

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Writ Petition No.6216 of 2017

Between

Lanka Annapurnasri, Junior Civil Judge, Chevella,
Ranga Reddy District; and 7 others

... Petitioners

and

1. The High Court of Judicature at Hyderabad
for the State of Telangana and the State of A.P.,
Rep. by its Registrar (Vigilance),
High Court Buildings, Hyderabad;
and 3 others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 03-3-2017

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

+ Writ Petition No.6216 of 2017

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Vs.

\$ The High Court of Judicature at Hyderabad
for the State of Telangana and the State of A.P.,
Rep. by its Registrar (Vigilance),
High Court Buildings, Hyderabad; and 3 others

... Respondents

! Counsel for the Petitioners: Mr. Vedula Venkata Ramana
Senior Counsel

Counsel for Respondents: Mr. S.Sri Ram,
Standing Counsel for High Court
of Telangana and A.P.

< Gist:

> Head Note:

? Cases referred:
Nil.

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

For Orders on 03-03-2017

Coram :

The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Ms. Justice J.UMA DEVI

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For Petitioners : Mr. Vedula Venkata Ramana
Senior Counsel

For Respondents : Mr. S.Sri Ram,
Standing Counsel for High
Court of Telangana and A.P.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.6216 of 2017

Order: (per V.Ramasubramanian, J.)

The petitioners who were all appointed as Assistant Public Prosecutors (Grade-II) during the period 1997-1999 and who were appointed temporarily under G.O.Rt.No.182, Law Department, dated 03-02-2004, as Junior Civil Judges, have come up with the present writ petition challenging the proposed action of the High Court in seeking to repatriate them to the Department of Prosecution as Assistant Public Prosecutors.

2. Heard Mr. Vedula Venkata Ramana, learned Senior Counsel appearing for the petitioners. Mr. S.Sri Ram, learned Standing Counsel for the High Court takes notice.

3. Admittedly, the petitioners were appointed as Assistant Public Prosecutor (Grade-II) during the period 1997-1999. In the year 2004, the petitioners were appointed temporarily under G.O.Rt.No.182, dated 03-02-2004, as Junior Civil Judges. The petitioners have been continuing in the post of Junior Civil Judges for the past nearly 13 years.

4. Incidentally, the petitioners made a representation on 21-9-2013 for regularisation of their services, in the post of Junior Civil Judges. But the said representation was rejected by the High Court and the same was communicated by the proceedings dated 21-4-2014. We do not know whether the

petitioners have challenged the said decision. Be that as it may, the immediate provocation for the petitioners to come up with the present writ petition, as stated in para-4 of the Affidavit in support of the writ petition, is that they are now being repatriated as Assistant Public Prosecutors and that they have reliable information that they should comply with the repatriation order latest by 23-3-2017. The petitioners claim that by virtue of long service as Junior Civil Judges for 13 years, coupled with their service record being appraised as “good”, they are entitled to continue as Junior Civil Judges. The contention of the petitioners is that an appointment which continued for 13 years cannot be treated as temporary and that the repatriation strikes at a legitimate expectation that they have entertained.

5. We have carefully considered the above submissions. As a matter of fact, we had an occasion to consider the case of another Assistant Public Prosecutor, similarly placed as the petitioners herein, who has now been retired upon attaining the age of 58 years. We have considered in the said case extensively, the different types of appointments made under the Andhra Pradesh State Judicial Service Rules, 1962, the changes brought forth to the conditions of service of the holders of those posts by the A.P. State Judicial Service Rules, 2007 and the rights of candidates like the petitioners herein vis-à-vis the Rules.

6. The Andhra Pradesh State Judicial Service was originally constituted way back on 01-4-1958, to comprise of 3 categories of Judicial Officers, namely, (1) Senior Civil Judges, (2) Junior Civil Judges and (3) Judicial Magistrates of Second Class. Though the Andhra Pradesh State Judicial Service was constituted with the above 3 categories of posts way back on 01-4-1958, the Special Rules governing the service were issued for the first time only under G.O.Ms. No.2207, Home Department, dated 04-12-1962. These Rules, known as Andhra Pradesh State Judicial Service Rules, were issued in exercise of the powers conferred by Article 234 read with proviso to Article 309 of the Constitution of India.

7. The scheme of these Rules, to the extent they are necessary for the disposal of the present case is as follows:

(i) Rule 3 of the Rules stipulated that the Andhra Pradesh State Judicial Service shall consist of 3 categories of officers, namely, Category-I -- Senior Civil Judges, Category-II -- Junior Civil Judges and Category-III – Judicial Magistrates of Second Class.

