

Baqar Hussian and others

Vs

Zilla Parishad, Medak

Civil Appeals Nos. 4085 and 4086 of 1984 with C.A. nos. 1303 of 1988; 3347 and 3350 of 1983 with 3192 of 1985 and C.A. No. 1808 of 1992

(L. M. Sharma, Ms. M. S. Fathima Beevi JJ)

28.04.1992

JUDGEMENT

FATHIMA BEEVI, J.

1. Special Leave granted.

2. These appeals raise identical question involving the interpretation of the Andhra Pradesh Panchayat Samithis and Zilla Parishads Ministerial Service Rules 1965 in relation to seniority and promotion. The Rules under the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act 1959 were issued under G.O. Ms. No. 303 P.R. dated 15-3-1965. The service consists of categories of posts as under:-

Category I:- Managers etc. Zilia Parishads.

Category II:- Superintendents in Zilla Parishads and Panchayat Samithis.

Category III:-' Secretarial Assistants, Revenue Officers, Endowment Officers, Upper Division Clerks and Senior Accountants in Zilla Parishads and Panchayat Samithis.

Category IV:- Loans Inspectors, Lower Division Clerks and Junior Accountants cum-Store Keepers etc.

3. Rule 3 so far as material reads thus:-

(See Table below)

"3. Appointment:- Appointment for the categories specified in column (1) below shall be made by the method specified in the corresponding entry in column (2) thereof.

Category	Method of Appointment
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I. (i) & (ii) Managers in Zilla Parishads and Panchayat Samithis	By promotion from
Category II Note : (i) Assistants working in Andhra Pradesh Secretariat shall also be eligible to hold the posts on deputation for a specified period to be prescribed by the Government.	

II. Superintendents, Zilla Parishads and Panchayat Samithis	By promotion from
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classes (i) to (iv) in Category III.

III. Classes (i) to (iv) By Promotion from classes (i) to (iv) in Category V."

4. Rule 4 prescribes the qualifications for appointment to the various categories. Under this rule, Account Test for the employees of local bodies or an equivalent test in addition to the general educational qualification specified is prescribed against categories 1, 2 and 3. As the Account Test became a new test from 15-3-1965 to the employees of Panchayat Samithis and Zilla Parishads working in Telangana area, the Government granted two years time from 7-8-1967 to 7-8-1969 to enable them to pass the Account Test. The period was extended by two more years in 1969 and for a further period of two years in 1971. Finally, the rule itself was amended extending the time up to November 1974."

5. Proviso to Rule 4 as amended reads thus:-

"Provided further that the services in the category of Upper Division Clerks of such or the Lower Division Clerks working in Panchayat Samithis and Zilla Parishads who were temporarily promoted as Upper Division Clerks and Senior Accountants prior to 15th March, 1965, but passed the prescribed Account Test before 30th November, 1974 i.e. within the time granted to them by executive orders issued from time to time by the Government to pass the said Account Test shall be regularised from the date of their first temporary promotion or from a subsequent date:

Provided also that the regularisation of service under the foregoing proviso shall not affect the seniority and promotions to higher' posts ordered in accordance with rules in favour of those who passed the said Account Test before the 7th August, 1967."

6. Appellants in Civil Appeals Nos. 4085 & 4086 of 1984 were appointed as Lower Division Clerks in Zilla Parishad, Medak during the period of 1959 to 1961. They were promoted to the regular vacancies of Upper Division Clerks during the period of 1960 to 1963. The respondents were also appointed as Upper Division Clerks before 1965.

7. The appellants who were promoted as Upper Division Clerks before 15-3-1965 passed the Account Test within the extended period after 7-8-1967. The respondents, however, acquired the qualification by passing the test before 7-8-1967. The appellants were in due course promoted as Superintendent and Manager.

