K. Rama Rao Vs Executive Officer, Sri Varahalakshmi Narasimha Swami Devasthanam

Court: Andhra Pradesh High Court

Date of Decision: June 18, 1997

Acts Referred: Andhra Pradesh (Andhra Area) Hindu Religious and Charitable Endowments Act, 1951 â€" Section 100(2)
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 â€" Section 107, 109(2), 31(5)
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 â€" Section 155(1), 155(2)
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Rules, 1987 â€" Rule 2, 4(2), 9

Citation: (1997) 5 ALT 25

Hon'ble Judges: B.K. Somasekhara, J

Bench: Single Bench

Advocate: Koka Raghava Rao, for the Appellant; Metta Chandrasekhara Rao, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B.K. Somasekhara, J.
Heard on merits.

2. Having heard the learned arguments of both the sides by the learned advocates, this Court confronts itself with the following question for

determination:-

Whether the age of superannuation of the petitioner is 65 years by virtue of Rule 4(2) of the Rules u/s 100 Sub-section (2) (y) of the Madras

Hindu Religious and Charitable Endowments Act, 1951 (for short "the 1951 Act") as per G.O.Ms.No.584 Rural Welfare dated 28th May, 1952,

in part-I which reads as follows:-

4(2) Except in the case of a hereditary officer or servant, no person may be appointed to or hold any office unless he is not less than twenty-five

and not more that sixty-five years of age.

The factual periphery in the case is limited. The petitioner is an Executive Engineer and an employee of the respondent. Initially he was appointed

as a Supervisor in the respondent-temple on 20-2-1970 and came to be promoted as Executive Engineer on 1-3-1990. His date of birth is 1-7-

1939. Proceedings R.C.No.81/452/96/3 dated 31-5-1996 were issued by the respondent to superannuate the petitioner on 30-6-1997 based on

such a date of birth and on the basis of the age of superannuation being 58 years. The petitioner is aggrieved by that as according to him, his age of

superannuation would be 65 years by virtue of Rule 4(2) framed under the G.O. mentioned supra. The stand of the respondent is that by virtue of

the law in operation regarding his service tenure, the age of superannuation is 58 years and not 65 years and such a rule under the G.O. supra is no

longer in operation.

3. Mr. Raghava Rao, the learned senior advocate has contended that the petitioner who was working in the temple, his services were to be

governed by the 1951 Act and the G.O.Ms. No. 584 dated 28-5-''52 supra having been issued as the rule u/s 100(2) (y) of the 1951 Act having

the force of law; in spite of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (for short "the 1966 Act")

which was repealed under Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the 1987 Act"),

such a notification has been saved under both the enactments and in the absence of any rule in operation regarding the service condition of the

petitioner as to superannuation he is entitled to the benefit of the age of superannuation at 65 years under the Rule supra. He also relied upon an

unreported ruling of this Court in W.P.M.P. 1713 of 1983 in W.P. 1207 of 1983 dated 24-2-1983 in support of his contention. Principally, the

learned advocate is relying upon the said rule under the G.O.Ms.No.584 supra to draw an inference that the age of superannuation for the

petitioner is 65 years although it is not stated in so many words and that having remained in force as on to day, the petitioner is entitled to get the

benefit of the same.

4. Learned Government pleader for Endowments for the respondent contends to the contrary, in the first place, to demonstrate that such a rule

imports no meaning as is sought to be imported by the learned advocate of the petitioner and secondly, such a rule is not in force judging the law as

on today in the light of the provisions of the 1966 Act and also the 1987 Act.

