

B.Srinivas Vs. the Deputy Commissioner of Endowments and Executive Office of Sri Anjaneya Swamy Devasthanam, Kondagattu Village, H/O Mutyampet, Mallial Mandal, Karimnagar District and Others.

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Court : Andhra Pradesh

Decided On : Jul-03-2012

Judge : Sanjay Kumar

Appeal No. : Writ Petition No. 1454 of 2012

Appellant : B.Srinivas

Respondent : The Deputy Commissioner of Endowments and Executive Office of Sri Anjaneya Swamy Devasthanam, Kondagattu Village, H/O Mutyampet, Mallial Mandal, Karimnagar District and Others.

Judgement :

The matter was listed before this Court for admission. However, arguments were advanced by the learned counsel traversing the gamut of the case. As the pleadings are also complete, the writ petition itself is taken up for disposal with the consent of the learned counsel.

The short question that arises for consideration in this case is whether Sri Anjaneya Swamy Devasthanam, Kondagattu, Karimnagar District, the first respondent temple, is the parent institution of the petitioner for the purpose of

reckoning his seniority and for promotion?

The petitioner was initially appointed on 01.06.1989 as a Junior Assistant in Sri Hanuman Temple, Huzurabad Town, Karimnagar District, on a consolidated pay, under the order dated 31.05.1989 of the Single Trustee of the temple. He was transferred to the first respondent temple under proceedings dated 07.12.1989 of the Deputy Commissioner, Endowments Department, Hyderabad, and joined as a Junior Assistant in its service on 08.12.1989. He was extended the benefit of the time scale attached to his post, under the proceedings dated 09.01.1990 of the Deputy Commissioner, Endowments Department, Hyderabad, with effect from 01.01.1990, while serving at the first respondent temple. He was thereafter promoted as a Senior Assistant on 16.06.1996 in the same temple. He filed Writ Petition No.19252 of 2002 before this Court when his candidature for promotion to the post of Superintendent was overlooked and a Superintendent from another temple was sought to be transferred in the existing vacancy in the first respondent temple. Pursuant to the interim direction granted by this Court in the said writ petition, he was promoted as a Superintendent under proceedings dated 18.03.2003 of the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad, and was transferred to Srisailam Devasthanam, Srisailam, where he joined duty on 23.03.2003. The petitioner was then transferred to Sri Rajarajeswara Swamy Devasthanam, Vemulawada, under proceedings dated 28.03.2003 of the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad, and joined duty on 30.03.2003. Pursuant to the directions of the Endowments Department, Government of Andhra Pradesh, in its Memo dated 18.01.2011, to the effect that employees working on deputation/transfer from other than the cadre of such temples may be repatriated to their parent institutions, the petitioner was repatriated from Sri Rajarajeswara Swamy Devasthanam, Vemulawada, to the first respondent temple under proceedings dated 29.08.2011 of the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad, and joined there. There is no dispute as to the petitioner possessing the requisite qualification for promotion to the post of Assistant Executive Officer. This, then, is the career graph of the petitioner.

In so far as the third respondent is concerned, he joined the service of the first respondent temple as a Junior Assistant on 16.03.1990 having been appointed as such under proceedings dated 09.03.1990 of the Deputy Commissioner, Endowments Department, Hyderabad. He was promoted as a Senior Assistant with effect from 18.09.2003 in the first respondent temple by virtue of the proceedings dated 04.09.2003 of the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad. He was further promoted as a Superintendent with effect from 21.10.2005 under the proceedings dated 19.10.2005 of the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad. He was transferred to Sri Rajarajeswara Swamy Devasthanam, Vemulawada, under proceedings dated 22.04.2006 of the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad, and joined the service of the said temple on 23.05.2007. He was re-transferred back to the first respondent temple on 29.06.2008 under the proceedings dated 13.06.2008 of the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad. He also possesses the requisite qualification for aspiring to the post of Assistant Executive Officer.

Under proceedings dated 30.12.2011, the Commissioner, Endowments Department, Government of Andhra Pradesh, Hyderabad, revised the cadre strength of various temples. In so far as the first respondent temple is concerned, one post of Assistant Executive Officer was also sanctioned. The Executive Officers of the temples concerned were directed to fill up the newly sanctioned posts by promoting the senior-most eligible and qualified candidates as per rules.

Pursuant to these proceedings, the first respondent temple took up the process of filling up the newly sanctioned post of Assistant Executive Officer. By the impugned proceedings dated 08.01.2012, the third respondent was promoted to the said post with immediate effect. Aggrieved, the petitioner is before this Court.

