

M.A. Rasheed and Others Vs. Commissioner for Co-operation, A.P., Hyd. and Others

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Court : Andhra Pradesh

Decided On : Sep-24-1999

Reported in : 1999(6)ALD128; 1999(6)ALT9

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

Acts : Andhra Pradesh Co-operative Societies Rules, 1964 - Rule 73 ; [Constitution of India](#) - Articles 14, 16 and 137; [Limitation Act, 1963](#); State Re-organisation Act, 1956

Appeal No. : WP Nos. 11075 and 11270 of 1999

Appellant : M.A. Rasheed and Others

Respondent : Commissioner for Co-operation, A.P., Hyd. and Others

Advocate for Def. : Government Pleader for Co-operation and ;Mr. P.M. Gopal Rao and ;Mr. Krovvidi Narasimham, Advs.

Advocate for Pet/Ap. : Mr. Ch. Jagannadha Rao and ;Mr. P.V. Narayana Rao, Advs.

Judgement :

ORDER

1. This common judgment shall dispose of WP Nos.11075 and 11270 of 1999 as the question of law that arises is the same in both the writ petitions. WP No.11270 of 1999 is filed for declaration that the orders of the second respondent in proceedings No.B5/398/1/99-2000 dated 15-5-1999 as illegal, arbitrary, colourable exercise of power and violative of principles of natural justice and violative of provisions of Rule 73(vi) and 73(ix) of Andhra Pradesh Co-operative Societies Rules (hereinafter called as 'the Rules') and to set aside the same. The petitioner also prayed for a consequential relief to set aside the orders in Proceedings No.B5/3 99/99-2000 dated 15-5-1999 wherein the respondents 4 and 5 were promoted to the cadre of Assistant General Managers in Karimnagar District Co-operative Central Bank (hereinafter called as the Bank). The facts are not in dispute. The petitioner is working as Manager with effect from 14-4-1980 in the Bank. In the provisional integrated inter se seniority list as on 1-11-1991 the petitioner is placed at S.Nos.17 in the category of Managers (Category III). The provisional seniority list was communicated by the 3rd respondent vide proceedings No.1076/65/95-99 dated 12-8-1998. By the said order, the 3rd respondent also called upon all the concerned employees to file their objections, if any with necessary documentary evidence in support of their objections within 30 days from the date of proceedings. The respondents 4 and 5 were admittedly placed at S.Nos.26 and 31 respectively in the provisional seniority list dated 12-8-1998. Both the respondents were working in the cadre of Managers with effect from 12-1-1985 and 2-2-1988 respectively in the erstwhile Primary Agricultural Development Bank which was merged with the District Development Bank by the Act No. 1 of 1987. After communication of integrated provisional seniority list, the aggrieved persons made representations objecting to the placement. After receiving objections from the aggrieved employees, the 3rd respondent who is under statutory duty to issue final seniority list, placed the entire matter before the Managing Committee of the Bank. The Managing Committee in its meeting held on 15-5-1989 resolved to approve the integrated seniority list of employees in cadre III, IV and V of the Bank. On the same day, the impugned integrated final seniority list of cadre III employees was prepared and the consequential promotion orders promoting the respondents 4 and 5 were passed to the post of Assistant General Manager in the Bank were passed. In the integrated final

seniority list approved by the Managing Committee, the petitioner was placed at S. No.21 and respondents 4 and 5 shown at S. No. 1 and 3 respectively. As the rule of seniority-cum-fitness has to be applied for promotion from the cadre III to the post of Assistant General Manager, the petitioner was not promoted to the said post. Aggrieved by the proceedings of the 3rd respondent dated 15-5-1999 communicating the final integrated seniority list of cadre III employees as well as the consequential order promoting the respondents 4 and 5, the petitioner approached this Court by way of this writ petition for the beliefs noted above.

