

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

Writ Petition No.28557 of 2015

Between

K.Vijayakumar, S/o Ramulu,
Age: 58 years, Occ: Junior Civil Judge,
Mailavaram, Krishna District

... Petitioner

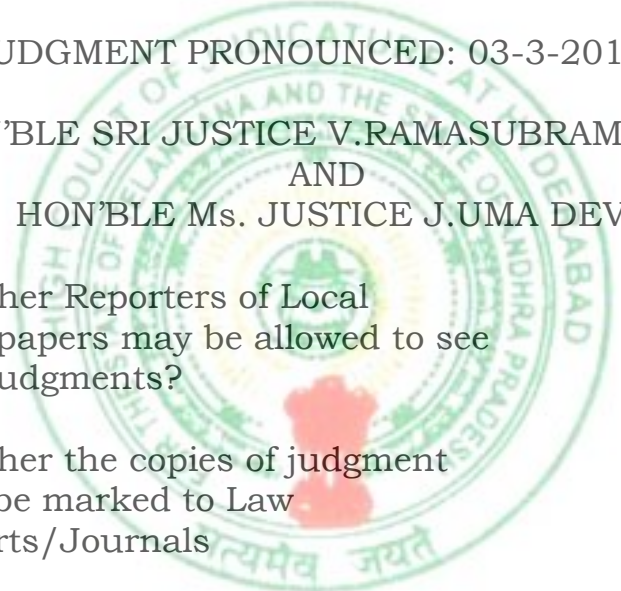
and

1. The State of A.P., Rep. by its Secretary,
Law and Legal Affairs, A.P. Secretariat,
Saifabad, Hyderabad; and 2 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.28557 of 2015

% 03-3-2017

K.Vijayakumar, S/o Ramulu,
Age: 58 years, Occ: Junior Civil Judge,
Mailavaram, Krishna District

... Petitioner

Vs.

\$ The State of A.P., Rep. by its Secretary,
Law and Legal Affairs, A.P. Secretariat,
Saifabad, Hyderabad; and 2 others

... Respondents

! Counsel for the Petitioner: Mr. G.U.R.C. Prasad

Counsel for Respondents: Mr. P.Ravi Prasad,
Standing Counsel for High Court
of Telangana and A.P.

< Gist:

> Head Note:

? Cases referred:

1. (1997) 7 SCC 443

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

Reserved on : 22-02-2017 & Delivered on 03-03-2017

Coram :

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

Writ Petition No.28557 of 2015

K.Vijayakumar, S/o Ramulu,
Age: 58 years, Occ: Junior Civil Judge,
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... Petitioner

Vs.

1. The State of A.P.,
Rep. by its Secretary, Law and Legal Affairs,
A.P. Secretariat, Secretariat, Saifabad, Hyderabad;
and 2 others

... Respondents

For Petitioner : Mr. G.U.R.C. Prasad

For Respondents 1to3 : Mr. P.Ravi Prasad,
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.28557 of 2015

Order: (per V.Ramasubramanian, J.)

The petitioner, who was ordered to be retired on attaining the age of superannuation at 58 years, has come up with the present writ petition.

2. Heard Mr. G.U.R.C. Prasad, learned counsel for the petitioner and Mr. P.Ravi Prasad, learned Standing Counsel for the High Court of Telangana and Andhra Pradesh.

3. The petitioner was originally appointed as Assistant Public Prosecutor on 10-6-1998. While working as such, he was selected and appointed temporarily as a Junior Civil Judge, under G.O.Rt.No.182, Law Department, dated 03-02-2014. He joined the post on 28-02-2004.

4. While taking up the cases of Judicial Officers for review, upon completion of 58 years of age, the case of the petitioner was also taken up by the Administrative Committee of the High Court on 05-8-2015. Apart from the petitioner, there were 2 other persons by name B.Chengalraya Naidu and K.Vijaya Kumar, who were also working as Judicial Officers, on a temporary basis. The Administrative Committee resolved on 05-8-2015 not to continue the temporary services of the said Judicial Officers including the petitioner herein beyond the age of 58 years. Accordingly, the committee passed a resolution and the same also got the approval of the

Full Court. Thereafter, a recommendation was made to the Government and the Government issued G.O.Rt.No.1017, dated 29-8-2015, retiring the petitioner with effect from 31-8-2015, the last day of the month on which he had completed 58 years of age. Aggrieved by the said order, the petitioner has come up with the present writ petition.

