

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL Nos.171 and 173 OF 2018

COMMON JUDGMENT

(Per Sri Justice Sanjay Kumar)

O.A.No.1608 of 2013 was filed by A.Goverdhanagiri before the Andhra Pradesh Administrative Tribunal, Hyderabad (*for brevity*, 'the Tribunal'), assailing the action of the authorities in not considering his case for appointment to the post of Junior Assistant and in appointing P.Guruva Reddy, the sixth respondent, to the said post. A consequential declaration was sought by him to the effect that he was entitled to be appointed as a Junior Assistant in preference to the sixth respondent with all service and monetary benefits.

Upon abolition of the Tribunal in so far as the State of Telangana is concerned in September, 2016, the said OA stood transferred to the file of this Court and was renumbered as WP(TR) No.343 of 2017. By order dated 26.07.2017, a learned Judge of this Court allowed the said writ petition and directed the authorities to appoint A.Goverdhanagiri as a Junior Assistant from the date of appointment of P.Guruva Reddy, *viz.*, 17.06.2008, with all consequential benefits flowing therefrom. In the event no vacancy was available on that date, the learned Judge directed the authorities to adjust P.Guruva Reddy against any other post as per his entitlement, including the post of Lab Boy occupied by A.Goverdhanagiri or in any post of Junior Assistant that may have arisen after 17.06.2008. A.Goverdhanagiri was also held entitled to notional pay fixation from the date of appointment of P.Guruva Reddy, *viz.*, 17.06.2008.

Aggrieved by these directions, P.Guruva Reddy filed W.A.No.171 of 2018 while the authorities filed W.A.No.173 of 2018.

Heard Sri K.G.Krishna Murthy, learned senior counsel representing Sri K.Rama Mohan, learned counsel for P.Guruva Reddy, Sri Poodattu Amarender, learned counsel for A.Goverdhanagiri, and the learned Government Pleader for Services-II, State of Telangana, for the authorities.

The cases on hand pertain to the scheme of providing employment to displaced persons in relation to Major & Medium Irrigation & Power Projects or their dependants, promulgated by the erstwhile Government of Andhra Pradesh *vide* G.O.Ms.No.98, Irrigation (Projects Wing) Department, dated 15.04.1986.

The following are the modalities for implementation of the scheme, as set out in the said G.O.:

- i) Not more than 50% of the vacancies of the categories equivalent to Junior Assistants/Typists and the cadres below arising in Major and Medium Irrigation and Power Projects shall be filled up by the displaced families/or their dependents of a respective project duly following the reservations for various categories Viz., SC.ST.BC. Ex-Servicemen, Physically handicapped and meritorious sportsman etc.,
- ii) The candidates eligible for appointment under this scheme shall be the displaced persons or his/her son, daughter or spouse, there being no other earning member in the family.
- iii) Applications for appointment from the eligible candidates shall be made to the District collector, concerned within a period of one year from the date of actual displacement of the family. Preference shall be given with reference to the date of displacement and to those applicants whose houses and land are acquired. The District collectors shall draw up a list of such applications and forward the same to the project authorities for appointment.
- iv) All appointments made in this scheme shall be temporary to start with however, the services of these employees will be regularized in the categories of posts whose pay is equal or less than that of Junior Assistants.
- v) The temporary appointments of the person employed under this scheme can be considered for regular appointment without subjecting them to normal process of recruitment prescribed in the

rules, such as age, and educational qualifications etc., however a formal notification may be made to the employment exchange and after filling up the vacancy, the appointing authority will furnish all relevant particulars of the candidates to the employment exchange covering the area.

vi) The regular appointment made under this scheme shall be kept outside the purview of the A.P. Public Service commission necessary amendments to the A.P. Public Service Commission regulations shall be issued separately.'

Admittedly, A.Goverdhanagiri and P.Guruva Reddy were eligible for employment in terms of the aforesaid G.O. A Selection Committee was constituted in terms of G.O.Ms.No.266, Irrigation & C.A.D. (Projects Wing) Department, dated 19.09.1994, to give effect to the G.O. The Selection Committee thereupon drew up a seniority list on 02.02.2004, wherein A.Goverdhanagiri stood at Sl.No.21 while P.Guruva Reddy was at Sl.No.44.

