

State of Andhra Pradesh Vs. B. Prashanth and Another

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Court : Andhra Pradesh

Decided On : Aug-08-2001

Reported in : 2001(5)ALD473

Judge : S.R. Nayak and ;S. Ananda Reddy, JJ.

Acts : Andhra Pradesh Ministerial Service Rules - Rules 1, 2, 11 and 29(2); Andhra Pradesh State and Subordinate Service Rules - Rule 33; [Constitution of India](#) - Article 309

Appeal No. : WP Nos. 32637 and 35041 of 1997 and 2415 of 1998

Appellant : State of Andhra Pradesh

Respondent : B. Prashanth and Another

Advocate for Def. : Mr. J.R. Manohar Rao and ;Mr. R. Kameswara Rao, Advs.

Advocate for Pet/Ap. : Government Pleader for Services-I

Disposition : Writ petition dismissed

Judgement :

ORDER

S.R. Nayak, J.

1. These three writ petitions arise out of the claim of the 1st respondent in each of these writ petitions that they should be appointed as Probationary Revenue Inspector with effect from the date on which the substantive vacancies in the permanent cadre arose in the category of Senior Assistants, in terms of Rule 11(i)(ii) of Annexure-IV to Rule 29(2) of the A.P. Ministerial Service Rules. The 1st respondents filed OA Nos. 41887 of 1991, 6168 of 1994 and 6689 of 1994 before the Andhra Pradesh Administrative Tribunal, for short 'the Tribunal' assailing the validity of the final Seniority list of the Senior Assistants prepared by the concerned District Collectors and also claiming seniority in terms of provisions of paragraph 11(i)(ii) of Annexure-IV to Rule 29(2) of the A.P. Ministerial Service Rules. The learned Tribunal allowed the applications and directed the petitioners herein to fix the seniority of the 1st respondent in the category of Senior Assistants keeping in view of paragraphs (2) and)(11) of Annexure IV to Rule 29(2) of A.P. Ministerial Service Rules. Hence these three writ petitions by the State authorities assailing the validity of the said common order.

2. The learned Government Pleader for Services-I would strenuously contend that the interpretation placed by the learned Tribunal on the provisions of paragraphs 11 (i)(ii) of Annexure IV to Rule 29(2) of the A.P. Ministerial Service Rules is illegal and unacceptable and the Tribunal ought to have seen that those provisions have nothing to do with the fixation of seniority in the cadre of Senior Assistants. The learned Government Pleader would maintain that the only relevant rule that it applicable to the facts of this case is Rule 33(a) of the A.P. State and Subordinate Service Rules, and if Rule 33 (a) is applied, no exception could have been taken to the actions of the District Collectors in fixing the seniority of the 1st respondents in these writ petitions taking into account the entry into the service in the cadre of Probationary Revenue Inspector. The learned Counsel would also place reliance on G.O. Ms. No. 607, General Administration (Services.A) Department, dated 6-11-1992. On the other hand, Sri J. Manohar Rao, learned Counsel appearing for the applicants - 1st respondents, would contend that by force of Rule 11 (i)(ii) of Annexure IV of Rule 29(2) of the A.P. Ministerial Service Rules, the appointments of the 1st respondents to the post of Probationary Revenue Inspector should be deemed to be with effect from the date on which the substantive vacancy arose in the permanent cadre of the senior Assistants in the Revenue Department. The

learned Counsel would maintain that if the deeming provision incorporated in Rule 11(i) is applied in the case of the 1st respondents -appointees, the rank assigned to them in the final seniority list prepared by the District Collectors would not be in consonance with the Rule 11(i) read with Rule 33(a) of the A.P. State and Subordinate Service Rules.

3. In the premise of the similar contentions raised before it, the learned Tribunal framed the following point for consideration and decision.

'Whether the Probationary Revenue Inspectors are entitled for appointment as Full Members of Service against the substantive vacancy against which they were recruited under Rule 29(2) read with para 11(i) and (ii) of Annexure IV of the A.P. Ministerial Service Rules and count their seniority in the category of Senior Assistants with reference to the vacancy against which they were selected.'

