

ANDHRA PRADESH HIGH COURT

Andhra Pradesh State Electricity Board

Vs.

N. Ramachandra Rao

Writ Appeals Nos. 117, 118, 119 of 1967 decided on 6.2.1968. in W. Ps. Nos. 754, 973 and 1151 of 1966

(P. Jaganmohan Reddy, C.J. and Kondaiah, J.)

08.09.1967

JUDGMENT

Kondaiah, J.

1. These three Writ Appeals by the Andhra Pradesh State Electricity Board are preferred against the common order passed by Krishna Rao, J., allowing the Writ Petitions Nos. 754/66, 958/66 and 1151/66.
2. The Andhra Pradesh State Electricity Board, the appellant herein, issued a Notification dated 15-11-65 calling for applications for 50% of the post of Accountants in the Andhra Pradesh State Electricity Board Service, to be filled by direct recruitment, by advertisement in daily newspapers on 19-11-65. The direct recruitment was open to all the qualified candidates as per the advertisement i. e., outsiders as well as employees working in the Andhra Pradesh State Electricity Board. Interviews by the Sub Committee have been made between 4-2-1966 and 17-2-1966, of all the candidates who had the requisite qualifications as per the advertisement. The selections were completed by 27-4-1966 and the Andhra Pradesh State Electricity Board approved the selections made by the Sub Committee on 7-5-1966.
3. The Writ Petition No. 754/66 was filed on 10-5-1966 by the 1st respondent in Writ Appeal No. 117/67 herein, for the issuance of a writ of Prohibition restraining the State of Andhra Pradesh, the Andhra Pradesh State Electricity Board, the appellant herein, and the Chief Engineer, the Andhra Pradesh State Electricity Board, from enforcing the Notification calling for applications for 50 per cent of the posts of Accountants in the Andhra Pradesh State Electricity Board service to be filled up by direct recruitment and for a direction to fill up the said posts by promotion of qualified Upper Division Clerks in the department itself. The appointment orders were issued on 18-5-1966. On 20-5-1966, the writ petition No. 978/66 was filed by Y. B. Sharma and 18 others for the issue of a Writ of Mandamus directing the respondents not to make appointments to the posts of Accountants in the Electricity Department by direct recruitment. On 8-6-1966, writ petition No. 1151/66 has been filed by 23 employees of the Andhra Pradesh State Electricity Department for the same relief.

4. It is relevant and necessary to give the brief and material allegations and counter allegations of the respective parties. The State Electricity Department was originally in charge of the Electricity Department as part and parcel of the State Govt. On 1-4-1959, the Andhra Pradesh State Electricity Board was constituted under Sec. 5 of the Electricity (Supply) Act, 1948, as a corporate body vested with statutory duties. All the petitioners were originally appointed as Lower Division Clerks in the Electricity Department of the Andhra Pradesh Government and they were promoted as Upper Division Clerks and made permanent. The petitioners claim that they are eligible for promotion to the posts of Accountants in the Electricity Department as they have passed the necessary tests, that after 1-4-1959 when the Board came into existence, the petitioners continued to be Government servants and hence, they are governed by the rules relating to the Government servants and that recruitment to the Boards service has to be made through the Andhra Pradesh Public Service Commission. It is contended that the appellant herein has no power to fill up the posts of Accountants by direct recruitment and that the post of Accountant is not a selection post based only on merit, but a panel is prepared from the Upper Division, Clerks who have passed the required tests and are eligible for being appointed as Accountants. If the direct recruitment for 50 per cent of the posts of Accountants is made by the appellant, the senior Upper Division Clerks, who are actually functioning temporarily as Accountants in those vacancies, would consequently have to be reverted as Upper Division & Clerks and hence, the petitioners would have no chance of being promoted as Accountants in due course of time. The action of the appellant herein in proceeding to make direct recruitment for 50 per cent of the Accountant posts would prejudice the rights of the petitioners, as such method would contravene the existing provisions of the G. Os. applicable for the promotion of the petitioners. It is further stated in the petitions that contrary to the existing G. Os., the appellant has made a number of appointments directly for the posts of Accountants subsequent to the filing of the Writ Petitions and that the validity of the same is subject to the result of these Writ Petitions.