Though the list dated 02.02.2004 was named as a seniority list, it is not in dispute that a written test was conducted on 31.07.2000 and on the strength of the marks secured by the applicants therein, this list was drawn up. It was therefore a merit list and not a seniority list. Thereafter, the Administrator-cum-Chief Engineer, Sriramsagar Project, LMD Colony, Karimnagar District, addressed letter dated 15.02.2002 to the applicants who had appeared for the selection test informing them that lists had been drawn up for the posts of Junior Assistants/Typists/Junior Stenos/Tracers/Attenders in terms of the merit ranks obtained by them. Significantly, Annexure-I thereto pertained to the merit list drawn up for the posts of Junior Assistant and both A.Goverdhanagiri and P.Guruva Reddy figured in this list but in terms of the merit secured by them, A.Goverdhanagiri figured over and above P.Guruva Reddy.

It may be noted that Memo dated 20.12.2005 was addressed by the Secretary to Government (Projects), Irrigation & CAD (Projects Wing)

Department, Government of Andhra Pradesh, informing A.Goverdhanagiri that he was assigned merit rank No.21 in the category of Junior Assistants and as the last candidate appointed under his reservation category (BC-B) secured rank No.3, his case would be considered as per his merit rank, roster point and availability of vacancies in that reservation category.

However, it may be noted that G.O.Ms.No.98 dated 15.04.1986 did not provide for the methodology of a selection test and preference had to be given only on the strength of the date of displacement and depending upon whether the applicant had lost both land and house. It may also be noted that the merit list made no reference to either the actual date of displacement or whether the applicant had lost both land and house.

It appears that P.Guruva Reddy submitted representation dated 25.03.2004 stating that in the case of other displaced persons, the date of displacement had been taken in terms of their first Award, but in his case, such date was taken with reference to the second Award. He therefore requested change of his date of displacement. The Collector, Karimnagar District, accordingly addressed letter dated 04.05.2004 to the Administrator-cum-Chief Engineer, Sriramsagar Project, requesting him to take the date of displacement of P.Guruva Reddy as 21.05.1979 instead of 29.05.1981, which had reference to his second Award.

While so, the Secretary to Government, Irrigation & C.A.D. Department, Government of Andhra Pradesh, issued letter dated 25.08.2007 requesting the Collectors of Karimnagar, Adilabad and Nizamabad Districts, and the Administrator-cum-Chief Engineer, Sriramsagar Project, to prepare seniority lists of displaced persons under Sriramsagar Project in accordance with the parameters laid down in G.O.Ms.No.98 dated 15.04.1986 and as per the reservation policy.

Thereupon, another integrated seniority list of 393 displaced persons was drawn up with the approval of the Selection Committee constituted under G.O.Ms.No.266 dated 19.09.1994, indicating the date of actual displacement with the particulars of the Award number and date; house/land; survey number; extent; details of the house and/or land etc. The same was communicated by the Administrator-cum-Chief Engineer, Sriramsagar Project, to the District Collector, Karimnagar, under Letter No.E/1344/2000 dated 29.02.2008. In this integrated seniority list, A.Goverdhanagiri figured at Sl.No.98 while P.Guruva Reddy stood at Sl.No.65. In the column relating to date of actual displacement, the date 5/29/1981 was mentioned against P.Guruva Reddy while the date 12/31/1980 was mentioned against A.Goverdhanagiri. The Award numbers mentioned against P.Guruva Reddy were 2/81-82 dated 29/05/1981 and 1/79-80 dated 21/05/1979 and he was stated to have lost both land and house. As regards A.Goverdhanagiri, the Award numbers were 6/80-81 and 3/82-83 and his father, being the displaced person, was stated to have lost both land and house. As regards educational qualifications, P.Guruva Reddy was stated to have a B.A. Degree while A.Goverdhanagiri had passed Intermediate. Both of them were stated to have applied for the posts of Junior Assistant. In the remarks column, against P.Guruva Reddy, it was stated that he was proposed as an Attender and against A.Goverdhanagiri, he was proposed as a Lab Boy. This integrated seniority list was produced by the authorities along with their counter filed in O.A. on 18.11.2013.

Significantly, the authorities chose to file a tampered copy of this integrated seniority list. The integrated seniority list placed before this Court by Sri Poodattu Amarender, learned counsel, indicates that there

were 21 columns therein and the 21st column pertained to 'Remarks'. However, the copy which was filed by the authorities along with their counter contained only 20 columns and the 21st column relating to 'Remarks' was deliberately cut out. This was obviously because P.Guruva Reddy was proposed for appointment as an Attender in terms of the said remarks column and not as a Junior Assistant.

