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Andhra Pradesh High Court

Case No: Writ Petition No. 10262 of 2010

M. Abdul Khayum, S.C. Vijaya Kumar and		APPELLANT
	Vs	
Navaneeta Krishna Vs The Commissioner Municipal Corporation Anantapur and Others		RESPONDENT

Date of Decision: Oct. 7, 2013

Hon'ble Judges: L. Narasimha Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: P. Raghavendra Reddy, for the Appellant; D. Linga Rao for Respondent No. 6 in W.P. Nos. 10262 and 10263 of 2010 and for Respondent No. 7 in W.P. No. 10263 of 2010, Sri P. Sai Prasad for Respondent No. 8 in W.P. No. 10262 of 2010 and for Respondent No. 9 in W.P. No. 10263 of 2010, GP for Municipal Administration and Urban Dev for Respondent Nos. 2 to 4 and Sri. T. Bheemanna (SC for Mun. Corp. ATP) for Respondent Nos. 1 and 5, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.
These two writ petitions are filed, against the common order, dated 21.4.2010, passed by the Andhra Pradesh Administrative Tribunal, in O.A. Nos. 3989 and 3992 of 2008 respectively. These writ petitions demonstrate as to how pervasive the concept of compassionate appointments has become in various departments of Government or the local bodies. The three petitioners herein were appointed as Record Assistants on 18.7.1992, 24.1.1986 and 13.5.1991 respectively, in the erstwhile Anantapur Municipality (since upgraded as Corporation) - the 5th respondent herein, on compassionate grounds. They submitted a representation to the Government - the 4th respondent herein, stating that four persons by name S. Krishna Murthy, M. Nagabhushanam, G. Sujatha and M.L.

Pramila Bai, were appointed on compassionate grounds, in the same Municipality between 1986 and 1994, as Junior Assistants or equivalent posts, and though they held the qualifications prescribed for the post of Junior Assistants, they were appointed as Record Assistants only. Acting on the said representation, 4th respondent issued G.O.Ms. No. 155, dated 22.3.1996, directing the Regional Joint Director-cum-Appellate Commissioner, Anantapur - the 3rd respondent herein, to absorb the petitioners herein as Junior Assistants in the future vacancies, by relaxing Rule 9(3) of A.P. Municipal Ministerial Subordinate Service Rules (for short "the Rules"). The 3rd respondent issued consequential proceedings dated 24.4.1996, appointing the petitioners as Junior Assistants and giving postings to them.

2. Some of the Record Assistants of the 5th respondent filed O.A. No. 2540 of 1996 questioning G.O.Ms. No. 155, dated 22.3.1996. It was pleaded that they are working as Record Assistants from 1977 and a Record Assistant in the Municipality can be appointed or promoted as Junior Assistant, only according to the prescribed Rules, and not otherwise ignoring the seniority of the Records Assistants. The petitioners opposed the O.A., by filing counter affidavit. They pleaded that G.O.Ms. No. 155, dated 22.3.1996, was issued in their favour, duly taking into account the fact that an individual can be appointed on compassionate grounds against posts for which he holds the qualifications, and certain other grounds were also pleaded. The Tribunal allowed O.A. No. 2540 of 1996, through its order dated 31.7.1997.

3. The petitioners filed W.P. No. 18173 of 1997 before this Court, challenging the order in O.A. No. 2540 of 1996. In its order dated 06.9.2007, this Court took note of the fact that the petitioners were being continued as Junior Assistants, on the basis of the interim orders, and disposed of the writ petition, giving liberty to the petitioners, to make representation, for regularization of their services. It is stated that the 5th respondent issued proceedings, dated 24.5.2008, declaring the probation of the petitioners, in the category of Junior Assistants. While petitioners were shown at serial Nos. 11, 10 and 9 respectively in the seniority list, the other contesting respondents were shown at serial Nos. 6, 12 and 14 respectively.

4. While the respondents 6 and 7 in W.P. No. 10263 of 2010 filed O.A. No. 3992 of 2008, the 6th respondent in W.P. No. 10262 filed O.A. No. 3989 of 2008, challenging the proceedings dated 30.5.2008 issued by the 5th respondent promoting the petitioners as Senior Assistants. Two other O.As were also filed with a prayer to declare that they are entitled to be considered for promotion as Senior Assistants in the existing vacancies. Through its common order dated 21.4.2010, the Tribunal allowed the O.As, holding that the appointment of the petitioners as Junior Assistants, from the category of Record Assistants, is contrary to Rule 9 of the Rules, and that they cannot be seniors to the applicants in the O.As. Direction was also issued to consider the applicants for promotion as Senior Assistants. The said orders are challenged, in these two writ petitions.