8. Seniority list of Upper Division Clerks was prepared by proceedings dated 5-6-1975. In the seniority list, the appellants were placed above the respondents. In February 1976, the appellant No. 1 was promoted as Superintendent along with two others and subsequently they were further promoted as Managers. On 1-7-1976, appellant No. 2 and appellant No. 3 were promoted as Superintendents. Proceedings of promotion given to the appellants were challenged by the respondents before the Administrative Tribunal by filing R.P. No. 51 of 1977 on the ground that they have passed the Account Test in 1966-1967 while the appellants have passed the said test only after 1967 and, therefore, the respondents were entitled for promotion to the higher posts before the appellants. Similar petitions were filed by other parties. The appellants also filed a petition as R.P. No. 451 of 1981 seeking a relief that the settled final seniority list of Upper Division Clerks should not be disturbed and promotions given on that basis should not be disturbed. The Tribunal by a common judgment dated 10-7-1984 disposed of these petitions.

9. The respondents petition was allowed by the Tribunal holding that persons who were not qualified up to 7-8-1967 and who got the benefit of the amendment issued under G.O. Ms. No. 822 dated 22-8-1977 have to be treated as juniors to those having passed the Account Test before 7-8-1967 were fully qualified for regular appointment as Upper Division Clerks irrespective of whether such persons were appointed to the posts of Upper Division Clerks regularly by 22-8-1977 or not.

10. The Tribunal adopted the reasoning that a person who has passed the Account Test is entitled to be appointed regularly to the post of Upper Division Clerk and person who has not passed such Account Test cannot be held to be entitled to such regular appointment until either they passed the Account Test or are exempted from passing such test. The Tribunal held that because of the test qualification such persons were eligible for regular appointment and those who have not acquired the qualification are to be treated as unqualified persons until 7-8-1967 the date on which the relevant orders giving them the necessary concessions were issued. In this view, relief was granted in all the petitions before it by the Tribunal. Aggrieved by the decision of the Tribunal, the appeals have been preferred on special leave granted by this Court.

11. Learned counsel for the appellants has taken us through the Government Orders, the relevant rules and the other material papers and the judgment of the Tribunal. He contended that the interpretation placed on the 2nd proviso to Rule 4 by the Tribunal in the light of the other Government Orders is wrong, that on prescribing the test qualification for promotion to the cadre of Upper Division Clerks since time has been granted for acquiring the qualification, the appellants who have been promoted before passing the Account Test must be deemed to have been qualified even at the time of the first appointment on their passing the Account Test. It was submitted that the respondents have also been promoted as Upper Division Clerks before they acquired the test qualification and merely because they have passed the test before the time was extended by the Government, it did not confer any right of seniority when they were juniors to the appellants in the category of Lower Division Clerks. It is also pointed out that the seniority list finalised in 1975 was not objected to and the promotion made on the basis of that list could not be assailed. Counsel for the respondents, on the other hand, maintained that until the appellants passed the Account Test, they were not qualified for being promoted as Upper Division Clerks. Their temporary promotion did not confer any right on them and their regular appointment can be deemed to have been made only when they passed the Account Test and that being subsequent to the date on which the respondents qualified themselves, they lost their seniority and, therefore, the Tribunal was right in its conclusions.

12. In order to appreciate these arguments, it is necessary to refer to the relevant Government Orders. The proviso to Rule 4 deals with the service in the Category of Upper Division Clerks and such of the Lower Division Clerks who were temporarily promoted as Upper Division Clerks prior to 15-3-1965 but passed the Account Test before 30th November 1974 and they are to be regularised from the date of their first temporary promotion or from the subsequent date. Such regularisation shall not affect the seniority and promotions to higher posts ordered in accordance with the rules in favour of those who passed the said Account Test before 7th August, 1967.