In terms of G.O.Ms.No.98 dated 15.04.1986, the date of actual displacement would vest a preferential right to the earlier displaced person or his nominee to be considered for employment. Further, those who lost both land and house had a preferential right over those who lost one or the other. In terms of these preferential rights and more particularly, the date of actual displacement, the material placed before this Court bears out that P.Guruva Reddy was displaced earlier in point of time when compared to the father of A.Goverdhanagiri. The Awards themselves demonstrate this as P.Guruva Reddy was displaced under Award No.1/79-80 on 21.05.1979 while A.Goverdhanagiri's father was displaced on 31.12.1980, pursuant to the Award bearing No.6/80-81. It may however be noted that even in the integrated seniority list, the date of displacement of P.Guruva Reddy was again wrongly shown as 29.05.1981 and not as 21.05.1979. Despite the same, he was placed at Sl.No.65 therein, totally out of place when compared to those above and below him, whose dates of displacement were shown in the year 1979. This demonstrates the level of lack of application of mind by the authorities while drawing up this integrated seniority list.

While so, P.Guruva Reddy was appointed as a Junior Assistant on 17.06.2008 and A.Goverdhanagiri was appointed as a Lab Boy on 18.06.2008. Upon noticing that several persons had been appointed as

Junior Assistants while ignoring his case, A.Goverdhanagiri started collecting information as to their appointments towards the end of the year 2012. He thereupon filed O.A.No.1608 of 2013 in March, 2013, seeking parity with P.Guruva Reddy. In effect, there was substantial delay on the part of A.Goverdhanagiri in seeking redressal of his grievance, as he admittedly took no steps till March, 2013 in relation to the appointment of P.Guruva Reddy in June, 2008.

Though Sri Poodattu Amarender, learned counsel, would rely upon *BADRUKA COLLEGE OF COMMERCE & ARTS V/ s. STATE OF A.P., EDUCATION DEPARTMENT*¹ in support of his contention that there was no delay on the part of A.Goverdhanagiri in seeking redressal of his grievance, it may be noticed that a Full Bench of this Court held in the aforestated decision that the Limitation Act, 1963, and the Rule of Limitation would not apply to proceedings under Articles 226 and 227 of the Constitution. However, that would not be the case when it comes to filing of an O.A. before the Tribunal. Section 21 of the Administrative Tribunals Act, 1985 (*for brevity*, 'the Act of 1985'), prescribes the limitation for an employee to bring his service dispute before the Tribunal. The delay in excess of four years on the part of A.Goverdhanagiri therefore does not satisfy this statutory provision as to limitation.

Similarly, the observations of a Division Bench of this Court in *RAJ KISHAN PERSHAD V/ s. JOINT COLLECTOR-I, RANGA REDDY DISTRICT, HYDERABAD*², in terms of the limitation prescribed for maintaining a revision under tenancy laws would have no application, as the present case would be governed by Section 21 of the Act of 1985.

¹ 1997 (1) ALD 282 (F.B.)

² 2018 (6) ALT 79 (D.B.)

Equally inapplicable is the decision of the Constitution Bench in *THE STATE OF MADHYA PRADESH V/ s. SYED QAMARALI*³, wherein the Supreme Court observed that an order of dismissal made in breach of a mandatory provision would be totally invalid and have no legal existence, requiring the affected party to have it set aside by an order of Court. In this context, the Supreme Court rejected the defence of limitation which was based only on the contention that such an order had to be set aside by a Court before it became invalid. Similar was the view expressed by the Supreme Court in *STATE OF MAHARASHTRA V/ s. PRAVIN JETHALAL KAMDAR (DEAD) BY LRS*⁴.

