

SUPREME COURT OF INDIA

I. Appa Rao

Vs.

Government of A.P.

C.A.No.3030-3033 of 2007

(R.V. Raveendran and Dr. Mukundakam Sharma JJ.)

24.07.2008

ORDER

1. The appellants were appointed as LDCs (Junior Assistants) on temporary basis between 5.12.1973 to 14.12.1974 in the Commercial Tax Department in the Srikakulam District of Visakhapatnam Division. According to them they were so appointed in clear vacancies and that their names were sponsored by an Employment Exchange. They, however, did not undergo any selection process and according to them their temporary appointment was under Rule 10(a)(i) of the AP State Subordinate Service Rules which provided for such temporary appointments subject to the condition that the person on such temporary appointment shall not be regarded as on regular employment nor be entitled for any future appointment. The appellants subsequently appeared in the selections held in October 1976 by the District Selection Committee Srikakulam. They were selected and allotted by the Collector, Srikakulam to the Commercial Tax Department for regular appointment as LDCs and thereafter the Deputy Commissioner, Commercial Taxes, Visakhapatnam by an order dated 30.11.1976 appointed them temporarily as LDCs. The service of appellants who were being continued as temporary LDCs, were regularised with effect from 3.6.1975 as per proceeding dated 9.1.1980 of the Deputy Commissioner, Commercial Taxes, Visakhapatnam.

2. The Deputy Commissioner, Commercial Taxes, Visakhapatnam finalised the integrated provisional seniority list of Junior Assistants in Zone-I as on 30.6.1994 vide notification dated 18.10.1994. According to the appellants the persons who were junior to them namely the non-official respondents were placed above them in the said list. They, therefore, approached the Andhra Pradesh Administrative Tribunal in O.A.No.6834 of 1994 seeking the following reliefs : (a) to quash the final integrated list dated 18.10.1994, (b) a direction to the official respondents to prepare a fresh seniority list in accordance with the regularisation order issued on 9.1.1980 or in the alternative to direct them to determine their seniority from the date of their initial appointment. The said application was allowed by the Tribunal by its order dated 20.4.1999. The Tribunal was of the view that there was some infirmity in the preparation of the merit list by the District Selection Committee, Srikakulam in regard to the October 1976 selections. Therefore, it set aside the integrated seniority list dated 18.10.1994 insofar as it related to Junior Assistants/Typists/Stenographers selected in the District

Selection Committee selections of 1976 with a direction to the official respondents to prepare the seniority list of Junior Assistants/Typists/Stenographers separately by following the Rules of reservation without reference to the ranking communicated by the Collector in its letter dated 24.12.1991 (the merit list of District Selection Committee Srikakulam for October 1976 selections). The Tribunal further held that in the absence of any relative merit amongst the candidates selected in District Selection Committee selections of 1976, the length of temporary service, if any, put in by the candidates should be the criterion for fixing inter se seniority amongst the candidates belonging to a category (SCS/BCs/SCs/STs) and if the length of service is same, age has to be taken as criterion. The Tribunal further held that after preparing the seniority lists of Junior Assistants/Typists/Steno-Typists separately a common integrated seniority list should be prepared based on dates of regularisation.

3. Some of the appellants also filed O.A.No.3955/1995 and O.A.No.5588/1995 challenging the proceedings dated 20.06.1995 of the Dy. Commissioner of Commercial Taxes, Visakhapatnam, by which he finalised the provisional seniority list of Senior Assistants in Commercial Tax Department-Zone I. The Tribunal disposed of the said applications by order dated 15.12.1999 directing the Dy.Commissioner of Commercial Taxes, Visakhapatnam to revise the said seniority list, based on the seniority list to be prepared in the category of Junior Assistants/Typists/ Stenographers as per the directions issued by the Tribunal in O.A.No.6834/1994.

4. The order of the Tribunal in O.A.No.6834/1994 was challenged by the non-official respondents, in Civil Writ Petition Nos.1247 and 7848 of 2000. The order of the Tribunal in O.A.No.3955/1995 and O.A.No.5588/1995 was challenged in Civil Writ Petition Nos. and 7268 & 7269 of 2001. The said writ petitions were allowed by the Division Bench of the Andhra Pradesh High Court by a common judgment dated 5.12.2001. The High Court was of the view that the integrated seniority list prepared on the basis of the merit list prepared by the District Selection Committee in 1976 did not call for any interference. The High Court found that the seniority list dated 18.10.1994 had been prepared keeping in view the guidelines/parameters communicated by the Commissioner of Commercial Taxes (vide his circular dated 4.8.1994) which reads as under :

" The seniority of junior assitants should be according to the ranks assigned by the Andhra Pradesh Public Service Commission/District Selection Committee or any other appointment authority in respect of Junior Assistants including Typists, Junior Stenos and other equivalent posts."

