

(2001) 5 ALD 359

Andhra Pradesh High Court

Case No: Writ Petition No's. 4844 and 4845 of 2001

M. Raji Reddy

APPELLANT

Vs

Regional Joint Director
of Higher
Education/Now the
Regional Joint Director
of Intermediate
Education, Warangal
and others

RESPONDENT

Date of Decision: June 20, 2001

Acts Referred:

- Andhra Pradesh State and Subordinate Service Rules, 1962 - Rule 4(1)
- Andhra Pradesh State and Subordinate Service Rules, 1996 - Rule 23, 6
- Constitution of India, 1950 - Article 14, 16, 320

Citation: (2001) 5 ALD 359

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: Mr. S. Lakshma Reddy, for the Appellant; Government Pleader for Services-I and Mr. V. Mallik, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.B. Sinha, C.J.

These two cases involving common questions of fact and law were taken up for hearing together and are being disposed of by this common judgment.

2. The applicants before the Tribunals are the writ petitioners before us. They filed OA Nos. 5233 of 1998 and 5234 of 1998 praying for similar reliefs, which are in the following

terms:

"In the circumstances stated above, it is prayed that this Hon"ble Tribunal may be pleased to declare the impugned proceedings in Rc.No. 831/A2/97 dated 29-4-1997 and reverting the applicant to the post of Physical Education Teacher is totally illegal, without jurisdiction and violative of Articles 14 and 16 of the Constitution of India and consequently direct the respondents to continue the applicant as Physical Director with all consequential benefits and pass such other orders as may be deemed fit".

3. Bereft of all unnecessary details, the fact of the matter is as follows:- The petitioners and the respondents were appointed as Physical Education Teachers. A combined Seniority List was prepared for the purpose of recruitment by transfer from the category of Physical Education Teacher working in the Government High Schools and Zilla Parishad High Schools. The petitioners herein acquired qualification for promotion to the next higher post of Physical Director Grade-II. It is not in dispute that the unofficial respondents acquired the requisite qualification later on. The contention of the petitioners before us, as also before the learned Tribunal, was that having regard to the provisions of Rule 6(b) read with Rule 23 of the A.P. State and Subordinate Service Rules, 1996 (for short, "1996 Rules"), it was incumbent upon the respondents to prepare a panel every year for promotion. The petitioners contend that such a panel was prepared in the year 1994-95 wherein their vacancies during the said year, which were filled up. However, later on 11th vacancy was also filled up. No panel, however, was prepared in the year 1995-96 despite the existence of six vacancies during the said year. A panel was prepared in the year 1996-97 which was received by the official respondents on 22-10-1996 and a supplementary panel on 26-12-1996. By reason of an order dated 29-4-1997, the petitioners were promoted, purported to be in terms of Rule 37(a)(i) Part II of the General Rules. However, on a representation made by the unofficial respondents herein, the said order of promotion was cancelled. The petitioners herein filed two applications marked as OA Nos. 2594 of 1987 and 2863 of 1997, questioning the said order cancelling the order of promotions, whereupon the learned Tribunal by order dated 20-6-1997, directed the respondents to consider the matter afresh after giving an opportunity of hearing to the petitioners. Undisputedly, pursuant to or in furtherance of its direction, an opportunity of hearing has been granted to the petitioners, whereafter an order dated 22-7-1998 was passed directing as follows :

"After carefully examining the explanation of Sri M. Raji Reddy submitted vide reference 5th cited, it has been concluded that his explanation is found not satisfactory since the promotion orders were issued by mistake after receiving the fresh seniority list in which he is found junior.

Therefore, Sri M. Raji Reddy, PET, UPS Kothapally Mandal, Jammikunta, Karimnagar District who has been promoted as Physical Director and posted to Govt., Junior College (Girls), Mahabubabad vide reference 1st cited, is hereby reverted to his original post of PET and surrendered to the Chief Executive Officer, Zilla Parishad, Karimnagar for

further posting orders".

4. Similar order was passed in respect of the petitioner in the other writ petition. The aforementioned orders were questioned before the A.P. Administrative Tribunal by the petitioners in the aforementioned OAs. The learned Tribunal disposed of both the OAs, by a common judgment dated 28-2-2001 dismissing the said applications.