Under Rule 33 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants Service Rules, 2000 (for brevity, 'the Rules') framed by the Government in G.O.Ms.No.888, Revenue (Endowments.I) Department, dated 08.12.2000, in exercise of the powers conferred by Section 65(4) r/w Section 153 of the Andhra Pradesh Charitable and

Hindu Religious Institutions and Endowments Act, 1987, the unit for the purpose of recruitment, seniority and promotion is stated to be each institution or endowment.

Though the word 'recruitment' has not been defined in the Rules, the term 'Office holder or servant' has been defined under Rule 2(d) and reads to the effect that a person who holds an office to which an inam is granted, confirmed or recognized by the Government or who is remunerated by the institution concerned and who is either a whole-time or a part-time functionary would be an office holder or servant. Rule 7 deals with probation and states to the effect that every person appointed to an office or post by direct recruitment shall be on probation for a period of two years. Under Rule 12, seniority of an employee in a particular cadre or post is to be counted from the date of commencement of probation in that category or post, unless he has been reduced to a lower rank as a punishment, and would be determined by the date of his first appointment to such category or post. Under Rule 13, no employee shall be considered eligible for promotion from a lower category to a higher category unless he has satisfactorily completed his probation and the minimum stipulated service in the feeder post.

The scheme of the Rules therefore makes it clear that the term 'recruitment' in Rule 33 of the Rules applies to a regular appointment, be it in a whole-time or a part-time post, and the terms 'seniority' and 'promotion' are applicable to only those regular employees who have been placed on probation and have successfully completed the same.

In so far as seniority of temple employees in general is concerned, the issue was considered in the review meeting held by the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad, on 23.07.2011. The minutes of the said meeting were communicated to all the Regional Joint Commissioners, Deputy Commissioners and Assistant Commissioners in the State for taking necessary action in accordance therewith, under the letter dated 28.07.2011 addressed by the Office of the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad. The following norms were suggested for preparation of the seniority list:

“3 Preparation of seniority lists of temple employees:

- i) Parent institution shall be a unit for appointment and promotion;
- ii) Where the individual is promoted in a foreign institution and if an employee of that institution becomes eligible for promotion, the promotee must be reverted to his parent institution and the said eligible employee of the institution must be promoted.
- iii) If an employee has taken promotion and working as such in another institution, and whether there is no such post exists in his parent institution, his seniority must be shown in the lower post in his parent institution without reverting him to the lower post.
- iv) If an employee is appointed on consolidated or daily wages in an institution and he is sanctioned the regular time scale of pay in another institution, his seniority must be shown in the institution where he was sanctioned the time scale of pay from the date of its sanction.
- v) No reversions shall be effected due to implementation of the above circular, until further orders.

The Commissioner has instructed that final seniority lists of temple employees including Junior Assistants should be submitted to the Commissionerate by 31.07.2011 without fail by the concerned Unit Officers with their attestation.

This was the legal position obtaining when the first respondent temple took up the promotion to the newly created post of Assistant Executive Officer in its revised cadre. Pertinent to note, the petitioner submitted a detailed representation on 07.01.2012, adverting to his service particulars and the minutes of the review meeting held on 23.07.2011 by the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad. He asserted that his parent institution was the first respondent temple and that he was senior to the third respondent, in support of his claim for promotion to the post of Assistant Executive Officer. It is stated that the petitioner's representation was rejected under Memo dated 07.01.2012 by the first respondent temple. However, the same is not placed on record. Independently, the first respondent temple issued the impugned proceedings dated 08.01.2012

holding that the petitioner's parent unit is Sri Hanuman Temple, Huzurabad, Karimnagar District, and that the third respondent was the only Superintendent in the first respondent temple. He was therefore considered to be the senior-most qualified candidate for promotion to the post of Assistant Executive Officer in the first respondent temple and was accordingly promoted with immediate effect.

The letter dated 08.01.2012 of the third respondent, reporting for duty as an Assistant Executive Officer in the first respondent temple, is also made part of the record.

As the issue centers around which temple would be the parent institution of the petitioner, this Court, by order dated 27.02.2012, directed the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad, to file a detailed counter explaining as to which temple has to be treated as the petitioner's unit for reckoning his seniority, i.e., whether it is the temple where he was appointed on a consolidated pay or whether it is the temple where he was granted the time scale. The Commissioner was also asked to explain the relevance of the minutes of the review meeting dated 23.07.2011.

In response thereto, the Joint Commissioner and Vigilance Officer, Endowments Department, Andhra Pradesh, Hyderabad, filed a counter on behalf of the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad, wherein he stated that the petitioner's parent institution is the first respondent temple as he was given time scale of pay while in the service of the said temple. Reference in this regard was made to the minutes of the review meeting dated 23.07.2011. He further stated that the petitioner was senior to the third respondent in all cadres. He also adverted to the fact that the petitioner's name was deleted from the seniority list of Superintendents eligible for appointment as an Executive Officer Grade-I on the ground that he was working in a Deputy Commissioner Cadre temple, viz., the first respondent temple. He stated that had the petitioner been shown as an employee of Sri Hanuman Temple, Huzurabad, he would have been eligible for appointment as an Executive Officer Grade - I. He pointed out that the petitioner could not be deprived of promotion as an Executive Officer Grade-I as well as an Assistant Executive Officer by denying him a parent unit altogether. He

concluded by stating that the petitioner was entitled to be promoted as an Assistant Executive Officer in the first respondent temple in preference to the third respondent, being senior to him.

