

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

WRIT APPEAL NOS.1724 AND 1915 OF 2017

COMMON JUDGMENT
(Per Hon'ble Sri Justice Sanjay Kumar)

W.P.No.18902 of 2017 was filed by Anugu Kishan Rao assailing the action of the authorities in not considering his case for promotion to the post of Hostel Welfare Officer (HWO) Grade-I and in promoting G.Chakrapani, the fourth respondent therein, to the said post, *vide* proceedings dated 12.05.2017 issued by the District Collector (BCDD), Karimnagar. He filed W.P.M.P.No.23041 of 2017 in the said writ petition seeking a direction to the Commissioner of B.C. Welfare, State of Telangana, to consider his representation dated 17.05.2017 for promotion to the post of HWO Grade-I as per his seniority and to suspend the proceedings dated 12.05.2017, whereby the fourth respondent was promoted to the said post. By order dated 13.06.2017 passed in this miscellaneous petition, a learned Judge of this Court suspended the proceedings dated 12.05.2017 promoting the fourth respondent to the said post, opining that the promotion of the fourth respondent who was junior to the petitioner was *prima facie* arbitrary and illegal and directed the Commissioner of B.C. Welfare, State of Telangana, to consider the petitioner's representation dated 17.05.2017 for promotion to the post of HWO Grade-I strictly as per his seniority. W.V.M.P.No.2423 of 2017 was filed by G.Chakrapani, the fourth respondent, while W.V.M.P.No.2941 of 2017 was filed by the District Collector (BCDD), Karimnagar, to vacate the aforesaid order dated 13.06.2017. By common order dated 18.07.2017, the learned Judge opined that as the issue of applicability of Rule 16(h) of the Telangana State and Subordinate Service Rules, 1996 (for brevity, 'the Rules of 1996') was yet to be decided in

W.P.No.39728 of 2012, which was pending consideration before this Court, it was not proper for the authorities to determine the *inter se* seniority of Anugu Kishan Rao *vis-à-vis* G.Chakrapani or promote the latter. The learned Judge therefore made the interim order dated 13.06.2017 absolute, making it clear that neither Anugu Kishan Rao nor G.Chakrapani or anybody else mentioned in the provisional seniority list of the HWOs Grade-II (Male) of the B.C.Welfare Hostel in Karimnagar District, as on 30.09.2016, should be promoted pending the decision in W.P.No.39728 of 2012. The writ petition was directed to be posted for hearing along with W.P.No.39728 of 2012.

Aggrieved by this order, G.Chakrapani preferred W.A.No.1724 of 2017 while W.A.No.1915 of 2017 was filed by the State of Telangana and its officials, including the District Collector (BCDD), Karimnagar.

Heard Sri V.Ravichandran, learned counsel for G.Chakrapani, Sri Poodattu Amarender, learned counsel for Anugu Kishan Rao, and the learned Government Pleader for Services, State of Telangana, for the authorities.

By order dated 21.11.2017 passed in W.A.No.1724 of 2017, a Division Bench of this Court directed that G.Chakrapani should not be reverted from his present post and also stayed the operative portion of the order under appeal, to the effect that no promotion should be granted to anyone in the provisional list pending the decision in W.P.No.39728 of 2012. I.A.No.1 of 2018 was filed by Anugu Kishan Rao to vacate this interim order. The said interim order was however made absolute on 22.01.2018.

The bone of contention between Anugu Kishan Rao and G.Chakrapani is with regard to their *inter se* seniority. It is an admitted fact that Anugu Kishan Rao was appointed as a HWO Grade-II on 23.01.1989 while G.Chakrapani was appointed to the said post on 25.06.1985. However, Anugu Kishan Rao passed the requisite departmental test on 22.06.1991

within his probation period while G.Chakrapani passed the said test on 23.05.1991. In terms of Rule 16(h) of the Rules of 1996, his date of commencement of probation was altered to 24.05.1989. In consequence, the services of Anugu Kishan Rao were regularized on 23.01.1991 w.e.f 21.01.1989 while the services of G.Chakrapani were regularized on 23.05.1991 w.e.f 23.05.1989.

