
Mohd. Mahmood Ali and Others Vs Deputy Commissioner of Commercial Taxes, Hyderabad Rural Division and Others

Writ Petition No. 24460 of 1999

Court: Andhra Pradesh High Court

Date of Decision: Dec. 12, 2001

Acts Referred:

Andhra Pradesh Ministerial Service Rules, 1966 "Rule 10

Citation: (2002) 2 ALT 754

Hon'ble Judges: S.R. Nayak, J; L. Narasimha Reddy, J

Bench: Division Bench

Advocate: B.G. Ravindra Reddy and J.R. Manohar Rao, for the Appellant; G.P. for Services-II, M.V. Raja Ram and V.V. Prabhakar Rao, S.C. for APPSC, for the Respondent

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J.

W.P. No. 24460 of 1999 is filed against the judgment of the Andhra Pradesh Administrative Tribunal (for short

"the Tribunal") in O.A. No. 4854/93 dated 12-10-1999; W.P. No. 1136 and 1426 of 2000 are filed against the judgment of the Tribunal in O.A.

No. 666/94 dated 14-7-1999; and W.P. No. 4500 of 2000 is filed against the judgment of the Tribunal in O.A. No. 7492/99 dated 8-2-2000.

The issue involved in these writ petitions is common. Hence, they are disposed of by a common judgment.

2. Briefly stated, the facts leading to filing of the OAs and consequently the writ petitions are as under:

The writ petitioners were appointed as Junior Assistants in the year 1987 in the Commercial Tax Department, having been selected by the

respective District Selection Committees (for short "the DSCs"). Ever since then, they have been borne on the cadre of the L.D.Cs. in the

Commercial Tax Department. The party respondents in the writ petitions have appeared in the recruitment test held by the A.P. Public Service

Commission in the year 1984. Since they could not come up to the selection vis-a-vis the available vacancies, they were kept in the waiting list.

The Government of Andhra Pradesh, in the year 1984, abolished the system of Village Officers. It has decided to get the work of the Village

Officers done by the Junior Assistants to be designated as Village Assistants. For this purpose, it issued G.O.Ms. No. 622 dated 6-4-1984

creating 4000 posts of Junior Assistants in the scale of Rs. 425-650 in the Revenue Department under the District Administration. To fill up these

posts, the Government addressed to the A.P. Public Service Commission to allot candidates from the waiting list. The creation of the posts under

G.O.Ms. No. 622 was for a period less than one year i.e., up to 28-2-1985. Even when the process of appointing the Village Assistants was in

progress, the High Court intervened and granted stay. The A.P. Public Service Commission allotted 3725 candidates and out of whom only 2229

joined.

3. The Supreme Court had set aside the decision of the Government in abolishing the system of Village Officers. That necessitated the Government

to continue the erstwhile Village Officers in a modified scheme. This, in turn, had resulted in displacement of the Village Assistants. Thereupon, the

Government started examining the feasibility of continuing the Village Assistants in the Revenue Department by creating supernumerary posts. One

after the other G.Os., came to be issued extending the life of the supernumerary posts. The one which is relevant is G.O.Ms. No. 1610 dated 24-

12-1986. This G.O., inter alia provides for continuance of the Village Assistants (Junior Assistants) working in temporary posts and deploying

them as per the needs in the Districts. The relevant paragraph i.e., paragraph No. 6 of the said G.O., reads as under:

All the district collectors are requested to continue the existing 2229 Junior Assistants working in the temporary posts sanctioned and continued in

the G.Os. read above by deploying them as per the needs of their districts. They are also requested to absorb these temporary Junior Assistants in

the regular vacancies in the districts in the regular vacancies arising in their districts, observing the Roaster points. The supernumerary posts created

till 1-3-1987 in para 5 above shall cease to exist as and when these temporary Junior Assistants are absorbed in the regular vacancies of Junior

Assistants in their respective districts.

4. Inasmuch as it was becoming difficult to absorb such a large number of Village Assistants, who were initially appointed in temporary vacancies

and which themselves ceased to exist in view of the judgment of the Hon"ble Supreme Court, the Government started its efforts to accommodate

them in other departments also to avoid retrenchment. One such scheme was formulated in G.O.Ms. No. 100 dated 2-2-1989. In that G.O., it has

been decided by the Government to permit the appointing authorities in the Commercial Tax Department to fill the vacant posts of Junior

Assistants, Typists, etc., from out of the surplus staff in other departments, subject to the following conditions:-

(a) The surplus staff should have been appointed in the concerned Department regularly through A.P.P.S.C. or D.S.C. as the case may be;

(b) They should take, last rank in Commercial Tax Department in the concerned category of posts. However, their pay in the original department

will be protected.

