

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

WRIT PETITION No.36387 OF 2012

ORDER

(*per* Hon'ble Sri Justice Sanjay Kumar)

The petitioner is the unsuccessful applicant in O.A.No.1984 of 2005 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'). His prayer therein was to declare that the date of commencement of his probation in terms of the proceedings dated 04.04.1995 could not be altered and therefore, the proceedings dated 17.02.2003 and the *inter se* seniority list dated 15.03.2004 were illegal. By common order dated 29.04.2010, the Tribunal dismissed the said O.A. along with other similar O.A.s. The petitioner thereupon filed Review M.A.No.1476 of 2010 in O.A.No.1984 of 2005 seeking review of the common order dated 29.04.2010 in so far as it pertained to his O.A. By common order dated 07.06.2012, the Tribunal dismissed the said review application along with similar applications filed in the other O.A.s. Aggrieved by these orders, the petitioner filed this writ petition.

The petitioner was appointed as an Agricultural Officer by proceedings dated 27.11.1991. He joined service as such on 07.02.1992. Thereafter, proceedings dated 04.04.1995 were issued by the Commissioner and Director of Agriculture, Andhra Pradesh, placing him on probation with effect from 07.02.1992. The said proceedings recorded that his services were regularized with effect from 07.02.1992 and that he was placed on probation for a total period of two years on duty within a continuous period of three years from the said date. Surprisingly, the Commissioner further stated therein that during the period of probation,

the petitioner should pass the Agriculture Departmental Test, Accounts Test for Subordinate Officers Part-I and Second Class Language Test in Telugu within the period of probation. As the proceedings were issued on 04.04.1995, the period of three years stipulated thereunder, commencing from 07.02.1992, already expired even by the date of issuance thereof. The question of the petitioner passing the aforesaid departmental tests within that period therefore did not arise. The stipulation was incapable of performance, as he could not have turned back the clock. However, treating this as a failure on the part of the petitioner to pass the requisite tests within the period of probation, the authorities sought to alter the date of commencement of his probation as per Rule 16(h) of the Andhra Pradesh State and Subordinate Service Rules, 1996, read with Rule 24(c) of the Andhra Pradesh State and Subordinate Service Rules, 1962, which was in operation at the time of the issuance of the proceedings dated 04.04.1995. Consequently, the provisional seniority list of Agricultural Officers was also sought to be altered with adverse impact on him. Aggrieved by these actions, the petitioner and others similarly situated filed O.A.s. before the Tribunal. We are informed that the petitioner passed all the three departmental tests in the years 1995 and 1996.

By the common order dated 29.04.2010, the Tribunal opined that the applicants could file appeals in so far as their provisional seniority was concerned and as some of them had already done so, including the petitioner, the authorities were directed to pass final orders in the said appeals. The applicants were given liberty to agitate before the appropriate forum, if they were aggrieved by the final seniority list drawn up thereafter. In so far as the review application filed by the petitioner is concerned, the Tribunal found no grounds to exercise review jurisdiction

as it was of the opinion that there was no error apparent on the face of the record. It is therefore clear that the Tribunal never addressed the issue raised by the petitioner as to the impossibility of performance in so far as passing of the departmental tests by him was concerned, given the fact that the proceedings dated 04.04.1995 required him to pass the said tests within three years from 07.02.1992.

Sri M.Srinivasa Rao, learned counsel for the petitioner, would state that this very issue fell for consideration before a Division Bench of this Court in W.P.No.3171 of 2006 in relation to the Horticulture Department of the State. A copy of the order dated 23.07.2008 passed in W.P.No.3171 of 2006 is placed on record. In like circumstances as are obtaining before us, the Division Bench observed as follows:

‘14.The applicant, in the instant case, possessed the requisite qualifications to be appointed as Horticulture Officer, therefore, the authorities, in their discretion and also, perhaps, having regard to the language used in Rule 10 (a) (i) (2) of 1962 Rules to the effect that *“no appointment under sub-clause (1) shall ordinarily be made of a person who does not possess the qualifications, if any, prescribed for the said service, class or category....”* considered it necessary to regularize the services of the applicant and accordingly by proceedings dated 7-7-1994 his services were regularized. Therefore, it follows that from the date of his initial appointment i.e. 11-3-1991 till the date of issuance of proceedings dated 7-7-1994, regularizing the services of the applicant, by necessary implication, the applicant is deemed to be a temporary appointee and cannot not be regarded as probationer in view of Rule 10 (a) (iv) of 1962 Rules and, therefore, the question of application of Rule 8 and Rule 10 of Special Rules to the case of the applicant does not arise, during that period.

...

16. It is to be noted that the applicant was placed on probation through proceedings dated 7-7-1994 for the first time

and there was no rationale in requiring the applicant to pass the requisite tests as contemplated under Rule 10 of Special Rules within the continuous period of three years from the date of appointment, as the said period has already expired even before the issuance of the proceedings dated 7-4-1994, the date of initial appointment of the applicant being 11-3-1991.'

The Division Bench accordingly concluded that the authorities were not justified in altering the date of regularization of the applicant therein.

We are informed by the learned Government Pleader that this order has been implemented. This order was followed by another Division Bench of this Court in W.P.No.16607 of 2007, relating to the Animal Husbandry Department. The order dated 18.03.2013 passed in the said writ petition is placed on record and reflects that the Division Bench merely followed the order dated 23.07.2008 passed in W.P.No.3171 of 2006 upon the learned Government Pleader submitting that the said decision squarely covered the issue. Further, the unofficial respondents in the said writ petition carried the matter to the Supreme Court by way of Special Leave to Appeal (Civil) No.39037 of 2013. By order dated 03.03.2017, the Supreme Court dismissed the special leave petition opining that it did not find any ground to interfere with the order passed by the High Court.

Given the aforesaid facts, we are of the opinion that when the petitioner was placed on probation long after his entry into service but with retrospective effect, he could not have been expected to pass the departmental tests within the time stipulated, which had already expired by the date of the belated proceedings dated 04.04.1995. Based on this irregularity, the authorities cannot take advantage of their own mistake and seek to alter the date of commencement of his probation or his provisional seniority.

The writ petition is accordingly allowed setting aside the common order dated 29.04.2010 and the order dated 07.06.2012 passed by the Tribunal in so far as they related to the petitioner. The date of commencement of probation of the petitioner shall be treated as 07.02.1992 and not as 17.06.1994, the altered date. The authorities shall also restore his provisional seniority without taking into account the altered date of commencement of his probation.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

30th APRIL, 2018
PGS



SANJAY KUMAR,J

M.GANGA RAO,J