5. The contentions of Mr. G.U.R.C. Prasad, learned counsel for the petitioner, are as follows:

(1) that the petitioner was appointed as a Junior Civil Judge on a temporary basis from the post of Assistant Public Prosecutor, in accordance with the Special Rules for Andhra Pradesh State Judicial Service, 1962;

(2) that when the 1962 Rules were repealed and a new set of rules, namely, Andhra Pradesh State Judicial Service Rules, 2007 were issued, the appointments made prior to the commencement of the 2007 Rules were not only saved but also declared to be deemed to have been made under the 2007 Rules, by virtue of Rule 26(2) of the 2007 Rules;

(3) that the persons who were directly recruited to the State Judicial Service are required to be placed on probation and persons who were appointed otherwise to the Judicial Service are placed on officiation in terms of Rule 9 of the 2007 Rules;

(4) that by virtue of Rules 10 and 11 of the 2007 Rules which respectively deal with confirmation of probation and discharge of unsuitable probationers and by virtue of the

decision of the Supreme Court in *Dayaram Dayal v. State of M.P.*¹, the petitioner should be deemed to have been confirmed as a Judicial Officer and hence to retire him on attaining the age of 58 years, the procedure prescribed in Rule 23 ought to have been followed;

(5) that while retiring the petitioner on attaining the age of 58 years, the respondents did not follow the procedure prescribed by Rule 23 of the Andhra Pradesh Judicial Service Special Rules, 2007, but wrongly invoked Section 3(1) of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984;

(6) that the performance of the petitioner as a Judicial Officer was consistently rated as “good” both qualitatively and quantitatively and hence he cannot be deemed to be a person of no utility value for the invocation of the public interest clause;

(7) that in the past, the High Court continued in service several Judicial Officers appointed by the method of recruitment by transfer, beyond the age of 58 years and up to the age of 60 years and hence the action of the High Court is discriminatory in nature;

(8) that a person by name C.Rajender Reddy, who was appointed temporarily as a Civil Judge from the post of Superintendent of the Subordinate Court, was given the benefit of extension up to 60 years in May, 2015;

¹ (1997) 7 SCC 443

(9) that Section 3(1-A) of the A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984 entitles a person to continue in service up to the age of 60 years and hence the procedure prescribed by the proviso to Section 3(1-A) ought to have been followed if the benefit of continuation up to 60 years was to be denied to the petitioner; and

(10) that in any case, if the petitioner was treated still as an employee in the Directorate of Prosecution, he could only have been sent back on repatriation, since the age of retirement of all Government Servants (including that of Assistant Public Prosecutors) was enhanced to 60 years by the State of Andhra Pradesh under G.O.Ms.No.147, Finance Department, dated 30-6-2014, by which Section 2(1) of the Act was amended.

6. We have carefully considered the above submissions.

7. In order to understand the real propensity of the contentions raised by the learned counsel for the petitioner, it is necessary to have a look at the very constitution of the Judicial Service in the State of Andhra Pradesh. Therefore, we shall take a peep into its history.

8. 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.

9. 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.

10. 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.

11. 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.***

12. 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.”

13. 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.”

14. 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 petitioner.***

15. The claim of the petitioner in his writ petition is that he was appointed by the method of recruitment by transfer, on temporary basis under G.O.Rt.No.182, Law Department, dated 03-02-2004. But the stand taken by the High Court is that the petitioner was appointed only on temporary basis under the 1962 Rules and that therefore he has no right to continue as a Judicial Officer.