13. The Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959 came into force on 18-9-1959. Under Rule 4, the District Cadre Staff includes both Governments and non-Governments servants. Qualification prescribed by the Government for similar posts were followed as per G.O. Ms. No. 2107 dated 2-8-1961 in Telangana. Appointments made after 1-12-1959 by the District Selection Committee was to be treated as regular service and their services will be regularised after issue of rules and promotions may be made on emergency basis pending issue of rules on the basis

of date of first appointment. The Andhra Pradesh Panchayat Samithis and Zilla Parishads Ministerial Service Rules were issued by the Governor of Andhra Pradesh in exercise of the powers conferred under S. 69 of the Act on 15-3-1965. The qualifications are prescribed in Rule 4. The Account Test became obligatory from 15-3-1965 to the employees of Panchayat Samithis and Zilla Parishads working in Telangana area also.

14. The appellants in Civil Appeals Nos. 4085 & 4086 of 1984 were appointed in the Panchayat Samithis and Zilla Parishads, Medak, as Lower Division Clerks during the period of 1958 to 1961 on selection made by District Selection Committee. These appellants 1 to 9 Baqar Hussain, Ameeruddin, S. Vittal, Ghousuddin, C. H. Jagannatham, G. Tulasidas, Y. Vittal Das, Mallaiah Gupta and J. Janardhan Reddy were promoted to the regular vacancies of Upper Division Clerks during the period of 1960 to 1963. The rules which came into force on 15-3-1965 prescribed Account Test for regularisation of the employees in the cadre post. These appellants passed the Account Test after 7-8-1967 but before November 1974.

15. The respondents Venkatesam and Ballaiah were promoted as Upper Division Clerks on 16-11-1964 and 21-10-1963 respectively. Venkatesam passed the Account Test in 1966 and Ballaiah passed the Account Test in 1967.

16. Baqar Hussain was promoted as Superintendent along with Zakir Hussain and Srinivas Rao on 7-2-1976 (1966?). They were further promoted as Managers on 1-7-1967. Ameeruddin was also promoted as Manager. These promotions were questioned by the respondents claiming seniority over these persons on the ground that they have passed the Account Test in 1966 and 1967.

17. In Civil Appeals Nos. 3347 & 3350 of 1983, respondents challenged the seniority list dated 28-1-1976.

18. Civil Appeal No. 13003 of 1988 arises from R.P. No. 242 of 1978. The appellants were appointed as Lower Division Clerks during the period of 1957 to 1959 and promoted as Upper Division Clerks between 1961 to 1964 before the rules came into force. The respondents were promoted as Upper Division Clerks subsequent to the promotion of the appellants and after the rules came into force. The respondents had passed the Account Test prior to 7-8-1967. The appellants were further promoted as Superintendents and Managers during the period 1978 to 1982.

19. By the G.O.Ms. No. 2107 dt. 2-8-61, the Government directed that pending issue of rules prescribing qualifications to each post under the Andhra Pradesh Panchayat Samithis Act, 1959, the rules obtaining in the different District Boards should be followed. It was also -ordered that wherever such District Board Rules are not available in respect of any post included in the District Cadre i.e. Panchayat Samithis and Zilla Parishads, the qualifications prescribed for similar post should be followed. In Andhra area, under the Andhra District Board Rules, the Account Test for the local bodies employees was prescribed for promotion of Lower Division Clerks as Upper Division Clerks. In Telangana area, no such Account Test was prescribed as a prerequisite qualification for promotion of Lower Division Clerks as Upper Division Clerks. No pecific instructions were issued by the Government that the Lower Division Clerks or the Junior Accountants in the lower category should pass the Account Test for holding the post of Upper Division Clerks in Panchayat Samithis and Zilla Parishads in the Telangana area.

20. With effect from 15-3-1965, passing of Account Test for the employees of local bodies or an equivalent test in addition to general qualification was prescribed in the Andhra Pradesh Panchayat

Samithis and Zilla Parishads Ministerial Services Rules as a prerequisite qualification for the Typists, Lower Division Clerks etc. for promotion to the post of Upper Division Clerks, Superintendents, Managers of Panchayat Samithis and Zilla Parishads. The test thus became obligatory in Telangana area with effect from 15-3-1965.