Rule 16(h) of the Rules of 1996 may now be taken note of. This Rule reads as under:

‘(h) Change of date of commencement of probation :--
Notwithstanding anything contained in the special rules or sub-rules (a) and (b) of Rule 33 of these rules, a probationer, who does not pass the prescribed tests or acquire the prescribed special qualifications within the period of probation or within the extended period of probation under Rule 17 and whose probation is further extended by the Government by an order under Rule 31, till the date of his passing such tests or acquiring such qualifications, shall be deemed to have commenced the probation with effect from the date to be fixed by the Government, which would be anterior to a date to his passing such tests or acquiring such special qualifications, so, however, that the interval between the two dates shall be equivalent to the prescribed whether on duty or otherwise and seniority of such probationer shall be determined with reference to the date so fixed.’

Sri V.Ravichandran, learned counsel, would place reliance on the judgment of the Supreme Court in R.VENKATA RAMUDU V/ s. STATE OF A.P.¹. This case pertained to the Andhra Pradesh Engineering Service Rules, 1967 (for brevity, ‘the Special Rules’), and in the context thereof, Rule 16(h) of the Andhra Pradesh State and Subordinate Service Rules, 1996 (for brevity, ‘the General Rules’), which is identical to Rule 16(h) of the Rules of 1996 in the case on hand, also fell for consideration. Venkata Ramudu was appointed temporarily as an Assistant Executive Engineer on 23.03.1992. As per Rule 6(2) of the Special Rules, an Assistant Executive Engineer has to be

¹ (2016) 16 SCC 464

on probation for a total period of two years on duty within a continuous period of three years. Rule 8(c) of the Special Rules stipulated that an Assistant Executive Engineer should pass the Accounts Test for P.W.D. Officers and Subordinates within the period his probation but Venkata Ramudu passed the Accounts Test only on 20.01.1997. However, Venkata Ramudu was placed on probation only on 17.07.2003 for a period of two years by the Engineer-in-Chief, Irrigation and Command Area Development Department, State of Andhra Pradesh, with retrospective effect from 18.04.1992. By the said proceedings, Venkata Ramudu was also called upon to pass the departmental test within the probation period. The Supreme Court took note of the fact that by the date of this communication, Venkata Ramudu had already passed the Accounts Test about six years prior thereto. This communication was purportedly made in exercise of power under Rule 16(h) of the General Rules. Thereafter, by Memo dated 20.01.2007, the Government of Andhra Pradesh exercised power under Rule 16(a) of the General Rules and extended the probation while fixing the revised dates of commencement of probation in respect of 210 Assistant Executive Engineers. Venkata Ramudu and the other appellants before the Supreme Court figured in this list. Though Venkata Ramudu passed the Accounts Test on 20.01.1997, he was shown to have completed his probation only on 27.07.2000. The revised date of commencement of his probation was shown as 27.07.1998. Aggrieved by this communication dated 20.01.2007, Venkata Ramudu and the others approached the Andhra Pradesh Administrative Tribunal (*hereinafter*, 'the Tribunal') and thereafter this Court. The issue framed by the Tribunal was as to whether Venkata Ramudu and the others, who belonged to the A.P.Engineering Services, were entitled to retain the date of commencement of their services as originally assigned to them by

virtue of the Note appended to Rule 8 of the Special Rules. The Tribunal concluded that the Note under Rule 8 of the Special Rules had to be read in consonance with the rules pertaining to the declaration of probation in the General Rules and could not take away the effect of the rule itself. The Tribunal further held that the Note would have to yield to the mandatory overriding provisions of Rule 16(h) of the General Rules. These findings were confirmed by this Court in the challenge laid by Venkata Ramudu and others.

At this stage, the Note appended to Rule 8(c) of the Special Rules may be perused. This Note stipulates as under:

‘Any such Assistant Executive Engineer on probation shall not be discharged for failure to pass the above test within the period of his probation, but his probation shall be extended and his increment stopped till he passes the test.’

