

(2024) 04 TEL CK 0006

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 14588 Of 2014

R.Dheemati Lakshmi

APPELLANT

Vs

Government Of Andhra Pradesh

RESPONDENT

Date of Decision: April 2, 2024

Acts Referred:

- Constitution Of India, 1950 - Article 226, 227
- Andhra Pradesh State and Subordinate Services Rules, 1962 - Rule 38(b)
- Andhra Pradesh Ministerial Service Rules, 1966 - Section 27(1)(iii)

Hon'ble Judges: Alok Aradhe, CJ; Sujoy Paul, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. This petition filed under Article 227 of the Constitution takes exception to the common order passed by the Andhra Pradesh Administrative Tribunal (hereinafter referred to as 'Tribunal') in O.A.Nos.1320 and 1326 of 2011 decided on 28.04.2014.

Factual Background:

2. The present petitioner and the private respondents herein were loggerheads before the Tribunal on the question of grant of seniority to the present petitioner and her promotion based on such seniority. In order to examine career progression of petitioner and unofficial respondents (i.e., respondent Nos.3 and 4), the necessary factual events are mentioned in tabular form for ready perusal:

Petitioner Unofficial Respondents

(Respondent Nos.3 and 4)

Date Event Date Event

09.08.1986 Appointed temporarily as 29.04.1989 Appointed as Typists

Junior Assistant

02.01.1990 Services were regularised.

08.08.1988 Probation was declared

11.05.1990 Made an application for her

transfer to Directorate of

Institute of Preventive

Medicine

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27.06.1990 Transferred to Directorate of

Institute of Preventive

Medicine with a condition

that she would take last

rank among the approved

probationers

25.07.1990 Joined duty in Institute of

Preventive Medicine

14.08.1997 Promoted temporarily as 30.08.2001 Respondent No.3 was

Senior Assistant promoted as Senior

Assistant

01.03.1999 Services were regularised in 10.10.2002 Respondent No.4 was

the cadre of Senior Assistant promoted as Senior

Assistant

w.e.f. 14.08.1997

05.09.1998 Probation was declared

18.03.2011 Promoted as Office

Superintendent

17.03.2012 Probation was declared

3. On 05.12.1992, a provisional seniority list of Junior Assistants was prepared wherein the petitioner's name was reflected at Sl.No.10, whereas respondents Nos.3 and 4 were shown at Sl.No.17 and 16 respectively. A provisional seniority list dated 18.04.2002 was prepared for the post of Senior Assistants, wherein the name of the petitioner was shown at Sl.No.20 and the names of respondent Nos.3 and 4 were shown at Sl.No.20 and 25 respectively. Yet, another seniority list was prepared for the post of Senior Assistants on 24.05.2004, wherein the petitioner herein stood at Sl.No.11 and respondent Nos.3 and 4 herein were at 16 and 19 respectively.

4. Respondent Nos.3 and 4 herein preferred objections against the said seniority list dated 24.05.2004 by representations dated 27.06.2007 and 28.06.2007. These representations were rejected on 06.03.2010. Aggrieved, respondent No.3 herein preferred appeal to the Government on 01.04.2010, which came to be dismissed on 22.02.2011. Thereafter, the aforesaid O.A.s were filed by private respondents before the Tribunal on 20.02.2011.

Finding of Tribunal:

5. The Tribunal allowed O.A.s on 28.04.2014 and came to hold that the present petitioner came on transfer at her own request from another department to Directorate of Institute of Preventive Medicine. In that event, she should have been placed at the bottom of the list and not last among the approved probationers. The Tribunal further opined that the present petitioner was promoted as Senior Assistant without a final seniority list. The grounds raised by the present petitioner and the Government could not find favour with the Tribunal because the Tribunal opined that the seniority list dated 05.12.1992 was a manipulated seniority list and that it was never circulated.

6. It was further held that the original applicants have been raising their objections from 1997 onwards, and therefore, the stand of present petitioner and official respondents that seniority list is questioned after 18 years was not correct. The O.As were filed before the Tribunal promptly within limitation after rejection of the representation. In the result, the Tribunal opined that present petitioner who came on her own request, cannot rank senior to the private respondents herein at the entry point because the private respondents at the time of entry were already on the rolls of the department. Thus, the Tribunal directed to review the seniority lists and promotion of respondent No.3 therein (petitioner herein) to the category of Senior Assistant and Office Superintendent and directed consideration of the case of the private respondents herein for promotion to the post of Office Superintendent as per revised seniority list and pass appropriate orders within a stipulated time. This petition is filed against the said finding.