(ii) Rule 4 of the Special Rules prescribed the method of appointment to all the 3 categories of posts. Sub-rule (2) of Rule 4 indicated that the appointment to the category of Junior Civil Judges shall be by direct recruitment. However, the proviso to Rule 4(2) stipulated that recruitment to 2 out of 20 vacancies shall be by transfer from full members or approved probationers in certain categories of posts in the

High Court Service or in the Subordinate Court Service or in the Police Prosecution Service or in the Law Department or Legislature Department.

(iii) In other words, 10% of the vacancies in the category of Junior Civil Judges could be filled up by the method of recruitment by transfer from the staff working in certain other services including those in the Department of Prosecution.

(iv) In addition to the aforesaid 2 methods of recruitment, namely, direct recruitment and recruitment by transfer, the Special Rules of the year 1962 also contemplated temporary promotions and appointments, under Rule 11. Sub-rules (2) and (3) of Rule 11 of the A.P. State Judicial Service Rules, 1962 deal with temporary appointments to the posts of Judicial Magistrates and Junior Civil Judges and hence these 2 sub-rules are extracted as follows:

“(2) Where the appointment of a person as Judicial Magistrate of II Class or Junior Civil Judge in accordance with these rules would involve excessive expenditure on travelling allowance or exceptional administrative inconvenience, the High Court or the Governor as the case may be, may appoint any other person in the list of approved candidates. **A person appointed under this rule shall not be regarded as a probationer in the service or be entitled by reason only of such appointment to any preferential claim to future appointment to the service.**

(3) (i) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in the category of Judicial Magistrate of the Second Class or Junior Civil Judge and there would be undue delay in making such appointments in accordance with these rules :--

(a) the High Court may make a temporary appointment to the category of Judicial Magistrate of the Second Class of a person who is a full member or an approved probationer in any category specified in the proviso to clause (a) of sub-rule (1) of the Rule 4 or promote temporarily to the category of Junior Civil Judge a person who is Judicial Magistrate of the Second Class.

(b)(i) the Governor may in consultation with the High Court made a temporary appointment to the category of Junior Civil Judges of a person, who is a full member or an approved probationer in any Category specified in the first proviso to sub-rule (2) of Rule 4 :

Provided that no person shall be appointed or promoted under this clause unless he possesses the qualifications prescribed in Rule 12.

Explanation :--Determination of the age in the manner laid down in Notes (1) and (2) and the provisos under clause (b) of Rule 12 shall also be applicable to the temporary appointment under this clause.

(ii) A person appointed or promoted under clause (1) shall be replaced by a qualified member of the service or an approved candidate as soon as possible to hold the post under these rules and the person appointed or promoted shall not be regarded as probationer in the post or be entitled by reason only of such appointment or promotion to any preferential claim to future appointments or promotions thereto.

The services of a person appointed under clause (i) shall be liable to be terminated by the appointing authority at any time without notice and without any reason being assigned.”

(v) Sub-rules (2) and (3) of Rule 11 may have to be read together with Rule 11-A, which deals with the date of commencement of probation and hence Rule 11-A is also extracted as follows:

“Rule 11-A. Date of commencement of probation of persons first appointed temporarily :--Notwithstanding anything in sub-rules (1) and (2) of Rule 11, a person

appointed temporarily under sub-rule (1) or sub-rule (2) aforesaid shall be deemed to have been on probation from the date of the order of regular appointment or from such earlier date as may be specified by the appointing authority.”

(vi) Rule 14 of the 1962 Rules contained prescriptions relating to probation. Rule 16 contained stipulations relating to suspension of probation for want of vacancy, special tests to be passed, extension of probation, discharge of unsuitable probationers and termination of probation. The first proviso under Clause (d) of Rule 16 stipulated that if no orders are passed regarding probation within one year from the date of completion of the prescribed or extended period of probation, the probation of a person shall be deemed to have been automatically declared with retrospective effect from the date of completion of the prescribed or extended period of probation.

(vii) Rule 5(1) of the 1962 Rules required the High Court to prepare lists of persons considered suitable for appointment both by direct recruitment as well as by transfer to the posts of Junior Civil Judges. But the preparation of such lists should be preceded by an examination held in accordance with the scheme specified in the Schedule to the Special Rules. The Schedule to the 1962 Rules contained the scheme of the examination.