The Supreme Court observed that this Note, which partakes the degree of efficacy of Special Rule 8(c) itself, obligates a probationer to pass the Accounts Test within the period of probation and provides the consequences of not doing so. Adverting to Rule 16(h) of the General Rules, the Supreme Court observed that it stipulates that a probationer who does not pass the prescribed test shall be deemed to have commenced probation with effect from the date to be fixed by the Government and thereby, it creates a fiction by which the date of commencement of probation is altered from the actual date of commencement. The *non-obstante* clause occurring in the opening part of Rule 16(h), *per* the Supreme Court, had to be understood as only enabling fixation of an altered date of commencement of probation in the cases of those probationers governed by Special Rules, where such Special Rules did not provide for extension of the period of probation. The Supreme Court further observed that in view of the declaration contained in the Note appended to Rule 8 of the Special Rules, there was neither a need nor occasion for exercise of power under the

General Rules in the context of Venkata Ramudu. Having stated so, the Supreme Court then considered the argument that by not altering the date of commencement of the probation of Venkata Ramudu, as required under Rule 16(h) of the General Rules, he would gain the unfair advantage of seniority over his colleagues who joined service along with him and successfully passed the Accounts Test within the stipulated period of probation, without taking the benefit of extension of probation. The Supreme Court thereupon referred to Rule 33 of the General Rules, dealing with seniority, and opined that as appointment would precede commencement of probation and Rule 33 of the General Rules did not make any reference to either commencement or declaration of probation, seniority should be reckoned from the date of first appointment to the service and if the rule making authority desired to make a distinction between persons who passed the Accounts Test within the prescribed period of probation as opposed to those who passed the Accounts Test after securing the benefit of extended period of probation, it should have done so expressly. The Supreme Court further observed that the Rules prescribed experience of five years as an Assistant Executive Engineer for further promotion and therefore, irrespective of whether an Assistant Executive Engineer passes the Accounts Test within the prescribed period of probation, he would not be considered for promotion till he completed five years of service. It is on the strength of this reasoning that the Supreme Court opined that it was unable to agree with the logic employed by the Tribunal and confirmed by this Court.

The aforestated discussion clearly demonstrates that the observations made by the Supreme Court were conditioned and greatly influenced by the Note appended to Rule 8(c) of the Special Rules. In fact, the Supreme Court went to the extent of holding that in the light of this Note, it was not even

necessary for the authorities to exercise power under the General Rules. Therefore, these observations must be understood in the context in which they were made and cannot be construed or applied generally. Be it noted that Rule 16(h) specifically speaks of seniority of the probationer being determined with reference to the altered date of commencement of probation in the event he does not pass the prescribed tests within the period of probation and therefore, a distinction has already been drawn by the rule making authority between these two disparate sets of probationers – those who pass the departmental tests within the period of probation as opposed to those who did not do so and required extension of their probation. This part of Rule 16(h) was not adverted to at all in R.VENKATA RAMUDU¹. These are aspects which would have to be considered in detail in the pending writ petition.

However, as matters stand, it is not disputed before us that Rule 16(h) has not been subjected to challenge, be it by the parties to these appeals or by any other party, and therefore, it would necessarily have to be acted upon as per the clear language used therein. The observations of the Supreme Court in R.VENKATA RAMUDU¹ in the context of the Special Rules which were under consideration, and more particularly the Note appended to Rule 8(c) thereof, cannot be twisted out of context and be made applicable across the board to all cases. Therefore, when it is an admitted fact that G.Chakrapani required alteration of the date of commencement of his probation and it is not in dispute that the probation of Anugu Kishan Rao required no such extension and was declared earlier, he would have to be treated as senior to G.Chakrapani in terms of Rule 16(h) of the Rules of 1996. As long as the said Rule remains unchallenged and unaltered, it would have to be given effect to as per its clear language and

the observations made in R.VENKATA RAMUDU¹ cannot have the effect of overriding the Rule or diluting it to the extent of ignoring the concluding portion thereof, dealing with the altered seniority of the probationer covered thereby.

W.A.No.1724 of 2017 is accordingly dismissed and W.A.No.1915 of 2017 is disposed of directing the authorities to act strictly in accordance with Rule 16(h) of the Rules of 1996. In terms thereof, Anugu Kishan Rao would have to be treated as senior to G.Chakrapani and he is entitled to be considered for promotion to the post of HWO Grade-I over and above him. The authorities shall therefore take action upon his representation dated 17.05.2017 in accordance with rules. This exercise shall be completed expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order. The direction of the learned Judge to the effect that no further promotions should be effected till the controversy *vis-à-vis* Rule 16(h) is decided in W.P.No.39728 of 2012 is however set aside and the authorities are at liberty to make promotions as and when required strictly in keeping with the applicable rules.

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

SANJAY KUMAR, J

12TH NOVEMBER, 2018
Sv

M.GANGA RAO, J