gazette notification, on April 29, 1965 the Chief Engineer of the government appointed all the said candidates to the posts of Junior Engineers who included the appellants and the respondents and others according to the order of seniority communicated by the Commission. The candidates so appointed were put on probation for a total period of two years.

2. The seniority as notified in the said list was challenged by a Writ Petition No. 2146 of 1966 in the High Court of Andhra Pradesh in November 1966 by 10 Junior Engineers belonging to the non-reserved category on the ground that the same was in breach of law since it was contrary both to the

said decision of this Court as well as to the Rules as they stood amended on August 11, 1964 w.e.f. April 1, 1964. The learned Single Judge disposed of the said writ petition on the assurance of the government contained in their Memorandum No. 3373 E-II/70 dated July 17, 1970 addressed to the Government Pleader that the seniority list would be revised in compliance with the amended Rules so far as the petitioners were concerned. Unfortunately, the learned Judge did not appreciate the discrimination to which the said assurance was to lead, since the assurance related only to the petitioners before him and had excluded the rest of the Junior Engineers similarly situated. The matter, however, rested there.

3. On December 28, 1972 the State Government gave an option to all the Junior Engineers including the petitioners and the respondents to choose between the government service and a permanent transfer to the Andhra Pradesh State Electricity Board.

4. Before the transfers could be effected, it appears that there was a correspondence between the government and the Commission for changing the seniority list pursuant to the assurance given by the State Government to the learned Single Judge. The Commission opined that the seniority list could not be altered in respect of only 10 petitioners in the said writ petition and had to be altered in respect of all the candidates selected, to comply with the amended Rules. Accordingly, the Commission on June 27, 1973 sent the corrected seniority list to the State Government. The government accepted the said list, and on July 23, 1973 directed its Chief Engineer to circulate the said revised list and to invite objections to the same within a stipulated period. Accordingly, the Chief Engineer by his Memorandum dated August 8, 1973 the said seniority list and invited objections from all the concerned Junior Engineers. Most of them including the respondents submitted their objections by October 1, 1973 on and from which date those of the Junior Engineers including the petitioners and respondents who has exercised their option to join the Electricity Board, were transferred to the Board.

5. The government transferred the Junior Engineers who has opted for service with the Board by its order of November 7, 1973 w.e.f. October 1, 1973 as stated above. That order being G. O.M. No. 1166 assumes importance in the present case since the contents of paragraphs 6(3) and 6(4) of the said document are relied on by the High Court as well as both sides in support of their respective contentions. The said contents may be reproduced here at the outset :

"6. (3) The transfers is on 'as is' basis and the names in the Annexure are not arranged in the order of seniority on that basis;

6. (4) On transfer to the Andhra Pradesh State Electricity Board the individuals will carry with them the seniority as it existed under government as on October 1, 1973 without prejudice to the seniority of the persons referred to in sub-para (1) above, who may be transferred to the Board by a subsequent order of the government and the seniority with reference to the position between November 1, 1956 to October 1, 1973 is liable to be altered by government at any time with reference to pending appeals on Common Gradation Lists or with reference to the recommendations of High powered Committee, State Advisory, Committee, Central Advisory Committee etc."

6. On November 5, 1974 the Chief Engineer of the Electricity Board (to which the petitioners and respondents had stood transferred permanently from October 1, 1973) after considering the representations against the seniority list received from the affected Junior Engineers, issued a

revised seniority list. This seniority list was challenged by the respondents and others who belonged to backward classes by a Writ Petition, by his order of March 29, 1978 struck down the said list on the ground that the Chief Engineer of the Electricity Board had no power to alter the seniority of the transferred employees whose seniority was fixed by the State Government. However, he observed that if the government had retained any power under the transfer order and if it was so advised, the government would be at liberty to revise the seniority list. Aggrieved by the said order the petitioners on August 25, 1978 preferred an appeal before the Division Bench of the High Court which dismissed it.

7. In view of the observations made by the learned Single Judge, the government on August 23, 1979 issued show cause notices once again to all the persons belonging to backward classes (the respondents) to show cause why their seniority should not be revised as per the assurance given by the government to the High Court while disposing of Writ Petition No. 2146 of 1966. Some of the respondents replied to the show cause notice on November 18, 1979 and some of them filed a writ petition in the High Court being Writ Petition No. 215 of 1980 on December 7, 1979 for restraining the government from revising the seniority pursuant to the show cause notice. At the same time, in February 1980, some of the petitioners in Writ Petitioners No. 2146 of 1966 filed Writ Petition No. 582 of 1980 before the High Court for seeking a direction to the government to implement the assurance given by it while disposing of the said writ petition. The learned Single Judge by his decision of February 5, 1981 dismissed the respondents' petition upholding the power of the government to revise the seniority list, and in view of the said order passed in respondents' writ petition, no order were passed in the petitioners' petition.

