

V. Subba Rao and others

Vs

Secretary to Govt. and Panchayat Raj

Special Leave Petition (C) Nos. 9268-70 of 1994

(CJI A. M. Ahmadi, K. Venkataswami, Sujata V. Manohar JJ)

27.02.1997

JUDGEMENT

Mrs. SUJATA V. MANOHAR J.

1. The petitioners were originally employees of Zilla Praja Parishads of various Districts in the State of Andhra Pradesh. The petitioners are the children of deceased employees of the respondents. In or around December 1983 they were appointed by the respondents on compassionate ground as Watchmen etc. under the quota for deceased employees' children on a consolidated pay. In December 1988 they were appointed as regular employees in the Zilla Praja Parishad on a regular scale of pay. In 1991-1992 they were promoted to the post of Junior Assistants.

2. In April 1993 a show-cause notice was issued to the petitioners to show-cause why they should not be reverted to their Last Grade Post since five years' service in the Last Grade Post is required for promotion to the post of Junior Assistant. The petitioners had worked for hardly three years in the Last Grade Post. The petitioners submitted their explanation 1983. They contended that for promotion to the post of Junior Assistant the minimum qualifying service was ordinarily three years and in no case less than two years.

3. In view however, of the provisions of the Andhra Pradesh Ministerial Service Rules, 1966 as amended by G.O. Ms. No. 589 dated 19th of November 1986 which requires a minimum of five years service in the Last Grade for promotion to the post of junior Assistant, the contentions raised by the petitioners were rejected by the respondents by an order dated 29-5-1993 issued by respondent No. 2. The petitioners were reverted to their original post. Being aggrieved by this order the petitioners filed applications before the Andhra Pradesh Administrative Tribunal challenging their order of reversion. These applications have been dismissed by the Andhra Pradesh Administrative Tribunal. The present petitions challenge the order passed by the Andhra Pradesh Administrative Tribunal.

4. The question is whether the petitioners need to have five years 'service as Watchmen. Attenders etc. for appointment as Junior Assistants. The petitioners have placed reliance on G.O.Ms. No. 627 dated 21st of December, 1983. This Government Order is issued by the General Administration Department in connection with certain Special/Ad hoc Rules relating to various State and Subordinate Services. It states that in Special/Ad hoc Rules relating to State and Subordinate Services a provision is made to the effect that a period of five years of service in the lower category from which promotion is to be made to the next higher category in the same service or when an appointment is to be made by transfer from any other service (underlining ours). The Government with a view to avoiding administrative difficulties had issued an Ad hoc Rule set out in G.O.Ms.

No. 85 dated 12-2-1979 reducing "ordinarily five years in the lower category" to three years of which at least two years' service was required to be in the category class or grade from which promotion was to be made. As the wording of the rule was considered defective, it was decided to make a fresh Ad hoc rule in its place. Accordingly a Notification (G.O.Ms. No. 627) was issued on 21-12-1983 framing an Ad hoc Rule superseding the earlier Ad hoc Rule issued in G.O.Ms. No. 85 dated 12th of February, 1979. The new Ad hoc Rule was deemed to have come into force on 12th of February, 1979. It is to the following effect :-

"Notwithstanding anything contained in the relevant Special Rules or the Ad hoc rules for the State and Subordinate Service, the minimum period of "Ordinarily five years of service" wherever prescribed in the said Rules for appointment of a member of service from the lower category, class or grade, To the next higher category, class or grade whether such appointment is made either by promotion in the regular line or by recruitment by transfer from any other service, that period shall be reduced to "ordinarily three years, but in no case shall it be less than two years, in the category, class or grade from which such promotion or transfer is made."

(underlining ours)

(N. B. : The comma after the phrase "less than two years" has been added by an amendment made in 1989 to clarify the position.)

5. The Ad hoc Rule deals only with promotions within the service and transfers. It applies to a member of a Service when he is promoted from a lower post to a higher post in the same Service. It also applies when the appointment is by transfer from another Service. It does not, however deal with promotions/appointments from a lower grade Service to a post in a higher grade Service.

6. The Ad hoc Rule which replaces the Ad hoc Rule framed in 1979 was promulgated to overcome administrative difficulties. These administrative difficulties have been spelt out in G.O.Ms. No. 85 of 12-2-1979. It states that persons satisfying five years of service are not available and hence to avoid administrative difficulties and disputes it has been decided to reduce the existing period of five years' service to three years' service of which there should be service of a minimum period of two years in the class, category or grade from which promotion is made to the next higher category.