It, therefore, set aside the order of the Tribunal and consequently dismissed the Original Applications filed by the appellants.

5. The said judgment of the High Court is under challenge. Learned counsel for appellants submitted that where the initial appointment was only ad hoc as a stop- gap arrangement, and not according to any Rules, the officiation in such post may not be taken into account for considering the seniority. But where the initial appointment through ad hoc is made by following the Rules, and the appointee continues in the post uninterruptedly till the

regularisation of his service in accordance with the Rules, the period of officiating service will be counted. He submitted that the decision of the Tribunal was in consonance with the said principle laid down by a Constitution Bench of this Court in *Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others*¹.

6. The question that, therefore, arises for consideration is whether the High Court was justified in interfering with the order of the Tribunal which had directed that the seniority list should be prepared by taking into account the length of temporary service requires interference.

7. We are not concerned with the regularisation of ad hoc or stop gap appointments. In this case the initial appointments were on temporary basis without undergoing selection process between 1973 to 1974 under Rule 10(a)(i) of A.P. State Sub-ordinate Service Rules. Such temporary appointees subsequently underwent the selection process by the District Selection Committee in October 1976 and they were again appointed on temporary basis and later regularised with effect from 3.6.1975.

“The seniority list has been finalised on 18.10.1984 keeping in view the ranks assigned in the merit list prepared by the District Selection Committee. Therefore the seniority list was in accordance with parameters prescribed by the Commissioner of Commercial Taxes as also the settled principle of law. The Tribunal thought it fit to interfere with the seniority list not because in law it considered the temporary service should be reckoned for the purposes of the seniority but because it found that merit list prepared by District Selection Committee, Srikakulam regarding October 1976 selections was not properly done. It found that in the merit list prepared by the District Selection Committee for Srikakulam District, all the selected candidates except two have secured 65% marks and two candidates had secured 63% marks and the merit list did not furnish any indication as to how the inter se merit of various candidates who had secured 65% was settled. Therefore, the Tribunal was of the view that the length of temporary service of the candidates should be considered as a criterion for fixing inter se seniority amongst candidates belonging to a category (OC/BC/SC/ST) in the said merit list relating to District Selection Committee selections in Srikakulam.”

8. But the alleged defect in the merit list that was pointed out and which found acceptance by the Tribunal was only with reference to the merit list prepared by the District Selection Committee, Srikakulam. No such defect was found in the merit lists prepared by other District Selection Committees. The merit list of October 1976 prepared by District Selection Committee, Srikakulam could not have been interfered for two reasons. Firstly, all the candidates shown in the merit list were not parties before the Tribunal. Secondly, the validity of merit list prepared by the District Selection Committee, Srikakulam was not in issue and therefore neither the State Government nor the concerned District Collector had an opportunity to offer an explanation as to the manner of preparation of the merit list. Though the 1976 merit list that was considered by the Tribunal did not disclose the method adopted by the District Selection Committee for placing the various candidates who had secured 65%

marks in a particular order of merit, it is possible that they had adopted some reasonable or relevant criteria which would have been disclosed if an opportunity had been granted to explain. Merit list prepared in 1976 could not obviously be condemned in 1999 without any challenge and without an opportunity to the authority who prepared it to explain the manner of its preparation. It will be unjust to ignore a merit list which was given effect for nearly a quarter century without any challenge as it will unsettle settled positions regarding seniority and promotion. Be that as it may.

9. In the first civil appeal we find that the respondents Nos. 5 to 9 (S.Venkata Raju, MSVVK Patrudu, GST Augustine, A. Sreeramulu and K.Rama Rao) are the private respondents. Any alleged irregularity in the seniority list prepared by the District Selection Committee for Srikakulam could not obviously be held against the said respondents as they were not from Srikakulam District and their names did not find a place in the merit list for Srikakulam. Therefore, even if any test suggested by the Tribunal, for fixing inter se seniority, in respect of Srikakulam candidates is assumed to be proper and correct, it cannot operate against respondents who were not selected from Srikakulam.

10. Lastly, we find that the High Court has taken note of the fact that G.O.No.711 dated 28.8.1996 which directed that the seniority of Junior Assistants selected in the year 1976 should be fixed with reference to the date of their initial entry into service, was quashed by the Tribunal and that decision had been upheld by the High Court by judgment dated 5.12.2001 in Writ Petition No.28245/1998 (S.Sabapathi vs. Govt. of AP). Therefore, the said principle could not be the basis for the purpose of finalising the seniority list.

11. For all these reasons, we do not consider this case a fit one for interference with the order of the High Court. These appeals are accordingly dismissed.

¹1990 (2) SCC 715