8. Aggrieved by the said decision, the respondents preferred an appeal on March 30, 1981 to the Division Bench. Since no stay was granted pending the appeal, the government by its order dated May 26, 1981 issued a final revised seniority list after considering the representations of the persons belonging to the backward classes including the respondents. Thereafter on July 15, 1982, the Division Bench of the High Court allowed the appeal of the respondents holding that the government had no power to revise the seniority list. It is this decision which is under challenge.

9. On behalf of the respondents some further connected developments have been brought to our notice. It appears that along with the appellants and respondents who were the degree holders, some diploma holders were transferred to the Board w.e.f. the same date, namely, October 1, 1973. Some of them had preferred on April 16, 1980 a writ petition being Writ Petition No. 1657 of 1980 before the High Court for a direction to the government to prepare a seniority list of Assistant Engineers who were appointed from June 15, 1963 in accordance with the statutory rules and to communicate the same to the Board. On April 16, 1982 a learned Single Judge allowed the said petition upholding the plea that the said Order No. 1166 dated November 7, 1973 had given powers to the State Government to settle the seniority of the transferred employees as on October 1, 1973. This decision was upheld in appeal by a Division Bench of the High Court by its decision of March 26, 1987. The Special Leave Petitions Nos. 8044 and 10783 of 1987 preferred against the said decision were dismissed by this Court on October 30, 1987 and this Court directed the Board to implement the order of the High Court subject to any decision which may be rendered by this Court in the present appeals. On August 4, 1989 the State Government communicated the seniority list of the Assistant Engineers to the State Electricity Board and the Board is acting on the same. The result is that whereas the petitioners, namely, the diploma holders in the said Writ Petition No. 1657 of 1980 are the beneficiaries of the revised seniority list, the present appellants are not.

10. The High Court has quashed the revised seniority list on three grounds. The first ground is that

the employees having exercised their option under the Government Orders Nos. 1651 and 1166 dated December 28, 1972 and November 7, 1973 respectively subject to the terms and conditions mentioned therein, they were estopped from contending that the seniority which they carried with them as it existed under the government as on October 1, 1973 cannot be continued further and was liable to be disturbed because the rule of reservation contained in old Rule 22 (ii)(c) was declared by this Court to be violative of Articles 14 and 46 of the Constitution of India. The High Court further opined that there was a declaration in G.O. No. 1166 of November 7, 1973 which was binding on all concerned, viz. the government, the Board as well as the employees, that the exercise of the option was final. Since the government and the Board had acted upon the option exercised by the employees and transferred them from government service to the service of the Board, they were estopped from revising the seniority. So also the employees were estopped from claiming that their seniority should be revised on any grounds whatsoever. The second ground given by the High Court was that the transfer itself being subject to the terms and conditions mentioned in the aforesaid government orders which stated that the transfers were on "as is" basis which included seniority, the seniority cannot be disturbed on any ground whatsoever. The High Court stated in this connection that the employees concerned were specifically notified that the names mentioned in the annexure were not arranged in the order of seniority and they were further notified that the employees would carry with them the seniority as it existed on October 1, 1973, the only exception being of those employees who were mentioned specifically in sub-para (1) of paragraph 6 of G.O. No. 1166. Those persons were non-gazetted technical staff, ministerial and few others whose options were not received by the government on account of the delay in transit or for other reasons. The High Court negated the contention that clause 4 of G.O. No. 1166 which stated that the employees will carry with them their seniority as it existed under the government on October 1, 1973 "without prejudice to the seniority of the persons referred to in sub-para (1) above who may be transferred to the Board by subsequent order of the government the seniority with reference to the position between November 1, 1956 and November 1, 1973 was liable to be altered by government at any time with reference to pending appeals on common gradation list or with reference to the recommendations of High Powered Committee (HPC), State Advisory Committee (SAC), Central Advisory Committee (CAC) etc." included the cases of employees who had made their representations such as the present appellants who had initiated the proceedings by Writ Petition No. 2146 of 1966 and which proceedings were not finally disposed of even by October 1, 1973. The High Court held that the word "etc." was confined only to those employees who were affected by the States Reorganisation Act or by orders on appeal against the Common Gradation Lists or representations made against the recommendations of the HPC or SAC or CAC which were all matters referable to the integration of the services of the Andhra and Telangana regions consequent upon the reorganisation of the States. That clause also referred, according to the High Court, to the revision of inter se seniority list as on October 1, 1973 of other non-gazetted technical staff, ministerial and few others who may be subsequently transferred. But it did not refer to any of those who had already been transferred. According to the High Court, if that was the intention, the government would have specifically stated so. The last ground given by the High Court was that the government had no power to alter the seniority of the employees after October 1, 1973 since they had ceased to be the government employees. According to the High Court, the power given to the government under Rule 36-A of the Rules to review the seniority could not be exercised to rectify the mistake. According to the High Court, the question was not whether the earlier seniority list was valid but whether it could be revised and if so, by which authority. The government's power of revising the seniority list was only in respect of those who were government servants on the date of the revision. The High Court also held that merely because the Board had no jurisdiction to disturb the seniority so fixed, it did not follow that the government continued to have jurisdiction in respect of those employees who were

no more its employees.