16. It must be borne in mind that different consequences follow, if the appointment of the petitioner was by the method of recruitment by transfer or if his appointment was on temporary basis. ***Rule 11(2) of the 1962 Rules makes it clear that a person appointed as a Junior Civil Judge on temporary basis under the said Rule, will not be regarded as a probationer. Therefore, such a person will not be entitled to the benefit of the deeming fiction created for the satisfactory completion of probation under the first proviso to Rule 16(d) of the 1962 Rules.*** The first proviso to Rule 16(d) of the 1962 Rules reads as follows:

“Provided that in respect of a probationer who is otherwise qualified for a declaration of probation if no orders are passed regarding his probation within one year from the date of his completion of the prescribed or extended period of probation, his probation, subject to other provisions of these rules, shall be deemed to have been automatically declared with retrospective effect from the date of completion of the prescribed or extended period of probation and a formal order to that effect may be issued for the purpose of record.”

17. A person who was never placed on probation, cannot seek a deemed declaration of probation under the proviso to Rule 16(d) of the 1962 Rules. Therefore, a person who was appointed under Rule 11(2) of the 1962 Rules on a temporary basis, cannot claim that by virtue of long efflux of time, he must be deemed to have completed his probation and must be deemed to have become an approved probationer or a full member of the Judicial Service, not being liable to be repatriated to the Department from which he was brought as Judicial Officer.

18. ***The real test to find out whether a person was appointed as a Junior Civil Judge by the method of recruitment by transfer in terms of the proviso to Rule 4(2) of the 1962 Rules or whether he was appointed only on temporary basis under Rule 11(2) and not placed on probation, is to see whether he was selected after an examination conducted in accordance with Rule 5 read with the Schedule to the 1962 Rules or not.***

19. If that test is applied, it could be seen that the petitioner was not subjected to a process of selection in terms of Rule 5(1) read with the Schedule to the 1962 Rules, for the purpose of appointing him by the method of recruitment by transfer. On the contrary, the petitioner himself claims in para-5 of his Affidavit in support of the writ petition that he never had an opportunity to appear for the examination for selection of Junior Civil Judges and that he merely appeared

for an oral interview. Additionally, it is asserted in para-11 of the counter affidavit filed on behalf of the High Court that the petitioner did not undergo the process of selection in the form of examination prescribed under the Schedule to the Rules, for appointment as Civil Judge (Junior Division) by the method of recruitment by transfer.

20. Therefore, it is clear that the petitioner was not appointed by the method of recruitment by transfer in terms of the proviso to Rule 4(2) of the 1962 Rules. Hence, he cannot be considered as a person appointed by the method of recruitment by transfer in terms of Rule 4(2)(d)(ii) of the 2007 Rules. On the contrary, the appointment of the petitioner was under Rule 11(2) of the 1962 Rules and hence he will be deemed to be only a temporary appointee under Rule 14(2) of the 2007 Rules.

21. As we have pointed out earlier, the 2nd part of Rule 11(2) of the 1962 Rules makes it clear that a temporary appointee will not be regarded as a probationer. This Rule stands reiterated by Rule 11A which says that a person appointed on temporary basis under Rule 11(2) will be deemed to be on probation only from the date of the order of regular appointment. The petitioner was never regularly appointed so as to have the benefit of being placed on probation under Rule 11A of the 1962 Rules.

22. Once it is clear that the petitioner was not recruited by the method of transfer to the post of Junior Civil Judge,

but appointed only on temporary basis, it follows as a corollary that he continued to be a person who was holding a substantive post in the category of Assistant Public Prosecutor. Therefore, his temporary appointment as a Junior Civil Judge was liable to be cancelled at any time and the petitioner liable to go back to his substantive post, namely, that of Assistant Public Prosecutor. The petitioner's lien in the post of Assistant Public Prosecutor could not have been severed since he was neither appointed substantively to the post of Junior Civil Judge as required under Fundamental Rule 14 nor did he acquire any lien in the post of Junior Civil Judge. In such circumstances, it is futile on the part of the petitioner to oppose his repatriation to the parent unit and to the substantive post.

23. Keeping in mind the picture that has emerged from the above discussion, let us now take up for consideration the contentions of the learned counsel for the petitioner one after another.

