

P. Ramasree Vs. Superintending Engineer, R and B Circle, Guntur and Another

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Court : Andhra Pradesh

Decided On : Mar-16-2001

Reported in : 2001(3)ALD150; 2001(3)ALT499; [2001(90)FLR275]

Judge : S.B. Sinha, CJ and ; S.R. Nayak, J.

Appeal No. : WP NO. 3106 of 1999

Appellant : P. Ramasree

Respondent : Superintending Engineer, R and B Circle, Guntur and Another

Advocate for Def. : Government Pleader for Services-III

Advocate for Pet/Ap. : Mr. J. Sudheer,

Judgement :

ORDER

S.B. Sinha CJ.

1. The petitioner was appointed on 28-5-1993 as tracer. A retrenchment notice was served on her on 30-6-1999 on the ground of want of vacancy but she was not relieved. The said notice of retrenchment was cancelled and she was directed to be retained in N.H. Division, Guntur. She was sought to be retrenched again on

29-11-1994 by the Superintending Engineer, R & B Circle, Guntur having regard to the judgment of the Administrative Tribunal in the case of Sri K. Baladas stating:

'In view of the judgment delivered by the Hon'ble A.P. Administrative Tribunal in the reference cited, Sri K. Baladas, Tracer who is continued under supernumerary in Electrical Division, Guntur is transferred and posted to (R & B) N.H. Division, Guntur in place of Smt P. Ramasree, Tracer.

Smt P. Rama Sree, Tracer of (R & B) N.H. Division, who is the junior-most in the circle is now retrenched as there is no vacancy to continue both candidates and in view of the judgment cited above and is surrendered to Collector and District Magistrate, Guntur for absorption in other departments in the district.'

2. The petitioner filed an application before the Tribunal marked as OA No.7094 of 1994. On 13-2-1996 the petitioner was issued with an offer of appointment again as tracer wherein reference was made to the proceedings dated 29-11-1994 whereby and whereunder she had been retrenched. By reason of the said order dated 13-2-1996 she was posted as tracer in R & B Electrical Division, Guntur. She was again retrenched on 26-2-1997. Another Original Application was filed by her which was marked as OA 1084 of 1997. Both the applications were taken up for hearing together by the learned Tribunal.

3. The only question which arose for consideration before the learned Tribunal was as to whether having regard to G.O. Ms. No.686, dated 3-8-1997 and G.O. Ms. No.36, dated 25-1-1990 an order of retrenchment could have been passed against the petitioner who is a member of Scheduled Caste as in terms of the aforementioned Government Orders protection had been issued to the Scheduled Caste and Scheduled Tribe candidates from being retrenched. The question as to whether such a Government Order could be issued or not came up for consideration before the Apex Court in Government of A. P. v. Bala Musalaiah, 1995 SCC (L&S;) 275. The Apex Court held that such Government Order is not maintainable. However, it was directed:

'10. We, therefore, hold that the GO as framed is not sustainable. It would, however, be open to State Government to recast the GO in the light of what has

been stated by us, if deemed necessary by it. As, however, the GO has been in operation for about three decades by now, we do not propose to upset the retrenchments which have already taken place pursuant to what has been provided in the GO. The GO would, therefore, become non-operative from today.'

4. It now appears that the State of Andhra Pradesh has issued G.O. Ms. No.121 Social Welfare (L1) Department, dated 31-10-1996 pursuant to or in furtherance of the aforementioned observations made by the Supreme Court, the relevant portion whereof reads thus:

'3. In the light of the directions of the Supreme Court, it has become necessary to formulate a revised procedure to safeguard the interests of SC/ST employees in the matter of retrenchment. The matter has been examined in consultation with General Administration (Ser.) Finance and Law Departments.

5. Government accordingly direct that, whenever retrenchment takes place due to reorganisation of the departments/ or reduction of posts or other administrative measures, the normal procedure prescribed in service rules should be followed. However, if any SC/ST persons are affected by the retrenchment, they should be accommodated by creating supernumerary posts in that organisation which have to be adjusted against future vacancies.

6. All the Departments of Secretariat/ Heads of Departments should follow the revised procedure indicated in para 4 above in respect of the retrenchment of SC/ST employees. The Finance Department will create necessary supernumerary posts as proposed to by the Heads of Departments/ Departments of Secretariat as the principle of this revised procedure has been accepted by them.'

7. Although the said Government Order was not brought to the notice of the learned Tribunal, the genuineness of the said Government Order has not been disputed. Although the aforementioned Government Order has not been produced before the learned Tribunal, in our opinion, the same would not stand in the way of this Court in directing the respondents herein to follow the same. It is not in dispute that pursuant to the interim orders passed by the Tribunal the petitioner herein has been continuing in service. The State in the aforementioned G.O. Ms. No.121,

dated 31-10-1996 directed that supernumerary posts in that organisation should be created which are to be adjusted against future vacancies. Thus, without going into the rival contentions raised by the parties before the learned Tribunal, in our opinion, having regard to the aforementioned policy decision adopted by the State, this writ petition should be disposed of directing the respondents to give effect to the said policy decision by creating supernumerary post for the petitioner and adjusting her therein. It is really a matter of great regret that the State which is a model employer failed or neglected to implement its own policy decision and bring the said Government Order to the notice of the learned Tribunal. The State as a benevolent litigant was under an obligation to produce all records before the Tribunal. Its action in withholding the said Government Order before the learned Tribunal should be deprecated.

8. For the reasons aforementioned, the writ petition is allowed. The impugned order of the Tribunal is set aside and the petitioner herein is directed to be absorbed in a supernumerary post which must be created as the petitioner has been continuing in service and shall be allowed to continue in service in terms of the aforementioned Government Order. In the facts and circumstances of the case the respondents should also bear the costs of the petitioner which is quantified at Rs.2,000/- (Rupees two thousands only).