5. The appellant herein, the Andhra Pradesh State Electricity Board, filed a counter contending inter alia that the Andhra Pradesh State Electricity Board is an independent autonomous body but not a part and parcel of the State Government and it has statutory power to make appointments by resorting to direct recruitment, and it is not bound by any of the existing rules or G. Os. applicable to the Government servants and that the employees of the Andhra Pradesh State Electricity Board shall be governed by rules and regulations of the Andhra Pradesh State Government applicable to the corresponding employees of the State Government in respect of salaries, allowances and other conditions of service till corresponding rules and regulations are framed by the Andhra Pradesh State Electricity Board under Section 79 (c) of the Electricity (Supply) Act, 1948. It is denied that the petitioners have any legal vested right for being appointed as Accountants and they are all working only as clerks liable to be removed at any time when the posts are filled by the Andhra Pradesh State Electricity Board. It is urged that the Writ Petitions are not maintainable and the same are liable to be dismissed.

6. The State of Andhra Pradesh, the 1st respondent in the Writ Petitions, though it has not filed a separate counter affidavit supported the plea of the appellant herein in to and filed a memo accordingly.

7. Our learned brother Krishna Rao, J. has allowed the writ petitions holding that the Andhra Pradesh State Electricity Hoard has really no power at this juncture to create new permanent

vacancies of Accountants and to fill the same by direct recruitment, that the permanent posts existing previously should alone be filled either by the Board or the Government in strict compliance with the existing rules and G. O. Ms. 1613 dated 24-9-1957 read with G. O. Ms. No. 770 dated 31-3-62 and that in the matter of recruitment, one out of every two posts shall be filled by promotion and the other by direct recruitment. Aggrieved by the order of Krishna Rao, J. the Andhra Pradesh State Electricity Board, the 2nd respondent in the Writ petitions, has preferred the above appeals.

8. Sri Ananthababu, for the Appellant, contends: -

- (1) that the Board has ample power to appoint 50 per cent of the Accountants by direct recruitment;
- (2) that no legal right of the petitioners has been infringed nor the Board has failed to perform any statutory duty; and
- (3) that the various G. Os. relied upon by the petitioners are of administrative character and they cannot override the statutory provisions of Section 15 of the Electricity (Supply) Act, 1948.

9. Sri Narasaraju for the petitioners contends: -

- (1) that the provisions of Section 78-A control the powers of the Board under Section 15 and the Board has no power to change its policy;
- (2) that the Board has no power to issue I the Notification and appoint the Accountants by direct recruitment;
- (3) that the petitioners have acquired a legal right pursuant to the various I G. Os. issued by the State Government;
- (4) that the Board is a part of the State I Government and the vacancies in the I Board should be filled by the Public Service Commission according to the G. Os. j and the rules applicable to the Government servants: and
- (5) that the effect of the Notification I and the direct recruitment would be to I deprive the employees who are already I working as Accountants who will have to I be reverted as Clerks and depriving the petitioners from having any chance of I being promoted as Accountants in due I course.

10. Mr. Krishnamurthy urged that the I Board has no power to fill all the 394 I vacancies of Accountants as they have been filled already by the Government and the posts belong to the Government. The Government Pleader fully supported the appellant in all his contentions.

11. The points that arise for determination are: -

- (1) Whether the Andhra Pradesh State Electricity Board is competent and has jurisdiction to make appointments for 50 per cent of the posts of Accountants by direct recruitment and to publish the Notification dated 15-11-1965 in the news- papers calling for

applications for the same?

(2) Whether the petitioners in the writ petitions have any vested legal right which has been infringed by the action of the Andhra Pradesh State Electricity Board in resorting to fill 50 per cent of the posts of Accountants by direct recruitment?

(3) Whether the G. Os. and the rules relied upon by the writ petitioners are applicable to the direct recruitment made by the Board and what is the effect of the G. Os.?