21. Prior to the issue of the rules certain employees including the appellants were promoted as Upper Division Clerks on temporary basis in accordance with the orders and general rules issued. Most of them had not acquired the Account Test qualification and, therefore, they are liable to be reverted. The Government examined the question and by G.O.Ms. No. 487 dated 7-8-1967 directed the two years' time from the date of the issue of the orders shall be allowed to those employees who were promoted as Upper Division Clerks prior to the issue of the rules to pass the Account Test prescribed under the rules. It was further provided that the services of the employees referred to shall be regularised with reference to the date of their appointment as Upper Division Clerks provided they passed the Account Test within the time of two years allowed, and others who do not acquire the above qualifications within the time allowed shall be reverted. This concession was not applicable to the employees who were promoted after 15-3-1965. It was further directed that the employees who acquired the age of 45 years on or before 15-3-1965 shall be exempted from passing the Account Test, and when so exempted they shall be eligible for promotion along with others who acquire such qualifications. The time allowed for two years (sic) was extended from time to time and finally up to November 1974. A Notification was issued on 22-8-1977 and the proviso was inserted which reads thus:-

"Provided further that the Services in the category of Upper Division Clerks or such of the Lower Division Clerks working in Panchayat Samithis and Zilla Parishads in the Districts of Hyderabad, Adilabad, Medak, Warangal, Nizamabad, Khammam, Nalgonda, Karimnagar, who were temporarily promoted as Upper Division Clerks and Senior Accountants prior to 15th March, 1965, but passed the prescribed Account Test before 30th November, 1974, i.e. within the time granted to them by executive orders issued from time to time by the Government to pass the said Account Test shall be regularised from the date of their first temporary promotion or from a subsequent date.

Provided also that the regularisation of services under the foregoing proviso shall not effect the seniority list and promotions to higher posts ordered in accordance with rules in favour of those who passed the said Account Test before 7th August, 1967."

22. The latter proviso is clear that the regularisation of services of the employees who were temporarily promoted as Upper Division Clerks prior to 15-3-1965 but passed the prescribed Account Test within the time @page-SC2034 granted was to be from the date of their first temporary promotion or from the subsequent date and subject to seniority of those employees who had been promoted to higher posts in accordance with the rules on their having passed the Account Test before 7-8-1967. The concession in G.O. Ms. No. 487 dated 7-8-1967 was conferred on those Upper Division Clerks who were holding the post temporarily and were liable to be reverted for want of the test qualification only subject to the second proviso. The latter proviso refers to the employees who had passed the Account Test before 7-8-1967 and by virtue of such qualification they had been promoted to higher posts in accordance with the rules. That definitely refers to those Upper Division Clerks who had been appointed as Upper Division Clerks on a regular basis and such of them who had been promoted to the higher post after having acquired the necessary test qualification. Their seniority over those employees who had not passed the Account Test before 7-8-

