

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

+ Writ Petition Nos.36646 of 2013, 17382 of 2014,
35443 of 2016 and 4772 of 2017

% 12-12-2017

W.P.No.36646 of 2013:

- # 1. The State of A.P., Rep. by its Prl. Secretary,
Labour, Emp. & Factories Dept., Secretariat, Hyderabad
2. Commissioner of Labour, Anjaiah Bhavan,
Chikadapally, A.P., Hyderabad

... Petitioners

Vs.

- \$ 1. M.C. Christopher, Asst. Commissioner of Labour,
O/o. the Commissioner of Labour, RTC X Road, Hyderabad
2. M.Rajendra Prasad, Asst. Labour Officer, Circle-I,
Anjaiah Karmika Bhavan, RTC X Roads, Hyderabad
3. The Hon'ble A.P. Administrative Tribunal,
Hyderabad, Rep. by its Registrar
4. N.Chandrasekhar Goud, Superintendent, O/o the Commissioner
of Labour, State of Telangana, Tanguturi Anjaiah Karmeka
Samshema Bhavan, RTC X Road, Hyderabad-20
5. K.Shreedhar, Superintendent, O/o the Commissioner
of Labour, State of Telangana, Tanguturi Anjaiah Karmeka
Samshema Bhavan, RTC X Road, Hyderabad-20

... Respondents

W.P.No.17382 of 2014:

- # M.Rajendra Prasad, Asst. Labour Officer, Circle-1,
Anjaiah Karmika Bhavan, RTC X Roads, Hyderabad

... Petitioner

Vs.

- \$ 1. The State of A.P., Rep. by its Prl. Secretary, Labour, Emp.
& Factories Dept., Secretariat, Hyderabad-22
2. The Commissioner of Labour, Anjaiah Bhavan,
RTC X Roads, A.P., Hyderabad
3. M.C. Christopher, Deputy Commissioner of Labour,
O/o the Commissioner of Labour, RTC X Road, Hyderabad
4. The Registrar, A.P. Administrative Tribunal,
Purani Haveli, Hyderabad
5. G.Narayana Swamy, Superintendent, O/o the Commissioner of
Labour, State of A.P., Tanguturi Anjaiah Karmeka Rest House,
RTC X Road, Hyderabad-20

... Respondents

W.P.No.35443 of 2016:

- # Kadaru Vijaya Bhasker Reddy, Asst. Commissioner of Labour (SSS),
O/o Deputy Commissioner of Labour, No.29-28-1/54, Kovelamudi
Vari Street, Suryaraopet, Vijayawada-520 002, A.P.

... Petitioner

Vs.

- \$ 1. Govt. of India, Rep. by its Under Secretary, Ministry of PG and Pension, Dept. of Personnel and Trg., 3rd Floor, Lok Nayak Bhawan, Khan Market, New Delhi
2. The State of A.P., Rep. by its Prl. Secretary, GAD (SR) Dept., A.P. Secretariat, Hyderabad
3. The State of A.P., Rep. by its Prl. Secretary, Labour, Emp., Trg. and Factories (Lab.IV) Dept., A.P. Secretariat, Hyderabad
4. The State of Telangana, Rep. by its Prl. Secretary, Labour, Emp., Trg. and Factories Dept., Telangana Secretariat, Hyderabad
5. The Commissioner of Labour, Govt. of A.P., D.Nos.33-7-6 & 33-8-14, Seetharamapuram, Vijayawada-500 013
6. The Commissioner of Labour, Govt. of Telangana, T.Anjaiah Karmik Bhavan, Chikkadpally, Hyderabad-20
- ... Respondents

W.P.No.4772 of 2017:

- # 1. Smt. M.Anuradha, Spl. Cat. Stenographer, O/o Commissioner of Labour, Papaiah Street, Seetharamapuram, Vijayawada-520 002, AP
2. Smt. E.V. Ramanamma, Superintendent, O/o APBOCWW Board, I Floor, A.P. Labour Welfare Board Rest House, Opp. Anjaneya Temple, Vivek Nagar, Hyderabad-20
- ... Petitioners

Vs.