(4) Whether the State Government has power to issue specific directives under Section 78-A of the Electricity (Supply) Act, 1948 to the Andhra Pradesh State Electricity Board and if so, whether the Government has in fact issued any such directive applicable to the present case?

12. For a proper appreciation of the points that arise for determination, it is appropriate and necessary to consider at this stage, the relevant provisions of the Electricity (Supply) Act 1948, and the G. Os. sought to be applied in the instant case.

13. Under Section 5 of the Electricity (Supply) Act, 1948 (hereinafter referred to as the Act), the Andhra Pradesh State Electricity Board (hereinafter referred to as the Board) has been constituted by the State Government. By sub-section (2) of Section 5, the Board shall consist of not less than three and not more than seven members appointed by the State Government. Sub-section (5) to Section provides for the appointment of one of the members possessing any of the qualifications specified in sub-section (4) as the Chairman of the Board. Section 8 prescribes the terms of office and conditions for appointment of the Members of the Board. Section 10 provides for the removal or suspension of Members. Section 10-A empowers the State Government to declare certain transactions void. Section 12 says that the Board shall be a corporate body having perpetual succession and a common seal with power to acquire and hold property, both movable and immovable, and shall by the said name sue and be sued. Section 15 empowers the Board to appoint a secretary and such other officers and servants as may be required to enable the Board to carry out its functions under the Act. By Section 7 to Act 101 of 1956, the proviso to Section 15 has been added. That proviso makes it clear that the appointment of the Secretary to the Board shall be subject to the approval of the State Government. It is clear from the provisions of Section 15 that the Board is empowered to appoint its employees required to enable it to carry out its functions under the Act, under such conditions as it deems fit, and proper. For any employment other than the Secretary, the approval of the State Government is not necessary. The Board has absolute power to appoint whomsoever it likes for carrying out its functions under the Act. By Section 60, the Board has to assume obligations of State Government in respect of matters to which the Act applies. Section 61 deals with the annual financial statement. By Section 69 (1) the Board has to prepare accounts including the profits and loss account and the balance sheet in such form as may be prescribed by the State Government, in consultation with the Auditor General of India and sub-section (5) to Section 69 empowers the State Government to cause the account of the Board together with the audit report thereon forwarded to it to be laid annually before the State Legislature and the accounts to be published. Section 75 (1) provides for the Board to prepare and submit to the State Government a report giving an account of its activities during the previous financial year. Under Section 78, the State Government is empowered to make rules to give effect to the provisions of the Act and such rules may provide specifically for the purposes enumerated in sub-section (2) to Section 78. By Section 23 of the

Act 101 of 1956, a new Section 78-A empowering the State Government to issue directions for the guidance of the Board on questions of policy in discharge of its functions, has been inserted. Subsection (2) to Section 78-A provides for referring any dispute, arising between the Board and the State Government as to whether a question is or is not a question of policy to the Central Electricity Authority constituted under Section 3 of the Act and its decision thereon shall be final. Section 79 empowers the Board to make regulations not inconsistent with the Act and the rules made thereunder to provide for all or any of the matters enumerated in Section 79 (a) to (k). Section 79 (c) read as follows: -

"79. Power to make regulations: - The Board may make regulations not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely: -

x x x x x x

(c) the duties of officers and servants of the Board and their salaries, allowances and other conditions of service;

x x x x x x "

14. Sri Narasaraju, the learned counsel for the writ petitioners, contends that the Board is nothing more than a part and parcel of the State Government and has its connection with the Government relating to its functions and activities that the G. Os. and the rules applicable to the appointment of the Government servants are applicable to the appointment of the Boards employees and that the Board has no power to issue the impugned Notification and appoint 50 per cent of the Accountants by direct recruitment. Our attention has been drawn to the aforesaid provisions of the Act as, according to the counsel, they support the plea raised by him. We do not see any substance in this contention.

15. Mr. Narasaraju contends that the provisions of Section 78-A would control the statutory powers of the Board under Section 15 and the Parliament inserted the new Section 78-A for that purpose. It is relevant and necessary to consider Section 78-A which read thus: -

Section 78-A: -

"(1) In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.