5. Heard Sri P. Raghavender Reddy, learned counsel for the petitioners, the learned Government Pleader for Municipal Administration for the respondents 2 to 5, Sri T. Bheemanna, learned Standing Counsel for Anantapur Municipality, and Sri D. Linga Rao and Sri P. Sai Prasad, learned counsel for the other contesting respondents.

6. It is not in dispute that the petitioners were appointed, at various points of time, as Record Assistants, on compassionate grounds. Such appointments themselves are de hors the Service Rules and otherwise than through prescribed procedure. After working for a quite long time, in that post, the petitioners approached the Government with representation that they ought to have been appointed as Junior Assistants, since they hold the qualifications for that post. They have also drawn comparison with certain other persons.

7. The grant of relief by the Government by issuing G.O.Ms. No. 155, dated 22.3.1996, itself was untenable. Not only any Rule was cited by the Government but also the Rule, which specifically bars such a relief, was directed to be relaxed. Unfortunately, on account of such selective favouritism shown by the Government, the structure of the establishments in various departments is getting disturbed. It also diminishes the employees" efficiency. Overnight, the petitioners became seniors, through maneuvering over the Record Assistants, who were working from the year 1977. The Government ought to have either issued notices to such Record Assistants or have ensured that the relief, if any, granted to the petitioners, accords with the relevant Rules, or the existing schemes.

8. A Record Assistant can become a Junior Assistant only against limited number of vacancies. The Rules prescribe a proportion, among various categories of employees in the Municipality, which constitutes the feeder category for the post of Junior Assistant. All the three petitioners who, are far juniors, were treated as Junior Assistants and that has naturally affected the promotional avenues of the Record Assistants that were working, since long time. O.A. No. 2540 of 1996 filed by the Record Assistants was rightly allowed by the Tribunal.

9. Things would have been altogether different, if the order in O.A. No. 2540 of 1996 was set aside, and the contention of the petitioners was accepted. That, however, is not the case. In W.P. No. 18173 of 1997, this Court did not undertake any adjudication, in that behalf. After narrating the facts that gave rise to the filing of the writ petition, what all this Court said was this.

But, however, it has been submitted by the learned counsel for the petitioners that they are being continued by virtue of the interim orders even as on today and their services were regularized. This proposition has been opposed by the learned counsel for the unofficial respondents stating that their services are yet to be regularized. If that was being so, it would suffice if a liberty is granted to the petitioners herein to make appropriate representation to the Commissioner, Anantapur Municipality, Anantapur

seeking relief of regularization of their services.

Accordingly, the Writ Petition is disposed of with a liberty to the petitioners herein to make appropriate representation to the Commissioner, Anantapur Municipality, Anantapur seeking relief of regularization of their services, if they so desire, if still they are working and the same may be considered in accordance with the law.

10. From this, it is not possible to construe that the order passed by the Tribunal in O.A. No. 2540 of 1996 was set aside. Still, just as the Government conferred undue benefit on the petitioners, by issuing G.O.Ms. No. 155, dated 22.3.1996, the 5th respondent availed the occasion and, acting upon the orders of this Court, has regularized the services of the petitioners, in the post of Junior Assistants. It only shows the level of influence or pressure, which the petitioners are having at their command. For all practical purposes, the Municipality has succumbed to their pressure and conferred undue benefit upon the petitioners, at the cost of other employees, who entered the service through proper channel and after undergoing the process of selection.

11. Once the petitioners were regularized as Junior Assistants, with effect from 25.6.2005, they would naturally steal march over all others, in that category also. As a result, they rose to the level of Senior Assistants or in some cases Superintendents. Here again, the effort made by the Tribunal to set at naught the injustice caused to the other regular employees of the Municipality, was thwarted on account of interim orders passed by this Court.

12. We do not find any basis to interfere with the common order passed by the Tribunal in O.A. Nos. 3989 and 3992 of 2008. We, however, are of view that in case the petitioners are otherwise eligible to be promoted, by treating them as having been appointed as Record Assistants and continuing as such, without any benefit under G.O.Ms. No. 155, dated 22.3.1996, or the orders of Municipality 30.5.2008, they can be continued only in posts, for which they are otherwise eligible. The writ petitions are, accordingly, dismissed, with the above observations. There shall be no order as to costs. The miscellaneous petitions filed in these Writ Petitions shall also stand closed.