1967 is secured by this proviso. It is only when the promotion to higher posts had been ordered in accordance with the rules in their favour after having acquired the test qualification before 7-8-1967 the proviso becomes applicable. Even if the Upper Division Clerks had acquired the test qualification before 7-8-1967 but had not been promoted to the higher posts and before they were promoted the other persons who had been temporarily appointed as Upper Division Clerks had also acquired the test qualification within the time granted, their regularisation from the date of the first temporary promotion entitles them to retain the original seniority. They lose the seniority only in favour of Upper Division Clerks who passed the Account Test before 7-8-1967 and had been promoted to higher posts in accordance with the rules, even though they might have been 'junior to the category who passed the Account Test after 7-8-1967 but within the time granted. This is the effect of the proviso. It benefits only the Upper Division Clerks who had been promoted to higher posts by virtue of their test qualification. So long as such promotions had not been ordered, they remained in the same category as those who had been granted the concession up to November 1974. The inter se seniority between these two categories is not affected until their promotion. The crucial words in the second proviso 'the seniority and promotions to higher posts ordered in accordance with rules in favour of those who passed the Account Test before 7-8-1967' contemplated an order of promotion taking into account the test qualification acquired before 7-8-1967. If there had not been an order of promotion, the mere passing of the test before 7-8-1967 does not confer seniority to those Upper Division Clerks over the category which had been granted the concession. Those temporary Upper Division Clerks who were liable to be reverted for want of test qualification and who had been conferred the concession by extending the time for passing the test were entitled to be regularised on passing the Account Test from the date of their first temporary appointment or the subsequent date without affecting the seniority of those persons who had secured the promotion to higher post in accordance with the rules on having passed the Account Test before 7-8-1967. The proviso clearly indicates that as a matter of right the temporary Upper Division Clerks who were liable to be reverted but had been given the concession and had passed the Account Test within the time granted could maintain their seniority over those persons who had not been promoted by virtue of their test qualification. The latter category who had already been promoted had to be treated as senior to the former. Any other interpretation of these provisos would make the second proviso redundant. Those who acquired test qualification before 1967 and had been promoted to higher post by virtue of such qualification are entitled to seniority over those who acquired the test qualification after 1967 and were regularised in the cadre of Upper Division Clerks even if their first appointment as Upper Division Clerks was prior to that of the earlier category. This does not mean that those of the Upper Division Clerks who acquired the test qualification before 1,967 but remained as Upper Division Clerks even when the seniors acquired the test qualification would be entitled to seniority @page-SC2035 in the category of Upper Division Clerks so long as they have not been promoted to the higher post in accordance with the rules on regularisation.

23. Sri S. K. Yousufuddin and seven other employees of Zilla Parishad, Karimnagar, claimed seniority over some of the juniors who acquired the Account Test qualification earlier to the seniors promoted to the post of Upper Division Clerks before 1965 and who had passed the Account Test within the extended time granted by the Government. Similarly, M.A. Saleem, and six other employees of Karimnagar Zilla Parishad claimed seniority over the juniors who had passed the test before 7-8-1967.

24. The Government by the order dated 23-1-1978 after examining the question stated thus : -

"According to the amendment issued in G.O. Ms. No. 822 P.R. dated 22-8-1977, the service of the Lower Division Clerks in Telangana region who were temporarily

promoted as Upper Division Clerks and Senior Accountants prior to 15-3-1965 but passed the prescribed Account Test before 30-11-1974 i.e. within the time granted by the Government shall be regularised from the date /of their first temporary promotion or from a subsequent date provided that the regularisation of services shall not affect the seniority and promotion to the higher post ordered in accordance with the rules in favour of those who passed the said Account Test before 7-8-1967. It means that the Lower Division Clerks who were promoted as Upper Division Clerks temporarily prior to the issue of the rules on 15-3-1965 but passed the Account Test subsequently before 30-11-1974 are entitled to have their services regularised retrospectively. But however such of those employees who were promoted temporarily as Upper Division Clerks prior to 15-3-1965 but passed the Account Test before 7-8-1967 and who have also been promoted to the higher posts in accordance with the rules shall not be effected."

25. In this view, the Government directed that the services of Sri Yousufuddin, Manager, who was promoted as Upper Division Clerk temporarily from 3-5-1961 and passed the Account Test in May 1967 and who was also promoted as Manager be regularised with effect from 3-5-1961 in the category of Upper Division Clerks and also in the category of Managers with effect from the date of his promotion as he was fully qualified to the post on that date as per the amendment issued in G.O. Ms. No. 822 P.R., dated 22-8-1977. It was further directed that the services of others who were promoted as Upper Division Clerks earlier to Sri S. K. Yousufuddin but passed the Account Test within the time limit after 7-8-1967 and who were promoted to higher post of Managers be regularised with effect from 3-5-1961 i.e. the date on which the services of Sri S. K. Yousufuddin are to be regularised and that they be placed below Yousufuddin in the seniority of Upper Division Clerks.

26. The Government also directed that the services of the other Lower Division Clerks who were promoted as Upper Division Clerks temporarily prior to 15-3-1965 but passed the Account Test subsequently before 30-11-1974 and who have not been promoted to higher posts such as Superintendents and Managers, on the date of issue of the amendment be regularised from the date of regularisation of the services of the individuals who had already been promoted. After regularising the services of these temporary Upper Division Clerks promoted prior to 15-3-1965, the services of those who were promoted after 15-3-1965 be regularised.