2. WP No. 11075 of 1999 is filed by nine Accountants working in the Bank. All of them were shown at S. Nos.12, 14, 16, 18, 21, 22, 24, 25 and 29 respectively in the provisional integrated seniority list of cadre IV employees of the Bank as on 1-11-1991. The provisional seniority list was communicated by the proceedings of the 3rd respondent dated 12-8-1998. After receiving the objections from the aggrieved employees, the matter was placed before the Managing Committee of the Bank. The Managing Committee in its meeting held on 15-5-1995 approved the integrated final seniority list of cadre IV employees of the Bank. In the final seniority list, the petitioners were shown below the respondents 4 to 13. Therefore, on the same day, the respondents 4 to 13 were promoted to the post of Managers and the petitioners were denied promotions. Aggrieved by the final integrated seniority list in Proceedings No.B5/398/199-2000 dated 15-5-1999 and the consequential promotion orders promoting the respondents 4 to 13 the present writ petition is filed.

3. In both the cases, notice before admission was ordered by this Court on 11-6-1999. The learned Standing Counsel Sri P.M. Gopal Rao and Sri P. Srinivas appearing for respondents 2 and 3 have filed counter affidavits. The Counsel appearing for other (the officers who were promoted as per the impugned final integrated seniority list) have also filed counter affidavits in both the cases. The petitioners have filed reply affidavits. When the matter came up for admission on 1-9-1999 all the Counsel appearing for the respective parties requested that the matter be disposed of finally at the admission stage. Hence, the matter was taken up for final disposal and the matter was heard at length on 20-9-1999 and 21-9-1999. In the counter affidavit filed on behalf of the respondents 2 and 3 it is stated

that the provisional seniority list prepared on 12-8-1998 is not in accordance with the statutory rules and the clarification issued by the first respondent. Therefore, the 3rd respondent placed the entire matter before the Managing Committee of the Bank which appointed Sub-committee to go into the matter and submit a report. The Subcommittee of the Managing Committee(second respondent) gave opportunity to all the parties and prepared a final seniority list on 10-5-1999 which was approved by the Managing Committee on 15-5-1999 and promotion orders are also issued to the contesting respondents on the same day. It is also stated that the General manager, the 3rd respondent herein is the Chief Executive Officer of the Bank working under the control of the second respondent and as the bye-laws of the Bank empower the Managing Committee to lookafter the day-to-day affairs of the Bank and prescribe the service conditions of the employees, there is no illegality in the final integrated seniority list prepared and approved by the Managing Committee, The availability of right of appeal under Rule 73(ix) does not in any manner render the final seniority list illegal as the final seniority list is not an order to carry in appeal to the Managing Committee and as the seniority list is prepared and approved by the Managing Committee, there is no right of appeal to the aggrieved party to the Managing Committee.

4. In the counter affidavit filed by the other contesting respondents, it is stated that Rule 73 of the rules was upheld by the Division Bench of this Court in D.V.V. Satya Prasad v. Government of Andhra Pradesh, : 1996(1)ALT390 (DB), and the provisional seniority list dated 12-8-1998 was prepared wrongly showing the respondents below the petitioners. When the objections were made, the entire matter was referred by the Managing Committee to the Sub-committee consisting of President, Vice-President and 10 Directors of the Bank. The Subcommittee met on 5-3-1999, heard the representations of various unions of employees and after giving an opportunity to all the concerned officials, the final seniority list was prepared which was approved by Managing Committee on 15-5-1999. As the representations of the petitioners were heard by the Sub-committee, the principles of natural justice are not violated even if the petitioners were shown below the respondents in the final seniority list.

5. In the counter affidavits filed by all the respondents as well as in the reply affidavits various averments are made with regard to the preparation of final seniority list to the effect that the provisional seniority list was not prepared in accordance with Rule 73 and various circulars issued by the first respondent. As there are very serious disputes regarding the preparation of provisional seniority list itself, and as it is not the scope of this writ petition at present, this Court is not inclined to go into all these questions. It is, however, made clear that whether the petitioners and contesting respondents were shown at the respective and legitimate places in the provisional seniority list, whether Rule 73 and other Circulars issued by the first respondent have been followed or not and whether the inter se seniority of both the wings before merger and after merger has been scrupulously followed or not are the matters for competent authority under Rule 73 to be gone into and decided. Therefore, I am not inclined to advert to these questions at this stage.