(c) The appointments shall be made strictly in accordance with the provisions contained in the Presidential Order and the instructions issued there

under from time to time.

5. It was in pursuance of this decision that the party respondents in the writ petitions were appointed as Junior Assistants on temporary basis in the

Commercial Tax Department through orders dated 31-3-1989 and 15-4-1989. The conditions contained in G.O.Ms. No. 100 dated 2-2-1989

were incorporated in the orders appointing the party respondents in the Commercial Tax Department.

6. After joining in the Commercial Tax Department, the party respondents filed O.A. No. 666/94 seeking a declaration that G.O.Ms. No. 100

dated 2-2-1989 was not applicable to them and for a consequential direction to the Government to prepare seniority list of Junior Assistants taking

into account, the services rendered by them in the Revenue Department. The Tribunal, through its judgment dated 14-7-1999 allowed the O.A.

Similarly, some of them filed O.A. No. 4854/93 for a declaration that their seniority in the Commercial Tax Department shall be decided on the

basis of the ranking assigned to them by the A.P. Public Service Commission and not otherwise. Following the judgment in O.A. No. 666/94

dated 14-7-1999, the Tribunal allowed O.A. No. 4854/93 through its order dated 12-10-1999. In compliance with the directions, contained in

O.A. Nos. 666/94 and 4854/93, the Government issued G.O.Ms. No. 1872 dated 8-12-1999 directing that they shall be entitled to count the

services rendered by them as supernumerary Junior Assistants (Village Assistants) before their absorption in the Commercial Tax Department and

that their seniority shall be fixed with reference to their date of appointment as Village Assistants. This G.O., was challenged by some of the writ

petitioners in O.A. No. 7492 of 1999 through its orders dated 8-2-2000. Hence, these Writ petitions.

7. Sri JR. Manohar Rao and Sri B.G. Ravinder Reddy, the learned Advocates for the petitioners submit that the orders of the Tribunal, which are

under challenge in these writ petitions, cannot be sustained either on facts or in law. They submit that the party respondents were never appointed

against a regular cadre and their appointment was against certain vacancies, which were themselves, not constituted into regular vacancies and

were created for a limited period. They contend that the very orders under which they were brought into the Commercial Tax Department indicate

that they were holding supernumerary posts and were rendered surplus and it was rather under humanitarian circumstances that they were

appointed in the Commercial Tax Department. The orders appointing them clearly indicate that they shall have to be treated as having been

appointed afresh and under no circumstances such persons can be placed above the petitioners who were appointed on regular basis in the year

1987 in the Commercial Tax Department. It is their further contention that certain memos were issued by some lower authorities, which run

contrary to the orders passed by the Government in exercise of its executive power. They placed reliance upon several judgments of the Supreme

Court and also therelevant rules under A.P. Ministerial Service Rules, 1966 (hereinafter referred to as "the Rules").

8: Sri M. V. Raja Ram, the learned counsel for the respondents and also the Government Pleader for Services II and Mr. V.V. Prabhakar Rao,

the learned Standing Counsel for A.P. Public Service Commission, while supporting the judgment of the Tribunal contend that the cumulative effect

of the various orders passed by the Government from time to time is that the party respondents were shifted from Revenue Department to the

Commercial Tax Department by way of transfer on administrative grounds and once that is so, they are entitled for their services rendered in the

Revenue Department to be counted for seniority. According to them, since the party respondents were selected by the A.P. Public Service

Commission way back in the year 1984, they are entitled to be treated as seniors to the writ petitioners, who admittedly were selected by the

DSCs in the subsequent years.

9. The undisputed facts are that there was no regular cadre of Village Assistants in the Revenue Department. As many as 4000 posts of Junior

Assistants were created for a limited period through G.O.Ms. No. 622 dated 6-4-1984. Though the party respondents appeared in the selections

undertaken by the A.P. Public Service Commission in the year 1984, they could not be selected for any posts and they were in the waiting list. On

account of creation of these temporary posts, they came to be appointed purely on temporary basis against those posts. In view of the judgment of

the Hon"ble Supreme Court, the entire scheme of the Village Assistants had to be discontinued thereby they became surplus. A reading of

G.O.Ms. No. 1610 dated 24-12-1986, a portion of which has been extracted supra, would indicate the circumstances that emerged on account

of these developments. It is also a matter of record that the entry of the party respondents into the Commercial Tax Department was through

proceedings dated 31-3-1989 and 15-4-1989. Since the contents of the said orders have a direct bearing on the entire controversy in these

matters, the same is extracted hereunder:

The following surplus candidates working in supernumerary posts in Revenue Department of Mahabubnagar District are hereby provisionally

appointed as Junior Assistants under 10 (a) (i) of A.P. Ministerial Service Rules and are posted to the offices noted against each.