- \$ 1. The Govt. of A.P., Rep. by its Prl. Secretary, Labour, Emp., Trg. & Factories Dept., A.P. Secretariat Bldgs, Velagapudi, Guntur Dist.
2. The Commissioner of Labour, Govt. of A.P., Papaiah Street, Seetharamapuram, Vijayawada-520 002, A.P.
3. Buddha Muniswamy, Asst. Labour Officer, Circle VI, Vijayawada
4. S.Govindu, Asst. Labour Officer, Circle III, Vijayawada
5. P.Lakshmi Narayana, Asst. Labour Officer, Circle VI, Vijayawada
6. M.Venkateswara Rao, Asst. Labour Officer, Jaggaiahpet-521 175, Krishna Dist., A.P.
7. Ms. Jalli Atchimamba, Asst. Labour Officer, Circle IV, Rajahmundry-533 103, East Godavari Dist., A.P.
8. Hon'ble A.P. Administrative Tribunal, Rep. by its Registrar, Purane Haveli, Hyderabad
- ... Respondents

! Counsel for Petitioners in WP.36646/2013: Spl. GP attached to the office of Addl. AG (TG)

Counsel for Petitioners in WP.17382/2014: Mr. M.Ratna Reddy

Counsel for Petitioners in WPs.35443/2016 & 4772/2017:

Mr. J.Sudheer

Counsel for respondents: Spl. GP for Services-I (AP), Mr. M.Ratna Reddy
Mr. C.Sai Reddy, Mr. K.Lakshman, ASG of India,
GPs for Labour (TG) & (AP), & Mr. G.Venugopal Reddy

Counsel for APAT:

< Gist:

> Head Note:

? Cases referred:

Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

Writ Petition Nos.36646 of 2013, 17382 of 2014,
35443 of 2016 and 4772 of 2017

Common Order: (per V.Ramasubramanian, J.)

While two out of the four writ petitions on hand are filed respectively by the composite State of Andhra Pradesh and one individual, assailing the decision of the Andhra Pradesh Administrative Tribunal, Hyderabad, the other two writ petitions are filed by the individuals, seeking allocation between the bifurcated States and also seeking promotion, by treating the post of Assistant Commissioner of Labour as a State-wide post to which the Presidential Order would not apply.

2. Heard the learned Special Government for Services (Andhra Pradesh), the learned Special Government Pleader attached to the office of the learned Additional Advocate General (Telangana), Mr. M.Ratna Reddy, learned counsel appearing for the petitioner in one writ petition and Mr. J.Sudhir, learned counsel appearing for the petitioners in the other writ petitions.

3. The Andhra Pradesh Labour Service, was constituted under Andhra Pradesh Labour Service Rules issued under G.O.Ms.No.71, Women Development, Child Welfare and Labour (Lab.IV) Department, dated 08-6-1993, in exercise of the powers conferred by the proviso to Article 309. The said Service was to comprise of six categories of posts viz.,

1. Additional Commissioner of Labour
2. Joint Commissioner of Labour
3. Deputy Commissioner of Labour
- 4-a. Assistant Commissioner of Labour
 - b. Public Relations Officer-cum-Industrial Relations Officer
5. Statistical Officer
6. Labour Officer

4. Rule 11 of the Special Rules issued under G.O.Ms. No.71, indicated that for the purposes of recruitment, appointment, discharge for want of vacancy, seniority, promotion, transfer and appointment as full member to the category of Labour Officers, shall be Multi Zones-I, II and III respectively. In other words, the post of Labour Officer was organized into local cadres in terms of the Presidential Order issued under Clause (10) of Article 371-D of the Constitution of India. In contrast, the post of Assistant Commissioner of Labour was retained as a State-level post and was not organized into local cadre.

5. But in the year 2005, the Government issued G.O.Ms.No.115, Finance (SMPC) Department, dated 28-4-2005, restructuring the Labour Department and upgrading the post of Labour Officer into Assistant Commissioner of Labour, the post of Assistant Commissioner of Labour into Deputy Commissioner of Labour and the post of Deputy Commissioner of Labour into Joint Commissioner of Labour. In fact, the upgradation took place en masse. Consequent upon the upgradation, the existing 12 Labour Welfare Centres in the Labour Department were wound up. Similarly, the 12 existing posts of Welfare Organizers

were converted into Assistant Labour Officers due to the winding up of the 12 Labour Welfare Centres.

6. It is not by any accident or omission that G.O.Ms.No.115, dated 28-4-2005, used the expression “upgradation”. This can be seen from para-4 of G.O.Ms.No.115 where the scale of pay of all the three posts also underwent a change. In other words, it was an upward moment for each of these three categories of posts both in status and in terms of the pay scale offered to them.

7. Pursuant to G.O.Ms.No.115, dated 28-4-2005, the Government also issued G.O.Ms.No.64, Labour, Employment, Training and Factories (Lab.IV) Department, dated 01-6-2005, containing further guidelines for the restructuring of the Labour Department. As per these guidelines, the original four-tier system got converted into a three-tier administrative set up with the Deputy Commissioner as the District Head, Joint Commissioner as the Zonal Head and Commissioner as the State Head. The cadre of Labour Officers was indicated in these guidelines to have been actually merged with that of Assistant Commissioner of Labour.

