

(2011) 09 AP CK 0018

Andhra Pradesh High Court

Case No: Writ Petition No. 26568 of 2010

G. Chinna Babu

APPELLANT

Vs

The Government of Andhra
Pradesh and The Project Officer,
ITDA Seethampeta, Srikakulam
District

RESPONDENT

Date of Decision: Sept. 23, 2011

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: J. Sudheer, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy

1. The petitioner challenges three separate orders, dated 16-09-2010, passed by the Project Officer, ITDA, Paderu, the 3rd respondent herein. The facts in brief that gave rise to the said orders are as under:

2. The Project Officer, ITDA, Seethampeta, the 4th respondent herein, issued a notification in the year 1997 inviting applications for appointment of Data Processing Officer (DPO). The petitioner and 43 others submitted applications. Through order, dated 01-05-1997, the 4th respondent appointed the petitioner as DPO, on a consolidated salary of Rs. 3,000/- per month. The petitioner submitted an application to the Commissioner of Tribal Welfare, the 2nd respondent herein, with a request to transfer him to the office of the Project Officer, ITDA, Paderu, by citing grounds of ill-health. The application was forwarded by the 4th respondent and on consideration of the same, the 2nd respondent accorded permission through proceedings, dated 24-04-2006. Accordingly, the petitioner was transferred to Paderu.

3. After some correspondence, the 2nd respondent accorded permission to the 3rd respondent to regularize the services of the petitioner and to place him in the time-scale, vide proceedings, dated 11-12-2006. On the next day itself, the 3rd respondent issued the consequential proceedings. It is stated that the probation of the petitioner was declared on 05-01-2010 with effect from 12-12-2008.

4. The 2nd respondent issued proceedings, dated 23-07-2010, directing the 3rd respondent to cancel the orders, dated 12-12-2006, through which the services of the petitioner were regularized. Reference was made to a communication received from the Institution of A.P. Lokayukta. The petitioner filed O.A. No. 4991 of 2010 challenging the proceedings, dated 23-07-2010. However, on an undertaking given by the respondents that the petitioner would be issued show cause notice, the O.A. was closed. Thereafter, the 3rd respondent issued show cause notice, dated 30-08-2010, requiring the petitioner to explain as to why the orders: (i) regularizing his services, (ii) granting pay-scale and (iii) transferring him from Seethampeta to Paderu, be not cancelled.

5. The petitioner submitted his explanation on 13-09-2010. Not satisfied with the explanation, the 3rd respondent passed the three orders referred to above.

6. The petitioner contends that he was appointed against a vacancy that was sanctioned by the Government and that the prescribed procedure was followed. He submits that the subject matter of enquiry before A.P. Lokayukta was totally unrelated to his appointment and the 2nd respondent issued a directive to the 3rd respondent without any basis. He submits that the impugned proceedings are untenable in law.

7. The 2nd respondent filed counter - affidavit opposing the writ petition. It is stated that the very appointment of the petitioner as DPO was contrary to law and the subsequent orders of regularization and transfer cannot be sustained. He submits that adequate reasons were furnished in support of the orders impugned in the writ petition.

8. Heard Sri J. Sudheer, Learned Counsel for the petitioner and the learned Government Pleader for Social Welfare.

9. The appointment of the petitioner as DPO was on the basis of selection. The record discloses that the Government accorded sanction for five posts of DPO in the ITDA through G.O. Ms. No. 50, dated 31-03-1993. On behalf of the respondents, it is stated that the permission so accorded was to the Andhra Pradesh Technology Services and there was no basis for the 4th respondent to issue notification and to appoint the petitioner as DPO. Had it been the solitary case of the petitioner being appointed, the contention could certainly have been accepted. A perusal of the record discloses that the 2nd respondent himself offered the following remarks vide memo, dated 11-12-2006, in response to clarification sought by the 3rd respondent:

Sl. No.	Point raised by the P.O. ITDA, Paderu.	Remarks of the Office
1.	--	
2.	It seems there is a change in method of recruitment in case of Sri G. China Babu. Can the appointment of Sri G. China Babu, DPO by Project Officer, ITDA, Seethampeta can be treated as Direct recruitment or not?	The P.O. ITDA Seethampeta appointed Sri G. China Babu by inviting applications through paper notification and selected Sri G. China Babu and it can be treated as direct recruitment.
3.	Whereas Sri G. China Babu, DPO who appointed by P.O. ITDA, Seethampeta against the sanctioned?	Sri G. China Babu appointed by the P.O., ITDA, Seethampeta against the sanctioned post to the ITDA Seethampeta vide G.O. Ms. No. 50 S.W. (T) Department dated 31.3.1993. The following DPOs are appointed and their present place of working is indicated below.

10. A list of 10 persons, including the petitioner, appointed as DPOs at different points of time was furnished. Nearly 15 years have elapsed since the petitioner was appointed. Further, the post of DPO was included in the cadre of the ITDAs through orders of the Government in G.O. Ms. No. 143, dated 07-10-1997. It, thus, emerges that the post is part of the cadre. It was filled by inviting applications and after undertaking a detailed selection process. The fact that the petitioner was paid consolidated wages, does not make any difference. It is too late in the day for the respondents to take an objection as to the very basis for the appointment of the petitioner.

11. So far as extension of the benefit of pay-scale is concerned, the petitioner approached the Tribunal by filing O.A. No. 3115 of 2002. That was disposed of by the Tribunal to examine the request of the petitioner and to take necessary steps in accordance with law. For about four years, the correspondence between various authorities ensued. The 2nd respondent ultimately accorded permission for regularization of the services of the petitioner and for extending the benefit of pay-scale, and consequential orders were issued by the 3rd respondent.

12. The only basis for cancelling the same through one of the impugned order is that the petitioner was not a regular employee. It is only by treating him as regular

employee that the 3rd respondent has undertaken extensive correspondence with the 2nd respondent and the twin benefits of regularization and fitting him into pay-scale, were extended. It has already been mentioned that the petitioner has been subjected to selection process, the post was sanctioned, and that the regularization has taken place with the specific approval of the 2nd respondent. The root cause for initiation of action against the petitioner is a communication received from the Lokayakuta. It appears that there was some communication gap in this regard. The complainants before Lokayukta were drivers and that did not have any pointed grievance against the petitioner. A vague reference was made to the effect that the services of the petitioner were regularized, whereas the same benefit was not extended to them. Nothing specific was observed against the petitioner by the Lokayukta. The reaction of the respondents to the communication was totally disproportionate and unrelated. Hence, the order canceling the pay-scale for the petitioner, cannot be sustained.

13. Now comes the issue pertaining to transfer of the petitioner from Seethampeta to Paderu. The appointment of the petitioner was by the 4th respondent against a vacancy at Seethampeta. It may be true that the transfer of the petitioner to Paderu has taken place with the specific permission of the 2nd respondent, the fact, however, remains that there is no provision for the transfer of DPO from one ITDA to another. Each post is specific for that very particular organization of region. Hence, no exception can be taken to the cancellation of the order of transfer, though it was passed with the prior approval of the 2nd respondent.

14. Hence, the Writ Petition is partly allowed setting aside:

- (i) the order, dated 16-09-2010, through which the appointment of the petitioner was treated as not in accordance with the Rules and Service Conditions; and
- (ii) another order, dated 16-09-2010, cancelling the orders, dated 12-12-2006, through which the services of the petitioner were regularized and the time-scale was allowed; but
- (iii) upholding the order, dated 16-09-2010, through which the transfer of petitioner to Paderu was cancelled and he was required to report duty at ITDA, Seethampeta.

15. There shall be no order as to costs.