8. The Special Rules of the year 1962 issued under G.O.Ms.No.2207, Home Department, dated 04-12-1962, came

into force on 01-4-1958 by virtue of Rule 1(2). These Special Rules underwent an amendment under G.O.Ms.No.124, Law Department, dated 05-8-1996. **Rule 5(1), though amended in 1996, retained the requirement of selecting candidates only through the examinations held in accordance with the scheme specified in the Schedule, both for direct recruitment and for appointment by transfer.**

9. The 1962 Rules were repealed by a new set of Rules known as the Andhra Pradesh State Judicial Service Rules, 2007 issued under G.O.Ms.No.119, Law Department, dated 02-8-2008. The State Judicial Service was reconstituted under the 2007 Rules to consist of 3 categories of posts, namely, (1) District Judges, (2) Senior Civil Judges and (3) Civil Judges. Rule 4 of these Rules also prescribed, under sub-rule (2), the method of appointment to all the 3 categories of posts. Clause (d) of sub-rule (2) of Rule 4 deals with appointments to the categories of Civil Judges. While sub-clause (i) of Clause (d) provides for direct recruitment to the posts of Civil Judges from among the eligible Advocates on the basis of written test and viva voce as prescribed by the High Court, sub-clause (ii) of Clause (d) prescribes recruitment by transfer to the posts of Civil Judges from among confirmed members or approved probationers of certain other services. But **Rule 4(2)(d)(ii) makes it clear that such recruitment by transfer would also be on the**

basis of written and viva voce tests as prescribed by the High Court.

10. Just as the 1962 Rules contained a provision for temporary appointments under Rule 11, the 2007 Rules also contains a provision for temporary appointments under Rule 14. Rule 14(2) of the 2007 Rules which deals with temporary appointments to the posts of Junior Civil Judges reads as follows:

“(2) Where it is necessary in the public interest owing to the exigency in the service to fill up immediately vacancies in the category of Civil Judges and there would be undue delay in making such appointment in accordance with Rules 4, 5 and 6, the Governor may in consultation with the High Court make temporary appointments from among the confirmed members or approved-probationers of any category specified in clause (d)(ii) of sub-rule (2) of Rule 4.

Provided that no person shall be appointed under sub-rule (2) unless he is eligible to be appointed as per sub-rule (2) of Rule 5.”

11. Rule 26(1) of the 2007 Rules repealed (i) the Special Rules for A.P. State Higher Judicial Service and (ii) the Special Rules for A.P. State Judicial Service. But sub-rule (2) of Rule 26 saved the appointments made under the previous Rules and created a deeming fiction that the appointments made prior to the commencement of the 2007 Rules shall be deemed to have been made under the 2007 Rules. Rule 26(2) of the 2007 Rules reads as follows:

“(2) The appointments made or actions initiated prior to the commencement of these Rules shall not be, effected and are deemed to have been made or initiated under these Rules.”

12. Therefore, there can be no dispute about the fact that all the appointments made under the 1962 Rules are saved and such appointments are deemed to have been made under the 2007 Rules. But ***the actual question is as to what was the nature of the appointment that was given to the petitioners.***

13. It is not the claim of the petitioners that they were appointed by the method of recruitment by transfer in the year 2004, in terms of the proviso to Rule 4(2) of the 1962 Rules. Even admittedly, the petitioners were appointed only on temporary basis in terms of Rule 11(2) of the 1962 Rules. Their request for regularisation was rejected about 3 years ago and the order of rejection has attained finality. Neither the 1962 Rules nor the 2007 Rules provide any scope for regularisation of candidates appointed on temporary basis.

14. The contention that by virtue of the continuous officiation for 13 years the petitioners have acquired a right or legitimate expectation cannot be accepted. This is for the simple reason that during this period of 13 years, the petitioners were entitled to take an examination conducted for appointment to the post of Junior Civil Judges by the method of recruitment by transfer. Under the proviso to Rule 4(2) of the 1962 Rules, 10% of the vacancies in the cadre of Junior Civil Judges were reserved for recruitment by transfer. But the candidates aspiring to be selected for recruitment by the method of transfer under the 10% quota, were supposed to

take an examination in terms of Rule 5 of the Special Rules, as per the scheme indicated in the Schedule to the Special Rules. The petitioners did not take care to compete for regular appointment by the method of recruitment by transfer despite the fact that examinations were conducted.

15. Even after the 2007 Rules came into effect, 10% of the vacancies were reserved for recruitment by transfer. But Rule 4(2)(d)(ii) of the 2007 Rules made it clear that appointments by the method of recruitment by transfer would also be only on the basis of written and viva-voce tests. From 2007 till 2017, the petitioners could not appear for an examination and get selected. Therefore, the present petitioners can neither claim a right nor claim legitimate expectation by virtue of long officiation. A person who failed to avail the opportunities available during this long officiation, will have no right or legitimate expectation.