The above question, it cannot be gainsaid, is the precise question that arises for decision before this Court also. Before dealing with the question, it is appropriate that the relevant statutory provisions be noted. Rule 33 of A.P. State and Subordinate Service Rules reads:

'33. Seniority :--(a) The seniority of a person in a service, class, category or grade, shall unless he had been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade:

Provided that the seniority of a probationer or approved probationer in a service, class or category from which he stood reverted on the 1st November, 1956 or prior to that date, shall be determined in the State-wide gazetted posts and non-gazetted posts in the Departments of the Secretariat and the offices of the heads of departments with reference to the notional date of continuous officiation with or without breaks in that service, class or category prior to the 1st November, 1956 to the date of re-appointment made thereafter but it shall not disturb the inter-seniority which obtained in the Andhra State. (This Proviso shall be in force till 31st October, 1996).

(b) the appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason the order of preference among them; and where such order has been fixed, seniority shall be determined in accordance with it;

Provided further that the order of merit or order of preference indicated in a list of selected candidates prepared by the Public Service Commission or other selecting authority, shall not be disturbed inter se with reference to the candidates position in such list or panel while determining the seniority in accordance with this rule and notional dates of commencement of probation to the extent necessary, shall be assigned to the persons concerned, with reference to the order of merit or order of preference assigned to them in the said list.

(c) Whenever notional date of promotion is assigned, such date of notional promotion shall be taken into consideration for computing the qualifying length of service in the feeder category for promotion to the next higher category and that the notional service shall be counted for the purpose of declaration of probation also in the feeder category.

(d) The transfer of a person from one class or category of a service to another class or category of the same service carrying the same pay or scale of pay shall not be treated as first appointment to the latter class or category for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the date of his regular appointment in the class or category from which he was transferred. Where any difficulty arises in applying this sub-rule, seniority shall be determined by the Government, if they are the appointing authority and in other cases, the authority next higher to the appointing authority shall determine the seniority.

(e) Where a member of a service, class or category, is reduced, for a specific period, to a lower service, class or category or grade--

(i) in cases where the reduction does not operate to postpone further increment, the seniority of such member on re-promotion shall,, unless the terms of the order

of punishment provide otherwise, be fixed in the higher service, class or category at which it would have been fixed but for his reduction;

(ii) in cases where the reduction operates to postpone future increment, the seniority of such member on re-promotion shall, unless the terms of the order of punishment provide otherwise, be fixed by giving credit for the period of service earlier rendered by him in the higher service, class or category.

(f) Seniority of a retrenched and re-appointed person: The seniority of a member of a service who is re-appointed after having been retrenched, owing to reduction of staff as a measure of economy, shall be determined in accordance with the date of such re-appointment:

Provided that the inter se seniority of such members absorbed in to the same service, class or category shall be determined--

(i) in any case in which re-appointment of such members was made in consultation with Public Service Commission or the other selecting authority, in accordance with the order of merit or the order of preference indicated by the said Public Service Commission or other selecting authority; and

(ii) in any other case, in accordance with the total length of service, in the same, equivalent or higher service, class or category put in by such member prior to retrenchment.

(g) The seniority of an approved candidate who takes up military service before joining to any service, class or category shall, on his appointment to such service, class or category, on his return from the said military service, be determined in accordance with the order of preference shown in the authoritative list of candidates approved for appointment to the service, class or category.'

4. Rules 1, 2, 11 of Annexure IV to Rule 29(2) of the Andhra Pradesh Ministerial Service Rules read:

'1. Appointment to the service may be made to the category of Senior Assistants in the Revenue Department by direct recruitment of person for employment as

Probationary Revenue Inspectors in any district.

2. Such appointment shall be made once in a year for each district and not more than one such appointment shall be made in a district on each occasion.

11. (i) For every such person there shall be reserved a substantive vacancy arising in the permanent cadre of the category of Senior Assistants in the Revenue Department in the district concerned after his appointment; and such person shall, on satisfactorily completing the prescribed period of his probation, be promoted as a full member of the service in that category with effect from the date on which the vacancy arose.

(ii) If no such vacancy has arisen and been reserved for him, he shall, on satisfactorily completing the prescribed period of his probation, be appointed to an acting, temporary or officiating vacancy in the permanent cadre of the category of Senior Assistants in the Revenue Department in the district concerned; and shall be appointed to be a full member of the service in any substantive vacancy next arising on that cadre.'