6. The learned Counsel for the petitioner Sri P.V. Narayana Rao in WP No. 11270 of 1999 has firstly contended that the final seniority list is in gross violation of Rule 73(vi)(b) of the Rules. Secondly, the impugned seniority list is in gross violation of principles of natural justice, in that though he was shown very high up in the provisional seniority list and while preparing the final integrated seniority list he was shown below the respondents 4 and 5 and been he was not given notice by the authorities and therefore the same is violative of principles of natural justice. For this proposition, the learned Counsel relied on the judgment of the Supreme Court in Union of India v. P.K. Roy, : (1970)ILLJ633SC . Thirdly, it is contended that under Rule 73(ix) a right of appeal is provided to every aggrieved employee to question the final seniority list or any order passed by the General Manager to the Managing Committee. As the impugned seniority list is virtually prepared and approved by the Managing Committee itself, the valuable right of appeal has been taken away and has resulted in illegality. For this proposition, the learned Counsel has relied on the judgment of the Hon'ble Supreme Court in Surjit Ghosh v. Chairman and M.D. United Commercial Bank, : (1995)ILLJ68SC . Lastly, the learned Counsel submitted that pursuant to the impugned seniority list dated 15-5-1999 the other contesting respondents were promoted on the same day to the posts of Assistant General Managers in one case and to the post of Managers in

the other case. As the promotions were made based on the seniority list issued by the authority who is incompetent, the seniority list is illegal and therefore consequential promotion orders have to be set aside. For this proposition, the learned Counsel relied on the judgment of the Supreme Court in *S.B. Patwardhan v. State of Maharashtra*, : [1977]3SCR775 .

7. The learned Counsel for the petitioners in WP No. 11075 of 1999 while adopting the submissions made by Sri P. V. Narayana Rao, has also contended that the integrated final seniority list is illegal in ways more than one. The learned Standing Counsel for the Bank Sri P. Srinivas has submitted that as notice was issued while communicating the provisional seniority list, there is no necessity to issue notice before communicating the final seniority list and if any grievance still remains for any person who has lost some place in the final seniority list, he is at liberty to prefer an appeal to Higher Authorities which cures any defect of non issue of notice. He would also submit that if the promotions are set aside, it would result in administrative problems. The learned Counsel also justified the integrated seniority list saying that in fact the final seniority list was prepared by the General Manager but before issuing it, the same as placed before the Managing Committee.

8. The learned Counsel Sri Krovvidi Narsimham appearing for the contesting unofficial respondents in both the cases submits that the provisional seniority list was itself prepared contrary to Rule 73(i) which has given equation of posts. According to him, the service rendered by the respondents prior to merger was totally ignored which resulted in gross justice. When the respondents as well as the employees' Union made representations they were considered by the General manager and as the entire issue is brought with complexities the matter was placed before the Managing Committee. The said committee being ultimate authority under the rules as well as bye-laws of the Bank, referred the matter to a broad based subcommittee. The sub-committee has considered each individual grievance and submitted the report, based on which the Managing Committee has approved the final seniority list which cannot be held to be illegal. The learned Counsel would also submit that as the respondents are seniors in equated cadre, even if the final seniority list dated 35-5-1999 and consequential promotion orders are found to be illegal for reason, pending any further consideration, the

respondents should be allowed to continue to discharge their functions in the promoted posts as they have already taken charge of the posts.

9. Having regard to the pleadings and submissions made by the learned Counsel appearing for the respective parties, the points that arise for consideration in this case are:

1. Whether the impugned final integrated seniority list approved and issued by the respondents 2 and 3 is not violative of the provisions of Rule 73(vi) and 73(ix) of the Andhra Pradesh Co-operative Societies Rules, 1964 as amended by G.O. Ms. Nos.13, dated 3-3-1993 and 212 dated 7-5-1994?

2. Whether the impugned promotion orders dated 15-5-1999 promoting the respondents 4 and 5 in WP No. 11270 of 1999 as General Managers in the Bank and the impugned promotion orders dated 15-5-1999 promoting the respondents 4 to 13 as Managers in the Bank are valid and sustainable?