The Deputy Commissioner and Executive Officer of the first respondent temple, on the other hand, filed a counter stating to the contrary. It is his case that as the petitioner was initially appointed in Sri Hanuman Temple, Huzurabad, the said temple is his parent institution and his seniority as well as his promotion are to be considered in that institution only. He adverted to the fact that the petitioner's representation dated 07.01.2012 was examined and rejected by a separate order of the same date and challenged the maintainability of this writ petition on the ground that the petitioner had not challenged the said rejection. He referred to the Rules contained in G.O.Ms.No.888 dated 08.12.2000 in the context of the letter dated 30.12.2011 of the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad, and asserted that the third respondent, being the senior-most eligible and qualified Superintendent in the first respondent temple, was promoted. In so far as the minutes of the review meeting held on 23.07.2011 are concerned, he stated that the suggestion given by the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad, was not a directive and that the Rules framed under G.O.Ms.No.888 dated 08.12.2000 would govern the field and had to be scrupulously followed. He therefore justified his action in promoting the third respondent to the post of Assistant Executive Officer in the first respondent temple overlooking the petitioner.

The third respondent filed a counter echoing the stand of the Deputy Commissioner and Executive Officer of the first respondent temple. It is his case that the petitioner had only been transferred to the first respondent temple from Sri Hanuman Temple, Huzurabad, and that the proceedings to the contrary, whereby the petitioner was granted promotions in the first respondent temple, could not supersede the statutory rules in G.O.Ms.No.888 dated 08.12.2000. He stated that the minutes of the review meeting held on 23.07.2011 would not come to the petitioner's rescue as they did not have statutory force and the statutory rules were not amended in consequence thereof. He therefore asserted that the petitioner's parent institution was not the first respondent temple and he could not be

considered for the subject promotion in terms of Rule 33 of the Rules.

The petitioner's original order of appointment bearing No.75/89 dated 31.05.1989, whereby the Single Trustee of Sri Hanuman Temple, Huzurabad, appointed him on a consolidated pay as a Junior Assistant in the temple is not placed on record. However, in the light of the counter affidavit filed on behalf of the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad, wherein the comparative service particulars of the petitioner and the third respondent are tabulated, indicating the petitioner's date of appointment as a Junior Assistant on a consolidated pay in Sri Hanuman Temple, Huzurabad, Karimnagar District, as 01.06.1989, there can be no scope to doubt the same. The failure of the petitioner to produce this document is therefore of no consequence.

Prior to the promulgation of the Rules in G.O.Ms.No.888 dated 08.12.2000, the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants' Conditions of Service Rules, 1983, contained in G.O.Ms.No.1478, Revenue (Endowments.VI) Department, dated 17.11.1986, held the field. Rules 12 and 13 of these Rules dealt with seniority and promotion and were more or less the same as the corresponding rules in the Rules framed in G.O.Ms.No.888 dated 08.12.2000. Rule 33 of the Rules prescribed that each institution or endowment would be the unit for the purpose of recruitment, seniority and promotion. As stated earlier, the term 'recruitment' applies only to regular employment, be it on whole-time or part-time basis, and seniority and promotion are linked with the successful completion of probation by such an employee.

Trite to state, an employee who is appointed on a consolidated pay basis would not be placed on probation. Thus, there is no question of reckoning his seniority or granting him promotion. The review meeting held on 23.07.2011 only clarified this aspect, as is evident from the minutes. These minutes were not mere suggestions as contended by the Deputy Commissioner and Executive Officer of the first respondent temple. The very fact that the minutes were communicated to the subordinate authorities for taking necessary action negates such a contention. The minutes of the said meeting state, under clause (iv) of Instruction No.3, that an employee, who is originally appointed on consolidated or daily wages basis in an

institution, is thereafter sanctioned time scale of pay in another institution, he would count his seniority in the institution where he was sanctioned the time scale of pay from the date of its sanction. Therefore, the employee's 'recruitment' for the purpose of Rule 33 of the Rules would be only when he was placed on a time scale and would be relatable to the institution in which he was working at that point of time. There is no dispute that the petitioner was working in the first respondent temple when he was granted the time scale under the proceedings dated 09.01.1990 of the Deputy Commissioner, Endowments Department, Hyderabad, which is placed on record. Applying this norm, the parent institution of the petitioner would obviously be the first respondent temple. Further, the fact that the petitioner was granted promotions to the posts of Senior Assistant and Superintendent, treating him as an employee of the first respondent temple, cannot also be lost sight of. Pertinent to note, by the time these promotions were given to the petitioner, the third respondent had already entered the service of the first respondent temple and was treated as the petitioner's junior, but he did not protest at any point of time. His tacit acquiescence with the promotions given to the petitioner, treating him as an employee of the first respondent temple and as his senior, must necessarily weigh against him.