16. Though no specific ground is raised in the writ petition in this regard, the petitioners have filed in the material papers, a copy of G.O.Ms.No.127, Finance Department, dated 08-5-2012 by which a new Fundamental Rule 14A was inserted in the place of the old Rule. The amended F.R. 14A reads as follows:

“The lien of a Government employee, which was automatically suspended from the date of his relief in the parent department under clause (g) under FR-14 shall automatically get terminated in the parent department on the date on which his probation is declared in the new department or on the date on which his probation is

deemed to have been declared in the new department, or on the date on which he/she completes 3 years of service in the new department, **whichever is earlier**".

17. Though the petitioners have not raised a specific ground on the basis of F.R. 14A, we would nevertheless consider the effect of the said Rule also.

18. Under F.R. 12(b), a Government servant cannot be appointed substantively, except as a temporary measure, to two or more permanent posts at the same time. Since the petitioners herein were appointed substantively to the post of Assistant Public Prosecutors (Grade-II), they had acquired a lien on the said post and hence they could not have been appointed as Junior Civil Judges substantively except as a temporary measure to the said post. The lien that the petitioners acquired in the post of Assistant Public Prosecutors (Grade-II) was not suspended in terms of F.R. 14 nor was the case of the petitioners covered by F.R. 14B. This is due to the reason that F.R. 14B would apply only to 2 posts in the same cadre. Therefore, by virtue of F.R. 13(b), the petitioners retained their lien on the post of Assistant Public Prosecutors (Grade-II), since they were only holding the post of Junior Civil Judges temporarily.

19. Keeping in mind the interplay of F.Rs. 12, 13 and 14B, let us now come back to F.R. 14A. Under the amended F.R. 14A, the lien of a Government employee which was automatically suspended in his parent department under F.R. 14(g) shall automatically get terminated in the parent

department on the date on which his probation is declared in the new department or on the date on which his probation is deemed to have been declared in the new department or on the date on which he completes 3 years of service in the new department whichever is earlier.

20. But in the case on hand, there was neither an automatic suspension of lien under F.R. 14(g) nor an automatic termination of lien in terms of F.R. 14A. As we have indicated earlier, no person who was appointed on a temporary basis like the petitioners herein, was ever placed on probation in the category of Junior Civil Judges. A person who was never placed on probation, cannot have either a normal declaration of satisfactory completion of probation or a deemed declaration of satisfactory completion of probation.

21. The provisions of F.R. 14(g) are not applicable to the case of the petitioners. F.R. 14(g) reads as follows:

“The Lien of (i) a Government employee, appointed outside the regular line from the date of his relief; (ii) a Government employee who resigned/are relieved from a post to join in a different post to which he is selected by direct recruitment, from the date of his resignation/relief from the old post; and (iii) a Government employee who is transferred from one department to another on request or otherwise by way of departmental transfers from the date of his relief shall stand automatically suspended even if it is not mentioned in such orders and such Govt. employees shall automatically acquire provisional lien in the new departments, in which they join.”

22. As can be seen from F.R. 14(g), the lien of a Government employee will stand automatically suspended, only under 3 contingencies, namely, (i) when he is appointed outside the regular line from the date of his relief, (ii) when he is resigned or relieved from a post to join in a different post to which he is selected by direct recruitment and (iii) when he is transferred from one department to another on request or otherwise by way of departmental transfers.

23. It is only in the aforesaid 3 contingencies that the lien of a Government employee will automatically get suspended and he will acquire a provisional lien in the new department under F.R. 14(g). It is only if the contingencies stipulated in F.R. 14(g) are satisfied that the amended F.R. 14A can be invoked.

24. Therefore, it is clear that the petitioners neither got their lien in the post of Assistant Public Prosecutors (Grade-II) suspended or terminated nor did they acquire any lien on the post of Junior Civil Judges, so as to invoke F.R. 14A. As stated earlier, the petitioners had several opportunities during the past 13 years to participate in an examination conducted in accordance with the scheme provided in the Schedule to the Special Rules, for the consideration of their cases for recruitment by the method of transfer as against the 10% quota. The petitioners could not get selected in those selections. Therefore, the petitioners have no right to continue and their claim for regularisation having already been

rejected, the petitioners are liable to go back to their parent department. After all, the petitioners are not sent home, but are sent only to their parent department. The fact that the petitioners may have to get back from the Bench to the Bar and may have to address others with honourable prefixes, despite being addressed so for the past 13 years, cannot be a point in their favour.

25. Therefore, the writ petition is devoid of merits and hence it is dismissed. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. There shall be no order as to costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

03rd March, 2017.
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Note:-

1. L.R. Copy to be marked.
 2. Issue C.C. today.
- (B/o)
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.6216 of 2017
(per VRS, J.)



03rd March, 2017.
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