3. To what relief?

In Re : Point No.1:

As noticed above, the submission on behalf of the petitioners is that as per Rule 73(vi)(b) the General Manager, the 3rd respondent alone is competent to initiate action for fixation of inter se seniority and issue final seniority list and the Managing Committee is not competent to issue the final integrated seniority list as a primary authority. Under Rule 73(ix) any person aggrieved by the order of the General Manager of the District Central Co-operative Bank may file an appeal to the Managing Committee of the Bank. Therefore, it is submitted that the impugned integrated final seniority list is not only illegal for the reason that the same has been issued by the Managing Committee but also illegal being contrary to Rule 73(ix). Such illegality has resulted in depriving the petitioners, the remedy of appeal because as the Managing Committee itself has approved the seniority list, the remedy of appeal to the same committee has become futile. It is also submitted by the learned Counsel for the petitioners that the petitioner who was shown very high up in the provisional seniority list issued in 1988 found himself to

be below the respondents 4 and 5 in the final seniority list. As the action of the respondents 2 and 3 deprived the petitioner the valuable right of seniority, the same is bad because the petitioner was not given any notice.

10. That integrated seniority list which is approved and issued by the Managing Committee is contrary to Rule 73(vi)(b) is not seriously disputed. Therefore, detailed discussion on this aspect of first point for consideration is not necessary. Be that as it may relying on the judgment of the Supreme Court in Surjit Ghosh case (supra) the learned Counsel for the petitioner submits that the valuable right of appeal under Rule 73(ix) has been defeated, therefore the action should be held unsustainable. There is force in the submission of the learned Counsel. In the said case which arose out of disciplinary proceedings against the appellant, the final order of punishment of dismissal was passed by higher authority than the disciplinary authority. The authority which passed the final order is the appellate authority. In that context, the Apex Court held as follows:

'It is true that when an authority higher than the disciplinary authority itself imposes the punishment the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned.'

The above dicta of the Apex Court equally applies to the facts of this case. It is next contended that without giving any notice, the petitioner/petitioners are deprived of the valuable right of seniority. The learned Counsel for the Bank submits that when the provisional seniority list is issued all the incumbents were advised to file their objections if any with documentary evidence in support of the objections within 30 days. The aggrieved persons filed objections, they were

considered by the appropriate authority who issued the final seniority list. If every time a person who lost few places by the time final seniority list is prepared is to be issued a notice, it is submitted, it would be un-ending process. Therefore, any such persons were conferred by the rule making authority with a right of appeal which cures any defect emanating from non issue of notice in the case of the petitioners. Generally speaking, the learned Standing Counsel for the Bank is correct. The rule of natural justice which, of late is being recognised as a rule of substantive law cannot be whimsical and fanciful. The very purpose of enforcing strict compliance with the rule of audi alteram partem is to achieve the element of certainty. If every time a notice is required to be given to the aggrieved employee who is likely to be effected in the process of issuing final seniority list, the very purpose of doctrine of fairness (which now includes the rule of natural justice) would be defeated. The rule of natural justice should be applied and enforced by the Courts of law not only with reference to the person complaining violation of the rule but also with reference to the persons whose rights would be violated if the principle is put into practice repeatedly. This general position of law is not disputed. However, in the facts and circumstances of this case, as presently seen, I have no hesitation to reject the counter submission of the learned Standing Counsel for the Bank.

11. The learned Counsel for the petitioners relied on the judgment of the Constitution Bench of the Supreme Court in P.K. Roy's case (supra). The case arose under the States Re-organisation Act, 1956. In the said case, the High Court of Madhya Pradesh declared the final seniority list of officers in Engineering Department as illegal and quashed the same and also holding that the preparation of provisional gradation list by the State of Madhya Pradesh preceding the final seniority list was not warranted. One of the submissions made on behalf of the respondents before the Supreme Court was that when the provisional gradation list was being considered at the time of issue of final integrated seniority list, the aggrieved parties ought to have been given a second opportunity to make a representation regarding the inter se seniority list of the officers coming from a different stream which merged with the cadre of Madhya Pradesh officers. The Supreme Court agreed with the submission and held:

'Normally speaking, we should have thought that one opportunity for making a representation against the preliminary list punished would have been sufficient to satisfy the requirements of law. But the extent and application of the doctrine of natural justice cannot be imprisoned within the straight jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case.'

