

State of Andhra Pradesh

Vs

K.V.L. Narasimha Rao

Civil Appeal No. 4109 of 1991

(S. Rajendra Babu, S.N. Phukan JJ)

19.04.1999

JUDGMENT

Rajendra Babu, J.

1. The respondents herein were in the judicial service of the State of Andhra Pradesh. They were originally appointed as Munsif Magistrates in the erstwhile State of Hyderabad and after the formation of State of Andhra Pradesh their services were integrated with those of their counterparts from different parts forming the State of Andhra Pradesh. As provided in the State Reorganisation Act, 1956 (hereinafter referred to as 'the Act'), the inter-State seniority amongst the judicial officers of different regions was referred to the Central Government and the new State of Andhra Pradesh prepared a common seniority list as directed by the Central Government. Certain litigations arose as to the norms to be adopted for fixing the seniority and ultimately the High Court in a writ proceeding directed that judicial officers in Telegana must be given their due promotions with effect from the date of their juniors being actually promoted. Representations made in that regard having failed, writ petition was filed before the High Court for a direction to the appellants and respondent No. 14 to pay arrears of salary and to give other monetary benefits flowing from their respective dates of notional promotion to the higher posts from the grade of Munsif to Sub-ordinate Judge and from Sub-ordinate Judge to District Judge. The High Court allowed the writ petition and directed payment of arrears of salary which was affirmed in appeal. Aggrieved by that order this appeal is filed.

2. The High Court took the view that the State Government cannot deny monetary benefits to officers whose ranks in the seniority list were adjusted and notional promotions were effected as a result of review of the common seniority list which attained finality under the provisions of the Act.

3. On behalf of the contesting respondents it was submitted that the allottees in the State of Andhra Pradesh could claim promotions on the basis of altered rank in the seniority with retrospective effect and as a necessary corollary thereto, they would have got promotions depending on their ranks in the seniority list and delay on the part of the authorities in finalising the list should not result in deprivation of monetary benefits to such allottees. On behalf of the appellants it was contended that the concerned officers did not actually work in the higher post and they had no right to claim monetary benefits.

4. Rules 26(aa) of the Fundamental Rules and Rule 40(aa) of the Hyderabad Civil Services Regulations are brought to our notice. The said Rules are in identical terms and read as under :-

"(aa) The pay of a Government servant whose seniority/promotion has been revised

and fixed from an earlier date, pay may be refixed on the basis of notional duty in the post from time to time. For this purpose the period for which the Government servant concerned would have officiated in the higher post if he had been promoted actually on that date may be reckoned on weightage for only such period given from the notional date of promotion. The non-qualifying periods like extraordinary leave, suspension etc., should also be deducted.

*Note 1* : Monetary benefit arising out of refixation as above, shall be limited to the duty periods and arrears shall be payable only for the period during which the Government servant actually discharged the duties of the post. Arrears shall not be payable for the notional duty periods assigned as a result of revision of seniority position.

*Note 1* : While a Government servant who is already promoted before the revision of his seniority and who is assigned an earlier date of promotion, shall be allowed arrears resulting from the pay fixation, in manner set out in Note 1 above for the period during which he actually discharged the duties of the post, and in the case of a Government Servant who has been promoted before the revision of seniority but is promoted after the review, he shall be allowed monetary benefit of pay fixation, from the date of promotion only.

*Note 3* : In the case of a Government servant who has already retired or died before the revision of his seniority and fixation of pay, the arrears shall be payable in the manner indicated in Note 2 above and the monetary benefit of pension/family pension or death-cum-retirement gratuity as the case may be, shall be allowed from the date of retirement/death."

The High Court took the view that the provisions of Fundamental Rule 26 or Rule 40 of the Hyderabad Civil Services Regulations have no application to cases falling within the ambit of the Act and, therefore, there could be cases where grant of notional promotion should not legitimately give rise to a valid claim for payment of arrears of salary either on the ground that the officer did not actually hold the post at the relevant time or otherwise. That principle could not be applied to the present case. A wrong had been committed in unduly delaying the finalisation of seniority and giving promotions thereto and hence denial of monetary benefits to them would be arbitrary in violation of Articles 14 and 16 of the Constitution.

5. In normal circumstances when the retrospective promotions are effected all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier. However, on the reorganisation of States a large number of officers stood allotted from different States to the newly formed State and their services had to be integrated on various principles and several agencies were involved in the same. The steps to be taken thereto were one of formulation of principles, publication of a provisional inter-State seniority list, inviting objections thereto, consideration of those objections in consultation with the Central Government and acting upon its directions to bring the seniority list in conformity with such directions. This entire exercise involved a good deal of time and gave rise to extraordinary situation. It is in those circumstances that Rules contained in the Fundamental Rule 26 or Rule 40 of the Hyderabad Civil Services Regulations have been framed. As a matter of fact, rules of erstwhile State regarding seniority are not applicable in the new State as allottees are governed by the Act and seniority is finalised therein. Even so, we do not see that there is any impediment to frame new rules affecting conditions of

service of such allottees but in conformity with the Act. Surely new rules cannot be brushed aside by saying that they are not applicable to cases coming under the Act. There is no contention either in the High Court or before us that they are framed in contravention of the Act. In this background, we fail to see as to why the Rules are not applicable to the respondents as held by the High Court.

6. In the result, we allow this appeal, set aside the order made by the High Court and dismiss the writ petition. But there will be no order as to costs.