

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 34701 of 2016

ORDER: (*Per VRS,J*)

The State of Andhra Pradesh has come up with the present writ petition, challenging an order passed by the Andhra Pradesh Administrative Tribunal, holding that the 1st respondent herein was entitled to continue in service up to the age of 60 years, but rejecting the claims of the respondents 3 and 4 herein.

2. Heard the learned Government Pleader for Services (A.P.), and Mr. D. Linga Rao, learned counsel for the 1st respondent.

3. The respondents 1, 3, and 4 jointly filed an application in O.A.No.5355 of 2013 on the file of the Andhra Pradesh Administrative Tribunal, claiming that as they were employed as Chainmen in the Department of Mines and Geology, which constituted Last Grade Service, they were entitled to continue in service up to the age of 60 years with all consequential benefits. The Tribunal, by a final order, dated 07.07.2015, allowed the application only insofar as the 1st respondent is concerned. Insofar as the respondents 3 and 4 are concerned, the Tribunal rejected their claim,

on grounds, which we are not presently concerned with in this case.

We do not know whether the respondents 3 and 4 have come up with any writ petition as against the dismissal of their claim or not.

4. Coming to the case of the 1st respondent, it appears that he was directly appointed as Chainman on 22.10.1991 by the Deputy Director of Mines and Geology, after having been sponsored by the employment exchange. The order of appointment, dated 10.10.1991, shows that a list of eligible candidates was sponsored by the employment exchange, from out of which, the 1st respondent was appointed under Rule 10(a) of the Andhra Pradesh Class-IV Service Rules as Chainman.

5. Interestingly, the post of Chainman in the Department of Mines and Geology was included in the Andhra Pradesh Mining Subordinate Service, in Category-14, under G.O.Ms.No.845, Industries and Commerce (M.I) Department, dated 28.08.1975. The Table, under Rule 3 of the Special Rules for the Andhra Pradesh Mining Subordinate Service issued in exercise of the powers conferred by the proviso to Article 309 of the Constitution, indicates that the only method of recruitment to the said post was recruitment by transfer from the Andhra Pradesh Last Grade Service. The Table, under Rule 5 of the Special Rules, further indicates that to be eligible for

appointment as Chainman by the method of recruitment by transfer, a person should have worked as Attender for a period of five years.

6. Despite the above statutory Rule being in force from 1975, the 1st respondent was appointed (1) directly to the post of Chainman, and (2) purportedly to the Andhra Pradesh Class-IV Service Rules and not to the Andhra Pradesh Mining Subordinate Service. Therefore, the tale of owes for the Department and for the 1st respondent started from the time of conception of the 1st respondent into service.

7. Be that as it may, the 1st respondent continued in service and reached the age of 58 years on 31.07.2013. Fearing a relieving order on 31.07.2013, the 1st respondent along with the respondents 3 and 4 approached the Tribunal and obtained an interim order to continue him in service. The interim order passed on 30.07.2013 continued to be in force for a full period of two years, namely, up to 31.07.2015.

8. On the factual question as to whether the order was implemented in letter and spirit, and as to whether the 1st respondent actually worked or not, there are two conflicting claims made by the Deputy Director of Mines and Geology. In a letter, dated 12.01.2015, addressed to the Secretary to Government, the Director of Mines and Geology stated the following:

“The Hon’ble A.P.Administrative Tribunal, Hyderabad, vide reference 1st cited given direction to continue the applicants in service as Chainman till further orders. As per the orders of the Hon’ble A.P.Administrative Tribunal, Hyderabad, there being continued as Chainman in their respective offices except Sri T.Parishudha Rao who was taken reversion as Office Subordinate vide procd.No.440/E/80, dt.07.08.2013.

The Hon’ble A.P.Administrative Tribunal, Hyderabad, vide reference 2nd cited, directed the respondent to ensure payment of the salaries to the applicants i.e. Sri K.Sanna Rao and Sri V.Yendanna from August and September, 2013 respectively to till date as it is reported that they are being continued in service as Chainman, as per the orders dt.30.07.2013 of the Hon’ble A.P.Administrative Tribunal, Hyderabad.

In view of the above, it is requested to grant permission to continue the applicants in service as Chainman as a special case till attaining the age of 60 years as per the present policy of the Government and keeping in view of the earlier permission accorded vide Memo No.3059/M.I(1)/91-92, dt.29-11-1991 and as per the orders of the Hon’ble A.P.Administrative Tribunal, Hyderabad,, further accord permission to pay the salaries to the applicants.”

9. In response to the said letter, the Government appears to have advised the Director of Mines and Geology to file a writ petition. But,

the same was not done. By a subsequent letter, dated 07.01.2016, the Deputy Director seems to have sought permission of the Director to allow the 1st respondent to sign the Attendance Register. Therefore, we have to take it that the interim orders of the Tribunal were implemented, as otherwise, the officials will face the threat of contempt. If the interim order had been implemented, it would mean, the 1st respondent had continued from 31.07.2013 to 31.07.2015, when he fortunately reached the age of 60 years. Thereafter, there was no scope for any continuation either by Court orders or otherwise.

10. One more circumstance in favour of the 1st respondent is that by the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2014, the Government servants were directed to continue up to the age of 60 years. The amendment to the Act has universal application to all servants from the State Service up to the Last Grade Service. In other words, the 1st respondent is a person, who was caught in the twilight area having reached the age of 58 years just six months before the Amendment Act came into force.

11. Today, the position is that after having allowed the 1st respondent to continue for two years, by virtue of the interim orders passed by the Tribunal, the Government cannot deprive him of

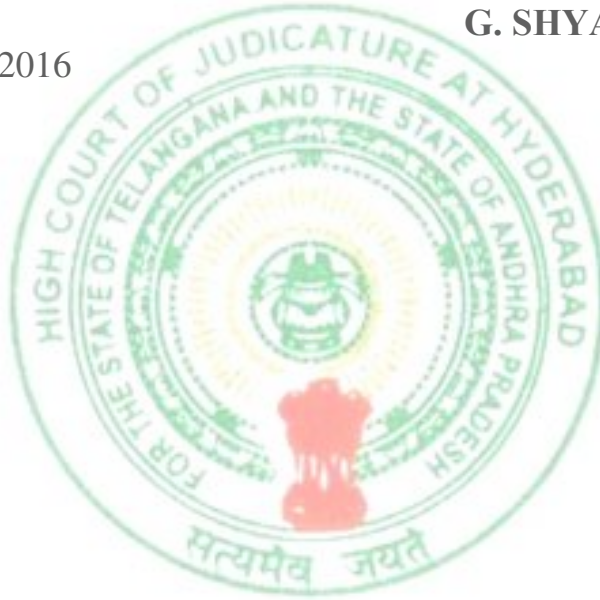
the benefit of his having worked there. Therefore, by default or otherwise, the 1st respondent has succeeded and we cannot interfere with the order of the Tribunal. Hence, the Writ Petition is dismissed.

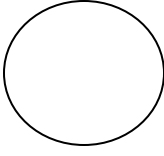
Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

27th October, 2016
cbs





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