24. The 1st contention of the learned counsel for the petitioner is that the petitioner was appointed by the method of recruitment by transfer in accordance with the Special Rules. But this contention is belied by the facts. The petitioner did not write any examination as prescribed by Rule 5(1) read with the Schedule to the 1962 Rules to be appointed by the method of recruitment by transfer. He was

appointed only temporarily under Rule 11(2). Hence, the 1st contention is rejected.

25. The 2nd contention of the petitioner revolves around the savings clause contained in Rule 26(2) of the 2007 Rules. But nothing turns on the savings clause. The petitioner was a temporary appointee in terms of Rule 11(2) of the 1962 Rules. Therefore, by virtue of Rule 26(2) of the 2007 Rules, he will be deemed to be a temporary appointee in terms of Rule 14(2) of the 2007 Rules. Hence, the 2nd contention does not take the petitioner anywhere.

26. The 3rd contention of the petitioner revolves around the placement of a directly recruited person on probation and a person recruited by transfer on officiation. Based upon Rule 9 of the 2007 Rules, it is contended by the learned counsel for the petitioner that the petitioner was placed on officiation, when he was appointed by the method of recruitment by transfer and that since no order discharging him as an unsuitable probationer was passed, his probation is deemed to have been declared.

27. But the said contention is based upon the presumption that he was appointed by the method of recruitment by transfer. We have already pointed out that the petitioner was appointed temporarily under Rule 11(2) and the Rule made it clear that such a person will not be regarded as a probationer. If the petitioner was not placed on

probation, the question of any reference to Rule 9 does not arise. Hence, the 3rd contention is rejected.

28. The 4th contention of the learned counsel for the petitioner is that if a probationer had not been discharged before the expiry of the original or extended period of probation, he will be deemed to have completed the period of probation by virtue of a combined reading of Rules 10 and 11 of the 2007 Rules. Therefore, the petitioner claims that he could have been retired before completing the normal age of retirement only in accordance with the procedure prescribed by Rule 23 of the 2007 Rules that mandates a notice of not less than 3 months' duration.

29. But the aforesaid contention is also based upon the presumption that the petitioner was recruited by the method of transfer and was placed on probation. We have found on facts that the petitioner was **not** recruited by the method of transfer and that the petitioner was never placed on probation so as to have the benefit of deemed declaration of probation. Hence, the question of following the procedure prescribed under Rule 23 did not arise. Insofar as the High Court is concerned, the temporary appointment of the petitioner came to an end and the petitioner had to go back to his parent department.

30. Under amended F.R. 14A (as amended by G.O. Ms.No.127, Finance Department, dated 08-5-2012), a Government employee whose lien was automatically

suspended under F.R. 14(g), will have his lien automatically 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 or on the date on which he completes 3 years of service in the new department. F.R. 14A as amended by G.O.Ms.No.127, dated 08-5-2012, reads as follows:

“(e) 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.**”

31. But for the invocation of F.R. 14A, the case of the petitioner should fall under F.R. 14(g), which 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.”

32. For the invocation of F.R. 14(g), 3 contingencies are to be satisfied. None of the 3 contingencies was satisfied in the case of the petitioner. Therefore, the petitioner's lien over

the post of Assistant Public Prosecutor never got suspended under F.R. 14(g) and as a consequence, it never got automatically terminated under F.R. 14A, so as to enable the petitioner to stake a claim over the post of Junior Civil Judge on a regular or permanent basis.

33. The 5th contention of the petitioner revolves around the fact that the Government invoked Section 3(1) of the A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984, instead of following the procedure prescribed by Rule 23 of the 2007 Rules. This contention has to be taken up along with the last contention which is based upon the amendment to Section 3(1) of the Act made under G.O.Ms.No.147, Finance Department, dated 30-6-2014. Under Section 3(1) of the Act, the age of retirement of a Government employee in the State of Andhra Pradesh was prescribed as 58 years. But by G.O.Ms.No.147, Finance Department, dated 30-6-2014, the age of retirement was made as 60 years. Therefore, what the respondents ought to have done is (1) that the High Court should have terminated the temporary appointment and sent the petitioner back to his parent department to be posted as Assistant Public Prosecutor and (2) that the State Government ought to have continued him as an Assistant Public Prosecutor up to the age of 60 years as per Section 3(1) of Act 23/1984.

