

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

Delivered on :14-06-2017

Coram :

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE M.S.K. JAI SWAL

WRIT PETITION Nos.28562 & 38586 of 2015

W.P.No.28562/ 2015

Between:

B. Chengalraya Naidu, S/o. B. Munaswamy Naidu
Jr. Civil Judge, Lakkireddipalli,
Kadapa District.

PETITIONER

And

1. The State of Andhra Pradesh, rep. by its Secretary, Law and Legal Affairs, Andhra Pradesh Secretariat, Saifabad, Hyderabad.
2. High court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh, rep. by its Registrar General.
3. The Registrar (Vigilance), High Court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh.

RESPONSENTS

W.P.No.38586/ 2015

Between:

M. Siva Sankara Prasad S/o. Perayya,
Retired Judicial Officer, R/o. Qr.No.A2, Judges Quarters,
West Marredpally, Secunderabad (temporary).

PETITIONER

And

1. The State of Telangana, rep. by its Secretary, Department of Legal Affairs, Legislative Affairs & Justice, Telangana Secretariat, Hyderabad.
2. The Hon'ble High court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh, rep. by its Registrar General, High Court Buildings, Hyderabad.
3. The Registrar (Vigilance), High Court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh.

RESPONSENTS

Counsel for the petitioner : Mrs. A. Chaya Devi.
In W.P.No.28562/2015

Counsel for the petitioner : Mr. N. Ashwani Kumar
In W.P.No.38586/2015

Counsel for respondent No.1 : G.P. for Law & Legislative Affairs

Counsel for Respondents 2 & 3 : Mr. P. Ravi Prasad.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
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WRIT PETITION Nos.28562 & 38586 of 2015

COMMON ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

The petitioners in these two writ petitions have come up with a challenge to the orders retiring them upon completing the age of 58 years.

2. Heard Mr. D.V. Seetarama Murthy, learned Senior Counsel, Mrs. A. Chaya Devi, learned counsel appearing for the petitioners and Mr. P. Ravi Prasad, learned Standing Counsel for the High Court.

3. The petitioner in W.P.No.28562 of 2015 was originally appointed as a Steno Typist on 21.09.1982 in the District Judiciary at Chittoor. Later he was appointed as Court Master in the High Court on 07.06.1996.

4. In the year 2005, the petitioner in W.P.No.28562 of 2015 was selected, after a process of oral interview, by a committee of Judges of this Court for appointment by the method of transfer on temporary basis as Junior Civil Judge. The appointment was ordered on 03.02.2004 and the petitioner continued in service for about 12 years. However, upon his completing the age of 58 years he was retired from service on the ground that the age of retirement of the post that he was holding substantively before his appointment on transfer as a Junior Civil Judge was only 58 years. Therefore, challenging the order in G.O.Rt.No.1018, dated 29.08.2015, the first writ petition is filed.

5. Similarly, the petitioner in the second writ petition was appointed as Steno Typist on 17.09.1983 in the Unit of East Godavari District Subordinate Court. He was appointed as Court Master-cum-Personal Secretary to the Hon'ble Judges of this Court in the year 1996. As in the

case of the petitioner in the first writ petition he was also selected for appointment as Junior Civil Judge and appointed as such on 28.02.2004. But upon his completing the age of 58 years, he was also retired from service under G.O.Rt.No.721, dated 28.09.2015, forcing him to come up with the second writ petition.

6. Admittedly, the appointments of both these petitioners were made in terms of Rule 11 (2) of the A.P. State Judicial Service Rules, 1958, as amended by G.O.Ms.No.2207 Home Department, dated 04.12.1962. Rule 11(2) provided for temporary appointment of a person as a Junior Civil Judge, if the appointment of a person in accordance with the Rules would involve excessive expenditure on traveling allowance or exceptional administrative inconvenience to the High Court. But Rule 11(2) made it clear that the person appointed under the said Rule would 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.

7. The 1958 Rules were replaced by a fresh set of Rules in the year 2007. Under Rule 26(2), the appointments made under the 1958 Rules were safeguarded but what was Rule 11(2) under the 1958 Rules actually became Rule 14(2) under the 2007 Rules. Since Rule 14(2) of the 2007 Rules did not make any deviation from Rule 11(2) of the 1958 Rules, it is not necessary to extract the same again.

8. It is true that the petitioners continued in the cadre of Junior Civil Judge from 2004 for a period of 11 years. But their appointments continued to be temporary appointments.

9. It must be pointed out at this stage that the 2007 Rules provide for a regular recruitment by the method of transfer from among the

holders of various posts in the High Court service. 20% of the vacancies in the cadre of Junior Civil Judges, are reserved for recruitment by transfer from among confirmed members or approved probationers of the various services, including the Andhra Pradesh High Court services. Therefore, the petitioners always had both before their temporary appointment as Junior Civil Judges in 2004 and perhaps after 2004 for competing for regular appointment as Junior Civil Judge by taking part in a regular process of selection. But the petitioners did not avail such an opportunity despite the Rules. As a matter of fact, both the petitioners appeared for selection under the 20% quota, but did not get through. Since they were holding posts in the High Court service, the High Court thought fit to continue their service on temporary basis despite their failure to get through in the regular selection.

