

S. Chinnappa Reddy and Others

Vs

State of A.P. and Others

Civil Appeals Nos. 1809-12 of 1996

(CJI A.M. Ahmadi, S.P. Bharucha JJ)

16.01.1996

JUDGMENT

BHARUCHA, J. –

1. Leave granted.

2. These appeals impugn two orders of the Andhra Pradesh Administrative Tribunal dated 8-3-1994 and 13-4-1994. They relate to seniority in the post of Assistant Executive Engineer, earlier called Junior Engineer, in the Public Health and Municipal Engineering Department of the Government of Andhra Pradesh.

3. Prior to 18-8-1970, the post of Junior Engineer was filled by direct recruitment and by redesignating Supervisors as Junior Engineers, as and when vacancies were available, upon their becoming graduates.

4. The State Government by GOM No. 682 dated 18-8-1970, banned the direct recruitment of Junior Engineers. Thereafter, in exercise of emergency powers conferred by Rule 10(1)(a)(i) of the Andhra Pradesh State and Subordinate Service Rules, 1965, the State Government made temporary and ad hoc appointments of Junior Engineers on emergency basis. Such appointments were not made after selection by the State Public Service Commission, which was the prescribed method of regular appointment. In 1975, with a view to regularise the services of these temporary and ad hoc appointees, the State Government conducted a Special Qualification Test (SQT). It was open to the temporary ad hoc appointees who had put in two years' continuous service up to 1-1-1973 to take the SQT. Those who qualified were ranked in seniority below those who had been regularly appointed as Junior Engineers prior to 18-8-1970.

5. In 1976 the ban on direct recruitment of Junior Engineers was lifted by the State Government and direct recruitment through the State Public Service Commission to the post of Junior Engineer was resorted to. Selections, accordingly, were processed between 1978 and March 1979. Before appointment orders in respect of those who had been selected could be issued, the State Government, on 14-9-1979, issued two orders, being GOMs Nos. 646 and 647. Under the former, the State Government directed that the services of all temporary appointees appointed by direct recruitment and continuing in service as on 9-8-1979 would be regularised without subjecting them to any written or oral test. Under GOM No. 647, the State Government issued orders for regularisation, thus :

"(i) the services of all temporary government employees who were appointed by

direct recruitment to any category or post and are continuing in service as on 9-8-1979 should be regularised without subjecting them to any test written or oral;

(ii)(a) the services of all temporary employees in all categories, other than LDCs, Typists and Stenotypists, in the Offices of the Heads of Departments and Junior Assistants, Typists and Stenotypists in the Secretariat, should be regularised from the next date following the date on which the last regular appointment in that category was made in the unit concerned or from the date of temporary appointment whichever is later."

6. Direct recruits of the year 1978-79 challenged GOMs Nos. 646 and 647 in a petition before the Andhra Pradesh State Administrative Tribunal. The Tribunal rejected the challenge. This Court was approached in appeal. The appeal was rejected, but certain directions were given. The judgment is I.J. Divakar v. Govt. of A.P. [(1982) 3 SCC 341 : 1983 SCC (L&S) 14]. The direct recruits selected in 1978 were appointed and given seniority as directed in Divakar case [(1982) 3 SCC 341 : 1983 SCC (L&S) 14]. On 17-7-1987, the State Government directed that the seniority of direct recruits of the year 1978-79 be fixed above that of the temporary appointees whose services had been, or were being regularised under GOM No. 647.

7. The State Government's order of 17-7-1987 was challenged by those temporary appointees who had been regularised under GOM No. 647 and the challenge was upheld. The direct recruits of 1978-79 thereupon filed a special leave petition before this Court. It was heard along with civil appeals that related to disputes about seniority between temporary ad hoc Junior Engineers on the one hand and Supervisors who had been designated Junior Engineers upon graduation on the other hand. The Judgment of this Court is in G.S. Venkat Reddy v. Govt. of A.P. [1993 Supp (3) SCC 425 : 1994 SCC (L&S) 38 : (1993) 25 ATC 617] and it was delivered, on behalf of a Bench of three learned Judges by one of us, (Ahmadi, J., as he then was). The judgment noted several earlier judgments, including the judgment in Divakar case [(1982) 3 SCC 341 : 1983 SCC (L&S) 14]. In para 15 of the judgment, a precise summary of the Court's directions was given thus : (SCC p. 435).

"15. To summarise : The candidates who have entered service after passing the SQT shall rank immediately after the regularly appointed candidates who had entered service before the selection of the successful SQT candidates. Next to the SQT candidates will rank those who are governed by this Court's directive in the last para of Divakar case [(1982) 3 SCC 341 : 1983 SCC (L&S) 14]. Thereafter the seniority will be fixed between the candidates covered under GOM No. 647, the upgraded supervisors and the SC/ST candidates recruited under the Rule 22(e) - limited recruitment scheme - in the light of this judgment. The judgment and order of the Tribunal will stand modified to the extent it concerns the SC/ST candidates recruited under Rule 22(e) - limited recruitment scheme. If as a consequence of this modification readjustment of inter se seniority between a candidate governed by GOM No. 647 and an upgraded supervisor becomes necessary it will be effected in the terms of this judgment. Fresh orders consistent with his judgment may be issued, if necessary. Except for the modification made in regard to recruitment under the limited recruitment scheme, the Tribunal's order is upheld."