34. The 6th contention of the petitioner is that he maintained a consistently good academic record as

reflected by the Annual Confidential Reports (ACR) and that therefore he cannot be retired in public interest on the ground that he was not of continued utility. But this contention is based upon the presumption that the petitioner had become a full member of the Judicial Service. The question of examining the fitness of a person to continue beyond the age of 58 years would arise only in the case of a member of the State Judicial Service. The petitioner was never a full member or approved probationer of the State Judicial Service. Hence his ACRs and fitness to continue beyond the age of 58 years are of no relevance.

35. The 7th and 8th contentions of the petitioner are about the continuance of other persons similarly placed like him beyond the age of 58 years. But these contentions are completely flawed, as a person appointed on temporary basis cannot compare his case with that of a person appointed by the method of recruitment by transfer and who became a full member or approved probationer of the State Judicial Service. Hence, these two contentions are also rejected.

36. The 9th contention of the petitioner is that under Section 3(1-A) of Act 23/1984, a Judicial Officer is entitled to continue up to the age of 60 years and that under the proviso to the said section, he can be retired only if certain conditions are satisfied. The claim of the petitioner is that neither the conditions stipulated in the proviso to Section 3(1-A) nor the procedure prescribed therein was followed.

37. But this contention also proceeds on the presumption that the petitioner was a full member of the State Judicial Service. He was actually not. Therefore, this contention does not hold water.

38. That leaves us with the last contention to which we have made a reference while dealing with the 5th contention. This contention revolves around the question of repatriation and the age of retirement in such cases.

39. As we have indicated earlier, one set of consequences would follow if the petitioner had been appointed as a Judicial Officer by the method of recruitment by transfer and a set of completely different consequences would arise if the petitioner had been appointed only temporarily as a Judicial Officer without being placed on probation. If the petitioner had been appointed by the method of recruitment by transfer, after being selected through a process of examination, then the petitioner's services should normally be continued up to the age of 60 years, unless upon a review made in terms of Rule 23 of the 2007 Rules he was found to be unfit to continue. But in the case on hand, this situation did not arise.

40. Once it is found that the petitioner was appointed only temporarily, it would follow as a corollary that he can always go back to his parent department. Once he goes back to his parent department, he is entitled as of right to continue to be in service up to the age of 60 years as stipulated under

G.O.Ms.No.147, dated 30-6-2014, unless his services were terminated for any misconduct pursuant to any disciplinary proceedings. But unfortunately, the recommendation made by the High Court not to continue his temporary services was misunderstood by the Government to be a recommendation for retirement of a Judicial Officer in terms of the 2007 Special Rules. This is why the Government Order impugned in the writ petition came to be passed compulsorily retiring the petitioner upon attaining the 58 years of age. The High Court could have been more careful in informing the Government that the petitioner was just repatriated to his parent department, without making a reference to his age. Repatriating a temporary employee to his parent department has no nexus with his age. Since the High Court committed a mistake in referring to the age of 58 years, the Government fell into an error in thinking that the petitioner should go home.

41. In other words, the order that could have been passed in the case of the petitioner was (1) to repatriate him to the post of Assistant Public Prosecutor and (2) to allow him to continue in service up to the normal age of retirement prescribed by A.P. Act 23/1984 as amended by G.O.Ms. No.147, dated 30-6-2014. Since this has not been done, the petitioner is entitled to relief.

42. Therefore, the writ petition is allowed and the impugned order is set aside. The Government is directed to

post the petitioner as an Assistant Public Prosecutor and allow him to continue up to the normal age of retirement of 60 years. The petitioner will be entitled to full pay and allowances in the post of Assistant Public Prosecutor, from 01-9-2015, the date on which he stood relieved by the impugned order up to the date of his reinstatement with all consequential benefits. The miscellaneous petitions, if any, pending in this writ petition 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:-

L.R. Copy to be marked.

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

Writ Petition No.28557 of 2015
(per VRS, J.)



03rd March, 2017.
(Ak)