11. To appreciate the reasoning of the High Court, it is first necessary to reproduce the relevant portions of G.Os. Nos. 1651 and 1166 of December 29, 1972 and November 7, 1973 respectively :

"G.O.Ms. No. 1651

* *

3. After carefully examining the matter in the light of the above, the government consider that in view of the transfer of the bulk of the electricity projects to the Board and the view of the fact that the Board is in charge of electricity supply and distribution, it will be appropriate that the Board should have direct control over the staff and all the activities of the Board should be managed by the Board staff. The government therefore direct that an opportunity be given to the government employees working in electricity supply and maintenance etc. to opt for service under the Andhra Pradesh State Electricity Board subject to the following terms and conditions. The employees on transfer to the Board :

(i) shall cease to be government servants and shall henceforth be the employees of the Andhra Pradesh State Electricity Board;

(ii) shall be governed by the rules and regulations framed by the Board in all matters including matters pertaining to promotions and disciplinary action subject however to (iii) below and the Andhra Pradesh Civil Service (CC&A) Rules cease to apply to them ..."

"G.O.Ms No. 1166

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4. With reference to the above orders, the Board and the Chief Engineer have obtained the options from the officers referred to in the Annexure to this order and forwarded them to the government.

5. The options exercised by the individuals were carefully considered by the government. All the officers mentioned in the Annexure to this order, have opted to the Board service in the form prescribed in Annexure I to the G.O. first read above.

6. In view of the options exercised by the officers, the government have decided to and accordingly transfer the services of the officers, mentioned in the Annexure to this G.O. to the A. P. State Electricity Board with effect from October 1, 1973 forenoon on the terms and conditions specified in paragraph 3 above and also those mentioned hereunder :

(1) Orders in respect of the non-gazetted technical staff, ministerial and of few others whose option forms have not been received by the governments on account of delay in transit or for other reasons, will issue separately;

##(2) * * ##

(3) The transfer is on "as is" basis and the names in the Annexure are not arranged in the order of seniority and do not therefore confer any right for seniority on that basis;

(4) On transfer to the Andhra Pradesh State Electricity Board, the individuals will carry with them the seniority as it existed under government as on October 1, 1973 without prejudice of the seniority of the persons referred to in sub-para (1) above, who may be transferred to the Board by a subsequent order of the government and the seniority with reference to the position between November 1, 1956 to (sic) October 1, 1973 is liable to be altered by government at any time with reference to pending appeals on Common Gradation Lists or with reference to the recommendations of High Powered Committee, State Advisory Committee, Central Advisory Committee etc"

12. We should have thought that a mere reading of these two government orders and particularly G.O. No. 1166, was enough to uphold the contention of the appellants herein that their seniority as on October 1, 1973 was liable to be revised by the government at any time. This was so because firstly, clause (3) of paragraph 6 makes it clear that the names in the annexure sent along with the order were not arranged in the order of seniority, and did not, therefore, confer any right for seniority on that basis. This shows that the government had not finalised the seniority list, and the list which was sent to the Board with the said order was a provisional one. The Government had to say so because admittedly on that day the seniority of the employees was in flux on account of various reasons. In the first place, as stated in paragraph 1 of the order, the seniority of non-gazetted technical staff, ministerial and few others whose options were not received on account of various reasons, could not have been arranged. As regards the gazetted technical staff such as the appellants as well as the non-technical staff, there were appeals pending against the Common Gradation Lists prepared as per the recommendations of the HPC, SAC, CAC etc. with reference to the seniority position between November 1, 1956 and October 1, 1973. This was a sequel to the reorganisation of the States and the amalgamation of the different regions in the State. Secondly, the government could not have ignored the position that as on October 1, 1973 the dispute with regard to the seniority of the appellants and the respondents herein was pending in the High Court right from November 1966 when, as stated earlier, 10 Junior Engineers including some of the present appellants had filed Writ Petition No. 2146 of 1966 giving rise to further proceedings as narrated hereinabove. In these circumstances, it will indeed be difficult to hold that whereas the government reserved power and could reserve power to revise the seniority list on account of the disputes about seniority arising out of the States' reorganisation and/or on account of the non-receipt of options of the non-gazetted technical staff etc. it did not or could not reserve such power to meet the situation arising out of the orders of the courts in the disputes pending between the appellants and the respondents herein. According to us, even if no such powers were specifically reserved in the said government order, the government would have been obliged to revise the seniority list to comply with such orders.