5. There cannot be any controversy that the petitioner was to be governed by the Rules governed by G.O.Ms.No.584 dated 28-5-1952 supra

when he joined the service and continued as such. The legal operation is also certain that barring Rule 4(2) of G.O.Ms.No.584, there was no other

provision nor is there any provision in regard to the age of superannuation of the petitioner and the similar employees. It is true that a normal

reading of the provision may not give the correct meaning as to the age of superannuation. But an inbuilt intellectual probe should expose the real

meaning behind it. The rule meant that a hereditary officer or servant or any person (the words used are "no person") may be appointed to or hold

any office unless he has twenty-five years and more and unless he is less than 65 years (for the sake of convenience the rule is to be in the

affirmative although it is stated in the negative). A simplification of the meaning is that a person who is less than twenty-five years of age is not

eligible to be appointed and a person who is more than 65 years was not eligible to be continued in service or otherwise the absurdity in the

expression may be authentic. If the intendment of the provision is that it was meant only for fixing the age for appointment as minimum age and

maximum age and not for holding the post upto a particular age would be a travesty of the practical intent. The simple question would be whether a

person appointed in between 25 years and 65 years for any reason can be put an end to in between and can be permitted to continue beyond that.

The simple answer is that the minimum age is as an eligibility for appointment as the meaning of age of superannuation is the maximum age of 65

years in the absence of any provision regulating that. That is how the precedent of this Court in W.P.M.P. 1713/1983 in W.P.1207/1983 while

interpreting such a rule has positively declared that persons holding offices in religious institutions in Andhra Area by virtue of such a provision are

entitled to continue upto 65 years. It means that the age of superannuation for such persons including the petitioner would be 65 years under the

provision. To that extent Mr. Raghava Rao, the learned advocate is able to bring home his contention and the contention of the learned advocate in

this regard is not able to convince this Court.

6. Unmistakably, the rule supra and the G.O.Ms.No. 584 supra were in operation till the 1966 Act was brought into force, i.e., 26-1-1967. By

virtue of Section 109 of the 1966 Act the Andhra Pradesh (Andhra Area) Hindu Religious and Charitable Endowments Act, 1951 was repealed.

But the Sub-section (2) of Section 109 of the 1966 Act being the saving clause, retained all rules made, notifications etc., to be in force except to

the extent they are not inconsistent with the Act etc. enumerated in the provision. Undoubtedly, the G.O.Ms.No.584 supra was issued under the

rule making power u/s 100 of the 1951 Act and therefore, it had the force of law. But, however, rules were framed u/s 107 read with Section 31

(5) of the 1966 Act which were brought into force from the date of the publication and there is no controversy that atleast during the tenure of the

service of the petitioner, the rules were brought into force. Mr. Raghava Rao has pointed out that relevant provisions relating to the service matters

of the employees particularly in relation to the petitioner may be Rule 2 (d) and Rule 9 of the Rules u/s 107 read with Section 31 (5) of the 1966

Act which he is trying to distinguish also, which will be considered shortly. Therefore, the saving clause u/s 109 (2) of the 1966 Act, normally

speaking, may not save out the notification issued u/s 100 of the 1951 Act. However, Mr. Raghava Rao has tried to demonstrate that neither Rule

2(d) nor Rule 9 of the Rules supra can bring the petitioner into the fours of the operation if we read them properly and therefore, the repealing of

the 1951 Act u/s 109 of the 1966 Act will not ease out the notification and the G.O.Ms.No.584 supra and therefore, even as on the 1951 Act

coming into the force or the rules framed, he was to be governed only by Rule 4(2) of the G.O.Ms.No.584 supra. Before adverting to such a

contention it would be proper to examine the law and the rules in operation up-till date on the question.

7. The 1966 Act came to be repealed by virtue of Section 155 (1) of the 1987 Act. As in the case of Section 109 (2) of the 1966 Act about the

saving, Section 155 (2) of the 1987 Act also saved certain aspects including the rules, notifications, certificates etc. enumerated in the provision.