8. Thereafter, the Government also issued G.O.Ms. No.26, Labour, Employment, Training and Factories (Lab.IV) Department, dated 22-4-2008, amending one paragraph in G.O.Ms.No.64, dated 01-6-1965. By this amendment, the Government sought to make the post of Assistant Commissioner

of Labour to have the character of the post of Labour Officer under the Presidential Order. In other words, the post of Assistant Commissioner of Labour was sought to be made a Multi Zone post under G.O.Ms.No.26, dated 22-4-2008.

9. But instead of making request to the centre to have the Presidential Order amended, the Government went through another route and issued G.O.Ms.No.86, Labour, Employment, Training and Factories (Lab.IV) Department, dated 29-9-2008. By this amendment, introduced to the Andhra Pradesh Labour Service Rules, the post of Labour Officer forming Category-6 of the service was completely omitted. Consequently, para-11 together with the table and the proviso thereunder, to the Service Rules was not omitted.

10. Therefore, challenging G.O.Ms.No.86, dated 29-9-2008, a person by name M.C. Christopher filed an original application in O.A.No.9880 of 2009 on the file of the A.P. Administrative Tribunal. The Tribunal by a final order dated 27-9-2013, allowed the original application and set aside the relevant portion of G.O.Ms.No.86 and consequently directed the State to treat the post of Assistant Commissioner of Labour only as a State-wide post to which the Presidential Order would not apply.

11. Aggrieved by the said order passed on 27-9-2013 in O.A.No.9880 of 2009, the composite State of Andhra Pradesh filed W.P.No.36646 of 2013. One individual who got the

opportunity to get appointed as Assistant Labour Officer, consequent upon the abolition of the Labour Welfare Centres, has come up with W.P.No.17382 of 2014 challenging the order of the Tribunal contending that what was a mere redesignation, was wrongly termed as upgradation and was wrongly understood as upgradation at all levels.

12. During the pendency of the above two writ petitions, one filed by the State and one filed by the individual challenging the order of the A.P. Administrative Tribunal, a person who was working as Assistant Commissioner of Labour directly came up before this Court with a writ petition in W.P.No.35443 of 2016, seeking a direction to the respondents to treat the post of Assistant Commissioner of Labour as a State-wide post, for the purposes of allocation of the incumbents between the States of Telangana and Andhra Pradesh under the Andhra Pradesh Reorganisation Act, 2014. Another set of candidates, who were working in the posts which now form the feeder category to the post of Assistant Commissioner of Labour, went before the Tribunal and filed O.A.No.273 of 2017 seeking recruitment by transfer by treating the post of Assistant Commissioner of Labour as a State-wide post. But the Tribunal dismissed the same, forcing those two candidates to come up with the writ petition W.P.No.4772 of 2017.

13. Despite the fact that what the petitioners in all these four writ petitions actually want, the core issue that will

determine where the petitioners will be placed, is as to whether the post of Assistant Commissioner of Labour continued to be a State-wide post after the upgradation of the post of Labour Officer or not.

14. As we have indicated in the narration of facts, the A.P. Labour Service Rules as they were originally constituted under G.O.Ms.No.71, dated 08-6-1993, comprised of six categories of posts. The post of Assistant Commissioner of Labour was in Category 4(a) and the post of Labour Officer was in Category 6. The method of recruitment to the post of Assistant Commissioner of Labour was stipulated in the table below Rule 3 of the Special Rules, to be either by way of direct recruitment or by way of appointment by transfer from Section Officers in the A.P. Secretariat Service or by promotion from Category 6 viz., Labour Officer. The Rules made it clear that the post of Assistant Commissioner of Labour was a promotional post for the post of Labour Officer. Similarly, Rule 11 of the Rules made it clear that the post of Labour Officer in Category 6 was organized into a Multi Zone post.

15. Thereafter, what happened in 2005 was that under G.O.Ms.No.115, dated 28-4-2005, the Government (i) wound up 12 Labour Welfare Centres, (ii) ordered the upgradation of the post of Labour Officer to the post of Assistant Commissioner of Labour and (iii) gave them a higher scale of pay and converted

certain posts in the Labour Welfare Centres into the Assistant Labour Officers.

16. The answer to the question as to whether the expression “upgradation” was used accidentally or by a conscious application of mind, could be found easily from the very amendments sought to be made under G.O.Ms.No.86, dated 29-9-2008, which became the subject matter of litigation before the Tribunal. Under G.O.Ms.No.86, Category 4 itself was deleted. Therefore, it was a case of abolition of one category. Once a category is abolished, persons holding posts in that category can either be downgraded or upgraded. It follows as a corollary that the existing Labour Officers could not have been merely redesignated as Assistant Commissioner of Labour. In the case of redesignation, the post remains but in a different form. But once the post is taken out of the purview of the existing Service Rules, the only way the incumbents in the post could be retained is either to downgrade them or to upgrade them.

