

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.20845 of 2000

Order:

The petitioner applied for the post of Assistant Traffic Manager in Andhra Pradesh State Road Transport Corporation (the Corporation, for short) in the year 1988 in response to the Notification issued by the Corporation. He belongs to BC-D Community. Among the vacancies, Roster Point No.18 is reserved for Backward Classes Group-D. In the select list of the candidates for the year 1988, two candidates were selected in the category of BC-D community and the petitioner is one of them.

One U.Rajendra Kumar did not report for duty after selections. Thereafter, the petitioner, whose name was kept in waiting list, was appointed against the vacancy at Roster Point No.18 as BC-D candidate. Thereafter, the petitioner claims that he is selected against Roster Point No.18 in the same batch. After training, he was appointed as Depot Manager on 22-3-1991.

2. The Corporation published the seniority list of Depot Manager/Assistant Traffic Managers vide Notification dated 06-10-1997 based on communal roster only. In the said seniority list, the name of the petitioner was shown at serial No.25 on the date of joining instead of serial No.18 as per the communal roster for the

recruitment made in the year 1988. Aggrieved by the same, the petitioner made an objection for the provisional seniority list vide his representation dated 14-11-1997. On his representation, the Corporation has addressed a letter dated 21-3-1998 to the Secretary of the General Administration Department, Government of Andhra Pradesh, Secretariat, Hyderabad seeking clarification with regard to the procedure for fixation of seniority list.

3. It is submitted by the petitioner that without waiting for the clarification from the Government, the Corporation has chosen to publish the final seniority list vide proceedings dated 14-7-1999 wherein there is no change in the seniority list from that which was published in provisional seniority list. His seniority has been fixed by taking into consideration the date of joining into duty instead of communal roster of 1988 recruits. Subsequently, the petitioner made another representation raising objection regarding the seniority list and that he was issued with proceedings dated 30-9-1999 stating that the Government has also clarified the seniority list prepared by the Corporation and there is no need to receive the same. It was mentioned in the said letter that the claim of the petitioner for allotment at Roster Point No.18 reserved for BC-D is not justified since he got appointment in place of unreported candidate as the same group having been selected in the waiting list. The

proceedings dated 30-9-1999 further stated that the seniority counts only from the date of his appointment, as such the proceedings dated 30-9-1999 are wholly illegal and contrary to the Recruitment Regulations.

4. Under these circumstances, the petitioner filed the present writ petition seeking a Writ of *mandamus* to declare the proceedings dated 30-9-1999 insofar as the petitioner is concerned as illegal and arbitrary; the proceedings dated 09-9-1999 issued by the 2nd respondent as wholly misconceived and arbitrary; and declare that the petitioner is deemed to have been appointed in the vacancy at Roster Point No.18 in 1988 selection for appointment to the post of Officer under Training (General)/Assistant Traffic Manager and place the petitioner at serial No.18 in the panel of the approved candidates recruited for the year 1988 and consequently issue order to promote the petitioner to the post of Deputy Chief Traffic Manager along with the candidates in Roster Point Nos.17 and 19 with all consequential benefits.

5. The respondents 1 and 3-Corporation filed counter affidavit contending, *inter alia*, as follows:

(a) The contention of the petitioner that two candidates were selected in the category of BC-D is not correct. There is a rule of reservation in the Corporation for filling up the posts by direct recruitment by the persons belonging to various communities and a roster of 100 points has been prescribed under the Andhra Pradesh

State Road Transport Corporation Employees' (Recruitment) Regulations, 1966 (the Recruitment Regulations, for short) for such reservation.

The Selection Committee of the Board has prepared a panel of 25 candidates by proceedings 17/19-6-1988 for appointment of Officers under Training (General). Among the 25 points of the communal roster, only one point i.e. serial No.18 is reserved for BC-D.

One U.Rajendra Kumar was selected in the category of BC-D and he was placed at serial No.18 of the panel of 25 candidates. Besides the main selection list of 25 candidates, the Selection Committee kept a waiting list of 14 candidates.

(b) Nextly, it is submitted that the candidates selected in the main selection list were appointed during August, 1988. It is a fact that Sri U.Rajendra Kumar, who was selected against BC-D roster point 18, did not report for duty after selections. Therefore, the petitioner, who was in the waiting list, was appointed as Officer under Training (General) during September, 1988. Similarly, four more candidates were appointed from the waiting list because of the non-reporting of the candidates selected against the open competition roster points 5, 7 and 15 and BC-A roster point 20.

(c) It is further submitted that while fixing the seniority among the candidates selected during June, 1988, the names of the candidates selected in the main list of 25

and joined the Corporation service were placed above based on the communal roster only. The seniority of the 5 candidates appointed from the waiting list has been fixed next to them in the order of roster points against which, they have been recruited due to non-reporting of 3 OCs, 1 BC-A and 1 BC-D candidates. In such process of selection, the seniority of the petitioner was fixed at serial No.21 among the 22 candidates selected and recruited during 1988. Pursuant to the representation submitted by the petitioner, clarification was sought from the Government with regard to the procedure followed in Government for fixation of seniority of the waiting list candidates appointed by direct recruitment in places of non-turned up candidates of the panel approved by the Selection Committee on the basis of communal roster. For a long time as no reply was forthcoming from the Government on the clarification sought for, the Corporation examined the representation submitted by the petitioner and issued clarification to him and published the final seniority list vide Notification dated 14-7-1999 after attending to the objections of the aggrieved officers.