In the present case, it is not a simple exercise of preparing the seniority list of officers/ employees belonging to one department/ organisation. The process involves the preparation of seniority list after integration of two altogether different services consequent to statutory merger of the Primary Agricultural Development Banks with the District Co-operative Central Banks. A reading of Rule 73 itself shows that the process is a complicated one and involves proper equation of the two categories of posts, preparation of inter se seniority list of Officers belonging to Primary Agricultural Development Banks on one hand and the Officers belonging to the District Cooperative Central Banks on the other hand and various other exercises. 'Therefore, it is always possible that while applying the principle of integration of services, persons who might have been placed at the top in the provisional seniority list may have been placed below the persons in the final seniority list and in the process officers coming from other stream which has been merged with the main stream might have been placed in the top of the seniority list. In such an event, I am of the considered opinion and also supported by the observations of the Supreme Court in P.K. Roy's case (supra), that if the person who is replacing the petitioner at the time of issue of final seniority list is a person who came from the other stream which merged with the main stream the effected officer has to be given a notice as otherwise the same would be unfair.

12. In the present case, the right of appeal does not cure the defect. Ordinarily, if primary authority has not complied with the rules of natural justice the defect which some times render the order itself void, may not be cured by the appellate authority conferring an adequate opportunity to the aggrieved. In this case, admittedly the impugned integrated seniority list is tainted with the illegality also for

the ground that the same has been issued by the appellate authority. Therefore, virtually the appellate authority is non-existent in this case. Therefore, I have no hesitation in rejecting the contention of the learned Standing Counsel for the Bank.

13. Therefore, the point No. 1 is decided in affirmative in favour of the petitioners and against the respondents.

In Re : Point No.2:

While examining the first point this Court has already held that the impugned final seniority list is wholly unsustainable. Therefore, without any much ado it has to be held that the impugned promotion orders promoting the respondents are illegal and unsustainable. In this context, another distressing factor which caused a lot of disturbance in the mind of this Court is to be noted. As per Rule 73(vi), the General Manager, the 3rd respondent has to initiate the process for issue of inter se seniority list within 6 months after the issue of order of transfer by the Registrar of Co-operative Societies. The provisional seniority list so issued should be communicated to all concerned giving one month time for filing objections. Thereafter, a final list has to be issued within four months from the date of issue of the provisional seniority list. Admittedly, the Registrar of Co-operative Societies issued orders merging the services of two streams with effect from 31-10-1991. No action was taken for issue of final seniority list, that may be because the validity of Rule 73 was challenged before this Court and this Court upheld the validity by its judgment in D.V.V. Satya Prasad's case (supra) on 16-11-1995. After that the time schedule prescribed under Rule 73(vi) was followed more in breach. The provisional seniority list was issued on 12-8-1998 in both these cases giving 30 days time for filing objections. After that the 3rd respondent ought to have issued final seniority list as per Rule 73(vi)(b) of the Rules. It was not done. After receiving the objections from the aggrieved persons, the 3rd respondent placed the matter before the Managing Committee, the second respondent herein who referred the matter to a Subcommittee constituted by it. The Subcommittee met on 5-3-1999 and ultimately finalised the seniority list and submitted its decision on 10-5-1999. The Managing Committee approved the integrated final seniority list as prepared by the Subcommittee. On the same day i.e., on 15-5-1999 the impugned

integrated final seniority list was issued and on the same day promotion orders were also issued to the unofficial respondents. Though, the provisional seniority list was issued in August, 1998, the respondents 2 and 3 took their own time in a leisurely fashion till 10-5-1999. The things got speeded up - for reasons which can only be imagined. On 15-5-1999 the action was taken with undue haste. Passingly, it may be mentioned that in the field of Administrative Law, the decisions taken with undue haste are being looked upon with suspicion, though the undue haste in discharging the statutory function by itself may not be an independent placitum of ground of illegality. An immediate question that springs up is what would be the wrong in issuing the final seniority list as well as the promotion orders on the same day.

