

Government of A. P. and Others

Vs

Dr V. Nagaraju and Others

Civil Appeals Nos. 5365 To 5374 of 1990

(S. Saghir Ahmed, S. Rajendra Babu JJ)

16.09.1998

JUDGMENT

RAJENDRA BABU, J.

1. The respondents were working as Civil Assistant Surgeons in the rural service of the State of Andhra Pradesh, appeared for the entrance test and were selected for undergoing the course of postgraduation in different subjects. The entrance examination was conducted for the Academic Years 1986-87 and 1987-88. The respondents were not selected towards the quota of reserved category for the in-service candidates and their selection fell outside the quota reserved for such candidates. The Director of Health and Family Welfare issued a circular in RC No. 19626/E6-A 88 dated 14-6-1988 to the effect that candidates who secured a certificate from the Principal concerned that they were selected for the postgraduation courses against the seats allotted for the in-service candidates' quota alone will be paid their salaries. The respondents challenged the action of the Director before the Tribunal. The Tribunal on the basis of the interpretation placed on the relevant rules held that all in-service candidates are eligible to get their salaries whether they are selected against the in-service quota or outside such quota and, therefore, the Director was not competent to issue such instruction which is contrary to the relevant rules. The Tribunal conclude that the respondents would be entitled to get their salaries right from the time they joined the postgraduate courses till the end of their courses and the same should be paid without any delay. The State being aggrieved by the action of the respondents, has filed these appeals.

2. The principal question arising for consideration before us is whether the in-service candidates who are selected outside the quota reserved for the in-service candidates could also be entitled to the same benefits as the candidates selected against such reserved quota.

3. Rules have been framed by the State of Andhra Pradesh known as "Rules for Admission to Postgraduate Courses in the Medical Colleges in the State of Andhra Pradesh". Rule 3 provides for reservations. Rule 3(2) states that 15% of seats in clinical subjects, in Medicine, Surgery, Obstetrics and Gynaecology groups and 30% of seats in non-clinical subjects or in each group are reserved for the in-service candidates. The reservation of in-service candidates shall be applicable in each category. Candidates selected on merit in the respective categories shall be counted against the in-service quota. Explanation added thereto states that an in-service candidates in one who has put in a minimum of two years' service on duty in the respective service. The Government in Memorandum No. 1209/E2/88-2 dated 28-11-1988 stated that only the in-service candidates who are selected against the quota provided in Rule 3(2) read with Rule 19(1) alone are entitled for deputation. Rule 19(1) reads as follows :

"19. (1) In-service candidates (of the Medical and Health Department) who have put in a rural service of two years on duty or more and are selected for admission in clinical subjects and non-clinical subjects will be deputed to the postgraduate studies."

Sub-rule (2) thereof states that any candidate in government service other than the "in-service" candidate defined under Rule 3(2) if selected for any postgraduate course shall not be entitled to any kind of leave including extraordinary leave without allowances for prosecuting postgraduate courses, unless he has put in a minimum of two years of service on duty in the respective service.

4. Rule 11(8) provides for stipends. It is made clear that in-service candidates shall not be paid stipends if they draw leave salary but they will be paid stipends if they are sanctioned extraordinary leave. The Tribunal in the present case has interpreted Rule 19(2) as to mean that all those candidates who have put in a service of minimum of two years if selected for postgraduate courses would be entitled to the same benefits as candidates who have been selected against the reserved quota for unreserved candidates relying upon the explanation to Rule 3(2).

5. The learned counsel for the appellants seriously challenged this view of the Tribunal and submitted that the concept of in-service candidates has got to be understood by reading Rule 3(2) and the explanation thereof together and not separately.

6. However, Shri Kanta Rao and Shri Subba Rao, learned counsel for the respondents, submitted that as long as the respondents answer the description of in-service candidates as provided in the explanation to Rule 3(2), there should not be any kind of distinction between those who are selected against the reserved quota and those who are selected on merit and the two should be categorised together and all benefits given to them should be common.

7. Shri Kanta Rao, learned counsel for the respondents, very vehemently submitted that there cannot be different classes of persons in the same service and relied upon the decision of the Andhra Pradesh High Court in *P. Indira Devi (Dr) v. Selection Committee* [(1986) 2 ALT 433]. That decision is only to the effect of enabling all eligible candidates whether against in-service quotas or otherwise to participate in the examinations for selection. The other two decisions in *State of Maharashtra v. Chandrabhan Tale* [(1983) 3 SCC 387 : 1983 SCC (L&S) 391 : 1983 SCC (Cri) 667] and *State of H.P. v. J. L. Sharma* [(1998) 1 SCC 727 : 1998 SCC (L&S) 366] relied upon by the learned counsel have no relevance to the present case.

8. The meaning to be attributed to the expression "in-service candidates" in Rule 19(2) will have to be understood with reference to Rule 3(2) along with the explanation thereof. The candidates who have been selected against the quota reserved in Rule 3(2) have got to be in rural service of two years on duty or more and have got to be selected in the appropriate subjects leading to their being deputed for postgraduate studies. If we read Rule 19 along with Rule 3(2), it becomes clear that an in-service candidate is one who has put in a minimum of two years' service in respective fields in the rural areas and is selected against the reserved quota and not all candidates who have put in 2 years' rural service and are selected to postgraduate studies. Thus the view taken by the Tribunal on the meaning of "in-service candidates" suffers from a fallacy of reading rules in compartments and not together. The intention of the Government in framing these Rules is clear that it is only those candidates who have been selected against the reserved quota who will be entitled to be deputed and not others, that is why sub-rule (2) of Rule 19 provided that if any candidate in government service other than the in-service candidates is selected for any postgraduation courses he should not be

entitled to any kind of leave including extraordinary leave without allowances for prosecuting postgraduate courses, unless he has put in a minimum of two years of service on duty in the respective service. In government service, there are two kinds of candidates - those who are selected against reserved quota and those who are selected otherwise than such quota. Those candidates who are covered by Rule 3(2) are those who have been selected against the quota reserved for the in-service candidates while others who are in government service and are selected are those who fall outside such category. The former will be entitled to extraordinary leave or other kinds of leave for prosecuting the postgraduate studies and the condition thereto is that they should have put in a minimum of two years' service. Therefore, the view taken by the Tribunal that the respondents will be treated on a par with the other in-service candidates cannot be upheld and the order made by the Tribunal is set aside.

9. In the circumstances of the case, we think if any amount of money has been paid to any of the respondents on the basis that there is no distinction between the in-service candidates and other candidates in government service who have been selected to the postgraduate studies, the same shall not be recovered.

10. Subject to what we have stated regarding recovery of the amounts, the appeals shall stand allowed and the order made by the Tribunal shall stand set aside. The applications filed by the respondents before the Tribunal shall also stand dismissed.