Both the learned Advocates point out that no rules have been framed under the 1987 Act in relation to the service conditions of the persons like

petitioner who are to be governed by 1951 Act. Therefore, the learned Government Pleader is right in postulating that the rules framed u/s 107 and

Section 31(5) of the 1966 Act supra are saved and therefore, are still in force. Therefore, the matter has boiled down to a sublimation that if the

petitioner is to be operated by virtue of Rule 9 of the Rules framed under the 1966 Act, then, he cannot get the benefit of 65 years as the age of

superannuation and if he is not, then, he should be positively held to get the benefit.

8. Rule 2(d), 2(e) and Rule 9 of the Rules u/s 107 read with Sub-section (5) of Section 31 of the 1966 Act read as follows:-

2(d): "Office holder or servant" includes a person who holds an office to which an inam granted, confirmed or recognized by the Government is

attached or who is remunerated in kind or in cash or in any other manner by the institution concerned and who is either a whole time or a part time

functionary.

2(e): "Ultharai servant" means a servant whose duties relate mainly to the performance, or rendering assistance in the performance of Puja, rituals

and other services to the Deity, the recitation of Manthras, Vedas, Prabandhas, Thevarams and similar invocations and the performance of duties

connected with such performance or recitation.

9. Age of Superannuation: Every person not being the holder of a hereditary Office or ultharai servant shall retire on attaining the age of fifty eight

years except in the case of Attenders whose age of superannuation shall be sixty years. An ultharai servant shall retire on attaining the age of sixty

five years, but if he is found physically unfit, he may be retired before attaining that age.

Mr. Raghava Rao, the learned advocate has pointed out that Rule 2(d) deals with office holder or a servant to include a person holding an office to

which inam granted etc. and secondly, Rule 2 (e) concerns only with Ultharai servant. According to him, these two rules contained three classes of

persons - (1) office holder, (2) servant and (3) Ultharai servant. The learned advocate has pointed out that the petitioner does not fall into any of

these categories and therefore, Rule 9 is not at all applicable to him as it may cover only those persons who can be brought into within Rule 2(d)

and 2(e). He has also emphatically pointed out that Rule 9 has never embraced within itself the employees in the nature of the petitioner as it only

concerns a person not being the holder of a hereditary office or Ultharai servant or no other type of employee. According to him, the rule is

provided for a purpose to cover only such persons and no other person. For this purpose he has fallen back on Rule 41 of the Rules supra which

deals with the classification of the employees of such institutions to come within Class I to Class VII among whom the petitioner comes within

Class II and therefore, he contends that he is not governed by the Rules in question and particularly Rule 9.

9. The learned Government Pleader contends that if we read the provisions harmoniously, no such contention of the learned advocate for the

petitioner becomes acceptable as according to him, Rule 9 although provided in a negative operation, it has got a positive intent to include certain

types of employees and to exclude all other types of employees whether they are called in a particular name or not including the classification of the

employees under Rule 41 supra. According to him Rule 2 (d), 2 (e) and Rule 41 should be harmoniously read together to bring out the correct

meaning.

10. On a careful reading of the provisions supra, there appears to be no scope to confuse the real meaning behind such provisions. Rule 2 (d) and

2(e) deal definitive provisions concerned to persons called office holder or a servant in regard to which Inam land is granted, confirmed etc. and

recognized by the Government as has been described in Sub-clause (d) and also Ultharai servant who is defined for a particular purpose. Ultharai

servant has been exclusively dealt with as a servant whose duties relate mainly to performance or rendering assistance in the performance of Pujas,

Rituals etc. different from office holder or a servant. In both Rule 2 (d) and Rule 9 of the Rules supra, the word "person" is used apart from the

classification of a particular type of office holder or a servant. That really means every person described as such for the purpose of the provisions

under the Rules. The classification under Rule 41 has been also for the purpose of understanding the categorization under Rule 2 (d) and 2(e) to fit

into Rule 9. In brief if we read all these rules together, any person or every person with such a category with definitive expression not only

classified but also named with a designation is brought within Rule 9 for the purpose of the age of superannuation. Now, coming to Rule 9 of the