(d) It is further submitted by the Corporation that the contention of the petitioner that his name was at serial No.18 of the selection list is incorrect and as could be seen from the list, although the petitioner was appointed against the backlog roster point of 18, his appointment

was from amongst the waiting list candidates against the unreported BC-D candidate selected for that point, after appointing 18 candidates at one stretch from the 25 selected candidates.

His seniority is also fixed (after the 18 candidates) among the 5 candidates appointed from the waiting list as per the dates of appointment. It is the version of the Corporation that any candidate appointed against

a backlog point cannot claim seniority against that point though he is appointed at a subsequent date. The point reserved to be filled in by a candidate belonging to any community will be carried forward for the purpose of recruitment only and not for the purpose of seniority. Hence, the plea of the petitioner that the Government had misdirected itself in application of service regulations is untenable.

(e) Contending as above, the respondents 1 and 3- Corporation sought to dismiss the writ petition.

6. Now, the point for determination in the present writ petition is whether the seniority of the petitioner can be fixed at roster point No.18 to which he was appointed subsequently on account of non-joining of a candidate of BC-D by name U.Rajendra Kumar.

7. I have heard Smt. K.Udaya Sri, learned counsel appearing for the petitioner, Sri N.Vasudeva Reddy, learned Standing Counsel for the Corporation-

respondents 1 and 3, and the learned Government Pleader for Transport for the 2nd respondent.

8. The learned counsel appearing for the petitioner contends that since the petitioner was appointed in the backlog vacancy at roster point No.18 under BC-D category, his seniority is to relate back to the said roster point though he was subsequently appointed from out of the waiting list.

9. On the other hand, it is submitted by the learned Standing Counsel for the Corporation that since the petitioner was appointed from out of the waiting list subsequently though he was placed at roster point No.18 on account of non-joining of a candidate who was originally selected for the said post, his seniority cannot be counted retrospectively. The learned Standing Counsel invited the attention of this Court to Regulation 3 of the Andhra Pradesh State Road Transport Corporation Employees' (Service) Regulations, 1964 (the Service Regulations, for short). Regulation 3 deals with seniority, which is as follows:

“3. Seniority:

(a) The “Seniority of a person in service, class, category or grade shall unless he has 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. If any portion of the service of such person does not count towards probation his seniority shall be determined by the date of commencement of his service which counts towards probation.

(b) The appointing authority may, at the time of

passing an order appointing two or more persons simultaneously to a service fix the order of preference among them; and where such order has been fixed seniority shall be determined in accordance with it.

(c)

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(d)

.....”

10. In the instant case, admittedly the petitioner was not in the original select list of 25 candidates.

He was in the waiting list. All the selected candidates were appointed on 13-8-1988 whereas the petitioner was appointed on 19-9-1988 from out of the waiting list due to non-joining of a BC-D candidate at roster point 18.

An employee can claim seniority only from the date of his appointment but not prior to that. Therefore, merely because the petitioner was appointed in the backlog vacancy of roster point 18 relating to BC-D, he cannot claim seniority retrospectively. In this context, it would be relevant to refer to a decision of the Supreme Court in

BIMLESH TANWAR v. STATE OF HARYANA^[1],

wherein the Supreme Court held as follows:

“49. Seniority is not a fundamental right. It is merely a civil right. Inter se seniority of the candidates who are appointed on the same day would be dependent on the rules governing the same. Only in absence of any statutory rules, the general principles may be held to be applicable.

50. It has been noticed hereinbefore, that the Punjab and Haryana High Court in exercise of its power of control under Article 235 of the Constitution of India had been determining inter se seniority of the candidates in terms of the instructions of the State dated 27-4-1972,

as quoted supra. In absence of any statutory rules, the said practice was developed which cannot be said to be arbitrary. In any event, such practice cannot be interfered with at this stage, keeping in view the fact that the rights of a large number of officers must have already been determined in terms thereof. In the instant case, Respondents

8 to 11 admittedly were more meritorious. They were unjustly deprived of their right of appointment, although they were entitled thereto having regard to Rule 10 of the Rules. They suffered for no fault on their part. They had to approach the High Court for ventilating their grievances. The High Court directed the first respondent herein to make appointment and only pursuant thereto and in furtherance thereof they were appointed. Should they in the aforementioned situation be permitted to lose their seniority is the question involved in this appeal. The answer thereto must be rendered in the negative. Long-standing practice as well as justice and equity favour the respondents. It is beyond any cavil that merit has a role to play in the matter of determination of inter se seniority.”

11. In the instant case, after exhausting the merit list, in the vacancies which arose out of non-joining of the candidates, the petitioner was appointed in the vacancy at roster point 18. Initially, one U.Rajendra Kumar was appointed at the said roster point and subsequently he did not choose to join duty. It is not open for the petitioner to contend that his seniority has to be reckoned from the date of initial appointment of one U.Rajendra Kumar though the petitioner was not appointed at that point of time. As already said, the petitioner is not entitled to claim seniority from the date on which he was not appointed at all, he was kept in the waiting list. He belongs to category

BC-D. Therefore, whenever a vacancy arose in BC-D at roster point 18 on account of non-joining of a candidate, the petitioner was rightly appointed in the said roster point but he cannot claim seniority of the candidate who was initially appointed at that roster point.

12. Therefore, I absolutely see no merit in the writ petition and accordingly, dismiss the same. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

R.KANTHA RAO, J.

04th December, 2015.
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HON'BLE SRI JUSTICE R.KANTHA RAO

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