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

* * * *

WRIT PETITION NO.23496 OF 2017

Between:

The State of Andhra Pradesh, Rep by its
Principal Secretary, Revenue Department
and others ...Petitioners

and

Sri Ginni Srinivasulu Reddy ...Respondent

Date of Judgment Pronouncement: 29th NOVEMBER, 2018

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No

2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No

3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

M. GANGA RAO, J

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

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<Gist:

>Head Note:

! Counsel for petitioners : Government Pleader for Services
State of Andhra Pradesh

^ Counsel for respondent : Sri O.Manoher Reddy and
Sri Y.Kanakalingeswara Rao

? CASES REFERRED: --

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

WRIT PETITION NO.23496 OF 2017

O R D E R
(*Per Sri Justice Sanjay Kumar)*

The State of Andhra Pradesh and its Revenue officials filed this writ petition aggrieved by the order dated 01.10.2016 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, (*for brevity*, 'the Tribunal'), in O.A.No.154 of 2013. The said O.A. was filed by the respondent herein assailing their action in not considering his case for appointment as a Village Revenue Officer. He sought a consequential direction to consider his case for such appointment in terms of the qualification of SSC prescribed under G.O.Ms.No.39, Revenue (Village Administration) Department, dated 11.01.2008, without reference to the amended Rules in G.O.Ms.No.1866, Revenue (V.A.) Department, dated 11.11.2011.

By the order dated 01.10.2016, presently under challenge, the Tribunal opined that the authorities should consider the case of the respondent-applicant for appointment as a Village Revenue Officer as per G.O.Ms.No.39 dated 11.01.2008 and directed them to do so within a time frame.

By order dated 17.07.2017, this Court granted interim suspension of the order under challenge. I.A.No.1 of 2018 was filed by the first respondent-applicant to vacate the said order.

Heard the learned Government Pleader for Services, State of Andhra Pradesh, appearing for the petitioners, and Sri O.Manoher Reddy, learned counsel representing Sri Y.Kanakalingeswara Rao, learned counsel for the respondent-applicant.

G.Krishna Rao, Village Administrative Officer, Uppalam Village, Sompet Mandal, Srikakulam District, went on medical leave due to ill health in the year 2001. The respondent-applicant, the son of G.Krishna Rao, claims to have worked in his place as a nominee Village Administrative Officer, in terms of the appointment order dated 02.08.2001. This order reads to the effect that G.Krishna Rao, Village Administrative Officer, Uppalam, was granted leave for three months on medical grounds, with effect from 01.08.2001 to 31.10.2001, and his son and nominee, G.Srinivasulu Reddy, being eligible and having passed SSC, was appointed during the leave period subject to ratification by the Revenue Divisional Officer, Tekkali. It is on this basis that the respondent-applicant claims to have worked as a Village Administrative Officer on nomination basis during the months of August, September and October, 2001.