10. Rule 16 of the 2007 Rules stipulate that the age of superannuation of a Member of the service shall be 60 years or such further age as is fixed by the Government from time to time. In so far as the staff working in the High Court service are concerned, the age of retirement is only 58 years. Therefore, the question is as to whether a temporary appointee would be entitled to the benefit of Rule 16 or not.

11. Rule 16 makes it clear that the age of superannuation fixed there under is for “member of a service”. The expression “member of a service” is defined in Rule 2 (18) of the A.P. State and Subordinate Service Rules, 1996, reads as follows:

“Member of a service:- “Member of a service” means a person who has been appointed to that service and who has not retired or resigned, or who has not been removed or dismissed, or substantively transferred or reduced to another service, or who has not been discharged otherwise than for want of a vacancy. He may be a probationer, an approved probationer or confirmed member of that service.”

12. Admittedly, the petitioners do not come within the definition of the expression “member of a service”, as extracted above. Therefore, at the out set Rule 16 has no application to the case of the petitioners.

13. Once it is clear that the age of retirement fixed under Rule 16 of the 2007 Rules is not applicable to the petitioners, then the next question that should be answered is as to what should be the age of retirement. The answer to this question is not far to difficult to be found, since the petitioners despite their temporary appointment to judicial service, continued to hold a substantive post in the High Court service. A person appointed temporarily to another category of post or another service, would not have his lien severed in the substantive post, unless his temporary appointment to the other post creates a lien in the other post. This is by virtue of Fundamental Rule 14.

14. We must also state that persons like the petitioners, who are appointed temporarily to the Judicial service from the High Court service, not only hold a lien in the substantive post in the High Court service but also claim promotions in the High Court service. It is not known whether the petitioners herein reached their turn for promotion in the High Court service, but the fact that they were entitled and that other persons were granted such promotions can be taken judicial note of by this Court.

15. The contention of Mr. D.V. Seetarama Murthy, learned Senior Counsel is that the petitioners have served the post of Senior Civil Judge without any adverse remarks for about 11 years and that on earlier occasions, persons, who were appointed temporarily were allowed to continue till they attained 60 years of age. It is also contended by the learned Senior Counsel that there is a requirement of a review under Rule 28, which was not undertaken. When the review of the work done by the

petitioners was carried out at the age of 50, the High Court thought fit to continue their service and that therefore, the learned Senior Counsel contends that the petitioners are entitled to continue up to 60 years.

16. The fact that there were no adverse remarks during the period of 11 years is not a ground for altering the age of retirement. It is true that on earlier occasions a few persons appear to have been continued beyond 58 years. But after detecting the mistake committed, the High Court has rectified it, wherever such rectification was possible. Therefore, the petitioners cannot claim as a matter of right to continue in service up to 60 years. The requirement of a review would not apply to a case of normal superannuation. Therefore, Rule 23 has no application.

17. It is contended by Mrs. A. Chaya Devi, learned counsel for the petitioner that a temporary candidate appointed under the 1958 Rules, which appointment was also saved by Rule 26 (2) of the 2007 Rules can be terminated only by replacing such a person with another suitable candidate. The appointment on temporary basis itself is to cover emergencies and exigencies of the service. When there are vacancies even now in existence, there is no necessity for the High Court to retire these persons, according to the learned counsel.

18. But the above contention overlooks one important aspect. If before the petitioners attain the age of superannuation their temporary appointments are sought to be terminated, they can be replaced only by persons, who are fully qualified. Temporary appointments are nothing but appointments made otherwise than in accordance with the Rules. The very power granted either under Rule 10(a)(i) of the General Rules or under Rule 14(2) of the Special Rules is to make appointments otherwise

than in accordance with the Rules. But it does not mean that the age of retirement of a person will get postponed.

19. The fact that there are vacancies may be a valid consideration for appointing other existing employees temporarily. In any case, after the directions issued by the Supreme Court in *Malik Mazhar Sultan & Anr v. U.P. Public Service Commission*¹ a definite time schedule is prescribed for filling up of the vacancies and the Supreme Court is also monitoring the same. Therefore the existence of vacancies cannot be a ground to postpone the normal age of superannuation of an employee.

20. The next contention raised by Mrs. A. Chaya Devi, learned counsel for the petitioner revolves around Rule 23 where a notice of three months is necessary. But Rule 23 speaks about premature retirement and not about retirement on superannuation. The petitioners have not been retired prematurely in public interest. They have been retired in their own interest upon completing the age of 58 years. Superannuation, like one other contingency in life, is inevitable and we do not think that we can postpone either of the eventualities. Therefore, the writ petitions are devoid of merits and they are dismissed.

21. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE M.S.K. JAISWAL

14th June, 2017
Js.

¹ (2008) 17 SCC 703

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