

M.R. Subhadra Vs. Financial Adviser and Chief Controller of Accounts, Apseb, Hyderabad and Others

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SooperKanoon Citation : sooperkanoon.com/424213

Court : Andhra Pradesh

Decided On : Jul-04-2000

Reported in : 2001(1)ALD112; 2000(4)ALT602

Judge : V.V.S. Rao, J.

Appeal No. : WP No. 8496 of 2000

Appellant : M.R. Subhadra

Respondent : Financial Adviser and Chief Controller of Accounts, Apseb, Hyderabad and Others

Advocate for Def. : Mr. S. Ravindranath, Adv.

Advocate for Pet/Ap. : Mr. H. Harischandra Reddy, Adv.

Judgement :

ORDER

1.The petitioner was an employee of the Andhra Pradesh State Electricity Board ('the Board' for brevity). After reorganization of the Board she has now become an employee of A.P. Transmission Corporation Ltd ('TRANSCO'). In this writ petition, filed in the year 1990, she sought for a direction to the respondents to regularise her service as Upper Division Clerk (UDC) with effect from 20-8-1973 and to give

all consequential benefits by setting aside the Memorandum issued by the Financial Advisor of erstwhile Board on 22-10-1986 declaring the successful completion of the period of probation of various UDCs., including the petitioner. The petitioner, who is shown at Sl.No.21 of the list is stated to have commenced her probation with effect from 19-1-1984 FN and declared to have completed the probation on 22-1-1985 AN.

2. The facts in this case, are not in dispute. The petitioner joined the service of the Board and she was duly promoted on 20-8-1973. As per the Rules of the Board, a person promoted into a higher category shall be on probation for a period of one year. However, it was not done and by proceedings dated 28-1-1980 she was reverted to the post of Lower Division Clerk (LDC). She questioned her reversion in WP No.493 of 1980. By order dated 29-12-1981 this Court directed the Board to continue her as UDC, as by that time, she passed the Accounts Test for Subordinate Officers Part-I.

3. The petitioner made request and also issued a Lawyer's notice to the Board requesting to regularize her service with effect from 20-8-1973, in vain. However, proceedings were issued by the first respondent on 22-10-1986 regularising her services as UDC with effect from 19-10-1984. This order is challenged on the ground of illegality.

4. A counter-affidavit has been filed on behalf of the respondents on 5-6-2000. It is, inter alia, stated that as per the Regulations of the Board, the petitioner ought to have passed the Government Technical Examination in Accountancy (Lower Grade) within the stipulated time and that as she remained unqualified, even after the stipulated time, she was reverted. Till 1983, no panel of UDCs., for promotion to the post of Assistant Accounts Officer was prepared and, therefore, no injury is caused to the petitioner. Though this Court earlier directed the Board to promote the petitioner as UDC, there was no direction to regularise her service with effect from 1973, and, therefore, the service from 1973 till 19-1-1984 is treated as temporary service, which cannot be counted for the purpose of seniority for promotion to the category of UDC. It is also averred that the petitioner is not qualified for promotion as Junior Accounts Officer, as she did not pass the

departmental test for Accountants in the Board and the Government Technical examination in Accountancy (Higher Grade). As the petitioner did not complete fifteen years of service in the cadre of UDCs. She is not entitled for exemption from passing the two departmental tests. For these reasons the order passed by the first respondent on 22-10-1986 declaring her probation with effect from 19-1-1984 is justified.

5. Sri H. Harischandra Reddy, learned Counsel for the petitioner relies on Regulation 6 of A.P. State Electricity Board Service Regulations - Part III read with relevant entries in Annexure-I. Regulation 6(a) provides appointment to several classes of service specified in column (1) of Annexure-I as specified in the corresponding entry in column (2) thereof.

6. Regulation 6(c) provides that the Rules made by the Government from time to time for reservations of appointments for Scheduled Castes, Scheduled Tribes and Backward Classes shall be followed by the Board. The relevant entry in Annexure-I may be noticed asunder:

PostMethod of recruitmentQualifications

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Upper Division Clerk(including the officers of Superintending Engineer

By direct recruitment1 In the case of candidatesother than those belonging to Scheduled Castes and Scheduled Tribes.

(Technical) and ChiefController of Accounts

Must possess a degree with asecond class of any University in India established or incorporated by Orunder a Central Act, Provincial Act, or a Stats Act or any equivalentqualification

By promotionMust have qualified AccountsTest or Subordinate Officers Part-1 and Government Technical examination inAccountancy by Lowar Grade.

2. In case of candidates belonging to Scheduled Castes and Scheduled Tribes in respect of posts reserved for them a degree of Arts, Commerce, or Science of any University in India established or incorporated by or under a Central Act, Provincial Act, or a State Act or any qualification.

7. On the basis of the above, the learned Counsel for petitioner submits that in the case of a candidate belonging to the Scheduled Caste, the prerequisite is a pass in the Accounts Test for Subordinate Officers Part-I and the Government Technical Examination in Accounts (Lower Grade) is not required. He also relies on the observations made by this Court in WP No.493 of 1980 dated 29-12-1981. In the alternative the learned Counsel submits that even if it is held that for the purpose of promotion, the departmental tests are essential, as the petitioner was allowed to work for more than ten years as UDC, it should be deemed that the said qualification is relaxed in her favour.