G.O.Ms.No.39 dated 11.01.2008 was issued by the Government of Andhra Pradesh notifying the Andhra Pradesh Village Revenue Officers Service Rules. Rule 3 therein dealt with the method of appointment and provided that appointment to the post of Village Revenue Officer should be made from the enumerated categories in the order of priority. The second category in terms of this priority comprises persons who were appointed under Rule 25 of the Andhra Pradesh Village Administrative Officers Service Rules, 1990 (for brevity, 'the Rules of 1990'). Claiming eligibility for appointment as a Village Revenue Officer under this category, the respondent-applicant applied for appointment as a Village Revenue Officer. He again made a representation on 14.05.2011 renewing his request. Thereupon, the Revenue Divisional Officer, Tekkali, called for a report from the Tahsildar, Sompeta. The Tahsildar, Sompeta, certified *vide* report dated 26.06.2012 that the respondent-applicant had worked for a period of three months in the year 2001 as a nominee Village Administrative Officer. However, endorsement dated 03.10.2012 was issued by the Collector, Srikakulam, rejecting the request of the respondent-applicant for appointment as a Village Revenue Officer on the ground that his case could not be considered as he did not possess the requisite qualification of a pass in Intermediate in terms of G.O.Ms.No.1866 dated 11.11.2011. Aggrieved by this rejection, the respondent-applicant approached the Tribunal by way of the subject O.A. Pursuant to the interim order passed in the O.A. on 04.01.2013 directing consideration of his case under G.O.Ms.No.39 dated 11.01.2008, the Collector and District Magistrate, Srikakulam, issued proceedings dated 23.07.2016, referring to the report of the Revenue Divisional Officer, Tekkali, holding that the Pay Bill Register for the period August, 2001 to October, 2001 was tampered and the in-charge arrangement order seems to have been fabricated and deserved no consideration, and held that the respondent-applicant was not appointed as a nominee Village Revenue Officer and managed to get proceedings from the then Mandal Revenue Officer, Sompeta, and the Revenue Divisional Officer, Tekkali, which were not even available in the record. Even otherwise, the District Collector opined that the respondent-applicant was not eligible to be considered for appointment as a nominee Village Administrative Officer in his father's leave vacancy as on 02.08.2001, as he was only 18 years 06 months and 21 days as on that date in terms of his own SSC record, wherein his date of birth was shown as 10.06.1983. He accordingly reiterated the rejection of the case of the respondent-applicant for appointment as a Village Revenue Officer in terms of G.O.Ms.No.39 dated 11.01.2008.

When this rejection was brought to the notice of the Tribunal, the following points were framed for determination.

i) Whether the applicant is entitled to be considered for appointment to the post of V.R.O. under G.O.Ms.No.39 dated 11.1.2008?

ii) Whether G.O.Ms.No.1866, Revenue, dt. 11.11.2011, is prospective or retrospective in nature?

iii) To what relief?

In so far as points 1 and 2 are concerned, the Tribunal concluded that in the light of the acquittance register produced by the respondent-applicant for the period August to October, 2001 it was not open to the authorities to contend that he never worked as a nominee Village Administrative Officer and that he had fabricated the records. Further, as regards applicability of G.O.Ms.No.1866 dated 11.11.2011, the Tribunal opined that the qualification of a pass in Intermediate prescribed therein would not have application to the case of the respondent-applicant as he applied for the post under G.O.Ms.No.39 long prior to the issuance of G.O.Ms.No.1866 dated 11.11.2011.

Dealing with the contention that he was under-aged as on the date of his appointment as a nominee Village Administrative Officer on 02.08.2001, the Tribunal opined that having appointed him as such, the authorities were estopped from contending that the said appointment was contrary to the rules. It is on the strength of this reasoning that the Tribunal allowed the O.A. setting aside the rejection endorsement dated 03.10.2012 and the proceedings dated 23.07.2016 issued by the Collector, Srikakulam District. In consequence, the authorities were directed to consider the case of the respondent-applicant for appointment as a Village Revenue Officer afresh under G.O.Ms.No.39 dated 11.01.2008, treating his SSC qualification as adequate.

The learned Government Pleader would contend that the very appointment of the respondent-applicant as a substitute Village Administrative Officer is disputed and material is available to disprove his claim.

We are however not inclined to venture into this disputed question of fact. The issue of applicability of the later G.O., in terms of the requisite qualification to be appointed as a Village Revenue Officer, also need not trouble us. We are of the opinion that the matter is amenable to resolution even if it is accepted that the respondent-applicant was appointed as a substitute Village Administrative Officer in the year 2001 and possesses the required qualification.