S.No. Name of the Candidate To be reported before

Sarvasri

1. J.M. Sudarshan O/o. The Dy. Commissioner (CT)

Hyd. Rural Division, Hyderabad.

2. K. Sudhakar Goud -do-

3. P. Venkata Chari O/o. The Dy. CTO, Gadwal

4. Ch. Sunkanna O/o. The Dy. CTO, Wanaparthy

5. Jemla Naik O/o. The CTO, Jadcharla

Their appointments are subject to the following conditions:

(1) That their appointments in Commercial Tax Department shall be treated as fresh appointments, initially on temporary basis, subject to the terms

and conditions to be decided by the Government.

(2) That their appointment is purely temporary and liable for termination at any time without prior notice and without assigning any reason.

(3) That they shall take last rank in this Department below the unapproved probationers also, if any.

In these proceedings, the candidates have been treated as surplus and they were provisionally appointed in the Commercial Tax Department.

Condition No. 1 stipulated that the said appointment shall be treated as fresh and on temporary basis and Condition No. 3 is to the effect that they

shall take the last rank in the Department below the unapproved probationers also, if any. The party respondents accepted these offers/ orders and

had joined the Commercial Tax Department. If that be so, the orders have to be given their full effect. These orders were in conformity with the

orders of the Government issued in G.O.Ms. No. 100 dated 2-2-1989.

10. Sri M.V. Raja Ram, the learned counsel for the respondents submits that his clients were already regularised in the Revenue Department and a

reading of Memo of the Government dated 5-3-1988 indicates that they were entitled for regularisation with effect from the date of their initial

appointment on account of the fact that they have been allotted by the A.P. Public Service Commission. A reading of the said memo dated 5-3-

1988 indicates the procedure to be adopted while absorbing the supernumerary candidates (Junior Assistants who were formerly appointed as

Village Assistants) in the Revenue Department. The Memo dealt with the aspect of regularisation of the services of such Junior Assistants within the

Revenue Department against regular vacancies. If at all the party respondents who were initially appointed as Village Assistants and later continued

against the supernumerary vacancies, were regularised in the Revenue Department, there was no occasion for them to have been treated as surplus

candidates in the order of their appointment in the Commercial Tax Department, which is extracted above. At no point of time, they have protested

against their having been treated or declared as surplus and their having been appointed on temporary basis, much less any protest or challenge

was made to the conditions incorporated therein. No orders or proceedings from the Government are shown which have the effect of withdrawing

the orders contained in G.O.Ms. No. 100 dated 2-2-1989 and the conditions contained in the order of appointment of the party respondents in

the Commercial Tax Department.

11. The learned Government Pleader placed before the Court certain orders and proceedings issued by the Government. One such is the Memo

dated 23-5-1994. Placing reliance upon this, the learned GP submits that the transfers of supernumerary Junior Assistants, such as party

respondents, should be treated on administrative grounds, and not on request. The relevant portion of the Memo reads as under:

The present decision of the Government for the absorption of Supernumerary Junior Assistants in the existing/arising vacancies in the

office(s)/department(s) under the administrative control of the District Collectors is only on administrative grounds and are not on the requests of

the Supernumerary Junior Assistants.

This would clearly indicate that the decision of the Government related to the transfer/ absorption of supernumerary Junior Assistants in the offices,

which are under the administrative control of the District Collector (which are by and large the Revenue Department itself) is only on administrative

grounds. Therefore, this decision has no bearing upon the transfer of supernumerary Junior Assistants to other departments, that too which are not

under the administrative control of the District Collector. It is not even pleaded, much less established, that the Commercial Tax Department is

under the administrative control of the District Collector. The various other G.Os., relied upon by the learned Govt. Pleader mostly deal with the

procedure prescribed by the Government from time to time in dealing with the supernumerary Junior Assistants within the Revenue Department.

12. As stated earlier, there is no indication either from the orders dated 31-3-1989 and 15-4-1989 or any other proceedings that the induction of

the party respondents into the Commercial Tax Department was through transfer.