(2) x x x x x x "

The State Government, under Section 78-A can only issue directions on questions of policy for the guidance of the Board in the discharge of its functions. The power to give directions on matters of policy by the State Government would not take away the statutory power given under Section 15 to the Board for appointing its employees to carry out its functions under the Act. By the addition of the proviso, the Parliament restricted the power of the Board under Section 15 only in so far as it relates to the appointment of its Secretary being made subject to the approval of the State Government. On a harmonious construction of Ss. 15 and 78-A, we hold that the spheres of the aforesaid two sections are distinct and different and one is not controlled or governed by the other. We cannot read something which is not there in the Section 78-A. A

reading of the relevant provisions of the Act would clearly disclose that the Board is an autonomous corporate body having statutory powers under Section 15 of the Act to appoint all other employees of the Board, except its Secretary as may be required to enable it to carry out its functions under the Act. Hence, on a consideration of the relevant provisions of the Act, we have no hesitation to hold that the Board has ample power and jurisdiction to call for the applications and appoint 50 per cent of the Accountants by direct recruitment.

16. Even on facts, it does not reveal from the records that the State Government has issued any direction or directions on questions of policy relating to the appointment of the Accountants one way or the other. Admittedly no direction has been issued by the State Government either under Section 78-A or any other provision directing the Board not to resort to fill the permanent posts of the Accountants by direct recruitment. The State Government, in its letter No. 6069 P. E. 2/65-66 dated 1-4-1966 informed the General Secretary Andhra Pradesh Non gazetted Officers Association, Hyderabad, on his memorandum dated 4-12-1965 presented to the Chief Minister, that the action of the Board in resorting to direct recruitment to fill 50 per cent of the permanent posts of the Accountants under its administrative control was in order and it did not call for interference by the Government. The stand taken by the State Government in the present writ petitions clearly shows that there is no divergence of opinion between the Government and the Board with regard to the action of the Board in appointing the Accountants by direct recruitment. We, therefore, hold that the State Government is in agreement with the policies of the Board and that the provisions of Section 78-A are not at all attracted, nor any such plea has been raised specifically in the present writ petitions.

17. It has next to be considered as to whether any legal right of the petitioners has been infringed and what is the statutory duty the Board has failed to perform so as to entitle the petitioners for the issue of a writ of mandamus. Unless, the petitioners establish that they have acquired a legal right to be promoted as Accountants in the Board and that the Board has a statutory duty or obligation to promote them as Accountants, the petitioners will not be entitled for the issue of a writ of mandamus in the present case. Sri Narasaraju contends (1) that the petitioners have acquired a legal right by working in the Board as clerks to be promoted in due course of time as Accountants as per the G. Os. and the rules applicable to the Government servants, and (2) that until the Government and the Board agree upon the final arrangement relating to the promotions and recruitment the Board has no right to change the policy and have direct recruitment which, in effect, adversely affects the persons already promoted and functioning as Accountants. Reliance has been placed on G. O. Ms. No. 1613 dated 24-9-1967, G. O. Ms. No. 720 dated 27-3-1959, Boards Proceedings Ms. No. 20 dated 8-4-1959, G. O. Ms. No. 2296 dated 21-9-1959 and G. O. Ms. No. 770 dated 31-3-1962 in support of this contention.

18. In G. O. Ms. No. 1613 dated 24-9-1957, the Government of Andhra Pradesh under Art. 309 of the Constitution amended the special rules for the Andhra Ministerial service, wherein after category 6 in Rule No. 2 and the entries relating thereto, the following has been inserted: -

Category 8: Accountants in the Electricity Department (one out of every two vacancies).

Rule 6 authorises the recruitment to any service, class or category both by direct appointments and by transfer. G. O. Ms. No. 720 dated 27-3-1959 provides for the transfer of certain projects from State Electricity Department to the Board. G. O. Ms. No.