17. By granting them a higher pay scale and moving them to Category 4 in the Labour Service, what was done by the Government was upgradation and that is the only way it could have been done.

18. Once a post is upgraded, then we may have to make a reference to the Presidential Order whether that post has been organized into local cadres or not. In the case of a post which

was merely redesignated, the organization of the post before its change of nomenclature into local cadre would continue to apply. But in the case of upgradation, the name given in the previous avatar cannot really be taken as an indicia for finding out whether the Presidential Order applies or not.

19. Today it is an admitted fact that no amendment was issued to the Presidential Order, making the post of Assistant Commissioner of Labour a Multi Zonal post. It continues to be a State-wide post. Therefore, the Tribunal was right in holding that the amendment sought to be introduced first to G.O.Ms.No.64 under G.O.Ms.No.26, dated 22-4-2008, as if the Assistant Commissioner of Labour will continue to have the character of the post of Labour Officer and the amendment sought to be made to the Service Rules by taking away Rule 11, was contrary to the scheme of the Presidential Order. Hence, we find no justification to interfere with the order of the Tribunal. Therefore, W.P.Nos.36646 of 2013 and 17382 of 2014 are dismissed.

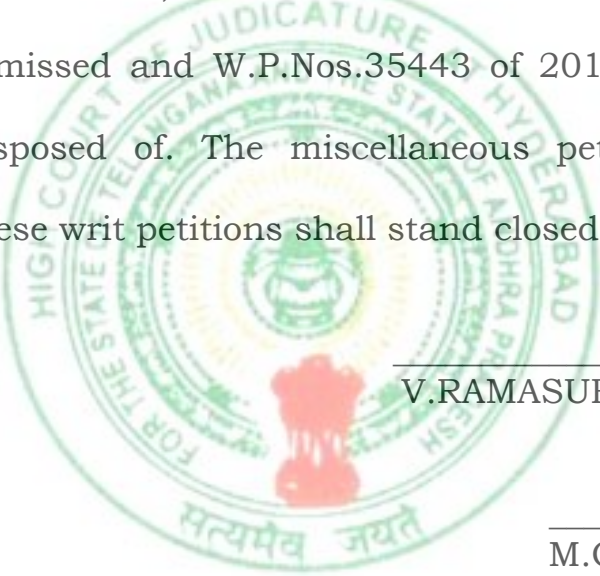
20. That takes us to W.P.No.35443 of 2016. The prayer in this writ petition by a serving Assistant Commissioner of Labour is to direct the respondents to treat the post of Assistant Commissioner of Labour as a State-wide post. This prayer has already been granted by the Tribunal in the other application filed by somebody else and we have confirmed the said order in the aforesaid two writ petitions. It appears that the Government

of India issued a communication dated 13-7-2016, refusing to declare the post as a State-wide post on account of the pendency of the aforesaid writ petitions. As a matter of fact, the petitioners need not have asked for such a declaration, since the post of Assistant Commissioner of Labour has always been a State-level post. By an executive order passed by the Under Secretary to the Government of India, what the Presidential Order said could not have been diluted. As a consequence, W.P.No.35443 of 2016 is disposed of directing the respondents to treat the post of Assistant Commissioner of Labour as a State-wide post, when it comes to ordering further higher promotions and when it comes to allocation between the two States.

21. Insofar as W.P.No.4772 of 2017 is concerned, the same challenges G.O.Rt.No.731, Labour, Employment, Training and Factories (Lab.I) Department, dated 26-12-2016. By the said order, the Government permitted the Commissioner of Labour to fill up the posts of Social Security Promotion Officers in the cadre of Assistant Commissioners of Labour, subject to creation of deputation reserve and subject to the outcome of W.P.No.36646 of 2013. This Government Order proceeds on the footing as though the post of Assistant Commissioner of Labour is a Multi Zonal post. This is clearly wrong in view of our findings in the preceding paragraphs. Therefore, it is made clear that all appointments either by way of direct recruitment or by

way of recruitment by transfer to the post of Assistant Commissioner of Labour should follow only the Presidential Order as it stands today, treating the post as a State-level post, for further higher promotions. Therefore, the petitioners in these two writ petitions, in their own turn, subject to seniority, eligibility and other criteria, should be considered, treating the post of Assistant Commissioner of Labour only as a State-level post.

22. In the result, W.P.Nos.36646 of 2013 and 17382 of 2014 are dismissed and W.P.Nos.35443 of 2016 and 4772 of 2017 are disposed of. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.



V.RAMASUBRAMANIAN, J.

M.GANGA RAO, J.

12th December, 2017.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

Writ Petition Nos.36646 of 2013, 17382 of 2014,
35443 of 2016 and 4772 of 2017
(per VRS, J.)



12th December, 2017.
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