13. However, Sri Raja Ram, the learned counsel for the respondents placing reliance upon the Memo dated 16-10-1996 submits that whatever

may have been the description in the order dated 31-3-1989, the Government through its Memo dated 16-10-1996 has clarified that the seniority

of the supernumerary Junior Assistants who were allotted to other departments should be reckoned from the date of their appointment as Village

Assistants as their transfer is only on administrative grounds and not on request. It needs to be noticed in this context that though this Memo was

issued by the Dy. Secretary to Government, it does not refer to any of the G.Os., issued by the Government on the subject. It does not even refer

to the orders of appointment. It runs contrary to various G.Os., including G.O.Ms. No. 100 dated 2-2-1989. It should not be forgotten that but

for the temporary schemes framed from time to time, right from the creation of posts of Village Assistants, for a limited period, till their absorption

and appointment in other departments, was dealt with by issuance of Government Orders from time to time. But for these orders, there is no

question of the A.P. Public Service Commission appointing Village Assistants in such enormous number or such persons being brought into various

other departments, cutting to the process of direct recruitment in the respective departments. It is understandable as to what authority does the

Dy. Secretary in the Revenue Department would have to decide the parameters to be adopted while fixing seniority of the supernumerary Junior

Assistants who were given fresh appointments in other departments. He can, at the most, deal with the affairs in his department, that too, in

conformity with the Rules and Government Orders applicable to that department. The Memo relied upon by the learned counsel has absolutely no

factual basis in so far as fixation of seniority in the Commercial Tax Department is concerned. It is well settled principle of law that executive

instructions cannot have any precedence over the statutory rules or orders passed by any superior authority (see P. Sadagopan v. Food

Corporation of India (1997) 4 SCC 301). It only deserves to be ignored for the present context.

14. He also relied upon G.O.Ms. No. 1610 dated 24-10-1986. This again deals with the absorption of the surplus Village Assistants who were

being continued in supernumerary posts and absorption within the Revenue Department. It does not at all deal with the appointment or absorption

in other department. While the claim of the party respondents before the Tribunal in O.A. No. 666/84 was to declare that G.O.Ms. No. 100

dated 2-2-1989 has no application to them and for the consequential relief, it is rather astonishing that there is not even a cursory reference to that

G.O., in the judgment of the Tribunal, much less, declaration to that effect. The O.A. was allowed by referring to certain Memps/ G.Os., which

have absolutely no reference to the subject matter.

15. The respondents are not able to convince us as to how the fresh appointment into the Commercial Tax Department through proceedings dated

31-3-1989 and 15-4-1989 got transformed into one, on transfer, from Revenue Department. Similarly, they are unable to demonstrate that the

conditions contained in those proceedings, particularly, the one relating to seniority (Condition No. 3) was modified or superseded. So much so,

even the Tribunal did not record any finding in this regard nor they were set aside by it. Therefore, the respondents just cannot ignore the express

stipulations as to the nature of appointment and method of reckoning the seniority as contained in the said orders. As long as those orders remain in

tact, and we in fact hold that they remain so, there is no way that the party respondents can be treated as seniors to the writ petitioners.

16. The question relating to fixation of inter se seniority of those who were on the cadre of the organisation from the inception of their service on

the one hand, and those who were working in the other organisations, but brought latter into the said organisation on the other; is no longer res

integra. Strictly speaking, such a question does not arise in this case, inasmuch as the party respondents entered the Commercial Tax Department

by way of fresh appointment and not by way of transfer. However, since the learned counsel for the respondents contend that the same should be

treated as transfer and the previous service rendered by them in the Revenue Department should be counted towards their seniority, the issue is

dealt with, to quell whatever little doubt they had about the rights of their clients.

17. In *State of Punjab and others Vs. Harnam Singh and others*, , the Hon"ble Supreme Court held that in the absence of any provision to the

contrary, the previous service rendered by the teachers working in the taken over schools would not count towards seniority in the service of the

institutions to which they stand transferred. It was held that under such circumstances, the previous services of the said employees stand wiped out.

18. In *Union of India (UOI) and Others Vs. K. Savitri and Others*, the Hon"ble Supreme Court had to consider the almost similar issue. The

respondents therein were employees in the Rehabilitation and Reclamation Organisation. On being rendered surplus in that Organisation, the

respondents were appointed in the All India Radio. While fixing the seniority, the services rendered by the respondents in the Rehabilitation and

Reclamation Organisation, were not taken into account. The Central Administrative Tribunal had allowed the OA filed by the petitioners,

respondents before the Hon"ble Supreme Court, and directed that such services shall be taken into account. Aggrieved by the same, the

Government filed Civil Appeal before the Hon"ble Supreme Court.