In our considered opinion, clause (i) of Rule 11 of Annexure IV is quite precise, clean, plain and unambiguous and it does not admit more than one meaning. In the instant case, there is no controversy on facts. The admitted facts are that the 1st respondent in each of these writ petitions claims to have been appointed as Probationary Revenue Inspector against the substantive vacancies arising in the permanent cadre of the category of Senior Assistants in the Revenue Department on completion of the prescribed period of probation. In view of these admitted facts and by force of the phrase 'with effect from the date on which the vacancy arose' occurring in Rule 11(i), it becomes quite clear that the 1st respondent in each of these writ petitions should be deemed to have been appointed as Probationary Revenue Inspector from the date on which the respective vacancies against which the petitioners were appointed arose. It is true that Rule 11(i) as such does not deal with seniority at all. It is also not the argument of Sri J. Manohar Rao, that Rule 11(i) deals with seniority and seniority has to be determined in terms of that rule. The learned Government Pleader is quite right in saying that the appropriate rule to determine seniority is Rule 33 of the A.P. State and Subordinate Service

Rules only. The language employed in Rule 33 of the A.P. State and Subordinate Service Rules, is also quite clear and unambiguous. The seniority of a person in a service, class, category or grade has to be determined with reference to the date of his first appointment. The crucial phrase in clause (a) of Rule 33 of the A.P. State and Subordinate Service Rules is 'the date of his first appointment'. The question is how this phrase should be understood and interpreted. The question to be considered is as regards the 1st respondents who are appointed as Probationary Revenue Inspectors under Rule 11(i), what is the date of their first appointment within the meaning and purport of Rule 33(a)? Can it be said that the actual date on which the office orders are issued appointing the respondents as Probationary Revenue Inspectors is 'the date of their first appointment' within the meaning of that phrase occurring under section 33(a) or the date of appointment envisaged under the deeming clause incorporated in Rule 11(i) of the rules. When Rule 11(i) in unmistakable term mandates that whenever substantive vacancies arising in the permanent cadre of the category of Senior Assistants in Revenue Department are filled up under Rule 11(i), those persons should be deemed to have been appointed with effect from the date on which the vacancies arose. In that view of the matter, while determining the seniority of the Probationary Revenue Inspectors appointed under Rule 11(i), in terms of 33(a) of the A.P. State and Subordinate Service Rules, the date on which those Probationary Revenue Inspectors are deemed to have been appointed should be the date of their first appointment within the meaning of that phrase occurring under Rule 33(a). Therefore, the view taken by the learned Tribunal that before applying the Rule 33(a) of the A.P. State and Subordinate Service Rules, the authorities should appoint the Probationary Revenue Inspectors strictly in accordance with the provisions of para 11(i)(ii) of Annexure IV to Rule 29(2) of the A.P. Ministerial Service Rules is unexceptionable, and it is in consonance with the rule position. The Government order G.O. Ms. No. 607, General Administration (Services-A) Department, dated 6-11-1992 is of no help to the petitioners herein. We say this because, in the first place, this G.O. was not in existence when the contesting respondents were appointed as Probationary Revenue Inspectors under para 11(i)(ii) of Annexure IV to Rule 29(2) of the A.P. Ministerial Service Rules. Secondly, the said G.O. cannot be said to be clarificatory in nature. We say this

because, as per the preamble to the Government order, the Government of Andhra Pradesh after noticing several conflicting judicial pronouncements, thought it fit to enact the rule under the proviso to Article 309 of the Constitution with non-obstantive clause, to give a quietus to the then existing uncertainty. It reads:

'Ad hoc rule:--Notwithstanding anything contained in the relevant Special Rules or the Ad hoc Rules for the State and Subordinate Services, the quota/rota, if any prescribed in the said Special Rules/ Ad hoc Rules shall apply only for determining the number of vacancies earmarked for recruitment by promotion and appointment by transfer and for direct recruitment are not for determining their inter se seniority. Their inter se seniority shall be determined in accordance with General Rule 33(a) and (b) of the State and Subordinate Service Rules.'

The above rule is not brought into force with retrospective effect. Therefore, it cannot be applied in the case of the 1st respondent-employees.

5. In the result and for the foregoing reasons, the writ petitions are dismissed with no order as to costs.

6. While entertaining these writ petitions, this Court directed status quo and that interim order has been in operation till date. The learned Government Pleader for Services-I prays that Court to grant some reasonable time to implement the order of the learned Tribunal. Hence, three months time is granted to the Government for implementing the said order of the learned Tribunal.

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