758 dated 31-3-1959 clearly states that all the staff of Government Electricity Department will continue to be under State Government for the time being and such of the officers and staff who are in charge of works and who stand transferred to the Board from 1-4-1959 will work under the Board on deputation without any extra remuneration. By Boards Proceedings Ms. No. 20 dated 8-4-1959, the officers and servants of the Board shall be governed by the rules and regulations of the Andhra Pradesh State Government applicable to the corresponding officers of the Government, in respect of salaries, allowances and other conditions of service till corresponding rules and regulations are framed by the Board under Section 79 (c) of the Act. In G. O. Ms. No. 2296 dated 21-9-1959, a number of works have been transferred from the Government Electricity department to the Board and various clarifications are made with respect to the functions of the Government and the jurisdiction of the Chief Engineer with effect from 1-4-1959. By G. O. Ms. No. 770 dated 31-3-1962 the Government servants serving under the Board shall continue to be treated as Government servants at present and recruitment, promotions, confirmations of all employees will be ordered by the Government or their officers as per existing orders and as the staff continue to be the Government servants, the provident fund accounts, service records etc. will continue to be maintained by the Accountant General. In B. P. Ms. No. 231 dated 25-5-1963, the Board decided to appoint such of the Officers and servants by virtue of its powers under Section 15 of the Act, as may be required to enable the Board to carry on its functions under the Act and framed regulations providing for direct recruitment to the Board Service, by virtue of its powers under sub-sections (c) and (k) of Section 79 of the Act. One of the services that is 'classified is 'Secretariat Staff Service Class I, which takes in Superintendents and Accountants. In B. P. No. 234 dated 28-5-1963, the Board decided to make its own recruitment of the staff for purposes of the Board, giving preference to merit, other conditions and qualifications, and that the prior policy of taking candidates from the Service Commission be stopped.

19. The various G. Os. referred to above are merely administrative in nature made for the purpose of internal arrangement between the- Board and the Government as and when required, but it cannot be said that they are statutory orders creating any legal rights in the petitioners. Admittedly some of the G. Os. are concerned with the taking over of the various projects by the Board from the State Electricity Department and none of them relates to the service conditions and the recruitment to the Board. We find that the G. Os. relied upon by the petitioners have no statutory force and they cannot override the unfettered statutory power of the Board conferred on it by Section 15 of the Act, empowering it to appoint all its officers and servants excepting the Secretary. Hence we reject the contention of Mr. Narasaraju that the effect of the G. Os. referred to above is that the Board has no power to appoint directly the Accountants for 50 per cent of the permanent posts and they should be recruited only through the Public Service Commission as per the G. Os. and rules applicable for the Government servants as devoid of any merit.

20. Even assuming that Deviously the posts were being filled through the Public Service Commission applying Government orders and rules for appointments, that will not in any way preclude the Board from exercising its statutory powers under Section 15 of the Act. The recruitment can be made either directly or by transfer and the persons who are working in the

Board on deputation have no legal vested rights to compel the Board to appoint only those persons who are working in the Board Dy promotion but not otherwise.

21. That apart, none of the petitioners are the employees of the Board. They are admittedly Government servants whose services have been lent on deputation to the Board. The Board is not a part and parcel of the State Government but an autonomous body constituted and functioning under the provisions of the Act and hence, the provisions of Art. 311 of the Constitution of India would not be applicable to it. The Board is analogous to that of Life Insurance Corporation and Road Transport Corporation. In *Ram Babu Rathaur v. Divisional Manager Life Insurance Corporation of India*¹, it was held that the Life Insurance Corporation of India is an autonomous body and not a department of the Govt, and that the provisions of Art. 311 of the Constitution are not applicable to the case of an employee under the corporation who has been removed on charges of misconduct and misappropriation of money. It is further held that a servant is always at the pleasure of the master. The aforesaid decision has been approved by the Supreme Court in *S.R. Tewari v. District Board, Agra*², Shah, J., speaking for the Bench at page 1683, rules thus: -

"The Corporation is an autonomous body and is not a department of the State, and the relation between the corporation and its employees is governed by contract and no statutory obligation is imposed upon the corporation in that behalf. The Court was, therefore, right in holding that the relationship between the employees and the corporation had to be determined, in the absence of any statutory provision or a special contract, by the general law of master and servant."