Contention of Petitioner:

7. Sri Vedula Srinivas, learned Senior Counsel for the petitioner, urged that the order of Tribunal dated 27.06.1990 leaves no room for any doubt that the present

petitioner was directed to take last rank among the approved probationers. This order dated 27.06.1990 was never called in question by anybody. On the strength of the seniority flowing from this order dated 27.06.1990, the petitioner was promoted as Senior Assistant in 1997 and was regularised as such in the year 1999. On 18.03.2011, she was promoted as Office Superintendent and her probation was declared on 17.03.2012.

8. The bone of contention of learned Senior Counsel for the petitioner is that there should be an element of certainty in the career progression of an employee. The seniority and promotions cannot be altered/cancelled after couple of years.

9. In support of his submissions, the learned Senior Counsel placed reliance on the judgment of Hon'ble Supreme Court in Rabindra Nath Bose vs. Union of India AIR 1970 SC 470 and Shiba Shankar Mohapatra vs. State of Orissa (2010) 12 SCC 471.

10. It is further submitted that the Tribunal has erred in holding that the petitioner herein will get bottom seniority below the private respondents herein. More so, when the order deciding the manner of seniority of transfer dated 27.06.1990 has attained finality in absence of any challenge to it. Apart from this, it is strenuously contended that the Tribunal has dealt with the provisional seniority list of 1992, but has not taken pains to consider that seniority lists dated 18.04.2002 and 24.05.2004 were also issued. After a considerable long time, respondent Nos.3 and 4 raised objection in the shape of representations which were rejected on 06.03.2010 and 22.02.2011. It is also submitted that it cannot be forgotten that by that time, the present petitioner completed more than 21 years of service with the Department during which she was promoted twice. If settled things are permitted to be unsettled in this manner, it will create administrative chaos which will neither be in the interest of employees nor the employer.

Contention of Respondents:

11. Learned counsel appearing for the State reiterated his stand taken in the counter filed before the Tribunal and pointed out that a categorical pleading exists in the counter that the provisional seniority list of 1992 was published, circulated and brought to the notice of the private respondents, but they did not raise any objection.

12. No reply/rejoinder to the said counter was filed before the Tribunal and therefore there was no occasion for the Tribunal to disbelieve the same.

13. The counsel for the private respondents/original applicants supported the impugned order of the learned Tribunal. The learned Senior Counsel placed reliance on second proviso of clause (b) of Rule 38 of the Andhra Pradesh State and Subordinate Services Rules, 1962 (Rules of 1962) and Rule 27(1)(iii) of the Andhra Pradesh Ministerial Service Rules, 1966 (Rules of 1966) to bolster his submission that a conjoint reading of these Rules leaves no room for any doubt that in a case of own

request transfer from one Department to another, the seniority must be fixed in the latter Department with reference to the date of his first appointment in the latter Department/Office.

14. It is urged that the Tribunal has not committed any error of law in holding that the petitioner should have been posted below all existing employees in the Directorate of Institute of Preventive Medicine notwithstanding the order dated 27.06.1990. The Tribunal has rightly opined that the petitioner should not have been given seniority as a last amongst the approved probationers.

15. Further more, the learned Senior Counsel for the private respondents submits that the provisional seniority list, dated 05.12.1992 was never circulated. This can be seen from one entry of the list itself which contains the name of Mr.Y.M.K.Murthy, Junior Assistant and his date of regularization is shown as 05.06.1993, whereas this provisional seniority list of Junior Assistant is allegedly issued on 05.12.1992. By no stretch of imagination, a seniority list issued in 1992 can contain the name of said Murthy who was regularized on a subsequent date i.e., on 05.06.1993.

16. The private respondents preferred representations when seniority list was brought to their notice and immediately after passing of the rejection orders, approached the Tribunal. Thus, delay (if any) is properly explained.

17. By placing reliance of the judgment in State of Punjab vs. Amar Singh Harika AIR 1966 SC 1313, learned Senior Counsel for private respondents urged that if provisional seniority list was prepared and kept in the file without circulating it, the said list cannot be treated to be a valid list. A seniority list can be operated only when it is duly circulated, objections are invited and final seniority list is issued.

18. The promotions on the basis of provisional seniority list should not have been made and the judgment of M.Ramakotaiah vs. Union of India (2007) 14 Supreme Court Cases 405 is relied upon for this purpose.

19. Lastly, it is urged that the Apex Court in no uncertain terms in Ajay Kumar Shukla vs. Arvind Rai Civil Appeal No.5966 of 2021, decided on 08.12.2021 held that the promotion based on erroneous seniority list which was prepared contrary to the provisions of statutory rules cannot sustain judicial scrutiny. The only exception is the delay in assailing such seniority list or promotion. Since there was no delay in filing the O.A., no fault can be found in the impugned order of the Tribunal.