27. The respondents Venkatesam and Ballalah claimed seniority on the ground that they had passed the Account Test before 8-1967.

28. The question whether the protection given by the second proviso in regard to seniority applies to those persons who were holding the rank of Upper Division Clerks on 22-8-1977 was considered.

29. The protection afforded applies only to the regular Upper Division Clerks who have passed the Account Test before 7-8-1967 and promoted to higher posts and not to the Upper Division Clerks who have passed the Account Test before 7-8-1967 and not promoted to the higher posts.

30. The intention of the Government in issuing the second proviso in G.O. Ms. No. 822 P.R. dated 22-8-1977 is to protect only those who passed the Account Test before 7-8-1967 and whose services in the category of Upper Division Clerks were regularised and promoted to the higher posts by 22-8-1977. It is not intended to benefit those persons who are not regularised or promoted even though

they had passed the Account Test before 7-8-1967.

31. The Tribunal in disposing of the petitions has overlooked the true scope of the proviso in the light of the Government Order dated 7-8-1967 and had uniformly applied the protection afforded in the second proviso to all those persons who had acquired the test qualification before 7-8-1967 irrespective of the fact that they had been regularised and promoted to higher post before 1977. On a plain reading of the proviso in the light of the various Government -Orders, it is very clear that until the Upper Division Clerks promoted before 15-3-1965 are regularised and promoted to the higher post on their acquiring the test qualification before 7-8-1967, they do not get seniority over those who passed the test after 7-8-1967 but within the time granted and the latter do not lose their seniority in favour of their juniors who acquired the test qualification before 7-8-1967. The Tribunal has in para 93 of the judgment held thus :

"Consequently these persons who were not qualified up to 7-8-1967 and who got the benefit of the amendment issued under G.O. Ms. No. 822 dated 22-8-1977 have to be treated as junior to those who, having passed the Accounts Test before 7-8-1967, were fully qualified for regular appointment as U. D. Cs. irrespective of whether such persons were ' appointed to the post of U.D.C., regularly by 22-8-1977 or not."

32. We do not agree with this proposition. The passing of the Account Test does not automatically result in regularisation of the appointment as Upper Division Clerks. The persons who were temporarily promoted earlier had been granted concession to get qualified and when they acquired such qualification they stood in the same position as those who passed the test earlier. The regularisation is not with reference to the date of passing the test but with effect from the date of first promotion in such cases. The regularisation with effect from a subsequent date is only in those cases where the juniors have already been promoted to higher posts by virtue of their test qualification. In such cases, the date on which such juniors are regularised would be the relevant date for the regularisation of the seniors who passed the test subsequently. (Subsequent date mentioned in the proviso covers only such cases). Once both categories are qualified and become eligible for being regularised and considered for promotion they are in the same stream and on par in all respects. They then belong to the same class. Once the appellants are eligible for regularisation under the rules, they stand on the same queue as others according to seniority, -vide Chandrakant v. State of Gujarat, (1977) 2 Serv LR 605.

33. We agree with the Tribunal that the protection under the latter part of the proviso to Rule 4 is available to those Upper Division Clerks who happened to be juniors and who had also acquired the test qualification and had been promoted to the higher posts on a regular basis though their seniors acquired the test qualification within the time allowed by the Government. We however hold that such protection is not available to those employees who remained in the same category of Upper Division Clerks and had been temporarily promoted as Upper Division Clerks subsequent to the appellants though they had passed the test before 7-8-1967.

34. We accordingly modify the judgment of the Tribunal to this extent and direct that the seniority list shall be prepared in all these cases in the light of our findings and direct that consequential relief be granted to the appellants in all these cases. The appeals and S.L.P. are disposed of as above. In the circumstances of the case, we make no order as to costs.

Order accordingly.

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