7. In the present case the petitioners have been promoted as Junior Assistants. The post of Junior Assistant is governed by the Andhra Pradesh Ministerial Service Rules of 1966. Under Rule 1 of the Andhra Pradesh Ministerial Service Rules, 1996 the composition of the Ministerial Service is set out. It consists of the categories of posts which are set out in that Rule. Category 10 consists of Junior Assistants in the offices of the Head of the departments and Directorates; while category 11 includes Junior Assistants in Subordinate Offices.

8. Rule 3 of these Rules deals with the method of recruitment to the various categories of posts enumerated in Rule 1. It also prescribes the necessary qualifications for recruitment and promotion. By G.O.Ms. 589 of 19-11-1986 Rule 3 was amended by the insertion of sub-rule (17) which is as follows:

"Rule 3(7) :

33. 3% of the posts of Junior Assistants in Panchayati Raj Bodies are reserved for Record Assistants, Attenders and other equivalent categories who possess minimum

general educational qualification and who have put in minimum service of five years in that category."

This is a specific Rule inserted in the Andhra Pradesh Ministerial Services Rules, 1966 by an amendment made on 19th of November, 1986 much later than the formulation of the Ad hoc Rule of 1983, This Rule specifically prescribes a minimum service of five years in the Last Grade Service as Record Assistants, Attenders and the like for promotion to the post of Junior Assistants in the Ministerial service. This Rule applies to the petitioners. It is a later amendment which directly applies to the post in question and must prevail over any general Ad hoc Rule promulgated earlier.

9. Rule 4(2) of the Andhra Pradesh Ministerial Service Rules which deals with promotion within the Ministerial Services, provides that "no member of the service shall, on or after 12th of February, 1979, be eligible for promotion from the lower category or post to the next higher category or post unless he has ordinarily put in a service for a minimum period of three years in the category from which he is to be promoted but in no case shall it be less than two years in the category from which such promotion is made." This Sub-rule (2) has a clear nexus with G.O.Ms.No. 85 of 21-2-1979 and the subsequent G.O.Ms.No. 627 of 21-12-1983, both of which came into effect from 12th of February, 1979, Rule 4(2) which was brought in by G.O.Ms. No. 189 of 22-3-1984 thus appears to have incorporated the Ad hoc Rule set out in G.O.Ms. No. 627 of 1983 in the Andhra Pradesh Ministerial Service Rules. This clearly indicates that G.O.Ms. No. 85 dated 12th February, 1979 and the subsequent G.O.Ms. No. 627 dated 21st of December, 1983 apply only to promotions within the Service, of members of the Service. This Rule has no application to recruitments made under Rule 3 when they are not by promotion under Rule 4 but by promotion from other lower grade Services. Rule 3(17) provides for recruitment to 33. 3% of the post of Junior Assistants in Panchayati Raj Bodies from Record Assistants Attenders and other equivalent categories in the lower grade service who have put in a minimum service of five years in that category. Rule 4(2) does not apply to such recruitment.

10. In fact, in Rule 3, wherever in any category of posts, there is a provision for promotion under Rule 4, it is expressly so mentioned. For example, Rules 3(1) first part, 3(2) and 3(11) are as follows :

"Rule 3 " Method of Recruitment - Special :

(1) Besides promotion as provided in Rule 4, the first vacancy out of every eight successive clear vacancies of superintendents in the Offices of the Heads of Departments and Directorates shall, on or after 23rd December, 1980, be reserved to be filled by transfer of Superintendents, Managers or Head Clerks working in the Subordinate Offices under the administrative control of the concerned Head of the Department or the Director as the case may be, or for special reasons from any other service or from any other Department in this service.

.....

3(2) : Besides promotion as provided in Rule 4, the first vacancy out of every four successive clear vacancies, of senior Assistants in the Offices of Heads of Departments and Directorates shall be reserved to be filled only from among suitable

Senior Assistants, working in the Subordinate Offices of the concerned Head of the Department or the Directorate. If any person so appointed by transfer suffers reversion, he shall be reverted to his parent office or Department:

.....

3(11) : Besides promotion as provided in Rule 4, appointment to the post of storekeeper in the Information and Public Relations Department shall be made by direct recruitment if no suitable candidate is available for appointment by recruitment, by promotion or by transfer."

11. Rule 4 is not mentioned in respect of recruitment to the post of Junior Assistant. The contention, therefore, of the petitioners that they are entitled to the benefit of Rule 4(2) or in the alternative, to the benefit of the G.O.Ms. No. 627 dated 21st of December, 1983, cannot be accepted. Thus we uphold the conclusion of the Tribunal. In the premises, the special leave petitions are dismissed. In the circumstances, there will be no order as to costs. Petition dismissed.