8. No seniority list having been prepared pursuant to the judgment in Venkat Reddy case [1993 Supp (3) SCC 425 : 1994 SCC (L&S) 38 : (1993) 25 ATC 617], the appellants moved the Tribunal. To this petition before the Tribunal, the ad hoc temporary appointees were impleaded upon their

application. They also filed an application before the Tribunal questioning the placement in seniority of direct recruits selected in 1978-79 above themselves.

9. On 21-1-1994, the State Government issued a provisional seniority list placing the direct recruits selected in 1978-79 above temporary ad hoc appointees who were covered by GOM No. 647.

10. The Tribunal, on 3-3-1994, called upon the officers concerned of the State Government to appear before it to explain the parameters which they proposed to follow for preparing seniority lists.

11. On 8-3-1994, the first of the two orders impugned in this appeal was passed. It stated that the Government pleader had placed before the Tribunal a letter dated 7-3-1994, which indicated that the State Government wanted to "proceed on the basis of the judgment of the Supreme Court in G.S. Venkat Reddy case [1993 Supp (3) SCC 425 : 1994 SCC (L&S) 38 : (1993) 25 ATC 617] for preparing fresh provisional seniority list.... Without considering the implication of the Presidential order, the general and special rules and the other judgments of the Supreme Court and any other judgments of the erstwhile judgment in this Department (sic) and executive instructions of the Government in a comprehensive manner, it will not be appropriate to proceed with the preparation of provisional seniority list as proposed which may give rise to further controversies". The Tribunal directed the State Government to prepare the parameters for preparation of the seniority list after examining this material, the initial organisation of the cadres, the cadre strength, the persons allotted at that time and the vacancies that had arisen thereafter.

12. On 13-4-1994, the second of the impugned orders was passed. It referred to a statement of the parameters which the State Government proposed to adopt. The Tribunal quoted a part of para 13 thereof, as follows :

"The summary in the present judgment (Venkat Reddy case [1993 Supp (3) SCC 425 : 1994 SCC (L&S) 38 : (1993) 25 ATC 617]) and direction in Divakar case [(1982) 3 SCC 341 : 1983 SCC (L&S) 14] as explained do not go together."

The Tribunal deduced from this that the State Government, apparently, was "facing difficulties in reconciling the judgments of the Supreme Court". The Tribunal considered it appropriate to direct material, which was "basic and essential", to be placed before it "for commencing an exercise for preparing a seniority list". A list of the required material followed. An interim order was issued that "persons appointed in 1984 on the basis of the concession given in Divakar case [(1982) 3 SCC 341 : 1983 SCC (L&S) 14] are not put above the persons who are already in the list showing the organisation of orders or appointed pursuant to SQT or GO No. 647 or limited recruitment".

13. It seems to us that the Tribunal has overreached itself. As aforesaid, the judgment in Venkat Reddy case [1993 Supp (3) SCC 425 : 1994 SCC (L&S) 38 : (1993) 25 ATC 617] was delivered by a Bench of three learned Judges after taking note of Divakar case [(1982) 3 SCC 341 : 1983 SCC (L&S) 14]. The directions given in Venkat Reddy case [1993 Supp (3) SCC 425 : 1994 SCC (L&S) 38 : (1993) 25 ATC 617] indicate where those governed by Divakar case [(1982) 3 SCC 341 : 1983 SCC (L&S) 14] are to be placed. There is, therefore, nothing in the directions which can lead to difficulty nor is there any question of 'reconciling' the same with Divakar case [(1982) 3 SCC 341 : 1983 SCC (L&S) 14]. We find no justification for the Tribunal's directions to the State Government to furnish "basic and essential" material to enable it to commence an exercise for preparing a seniority list, nor for the earlier direction that the parameters to be following in preparing the

seniority list should be set down by the State Government after examining Presidential order, general and special rules, judgments of the Supreme Court other than that in Venkat Reddy case [1993 Supp (3) SCC 425 : 1994 SCC (L&S) 38 : (1993) 25 ATC 617] and other judgments.

14. The orders of the Andhra Pradesh Administrative Tribunal dated 8-3-1994 and 13-4-1994 are, accordingly, quashed and set aside. The State Government is directed to review the seniority list which it has prepared to ensure that it is in strict conformity with the directions given in Venkat Reddy case [1993 Supp (3) 425 : 1994 SCC (L&S) 38 : (1993) 25 ATC 617] and precisely summarised in para 15 thereof. This seniority list, after such review, shall be placed before the Tribunal, which shall examine it only with a view to ensuring that it is in accordance with the directions contained in Venkat Reddy case [1993 Supp (3) 425 : 1994 SCC (L&S) 38 : (1993) 25 ATC 617]. The only discretion it has in this behalf is that indicated in para 15 of Venkat Reddy case [1993 Supp (3) 425 : 1994 SCC (L&S) 38 : (1993) 25 ATC 617], namely, that it may issue orders consistent with that judgment, if necessary. The applications pending before the Tribunal shall also be disposed of in the light of the judgment in Venkat Reddy case [1993 Supp (3) 425 : 1994 SCC (L&S) 38 : (1993) 25 ATC 617].

15. The appeal is allowed accordingly. There shall be no order as to costs.