19. As in the present case, in the case before the Hon"ble Supreme Court also, the matter was not governed by any Rule, but was dealt with under

the administrative instructions. The relevant paragraph (para 11.1) provided that the services rendered prior to redeployment should not be

counted towards seniority in the new Organisation. The Hon"ble Supreme Court ultimately held:

The Tribunal, therefore, was wholly in error in directing that the past services of the employees should be counted for granting them the benefit of

seniority and experience for promotion in the All India Radio. In the aforesaid premises, the impugned orders of the Central Administrative

Tribunal.....are set aside.

20. To the same effect is the judgment of the Hon"ble Supreme Court in *Yogendra Prasad Mandal Vs. State of Bihar and Others*, .

21. Sri Raja Ram, the learned counsel for the respondents placed reliance upon the judgment of the Hon"ble Supreme Court in *T.N. Khadi &*

Village Industries Board v. M.S. Krishnasivamy 2001 AIR SCW 2955 and contended that the services rendered by his clients in the Revenue

Department had to be taken into account for the purpose of seniority. The brief facts led into the case before the Hon"ble Supreme Court are that

the employees working in the Khadi Department and Industries Wing of the Department of the Industries and Commerce of the Tamil Nadu

Government stood transferred to the Tamil Nadu Khadi and Village Industries Board (for short "the Board") on its being formed under the Act of

1959. For the first time, the question relating to reckoning of services rendered by the employees in the Government before they being transferred

to the Board for the purpose of seniority fell for consideration before the Madras High Court in W.P. No. 1477/80. After taking into account the

various Government Orders as well as the prevailing practice, the Madras High Court in that writ petition filed by one Mr. Perumal Swami held

that the employees so transferred are entitled for the benefit of the services rendered by them in the Government department also. That became

final. The writ petition, which gave rise to the SLP before the Hon^{ble} Supreme Court arose under identical circumstances. In that view of the

matter, the Hon^{ble} Supreme Court, in paragraph 5, held as under:

Be that, as it may, it is clear that the question was examined by the High Court on an earlier occasion in Perumal Swami's case which was

decided fairly long time back and that decision was accepted by the Board itself. Having accepted that decision and the same had been acted upon

and the benefit of seniority had been extended to others and that decision in Perumal Swami's case having become final, we think that neither is it

open to the Board to contend to the contrary now nor was the learned single Judge justified in refusing to reckon the claims of the petitioners in the

writ petitions before him.

It is to be noted that the employees of the Khadi Department of the Government were ""absorbed"" in the Board. The decision in Perumal Swami's

case relating to that Organisation became final. In the present case, the party respondents were not absorbed in the Commercial Tax Department,

but were appointed afresh and they do not have the benefit of any precedent. Therefore, the ratio of the Supreme Court does not apply to the facts

of this case.

22. Reliance was also placed by the learned counsel on the judgment of the Division Bench of this Court in G. Koteswara Rao and others Vs.

Chaitanya Grameena Bank, Tenali, Guntur Dist. and others, This case related to the fixation of seniority within the same Organisation and it was

held that the seniority should be fixed with reference to the rank assigned by the Selection Committee and not by the date of joining. The present

case has nothing in common with the decision cited by the learned counsel for the respondents.

23. For the foregoing discussion, we do not find any merit in the judgments of the Tribunal in O.A. Nos. 4854/92 and 666/94. We therefore, set

aside the same.

24. G.O.Ms. No. 1872 dated 8-12-1999 was issued in pursuance of the directions issued by the Tribunal in O.A. Nos. 4854/92 and 666/94.

Since we have set aside the judgments of the Tribunal in the said two O.As., G.O.Ms. No. 1872 dated 8-12-1999 would lose its very foundation.

O.A. No. 7492/99 was filed by some of the writ petitioners challenging the said G.O. The Tribunal dismissed the same through orders dated 8-2-

2000. Since we held that G.O.Ms. No. 1872 dated 8-12-1999 has no factual or legal basis, we set aside the order of the Tribunal dated 8-2-

2000 in O.A. No. 7492/99 and also G.O.Ms. No. 1872 dated 8-12-1999 itself. Accordingly, the Writ Petitions are allowed, but in the circumstances of the case, there shall be no order as to costs.