That being said, the manner in which the authorities went about implementing the scheme leaves a lot to be desired. When G.O.Ms.No.98 dated 15.04.1986 made it clear as to how employment was to be provided to displaced persons and the categories of preference amongst them, it is inexplicable as to how the authorities came up with the methodology of a written test to ascertain their merit ranking. Not only did they conduct a written test and communicate the results thereof to the applicants-displaced persons but they also categorized them, as per their merit and eligibility, for various classes of posts in different lists. It is an admitted fact that the authorities let both A.Goverdhanagiri and P.Guruva Reddy know that they were short-listed for appointment as Junior Assistants. It was only upon the intervention of the Government that the lower authorities seem to have realized their mistake and undertaken drawing up of a seniority list in terms of the relevant parameters. Even when it came to this list, the lack of application of mind by the authorities is demonstrable in the context of P.Guruva Reddy, whose date of

³ 1967 SLR 228

⁴ (2000) 3 SCC 460

displacement was again wrongly shown but he was shown in the right place as per his seniority, in terms of the date of his first displacement. Surprisingly, having already informed A.Goverdhanagiri and P.Guruva Reddy that they were short-listed for appointment as Junior Assistants, the integrated seniority list communicated under the letter dated 29.02.2008 indicated that P.Guruva Reddy was to be appointed as an Attender while A.Goverdhanagiri was to be appointed as a Lab Boy. No explanation is forthcoming from the authorities as to how this change came about. Further, while the list stated so, it is surprising to note that P.Guruva Reddy was nevertheless appointed on 17.06.2008 as a Junior Assistant and not as an Attender. However, A.Goverdhanagiri was appointed one day later as a Lab Boy. The mischief behind the appointment of P.Guruva Reddy as a Junior Assistant, despite the remarks column in the integrated seniority list dated 29.02.2008 indicating that he was proposed for appointment as an Attender, is writ large inasmuch as the authorities thereafter chose to tamper with the said seniority list while producing a copy thereof along with their counter filed in the O.A. It may be noted that a photocopy was prepared of the said seniority list by blocking the last column, pertaining to 'Remarks', and the said truncated version was thereafter produced. It was only after this Court took serious note of such tampering on 15.11.2018, that the learned Government Pleader filed additional affidavit dated 28.11.2018 of the present Administrator-cum-Chief Engineer, Sriramsagar Project, along with an untampered copy of the said seniority list. No explanation worth the name is however forthcoming as to why a tampered list was produced earlier, leaving out the remarks column deliberately. As already pointed out *supra*, this seems to have been done to cover up the fact that P.Guruva Reddy,

who was appointed as a Junior Assistant on 17.06.2008, was actually proposed for appointment as an Attender, in terms of the deleted remarks column.

Though the learned Judge was not justified in giving primacy to the merit list dated 02.02.2004, as it was not in keeping with the procedure prescribed under G.O.Ms.No.98 dated 15.04.1986, the irrefutable fact remains that the appointment of P.Guruva Reddy was not *bonafide*. When he was proposed for appointment as an Attender in terms of the integrated seniority list, the authorities have to explain as to why he was appointed as a Junior Assistant, when the remarks column in the said list, in so far as it related to A.Goverdhanagiri, was scrupulously given effect and he was appointed as a Lab Boy. Be it noted that both of them were informed by the authorities that they were short-listed for appointment as Junior Assistants. As to why the authorities chose to bestow favour upon P.Guruva Reddy, whereby they continued to honour their commitment to him that he would be appointed as a Junior Assistant, when the same favour and commitment were not shown to A.Goverdhanagiri, remains unexplained and clearly demonstrates the arbitrariness at play in giving effect to and implementing the scheme floated under G.O.Ms.No.98 dated 15.04.1986. However, as there was substantial delay on the part of A.Goverdhanagiri in seeking redressal of his grievance with regard to such appointment of P.Guruva Reddy, this Court is of the opinion that it would not be just and fair to displace him at this late point of time, as he seems to have been promoted as a Senior Assistant thereafter.

As the learned Government Pleader would inform this Court, upon instructions, that two posts of Junior Assistant are vacant as on date, of which one post has been notified through the Telangana State Public

Service Commission but not the other, the authorities are directed to accommodate A.Goverdhanagiri against the vacant un-notified post and appoint him as a Junior Assistant, by duly adjusting him against the applicable roster point that would arise in future. As he chose to file the O.A. only in March, 2013, A.Goverdhanagiri would not be entitled to claim parity with P.Guruva Reddy now, having slept over the matter till that date despite being aware of the fact that he had also been short-listed for appointment as a Junior Assistant. The authorities shall therefore give notional effect to his appointment as a Junior Assistant from 01.04.2013 with attendant benefits but without past monetary benefits or seniority. The said period shall also be taken into reckoning for the purpose of pensionary benefits.

The writ appeals are accordingly disposed of with the above directions. The directions of the learned Judge to the contrary in the order under appeal are set aside. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

28TH DECEMBER, 2018

PGS