

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

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

* HON'BLE SRI JUSTICE M. GANGA RAO

+ WRIT PETITION NO.42157 of 2015

% Date: 16-11-2017

Between:

P.S.R.N.T. Swamy S/o. Late P. Sree Ramulu,
Assistant Controller, Legal Metrology,
Rudrampet, Ananthapur District
Andhra Pradesh State.

.... Petitioner

And

1. The State of Andhra Pradesh, rep. by its Commissioner, Civil Supplies & Ex. Officio Secretary to Government, Consumer Affairs, Food & Civil Supplies, Hyderabad.
2. The Controller of Legal Metrology, State of Andhra Pradesh, D.No.6-1-103/30431/Padma Rao Nagar, Secunderabad-25.
3. M. Gopi Krishna Reddy, Assistant Controller, Legal Metrology, Kurnool, Andhra Pradesh.
4. G. Rajesh Kumar, Assistant Controller, Legal Metrology, Vizianagaram, Andhra Pradesh.
5. P. Sudhakar, Assistant Controller, Legal Metrology, Visakhapatnam, Andhra Pradesh.
6. Smt. M.N.S. Madhuri, Assistant Controller, Legal Metrology, Kakinada, East Godavari District, Andhra Pradesh.
7. Smt. A. Krishna Chaitanya, Assistant Controller (Admn.) Legal Metrology, O/o. the Controller, Legal Metrology, State of Andhra Pradesh, Hyderabad.
8. The Hon'ble A.P. Administrative Tribunal, rep. by its Registrar, Purana Haveli, Hyderabad.

... Respondents

! Counsel for the petitioner : Mr. M. Surender Rao, Sr. Counsel

^ Counsel for Respondent No.1 : G.P. for Services-I (A.P.)

^ Counsel for Respondents 3 & 4 : Mr. P.S. Rajasekhar

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? Cases referred

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

WRIT PETITION No.42157 of 2015

ORDER: (Per VRS,J)

Aggrieved by the dismissal of his claim for re-fixation of seniority in the post of Assistant Controller of Legal Metrology, the petitioner has come up with the above writ petition.

2. Heard Mr. M. Surender Rao, learned Senior Counsel appearing for the petitioners, the learned Government Pleader for services for the State of A.P. and Mr. P.S. Rajasekhar, learned counsel appearing for respondents 3 and 4.

3. The petitioner herein was directly recruited to the post of Inspector of Legal Metrology on 03.03.1986. He was promoted to the post of Assistant Controller on 03.03.2007 and he was declared to have satisfactorily completed his probation on 31.12.2009.

4. After the promotion of the petitioner to the post of Assistant Controller, a question as to the fixation of his seniority in the cadre arose. On the ground that as on the date of his promotion to the post of Assistant Controller, there was no vacancy available under the quota for promotion and that he had actually occupied a vacancy intended for direct recruitment, the petitioner was assigned seniority below the direct recruits appointed three months later than him in June, 2007. In other words the unofficial respondents in this writ petition were appointed three months later than the writ petitioner to the post of Assistant Controller but they were granted seniority over the petitioner.

5. Aggrieved by such fixation of seniority, the petitioner filed O.A.No.9241 of 2010, challenging the seniority list dated 20.11.2010.

Pursuant to an interim orders passed in O.A.No.9241 of 2010, the appeal of the petitioner was considered and rejected. Therefore challenging the rejection order the petitioner filed a second application in O.A.No.1630 of 2013. The said application was dismissed by the Tribunal, forcing the petitioner to come up with the above writ petition.

6. The grievance, in brief, of the petitioner is that after appointing him on 03.03.2007 as against an existing vacancy, he was sought to be pulled down in the seniority list, below the direct recruitees, who were appointed three months later than him, namely on 15.06.2007. But unfortunately, the petitioner did not go, in his original application, into the question, whether the vacancy to which he was appointed, was actually intended for direct recruitment or promotees. On the contrary, the petitioner went back decades in period of time and questioned the promotions granted to in-house candidates, from the post of Superintendents to the post of Senior Inspectors in the A.P. Weights and Measures State Service. His ire was against three persons by name Babulal, M.G.K. Murthy and K. Rajaiah, who were working in the Ministerial service in the head office, earlier and who had gained recruitment by transfer respectively on 01.01.1978, 13.06.1980 and 14.02.1982, to the post of Senior Inspectors, by virtue of the table under Rule 3 of the A.P. Weights and Measures Service Rules. Rule 3 of the Said Rules together with the table and the notes thereunder are reproduced as follows:

“Rule 3. – Method of appointment: - Subject to the other provisions in these rules, the method of appointment for the several categories shall be as follows: -

Category	Method of Appointment
1. Regional Deputy Controller	By promotion from Category 2.

2. Assistant Controller	1. Direct recruitment. 2. Promotion from Category 2. 3. Transfer from the Category of Superintendents in the Department subject to Note (2) below:
3. Senior Inspectors (District) G.O.Ms.No.238, Dt.31.05.1994.	1. Recruitment by transfer from Inspectors in the Andhra Pradesh Weights and Measures Subordinate Service. 2. By recruitment by transfer from Superintendents of the Weights and Measures Department.

Note(1):- The appointment to the post of Assistant Controller (Cat.2) by direct recruitment and by promotion from Senior Inspectors (Cat.3) shall be in the ratio of 3:7. 1st 4th and 8th vacancy out of 10 vacancies shall be reserved for direct recruitment and 2nd, 3rd, 5th, 6th, 7th, 9th and 10th vacancies shall be reserved to be filled by promotion of Senior Inspectors in a cycle of 10 vacancies.