As already noted *supra*, by way of G.O.Ms.No.39 dated 11.01.2008, the Government of Andhra Pradesh put in place the Andhra Pradesh Village Revenue Officers Service Rules which came into effect on 08.02.2007. Rule 2 thereof speaks of the constitution of the service and states that the service shall consist of the posts of Village Revenue Officer in the Revenue Department. Rule 3 lays down the method of appointment. To the extent relevant, it reads as under:

> '3. Method of Appointment:
>
> Appointment to the post of Village Revenue Officer shall be made from the different categories in the following order of priority:-
>
> (i) … …
>
> (ii) Persons who were appointed under rule 25 of the Andhra Pradesh Village Administrative Officers Service Rules, 1990;
>
> … …'

Rule 25 of the Rules of 1990 reads as under:

> '25. Emoluments of a substitute:-- Where a substitute is appointed in any vacancy of Village Administrative Officer, shall be entitled to the honorarium and allowances of the said Village Office :
>
> Provided that while appointing substitute in such vacancy, the competent authority may give preference to a suitable and qualified person in accordance with sub-rule (1) of Rule 8 of the A.P. Village Administrative Officers' Service Rules, 1990, who has been nominated by the Village Administrative Officer who is granted earned leave except from those who are due to retire within one year subject to the condition that he shall furnish personal security for such a sum of as may be specified by the competent authority for the conduct of his nominee and for the safe custody of each and important records.
>
> Provided further that in the case of a nominee to be appointed as a substitute, such substitute must have completed the age of 20 years but should not have completed the age of 58 years.'

Though the Rule is titled 'Emoluments of a substitute', perusal of the Rules of 1990 in their entirety reflects that this is the only Rule which deals with the appointment of a substitute. It is clear from the aforesaid Rule that the nominee to be appointed as a substitute 'must have' completed the age of 20 years. The core question that would arise is whether a person appointed in violation of this mandate can assert a right to not only enjoy the benefit of such appointment but also seek regular appointment as a Village Revenue Officer on the strength of such irregular appointment under Rule 3(ii) of the Andhra Pradesh Village Revenue Officers Service Rules.

Sri O.Manoher Reddy, learned counsel, would contend that once it is accepted that the respondent-applicant did discharge the functions of a

Village Administrative Officer on nominee basis for a period of three months in the year 2001, he would fall squarely within the aforestated Rule 3(ii).

We are however not persuaded to agree. Rule 3(ii) of the Andhra Pradesh Village Revenue Officers Service Rules specifically speaks of eligibility of persons who were appointed under Rule 25 of the Rules of 1990. Therefore, to claim eligibility for regular appointment as a Village Revenue Officer under Rule 3(ii), the person must have been validly appointed under Rule 25 of the Rules of 1990. An illegal or irregular appointment, even if it was given effect to, cannot be the basis for such an irregularly or illegally appointed person to claim eligibility under Rule 3(ii). It is not in dispute that the respondent-applicant was under-aged in terms of the mandate of Rule 25 and was therefore not even eligible to be appointed as a substitute Village Administrative Officer. In consequence, even if it is accepted that he was, in fact, appointed and served as a substitute Village Administrative Officer for three months in 2001, the same would not vest him with eligibility under Rule 3(ii) of the Andhra Pradesh Village Revenue Officers Service Rules to aspire for regular appointment as a Village Revenue Officer. The Rules of 1990 were framed in exercise of power under Article 309 of the Constitution and therefore had statutory force. The mandate of Rule 25 of the Rules of 1990 therefore ought not to have been lightly brushed aside by the Tribunal by taking recourse to the doctrine of estoppel. There can be no estoppel against the statute and the Tribunal grievously erred in not recognizing this legal principle.

Viewed thus, the order passed by the Tribunal granting relief to the respondent-applicant completely overlooking the legal position as obtaining under the Rules cannot be countenanced. The respondent-applicant was therefore not eligible to be considered for the post of Village Revenue Officer on regular basis in terms of Rule 3(ii) of the Andhra Pradesh Village Revenue Officers Service Rules promulgated under G.O.Ms.No.39 dated 11.01.2008. The order passed by the Tribunal holding to the contrary is therefore unsustainable in law and is accordingly set aside.

The writ petition is accordingly allowed. 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

29th NOVEMBER, 2018

L/R copy to be marked - Yes
B/o PGS