Sections 11 and 12 of the Life Insurance Corporation Act provide for taking over of the employees of the previous organization. The Road Transport Corporation Act also provides similarly. There is no such provision under the Electricity (Supply) Act 1948 obliging the Board formed on 1-4-1959 to take all the employees working in the State Electricity Department on or before that date. Hence, it cannot be said that the petitioners are the employees of the Board; their real legal status is that of Government employees serving the Board on deputation. The various G. Os. relied upon by the petitioners are administrative in nature and they have no application to the facts of the present case.

22. That apart, the petitioners are not even the persons who are immediately due for promotion as Accountants even temporarily, as admittedly there are many seniors who should first be provided for. Thus the right of the petitioners, if any, is only a chance for being promoted as Accountants in due course of time which is not a fundamental right. There is no legal compulsion which involves the retaining or employing the petitioners in these writ petitions. In the circumstances by no stretch of reasoning it can be said that they had any vested legal rights on the date of the filing of the Writ petitions for being appointed as Accountants in the Board entitling for the issue of a Writ of Mandamus

¹ AIR 1961 All 502

² AIR 1964 SC 1680

under Art. 226 of the Constitution directing the Board not to fill the posts of Accountants by direct recruitment and promote the employees who are working in the Board and who have been deputed from the State Government.

23. We cannot accept the contention of Mr. Krishnamurthy that all the 394 posts of Accountants, permanent and temporary are Government posts and that they have been appointed by Government and it is only the Government but not the Board that has got power to fill the posts and the Board cannot fill up the same. This argument is based on the fallacy that the appointments made by the Chief Engineer of the Board, a Government servant on deputation are deemed to be by the Government. The Board has already been held as an autonomous corporate body and the Chief Engineer whose services have been lent to the Board by the Government has appointed the Accountants temporarily as the Executive Authority of the Board and hence, it cannot be said that the Government had appointed the Accountants previously.

24. The permanent vacancies which have now fallen vacant are about 260 and out of them, 130 vacancies are sought to be filled by the Board by direct recruitment and in fact only 121 persons have been selected and 86 have been appointed. The direct recruitment is open to not only outside and new candidates but also to persons who were working in the Board who have the requisite qualifications and in fact, 32 out of 86 persons so far appointed, have been selected from the employees who were working in the Board.

25. The contention of Mr. Krishnamurthy that the recruitment should be made directly for one in every two vacancies but not for 50 per cent of the permanent vacancies of Accountants also is untenable. In *Mervyn Continho v. Collector of Customs, Bombay*³, Wanchoo, J., as his Lordship then was, speaking for the Bench, ruled thus: -

"We do not see any violation of the principle of equality of opportunity enshrined in Art. 16 (1) by following the rotational system of fixing seniority in a cadre half of which consists of direct recruits and the other half of promotees, and the rotational system by itself working in this way cannot be said to deny equality of opportunity in Government Service."

Now the Board has filled only 50 per cent of the permanent posts of Accountants by direct recruitment and the remaining 50 per cent of the permanent posts would be filled in by promoting the persons who are working, taking into consideration their merit, qualifications and other conditions into account. Hence, we have no hesitation to hold that the provisions of Art. 14 or 16 (1) of the Constitution have not been violated.

26. That apart, the petitioners have not made the successful candidates who, have been recruited to the posts of the Accountants as parties to the writ petitions. The persons who have been selected are certainly interested and necessary, parties to the writ petitions as their rights would be affected if the writ petitions had to be allowed.

27. In the circumstances and for the reasons stated above, we find that the petitioners have failed to establish any valid or justifiable grounds for the interference of this Court

³ AIR 1967 SC 52 at p. 56

under Art. 226 of the Constitution. In the result, we set aside the order of Krishna Rao, J., in the Writ Petitions and allow the writ appeals, dismissing the writ petitions and in the circumstances without costs.

Appeals allowed.