5. Mr. S. Lakshma Reddy, learned Counsel appearing on behalf of the petitioners, vehemently submitted that having regard to the provisions contained in Rules 6(b) and 23 of the 1996 Rules, it was incumbent upon the respondents herein to prepare annual panel. Had such panel been prepared, learned Counsel contends, for the year 1995-96, they would have been promoted. The learned Counsel would contend that for the purpose of promoting the candidates, the Rules which were applicable as on the date when vacancy arose would apply and having regard to the fact that the unofficial respondents acquired the requisite qualification later on, their cases for promotion could not have been considered at all. In support of his contention, learned Counsel strongly relied upon [Vinod Kumar Sangal Vs. Union of India \(UOI\) and Others](#), [Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others](#), .

6. Mr. V. Mallik, learned Counsel appearing on behalf of the respondents, on the other hand submitted that Rule 6(b) of 1996 Rules would not apply in the instant case and Rules 4(a) (1)(iii) of A.P. State and Subordinate Service Rules, 1962 (for short, 1962 Rules") would be applicable.

7. The factual matrix of the matter being not in dispute, the only question which arises for consideration in these applications is as to whether, having regard to the provisions contained in the Rules of 1996, the petitioners can be said to have been deprived of any right by reason of non-preparation of panel in the year 1995-96.

8. Before proceeding to deal with the question, we may notice that the private respondents herein acquired the requisite qualification in April, 1995. It is also not in dispute that having regard to the fact that 1996 Rules came into force with effect from 27-1-1997, 1966 Rules would be applicable in the instant case. We proceed on the assumption that it was obligatory on the part of the respondents to prepare panel each year.

9. Rule 4(a)(1)(iii) of 1966 Rules reads thus:

"(iii) the list of approved candidates for promotion or appointment by transfer to a service or class of service in any case where it is necessary to consult the commission on the suitability for such appointment shall be prepared ordinarily in the month of September every year reckoning 1st September of the year as the qualifying date to determine the eligibility of a candidate for such appointment, which shall cease to be in force on the afternoon of the 31st December of the succeeding year or till a new panel is prepared, whichever is earlier:

Provided that 1st May of every year shall be deemed to have been the date on which the list of approved candidates for appointment to the posts of Assistant Secretary was prepared for the years 1978 to 1986."

10. A bare perusal of the aforementioned rule would clearly show that the panel which was required to be prepared was to remain in force till 31st December or a new panel is prepared.

11. So far as 1994-95 panel is concerned, evidently, the petitioners were not to be appointed therefrom. From a perusal of the prayer made in the Original Applications as quoted supra, it does not appear that any grievance was raised as regards non-preparation of any panel during the year 1995-96 by the petitioners.

12. In the aforementioned context, it may be relevant to consider the provisions of 1996 Rules, which came into force with effect from 27-1-1997 as, admittedly, only thereafter the impugned orders were passed. Mr. Lakshma Reddy, learned Counsel for the petitioners, strongly relied upon Rules 6(b) and 23 of 1996 Rules. Rule 6(b) reads thus:

"6. Method of preparation of panels :--

(a) xxx xxx

(b) The panel of candidates for appointment by transfer to a service or a class of service in any case, where the Commission is not consulted on the suitability of a candidate for such appointment under sub-clause (b) of Clause (3) of Article 320 of the Constitution of India or for promotion, shall be prepared ordinarily during the months of September every year on the basis of estimate of vacancies sent in terms of sub-rule (d). 1st September of the year shall be reckoned as the qualifying date to determine the eligibility of a candidate for such appointment, which shall cease to be in force on the afternoon of the 31st December of the succeeding year or till the next panel is prepared whichever is earlier and for the purpose of preparing the said panel, the zone of consideration shall be in the ratio of 1:3. The period from 1st September of the year to the 31st August of the succeeding year shall be reckoned for purpose of determining the number of vacancies during the panel:

Provided that if the number of candidates to be included in the panel falls short of the number of vacancies estimated such shortfall shall be made good by considering the claims of the other qualified and eligible candidates, if any, in the seniority list placed immediately below;

Provided further that the panel of candidates so prepared shall be reviewed after a period of six months reckoned from the date of approval of the panel, for the purpose of considering the cases of such other persons whose names were not included in the panel prepared earlier for not passing the prescribed tests or for not having special qualifications prescribed under the rules, if they have subsequently passed those tests or

acquired the said qualifications and are otherwise found suitable for inclusion in the panel of the year. No such review of list of approved candidates shall, however, be undertaken where no tests or special qualifications are prescribed under the rules as condition precedent for promotion or appointment by transfer;

Provided also that no panel of candidates need to be prepared:

(i) if vacancies are not available for the particular panel period subject to the appointing authority recording a certificate to that effect; or

(ii) where the appointing authority does not consider it necessary;

Provided also that the Government may order preparation of panel of candidates as frequently as may be necessary in the exigencies of administration".

13. The contention of Mr. Lakshma Reddy to the effect that had such panel been prepared, the petitioners would have been ipso facto been promoted cannot be accepted for more than one reason: (a) Having regard to Rule 6(f) of the 1996 Rules, the inclusion of a candidate's name in any panel would not confer him any right for appointment to such service, class or category. Thus even assuming that the State has failed to discharge its statutory obligation in making the panel, we are of the considered view that the same by itself would not have entitled the petitioners to be right to fill up the posts as and when they think fit and keeping in view the fact that by reason of Rule 6(f) no right of promotion accrues by reason of empanelment alone which can be enforced in a Court of law, we are of the opinion that the provisions of the Rules governing empanelment would be directory in nature. As indicated hereinbefore, in the instant case, the 1966 Rules would apply and thus the panel, which had been prepared, lapsed. In any event, the life of such panel was valid only till the next panel was prepared. The names of the petitioners together with the respondents had been taken into consideration and having regard to their seniority, they ranked higher in the panel but despite the same, the petitioners had been promoted, despite the fact that the panel for the year 1996-97, as noticed supra, were received by the competent authorities on 22-10-1996 and 26-12-1996. Non-consideration of cases of the respondents for promotion at that point of time, admittedly, when they had requisite qualifications would, therefore, necessarily constitute a mistake on the part of the 1st respondent. It is not in dispute that a mistake bona fide committed by the State can be rectified. In *D. Wren International Ltd, v. Engineers India Ltd.*, one of us (S.B. Sinha, J.) held thus:

"126. The question which now arises for consideration is as to whether the respondents could rectify its own mistake. It is one thing to say that mistake is apparent on the face of the records and it is another thing to say that such mistake may be found to be based on misconception of the aggrieved person.

127. In [Bhagwan Shukla Vs. Union of India and others](#), , the Supreme Court has also applied the principles of natural justice in the later cases. As the question raised in this

writ application between the parties is contentious, in my opinion even for rectification for such mistake it was obligatory on the part of the respondents to comply with the principles of natural justice as has been held by me in Smt. Ratna Sennee Roy v. The State of West Bengal, reported in 1995(1) Cal LT 462.

128. In [Divisional Superintendent, Eastern Railway, Dinapur and Others Vs. Shri L.N. Keshri and Others](#), it was held that reduction of scale of an employee without hearing him would be illegal.

129. The aforementioned decisions have been cited with approval by a learned single Judge of this Court in [Mrs. Malabika Dhar and others Vs. University of North Bengal and others](#), where a decision to cancel an admission was taken by the Executive Council of the University on the ground of accidental mistake, held that situational fairness demanded that the petitioner should be allowed to continue her studies as it was not a case of admission by collusion or manipulation".

14. In the instant case, it is not in dispute that really the unofficial respondents were entitled to be considered for promotion when the panel for the year 1996-97 was prepared. A bona fide mistake was committed in omitting their names. The petitioners at best were entitled to an opportunity of being heard. Such an opportunity having been granted, in our opinion, no procedural irregularity can be said to have been committed by the official respondents in passing the impugned order dated 22-7-1998.