8. The learned Standing Counsel for the TRANSCO relies on another official publication of the APSEB and submits that a printing mistake has crept in the official publication on which reliance is placed by the petitioner and that as per the official publication of the service regulations published in 1992, even a candidate belonging to the Scheduled Castes is required to pass the departmental tests. He relied on the necessary entry in the 1992 official publication of the Services Regulations published, which is as under:

Class Category of post Qualifications

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Category UDC O/o FA & CCA (I) By direct recruitment (i) In the case of candidates other than those belonging to Scheduled Castes and Scheduled Tribes Must possess a degree with a second class of any University in India established or incorporated by or under a Central Provincial Act or a State Act or any equivalent or a State Act or any equivalent qualification.

(ii) In the case of candidates belonging to SCs. and STs., in respect of posts reserved for them a degree of Arts, Commerce, Science of any University in India

established or incorporated by or under a Central Act, Provincial Act or a State Act or any equivalent qualification.

(II) By Promotion Must have qualified in Accounts Test for Subordinate Officers Part-1 and Government Technical examination in Accountancy by lower grade.

9. The submission made by the learned Counsel for the petitioner based on the official publication of APSEB 1981 and the submission made by the learned Standing Counsel on the official publication of the Board of the year 1992, are well founded. A plain reading of the relevant entries in both the publications support the contention of the learned Counsel for the parties. However, the submission made by the learned Counsel for the Board based on the relevant entry makes it categorical that in the case of direct recruitment, a candidate belonging to SC needs a degree in Arts, Commerce or Science; whereas in the case of other candidates they should possess second class degree in the same subject. However, when it comes to the method of appointment by promotion, either of the candidates, whether he belongs to OC category or SC category, they must have been qualified in the Accounts Test or Subordinate Officers Part-I and the Government Technical Examination in Accountancy by Lower Grade.

10. The question that immediately arises for consideration is whether there is any scope to read the relevant entry in 1981 official publication, contrary to the entry in the publication of 1992. A reading of the relevant entry in 1981 publication shows that in the case of candidates other than those belonging to SC/ST, they must possess a degree with second class for the purpose of direct recruitment. Thereafter, against the relevant entry in column 2, method of recruitment, a candidate to be appointed as UDC by promotion, he must have qualified in the Accounts Test for Subordinate Officers Part-I and the Government Technical Examination. The entry does not specifically exclude the candidates belonging to SC/ST as is the case in the method of direct recruitment. After making it compulsory for a candidate to pass the departmental test, there is other Entry (2), which says that a candidate belonging to SC need to have a degree of Arts, Commerce or Science. There is no serial number with regard to the entry immediately against the entry 'by promotion'. This only shows that if the contention

of the petitioner is to be accepted, it would result in absurdity. If what is submitted is accepted, even a candidate belonging to SC has to necessarily possess a second class degree which cannot be the intention of the Legislature and in which case, the words 'other than belonging to SC/ST' appearing in entry-I, against words 'by direct recruitment', would be meaningless. Therefore, in all probability, it is a mistake. Instead of printing Entry (2) against the direct recruitment, the same was not printed under the relevant Departmental Test to be passed against the entry 'by promotion'. This view is also supported by the observation made by this Court earlier in WP No.493 of 1980. This Court noticed that an impression can be gained by looking at the relevant entries in Pages 309 and 310 of the official publication that a SC candidate need not pass the test. It should therefore be held that in the case of promotion, whether the candidate belongs to Scheduled Castes/Scheduled Tribes or General category, they should have qualified in Accounts Test for Subordinate Officers Part-I and Government Technical Examination in Accountancy by Lower Grade. The submission of the learned Counsel for the petitioner that the candidate is exempted from passing the Accounts Test and other tests is liable to be rejected.

11. The alternative submission of the learned Counsel for the petitioner is well founded. As observed by this Court in WP No.493 of 1980, the petitioner was justified in not taking steps for getting necessary qualifications as per the relevant entry in Annexure-1 to the Regulations Part-III, in view of the mistake that crept in the official public publication. The question for consideration would then be whether she is entitled to the benefit of service as UDC from 1973 to. 1984. It is well settled that when an unqualified person is allowed to continue in the higher post, as temporary promotee may be due to fortuitous circumstances for a long spell of time, the law presumes that necessary qualifications are relaxed in the case of such a candidate. (See: The Direct Recruit Class-II Engineering Officers' Association v. State of Maharashtra, : [1990]2SCR900).

12. The learned Counsel for the respondents, however, relied on the judgment of the Allahabad High Court in the case of UPS Cement Corporation Ltd. v. Industrial Tribunal, 1996 (II) LLJ 137 and submits that when a person is temporarily promoted without requisite and necessary qualifications, such a person cannot

claim any right by virtue of such continuance and that service shall have to be treated as temporary service. In view of the Supreme Court decision in Direct Recruit's case (supra), I do not feel persuaded by the submission made by the learned Standing Counsel. Therefore, it should be declared that the respondents are deemed to have relaxed the necessary qualifications as per the entry in Annexure-I read with the Regulation 6(a) of A.P. State Electricity Board Service Regulations-Part III. Accordingly the service of the petitioner from 1973 till 19-1-1984 shall have to be treated as regular service and the respondents have to take necessary steps for issuing necessary proceedings in the light of this order.

13. The learned Standing Counsel for the respondents, further submits that the petitioner could be promoted as Junior Accounts Officer only in 1994. In view of this a direction shall issue to the respondents to revise the seniority of the petitioner as UDC with effect from 20-8-1973 considering her as having passed the requisite tests by regularizing her service as UDC from 20-8-1973 and give all consequential benefits, including promotions, in accordance with her eligibility and suitability.

14. In the premise, the writ petition is allowed to the extent indicated above with costs.