

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

AND

THE HON'BLE SMT. KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.26143 OF 2003

DATED:21-9-2017

Between:

Government of Andhra Pradesh
Rep. by its Secretary, Revenue Department
Secretariat, Hyderabad ... Petitioner

And

B. Sathaiah ... Respondent

COUNSEL FOR THE PETITIONER: Assistant Government Pleader, attached
to the Office of the Advocate General
(TS)

COUNSEL FOR THE RESPONDENT: None appeared

THE COURT MADE THE FOLLOWING:

ORDER:- (per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)

The Government of Andhra Pradesh, represented by its Secretary, Revenue Department, filed this writ petition feeling aggrieved by order dated 07.10.2002 in O.A.No.5535 of 1993 on the file of the A.P. Administrative Tribunal, Hyderabad (for short, "the Tribunal").

2. We have heard the learned Assistant Government Pleader representing the learned Advocate General for the State of Andhra Pradesh. At the hearing, counsel for the respondent is not present.

3. Due to a problem pertaining to Mulki, the State of Andhra Pradesh could not undertake the regular recruitment for various categories of posts, including that of typists, through A.P. Public Service Commission (APPSC) from 1967 to 1978. Evidently to meet the exigencies of administration, the posts of typists were being filled through the Employment Exchanges following the rule reservation. The respondent was one such person, who was sponsored by the Employment Exchange, selected as typist, and by proceedings dt.18.2.1976, he along with four others were appointed as typists temporarily under Rule 10(a)(i)(1) Part II of the Andhra Pradesh State and Subordinate Rules, 1962 (for short, "the Rules"). He has joined the duty on 21.2.1976. The State Government has prescribed a special qualifying test for regularizing the services of those who were not appointed through the medium of APPSC. As the respondent has passed the said test, his services were regularized in the category of typist vide office order No.3/D2/1980 with effect from 04.12.1978, vide proceedings dt.16.05.1980. Nearly twelve years later, the respondent made representation dt.24.04.1992 for revising his seniority with effect from 21.02.1976 in the vacancy by showing him in the vacancy reserved for physically handicapped candidate. This

representation was rejected by the petitioner, vide Memo No.34068/OP.I(2)/92-1, dated 18.01.1993. Feeling aggrieved thereby, the respondent filed O.A.No.5535 of 1993.

4. On behalf of the petitioner a counter-affidavit was filed wherein it was *inter alia* averred that the petitioner was appointed purely temporarily under Rule 10(a)(i)(1) of the Rules and that in the year 1978 APPSC has allotted some typists to the Revenue Department by which time the services of the persons like the respondent were not regularized. It was further averred that in order to regularize the temporary employees, special qualifying test was conducted by the APPSC and the services of the respondent and other similarly situated persons who have passed the special qualifying test were accordingly regularized. It was further averred that the respondent has no right for regularization of his services till he passed the special qualifying test and therefore he is not entitled to fixation of seniority with effect from the date anterior to the date of his passing the special qualifying test. It was also pleaded that the Tribunal by its order dated 23.11.1979 in R.P.No.145 of 1979 held that as the candidates who appeared for special qualifying test held in 1978 were only temporary recruitees, they did not have any right for regularization of their services or fixation of seniority until they qualify the special qualifying test, that their inter se seniority would be fixed in such a manner that they should not become seniors to those who were selected and appointed on the basis of open competition examination conducted for Group-IV services during 1976 and for Group-II services held in 1977 and that this order of the Tribunal was confirmed by the Supreme Court in *M. Nirmala v. State of Andhra Pradesh*¹.

¹ (1986) 3 SCC 647

5. By the impugned order, the Tribunal, however, allowed the O.A *inter alia* on the reasoning that the appointment order of the respondent has not contained any stipulation that he will be replaced by the candidates allotted by the APPSC or he should take a rank below the candidates allotted by the APPSC. It was further held that even assuming for a moment that the APPSC has allotted handicapped persons, they are entitled to take their place as per the roster, that admittedly no handicapped candidate was allotted by the APPSC to the unit of the appointment to which the respondent was initially appointed as a typist and that therefore he must be given his due place in terms of the reservation for the physically handicapped persons. The Tribunal further reasoned that as the respondent was subjected to selection process after being sponsored by the employment exchange and was selected as typist, his appointment cannot be termed as inferior to the appointment through the medium of the APPSC, particularly in the absence of any stipulation in his appointment order that he will be replaced by the candidates allotted by the APPSC. The Tribunal accordingly directed the petitioner to examine the case of the respondent in pursuance of its order and place him in the seniority list against the vacancy intended for physically handicapped person taking into consideration the roster point meant for the said category.