Rules supra, the expression ''every person'' should be understood in the context and the connotation of the whole provision in addition to the

strength to be derived from Rule 2 (d) and 2 (e) and also Rule 41 of the Rules. A careful reading of Rule 9 which imports in regard to the age of

superannuation of 58 years except in case of attenders whose age of superannuation is 60 years, shows that persons not being the holder of a

hereditary office or Ultharai servant mandatorily shall retire on attaining such age of superannuation. The provision has got the effect of exclusion

than inclusion. It is almost in the nature of defiance clause to exclude every person not being the holder of a hereditary office or Ultharai servant

from having the benefit of retirement age beyond 58 years except in the case of attender.

11. Mr. Raghava Rao has tried to play a very serious juristic sport in bringing home the meaning of a ''person'' as according to him, an employee of

an institution like respondent could not have been nomenclatured as a ''person'' as the meaning of such an expression has got a legal intent in

jurisprudence and Service Law. Although such an attempt commands admiration, it fails to invoke the acceptance by the Court for various

reasons. Except u/s 2 (22) of the General Clauses Act, 1891, ''the person'' is not defined either in the 1951 Act or 1966, Act or the 1987 Act or

in the very rules under G.O.Ms.No.584 supra. In Semce Law also, pointedly, it is difficult to catch the definition in a particular enactment.

Therefore, we are digressed as either to Law Lexicons or general dictionaries or general lexis and then to the route of law namely the

jurisprudence, the science of law.

12. ''Person'' as a noun means autonomous being, being, fellow, homo, human, human being, human creature, individual, living being, living soul,

member of the human race, mortal, mortal body, martal is.....(right column of page 380 of Legal Thesaurus, regular edition by William C. Burton).

In general usage person means a human being, i.e., natural person (left column of page 1142 of Black''s Law Dictionary, 6th edition of 1990).

The dictionary meaning of a ''person'' is not much different as it means an individual, human being, the living body of a human being (right column of

page 888 of the Concise Oxford Dictionary, eighth edition 1990 first printed in 1990 and fifth impression in 1994). The sumtnum bonutn of all

these expressions means that a person is a natural person and not a legal person which is a fiction. That is why the jurisprudential personification of

a living being is put into a natural personality called natural person as against the legal status of a legal person which will not be a living being. As a

notion and a concept the concept of personality lies in the legal person and natural person. ""So far as the legal theory is concerned, a person is any

being whom the law regards capable of rights or duties. Any being that is so capable is a person, whether a human being or not, and no being that

is not so capable is a person, even though he be a man. Persons are substances to which rights and duties are the attributes. It is only in this respect

that persons possess juridical significance, and this is the exclusive point of view from which personality receives legal recognition (page 299 of

Salmond on Jurisprudence, 12th edition of 1966 reprinted in 1995)"". It is jurisprudentially noted that only natural persons are human beings and all

other species and objects in the world are not and who may be called as legal persons for certain purposes (page 299 of Salmond on

Jurisprudence supra). Therefore, an employee called by any name or names by the lawmakers is a person in law and a natural person too and the

expression ''every person'' used in Rule 9 of the Rules supra totally embosses and embraces such employee including the petitioner. Either a defect

in the draughtsmanship or even in the expression in any statute is no answer to the true legal status and the meaning of such an expression.

Therefore, having due regard to the nature, extent and the legal effect of such provisions as above, the petitioner has to be governed by Rule 9 of

the Rules in question and therefore, he is debarred from having service to be superannuated beyond 58 years. Although he had such a benefit

under Rule 4(2) of the G.O.Ms.No. 584 supra, he lost it by virtue of the 1966 Act and also the Rules supra.

13. Therefore, with all concern and the construction of the realities this Court is not able to appreciate the petitioner''s claim to be retired beyond

the age of 58 years for the purpose of superannuation. Petition is dismissed. No costs.