15. In Vinod Kumar Sangal v. Union of India (supra), there existed a specific provision for constitution of a Departmental Promotion Committee each year. An explanation was offered for non-constitution of such Departmental Promotion Committee from the years 1979 to 1984. The Office Memorandum dated 24-12-1980 postulating consideration of the cases upon determination of the actual number of regular cases that arose each of the previous year/years immediately and the actual number of regular vacancies proposed to be filled in the current year separately and consideration in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards and preparation of a Selection List for each of the years starting with the earliest year onwards and on that basis consolidated "Select List" was to be prepared, the Apex Court observed that no such procedure having been followed, the promotion granted could not be upheld. Such is not the procedure the respondents to consider the vacancy position as was obtaining in each year separately. In any event, as noticed hereinbefore, the private respondents had also qualified in April 1995 and thus had such panel been prepared even in the year 1995-96, their cases were also required to be considered.

16. The decision of the Apex Court in Union of India v. N.R. Banerjee (supra) instead of advancing the case of the petitioner's Counsel runs counter to his submission. In that decision, it was held thus:

"The preparation and finalisation of the yearly panel, unless duly certified by the appointing authority that no vacancy would arise or no suitable candidate was available, is a mandatory requirement. If the annual panel could not be prepared for any justifiable reason, yearwise panel of all the eligible candidates within the zone of consideration for filling up the vacancies each year should be prepared and appointment made in accordance therewith".

17. Even applying the said test, the respondents were entitled to be considered. Reliance placed upon by the learned Counsel in *Y.V. Rangaiah v. J. Sreenivasa Rao* (supra) is misplaced.

18. The instant case, unlike *Rangaiah's* case, as noticed hereinbefore, is distinguishable having regard to the fact that no right of promotion accrues by reason of empanelment alone. It is one thing to say that old Rules would apply when by reason of the applicability of the new Rules the right of another eligible candidate is denied. But it is another thing to say that when the State applies its mind for the purpose of filling up of the vacancy, new Rules had already come into force. This aspect of the matter has been considered by the Apex Court in several decisions, including [A.A. Calton Vs. Director of Education and Another](#), and a recent decision of this Bench in [Mohanlal Agarwal Vs. S.V. Satyaprasad and others](#), wherein upon consideration of a large number of decisions, this Court held that the crucial date for consideration of the applicability would be when the Government decides to fill up the vacancy and not when the vacancy arises.

19. The submission of the learned Counsel to the effect that in terms of Rule 23 of the Rules, the order impugned before the Tribunal could have been passed within a period of six months in terms of Rule 23 of the 1996 Rules, is again misplaced. Rule 23 reads thus:

"23. Appeal, revision and review of orders of appointment (including promotion) to higher posts :--An order appointing a member of a service or class of service or category, to a higher post by transfer or by promotion may, within a period of six months from the date of such order, be revised by an authority to which an appeal would lie against the order of dismissal passed against a member of a service, class or category. Such revision may be made by the appellate authority aforesaid, either on its own motion or on an appeal filed by the aggrieved member of the service, class or category:

Provided that the Government may, irrespective of whether they are the appellate authority or not, revise such order of appointment after the expiry of the period of six months aforesaid, for special and sufficient reasons to be recorded in writing;

Provided further that no order of revision under this rule shall be passed unless the person likely to be affected by such revision is given an opportunity of making his representation against the proposed revision".

The proviso appended to Rule 23, which would be an exception to the main provision, clearly empowers the State to revise an order of appointment after expiry of the period of

six months for special and sufficient reasons to be recorded in writing. In the instant case, such reasons have been recorded and that too after giving an opportunity of hearing to the petitioners. In any event, having regard to the fact that the unofficial respondents are senior to the petitioners as per the panel prepared on 8-10-1996 and even in the panel prepared for the year 1996-97, they were at Sl. Nos. 6 and 7 whereas Respondents 3 and 4 were at Sl. Nos. 3 and 1 respectively, we are of the opinion that no injustice has been caused to the parties.

20. For the reasons aforementioned, there is no merit in these two writ petitions, which are accordingly dismissed. But, in the facts and circumstances of the case, there shall be no order as to costs.