13. We are further afraid that the High Court, in this connection, placed too much emphasis on the expression "the transfer is on as is basis" and did not read into it what in the context of the whole order should have been quite obvious. Clause 3 of the order itself states that the names mentioned in the annexure were not arranged in the order of seniority and did not, therefore, confer any right for seniority on that basis. Clause 4 of the order specifically stated that the seniority was liable to be altered by the government at any time with reference to the pending appeals "etc.". Even assuming that the government by the word etc." did not intend to refer to the matters pending in court and only intended to refer to the appeals arising out of the recommendations of the concerned

committees, it should be clear to any one that whether the government reserved such power or not with reference to the cases pending in courts, the government would have been under an obligation to revise the seniority list to comply with such orders. In the circumstances, the expression "the transfer is on as is basis" should have been confined to all service conditions except the seniority.

14. We are also unable to understand why the government could revise the seniority list of some employees who were no longer its employees after October 1, 1973 merely because it had reserved its powers to do so while it had not power to do so in respect of the other employees merely because it had not reserved such power. If the ground given by the High Court for such lack of power in respect of the latter class of employees is correct, viz. that they had ceased to be the government servants, then for the same reason the government could not have reserved and even if it had reserved, could not have had the power to change the seniority of the other employees since both had ceased to be the government employees on and from October 1, 1973. If the lack of power was on account of the severance of the relationship between the government and the employees, then whether the government reserved the power or not, the government could not have had such power. On the other hand, if government could exercise such power merely because it had reserved it, it could exercise if for any reason whatsoever and for any length of time even when the employees were not the government servants. We are afraid that the court failed to appreciate that firstly, even if the government so willed, it could not have reserved power to change the seniority of the employees after October 1, 1973. Conversely, the government had always the power to revise the seniority list of the employees as on October 1, 1973 on account of reasons accruing prior to the said date. To do it, it was not necessary for the government to reserve any power, for it had inherent power to do so. What is unfortunately lost sight of by the court is that the government had not reserved the power, as it could not, to change the seniority of the employees after October 1, 1973. The government had reserved the power, as it had every right to do so, to change the seniority of the employees as on October 1, 1973 or prior to that date when they were employees of the government. It is this initial wrong assumption which, we are afraid, has led the court to the wrong conclusion.

15. We have pointed out above that the government had not sent the list of the employees to the Board arranged according to seniority and the expression "as is" in the circumstances referred to service conditions other than seniority. We have further pointed out that even if the word "etc." at the end of clause (4) of paragraph 6 of the said government order was construed to exclude the dispute with regard to seniority pending in the court, that would not have exempted the government from complying with the orders of the court. To hold that the government by its own order such as the present one could prevent operation of the order of any court is to invite conflict in the jurisdictions of the executive and the judiciary which, we are sure, the High Court did not intend. But the reasoning of the court unwittingly and directly leads to such unconstitutional proposition.

16. For the same reasons, the government could not have forced the employees to accept the terms with regard to the seniority as an immutable one. This is apart from the fact, as pointed out above, that in fact the said government order did not lay down any such term. This being the case, it cannot be said that the appellants had accepted the seniority as was forwarded by the government to the Board and they were estopped thereafter from agitating against it. It is unnecessary to state that the decision of the court being the law, no plea of estoppel could be raised against it.

17. With respect, we are also unable to accept the reasoning of the High Court that since the Board had no power to change the seniority list, it could not be said that the government had the said power. As a first proposition, it is well settled that there cannot be a right without a remedy. Law

abhors such vacuum. But, as pointed out earlier, there are two periods with respect to which the power to alter seniority has to be examined. The first period is up to October 1, 1973 and the second commences thereafter. In the first period there was a relationship of employer-employee between the government and the transferred employees. Hence, the government had every right to correct or amend the seniority of the employees up to that date. If, therefore, the government had advertently or inadvertently committed any error in preparing the seniority list up to October 1, 1973, or because of the decisions of the courts it had to amend the said seniority list, not only it had power to do so but it was the only authority which could do it. The seniority list which was corrected by the government was the seniority list as on or before October 1, 1973.

18. In the circumstances, we are of the view that the decision of the High Court suffers from legal infirmities and has to be set aside. The result is that both the appeals are allowed. The revised seniority list sent by the government to the Board with Government Order No. 233 of May 26, 1981 is restored and the respondent-Electricity Board is directed to act on the same. In the circumstances of the case, there will be no order for costs in either of the appeals.

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