Note (2):- Provided however that every 6th vacancy in the cycle of 10 vacancies shall be reserved for existing incumbents in the category of Superintendents as on the date of issue of this notification till they get absorbed as Assistant Controllers.

Note (3):- The appointment to the post of Senior Inspectors (Cat.3) by transfer from Inspectors (Andhra Pradesh Weights and Measures Subordinate Service) and by transfer from Superintendents in Andhra Pradesh Ministerial Service working in the Office of the Controller of Weights and Measures shall be made in the ratio of 10:1 respectively i.e., every 11th vacancy shall be filled from among Superintendents in Weights and Measures Department."

7. After getting recruitment by transfer to the post of Senior Inspectors in the State Service from the Ministerial Service in the Head Office, those three individuals, viz., Babulal, M.G.K. Murthy and K. Rajaiah also gained further higher promotion within the State Service to the post of Assistant Controller.

8. The question as to whether persons working in the Head Office, who are not organized into local cadres, could gain promotion to the posts organized into local cadres as per the Presidential Order, 1975, was settled by a decision of the Supreme Court in V. Jagannadha Rao v.

State of A.P.¹. Following the said decision, the A.P. Administrative Tribunal, by a judgment dated 17.12.2004 passed in a batch of applications O.A.Nos.3122 of 2003, struck down the second part in the column as against the category of Senior Inspectors in the table under Rule 3, together with note (3) under the said Rule as ultra vires.

9. Though the Rule was held ultra vires in the very same department, by the judgment of the Tribunal dated 07.12.2004, the petitioner, who was working as Inspector at that time, in the State service, did not question the recruitment by promotion granted to those three individuals, probably for the reason that in the cadre of Inspectors (who were later re-designated as Senior Inspectors) the question of inter se seniority between the petitioner and those three individuals did not arise.

10. Another question arose after the decision in *V. Jagannadha Rao* as to what would happen to the promotions or recruitment by transfer already effected, by virtue of Rules, which were later declared as violative of the Presidential Order. On this question a Bench of this Court, in its decision in *G. Rajababu v. Government of A.P.*², held that it was not open either to the Tribunal or to this Court to declare that the law laid down in *V. Jagannadha Rao* will have prospective operation, unless the Supreme Court itself had said so.

11. The decision of this Court in *G. Rajababu* was taken on appeal to the Supreme Court. In its judgment reported in *K. Mahdava Reddy v. State of A.P.*³, the Supreme Court did not pronounce an opinion (1) as to whether *V. Jagannadha Rao* was intended to be prospective in operation or (2) Whether the Tribunal or the High Court would have the power to

¹ (2001) 10 SCC 401

² 2007 (4) ALD 105

³ (2014) 6 SCC 537

interpret *V. Jagannadha Rao* to have prospective effect. On the other hand, the Supreme Court directed the State Government to find out whether it would be possible to create supernumerary posts. After finding that the State was unwilling, the Supreme Court passed an order saving the promotions already made.

12. Therefore, the contention of the petitioner before the Tribunal was that once a Rule has been declared *ultra vires*, the beneficiaries of such a Rule, will have to fall along with the Rule. According to the learned Senior Counsel for the petitioner, it is not possible for the beneficiaries of a rule to survive, after the rule had drowned. The basic contention is that neither this Court nor the Tribunal can save, perhaps with the exception of the Supreme Court, promotions granted pursuant to Rule which was declared *ultra vires*.

13. But in the case on hand we do not think that we should venture to undertake such an exercise. The facts of the case stare at our face. The persons, whose recruitment by transfer to the post of Senior Inspectors in the State service have become illegal, pursuant to a part of Rule 3 of the Special Rules being declared *ultra vires*, gained those recruitments by transfer way-back in the years 1978, 1980 and 1982. The declaration of law that was made by the Tribunal with particular reference to this Rule, though following the decision in *V. Jagannadha Rao*, came on 07.12.2004. By that time, a period of nearly 22 to 26 years had passed from the date of the promotions granted to Babulal, M.G.K. Murthy and K. Rajaiah and they had also gained further promotions in the State service in the year 2005.

14. What is important to know in this case is that the original grievance of the petitioner was that after promoting him as Assistant

Controller in an available vacancy in March 2007, he was brought down in seniority on the ground that he usurped into a vacancy intended for direct recruitment. But after reconciling himself to the fact that he was only appointed against a vacancy intended for direct recruitment wrongly, the petitioner went into historical facts. Irrespective of whether *V. Jagannadha Rao* has prospective application or retrospective application, the fact remains that issues settled long back cannot be dug up from the grave or archives, to unsettle the past. Today for the purpose of setting right the Seniority of the petitioner, this Court, if the relief sought by the petitioner is to be allowed, should set at naught the recruitment by transfer given to three individuals in the years 1978, 1980 and 1982, consequently setting aside the promotions granted to them in the year 2005, and to adjust the appointment of the petitioner as against the original vacancy intended for promotion. This circuitous route cannot be adopted by the Tribunal considering the efflux of time irrespective of whether the law was in a state of flux or not as reflected in *Madhava Rao case*. Therefore, the dismissal of the Original Application, filed by the petitioner, by the Tribunal, cannot be found fault with. Hence the writ petition is dismissed.

15. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

M. GANGA RAO, J.

16th November, 2017
Js.

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
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