6. The order appointing the respondent reads as under:

“Under General Rule 10(a)(1)(i) in part-II of the Andhra Pradesh State and Subordinate Service Rules, the following candidates sponsored by the Regional Employment Exchange are appointed as Typists temporarily in this department from the date of their joining duty. The appointments are purely on a temporary basis subject to the condition that their services are liable to be terminated at any time without notice and without assigning any reason.

1. *Sri B. Sathaiah*
2. *Kum. K. Lalitha Kumari*
3. *Sri M. Doraswamy*
4. *Sri Abdul Ravoof*
5. *Sri B. Koteswara Rao.*

2. *They are also informed that they should report for duty immediately failing which their appointments will be treated as cancelled."*

Rule 10 of the Rules envisages temporary appointments in order to fill a vacancy in the post borne on the cadre of a service in an emergency. Under Clause (iii) of Rule 10(a), a person appointed under clause (i) thereof, shall, whether he possesses the qualifications prescribed for the service, class or category to which he is appointed, be replaced as soon as possible by a member of the service or an approved candidate qualified to hold the post under the said rules. Under clause (v) thereof, the appointing authority shall have the right to terminate the service of any person in the post to which he is appointed under clause (i) or clause (ii) at any time without assigning any reason and without notice. Under sub-rule (c) of the said Rule, a person so appointed shall not be regarded as a probationer in such service, class or category nor shall he acquire thereby any preferential right to future appointment to such service, class or category.

7. As could be seen from the order of the appointment of the respondent, Rule 10(a)(i)(1) of the Rules is incorporated therein. It is also clearly stipulated therein that the appointments are purely temporary subject to the condition that their services are liable to be terminated at any point of time without giving any notice and without assigning any reason. Curiously the Tribunal has not referred to the contents of this order and rendered a finding and repeated the same that the appointment

order does not contain a condition that the respondent will be replaced by a person allotted by the APPSC and that the respondent cannot be termed as inferior to the appointment made through the APPSC. The Tribunal, in our view, has failed to properly understand the scope of Rule 10 of the Rules which, as noted above, envisages the temporary appointments only in an emergency. The Rule clearly incorporated the condition that as soon as the regular appointment is made, the temporary appointees are liable to be terminated. Therefore, in ordinary course, the respondent ought to have been removed on the allotment of the candidates selected by the APPSC. However, obviously to avoid hardship, a special qualifying test was held to the respondent and similarly situated persons and accordingly their services were regularized fixing a date after their passing the special qualifying test. The Tribunal has also failed to consider the order dated 23.11.1979 in R.P.No.145 of 1979 passed by it holding that the seniority of the persons who were temporarily appointed and have passed the special qualifying test must be fixed in such a manner that they are placed below the candidates who were selected and appointed on the basis of open competitive examination conducted by the APPSC and also the fact that this order was confirmed by the Supreme Court in *M. Nirmala* (1 supra) as referred to in the counter-affidavit. The Tribunal also glossed over the fact that the respondent sought to revive a stale claim, inasmuch as though his seniority was fixed as far back as 16.05.1980, he did not raise any dispute with regard thereto for 12 years, i.e., till 24.04.1992, when for the first time he made a representation for revising his seniority.

8. For the aforementioned reasons, the order of the Tribunal is not sustainable and the same is accordingly set aside. The writ petition is accordingly allowed.

As a sequel to allowing the writ petition, W.V.M.P. No.167 of 2004 and W.P.M.P. No.33026 of 2003 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

KONGARA VIJAYA LAKSHMI, J

21.09.2017

gk/bnr

Note: LR copies to be marked.
(B.O)
bnr