Reliance placed by the first respondent temple and the third respondent on B.KULANDA REDDY v. THE GOVERNMENT OF ANDHRA PRADESH Writ Petition No.9636 of 2004 dated 10.09.2004 is misplaced. The said case did not deal with a temple employee who entered the service of the institution on a consolidated pay or daily wages basis. The issue before the learned Judge in that case was purely a seniority dispute between two regularly appointed temple employees belonging to different institutions. The observations made in the said judgment therefore have to be read in the context of the factual background of the case. More specifically, the observation that for the purpose of recruitment, seniority and promotion, the employees are considered for seniority or promotion along with the employees of that particular unit in which he was initially appointed, would be relatable to regular appointment and cannot be extended to include appointment on a consolidated/daily wage basis, as in the present case. Consequently, the observations of the Division Bench in P.LAKSHMA REDDY v. B.KULANDA REDDY Writ Appeal No.1434 of 2004 dated 22.08.2006, whereby

the said judgment came to be confirmed in appeal, would also be of no avail to the first respondent temple and the third respondent. Had the appointment of the petitioner in Sri Hanuman Temple, Huzurabad, been on a regular basis, the aforesaid judgments would have applied but not in a situation where the petitioner's appointment in the said temple was purely on a consolidated pay basis and his regular appointment, by his being placed on a time scale, was only in the first respondent temple.

Another argument advanced by the learned counsel for the third respondent is that the minutes of the review meeting held on 23.07.2011 can have no binding force as they are not statutory in nature. He placed reliance on the Division Bench Judgment of this Court in T.JITHENDRA PRASAD v. GOVERNMENT OF ANDHRA PRADESH Writ Appeal Nos.668 and 669 of 2011 dated 07.09.2011, wherein it was held that executive instructions cannot have the effect of overriding statutory rules. There can be no dispute with this legal proposition. However, on facts it is not established that the instructions issued by the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad, vide the minutes of the review meeting held on 23.07.2011, are in violation of the legal position obtaining under the Rules framed in G.O.Ms.No.888 dated 08.12.2000.

It is a settled proposition of law that if statutory rules are silent on any particular aspect, the Government can fill up the gap and supplement the rules by issuing instructions which are not inconsistent with the rules already framed [SANT RAM SHARMA v. STATE OF RAJASTHAN AIR 1967 SC 1910]. Rule 33 being inconclusive, in so far as its import and content are concerned, the instructions embodied in the minutes of the review meeting merely supplement the said rule and cannot be said to be in contradiction thereof, inviting the principle laid down in T.JITHENDRA PRASA.

This Court finds no merit in the contention of the first respondent temple that the present writ petition is not maintainable as the petitioner failed to question the order dated 07.01.2012, whereby his representation was rejected. The said order has not been placed on record but in any event, the rejection embodied therein was only a step in the process of effecting promotion to the post of Assistant

Executive Office in the first respondent temple. This process admittedly culminated in the impugned proceedings dated 08.01.2012. The petitioner, having challenged the said proceedings, cannot be non-suited on the ground that he did not independently challenge the rejection of his representation, which has no significance after the issuance of the impugned proceedings.

There is no dispute that if the first respondent temple is treated as the parent institution of the petitioner, he would be senior to the third respondent in all cadres and would therefore have priority in aspiring for the subject promotion.

On the above analysis, the petitioner is held to be an employee of the first respondent temple, which is his parent institution/unit under Rule 33 of the Rules for the purpose of reckoning his seniority and promotion. Overlooking his candidature for the subject promotion by treating him as an employee of another temple, as has been done by the Deputy Commissioner and Executive Officer of the first respondent temple, therefore cannot be countenanced. The petitioner, being eligible and qualified in all other respects and being senior to the third respondent, had to be considered for promotion to the subject post over and above the third respondent.

The Writ Petition is accordingly allowed setting aside the proceedings dated 08.01.2012, whereby the third respondent was given the subject promotion. The first and second respondents shall consider the candidature of the petitioner for the subject promotion by treating the first respondent temple as his parent institution under Rule 33 of the Rules and take a decision in the matter. This exercise shall be completed expeditiously and in any event, not later than two months from the date of receipt of a copy of this order. No order as to costs.

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