14. Rule 73(vi)(b) impliedly throws an obligation on the General Manager to communicate the final integrated seniority list and under Rule 73(ix) any person aggrieved by any order of the General Manager may appeal to the Managing Committee. There is no time limit prescribed for filing an appeal. Under Article 137 of the Schedule I to the [Limitation Act, 1963](#) when no limitation is prescribed by any law, 30 days will be the Units for limitation. Even if we ignore this, there shall be reasonable time to be given to the aggrieved persons to avail the right of appeal under Rule 73(ix). By issuing the integrated final seniority list as well as the promotion orders on the same day, the respondents 2 and 3 have denied and in fact frustrated the very substantive right of appeal given by the law. This is an arbitrary exercise of power which has resulted in issuing promotion orders with undue haste. Therefore, on point No.2, it has to be held in the negative in favour of the petitioners and against the respondents.

In Re: Point No. 3:

The learned Counsel for the respondents has strenuously contended that the respondents are seniors to the petitioners and therefore pending further action by the respondents 2 and 3 they should be continued. In other words it is contained that even if the promotion of the respondents is tainted with illegality which goes to the root of the matter they may be continued in the promotion posts. The learned Counsel for the petitioner Sri P.V. Narayana Rao relying on the judgment in

Patwardhan's case (supra) submits that when once the seniority list is found to be illegal, any consequential promotions based on the principle of seniority list cum fitness on the strength of illegal seniority list cannot be continued and the promotions should be set aside forthwith. In Patwardhan's case (supra) the Supreme Court did not agree with the direction given by the Gujarat High Court ordering interim promotions while interdicting the final seniority list. In this context, the categorical observations of the Supreme Court are as follows :

'.....it seems to us difficult to uphold the direction given by the Gujarat High Court that interim promotions made during the pendency of the writ petitions should not be disturbed until expiry of one month from the date of seniority as finally fixed by the Government and intimated to the concerned parties. Interim promotions which do not comply with the constitutional requirements and which under the judgment of Gujarat High Court are bad cannot be permitted to stand'

This Court has already come to the conclusion that the integrated final seniority list is contrary to Rule 73(vi) read with Rule 73(ix) and also is arbitrary for reasons more than one pointed above. The whole exercise is grossly in violation of principles of natural justice and also Articles 14 and 16 of the [Constitution of India](#). Therefore, the promotions of the respondents do not comply with the Constitutional requirements and cannot therefore stand as held by the Supreme Court. Therefore, I allow these writ petitions with the following directions:

- (1) The impugned integrated inter se seniority list of category III employees of Karimnagar District Co-operative Central Bank Limited, Karimnagar as on 1-11-1991 is set aside by declaring the same as arbitrary illegal and unconstitutional.
- (2) The impugned integrated inter se seniority list of category IV employees of Karimnagar District Co-operative Central Bank Limited, Karimnagar as on 1-11-1991 is set aside by declaring the same as arbitrary illegal and unconstitutional.
- (3) The promotion orders promoting the respondents 4 and 5 in WP No. 11270 of 1999 to the posts of Assistant General managers are null and void and are quashed. The respondents 4 and 5 shall be reverted back to their original posts forthwith. The various impugned promotion orders dated 15-5-1999 promoting the

respondents 4 to 13 in WP No. 11075 of 1999 to the posts of Managers are declared null and void and the same are quashed. The respondents 4 to 13 shall be reverted back to their original posts forthwith.

(4) It is ordered that the competent authority is at liberty to prepare the integrated final seniority list in accordance with law, the rules and various circular instructions issued by the first respondent from time to time and pending such exercise for the preparation of integrated final seniority list for the respective cadres, the competent authority is at liberty to promote the qualified, eligible and suitable officers in the lower cadre to the post in the higher cadre in accordance with the provisional seniority list. This exercise may be undertaken and completed by the competent authority within a period of 3 months from to-day without being prejudiced by any of the averments made by the General Manager in the counter affidavit filed before this Court in WP No. 11270 and 11075 of 1999 and keeping in view the judgment of Division Bench of this Court in D. V. V. Satya Prasad's case (supra), and

(5) There shall be no order as to costs.