20. No other point is pressed by the learned counsel for the parties.

21. We have heard the parties at length and perused the relevant papers.

FINDINGS:

22. The order, dated 27.06.1990 conferred seniority to the petitioner as last rank among the approved probationers. The learned Tribunal opined that this condition of taking the last rank among the approved probationers is flawed. This finding

mainly became foundation to hold that the private respondents will rank senior to the petitioners. It is pertinent to mention that the order, dated 27.06.1990 and the condition granting seniority to the petitioner was never called in question by anybody before any appropriate forum. Thus, seniority flowing from order dated 27.06.1990 became basis for petitioner's promotion from the post of Junior Assistant to Senior Assistant in the year 1997 and from that post to the post of Office Superintendent in the year 2011. This is trite that even if an administrative order is bad in law, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void or bad in law.

23. In *Smith vs. East Elloe RDC* (1956) 1 All ER 855, Lord Radcliffe observed that 'an order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders'. This principle was followed by Hon'ble Supreme Court in *Krishnadevi Malchand Kamathia vs. Bombay Environmental Action Group* (2011) 3 SCC 363, wherein it was held as under:

"16. It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void."

24. In this view of the matter, the Rules of 1962 and 1966 are of no assistance to the private respondents because the basic order, dated 27.06.1990 was never called in question by them before any appropriate forum.

25. In the ladder of promotion, the petitioner was promoted as Senior Assistant and Office Superintendent in the year 1997 and 2011 respectively. In the year 2011, the O.A.Nos.1230 and 1326 of 2011 came to be filed. The impact of allowing the O.As. amounts to depriving the petitioner from fruits of seniority and promotion flowing from order, dated 27.06.1990. The pivotal question for our consideration is whether the seniority and promotions based thereupon, which is being enjoyed by the petitioner pursuant to the order, dated 27.06.1990, can be altered to her detriment after few decades. This point is no more *res integra*.

26. A Constitution Bench of Supreme Court in *Malcom Lawrence Cecil D'Souza vs. Union of India and others* AIR 1975 SC 1269 wherein it was held that although security of service cannot be used as a shield against administrative action for lapse of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult to doubt to guarantee such security in all its varied aspects. It should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the

instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.

27. It was also held that a government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity.

28. In *Shiba Shankar Mohapatra (supra)*, the Apex Court again followed its earlier judgment. In no uncertain terms, it was held that such actions whereby the parties have agitated against stale claims cannot be encouraged. More so, where the right of third party is crystallized in the interregnum. Following the ratio of *K.R.Mudgal vs. R.P.Singh (1986) 4 SCC 531*, it was made clear that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In *K.R. Mudgal (supra)*, the Supreme Court laid down in crystal clear words that a seniority list which remains in existence without challenge for 3 to 4 years, should not be disturbed.

29. It was held that no party should be permitted to agitate against stale claims, more so, where right of third party is crystallized in the meantime. The common string flowing from the aforesaid judgments is that delay is fatal, if seniority list or promotion is assailed after 3-4 years. Even assuming that the grant of seniority to the petitioner was not in accordance with the Rules of 1962 and 1966, it will not be in the fitness of things to unsettle the settled seniority which is being enjoyed by petitioner pursuant to order, dated 27.06.1990.

30. So far argument of learned Senior Counsel for the private respondents that provisional seniority list should have been circulated, objections invited and only after issuance of final seniority list valid promotion order could have been issued is concerned, in the peculiar facts of this case, we do not see any merit in the said contention for the simple reason that interestingly the petitioner and private respondents both climbed in the ladder of promotion on the basis of provisional seniority list. As a rule of thumb, it cannot be said that in no circumstance, provisional list can form basis for regular promotion.

31. The Constitution Bench in *Malcom Lawrence Cecil D'Souza (supra)* held that disturbing seniority and promotion after long time may create administrative complications and chaos. This will not be in the interest of efficiency of service to disturb such seniority and promotions. Thus, in a case of this nature, in our considered judgment, the learned Tribunal should have rejected the original applications.

32. In *M.P. Mittal vs. State of Haryana (1984) 4 SCC 371*, it was held as under:

“...it is well settled that when a petitioner invokes the jurisdiction of the High Court under Article 226 of the Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain.”

(Emphasis supplied)

33. Keeping in view the interest of administration in mind, the Tribunal ought not to have interfered with the seniority and promotion after couple of years.

34. In view of the foregoing analysis, the impugned order of Tribunal dated 28.04.2014 in O.A.Nos.1320 and 1326 of 2011 is set aside and the petition is allowed. There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.