

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
&
THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA
Writ Petition No.20114 of 2000

ORDER:

(Per Hon'ble Smt. TMK, J)

Petitioners filed this Writ Petition seeking to quash the Order dated 12.04.2000 in Original Application No. 3854 of 1992 on the file of AP. Administrative Tribunal, Hyderabad with consequential directions to the respondents 1 and 2 herein to reckon the Seniority of the petitioners in the posts of Deputy Statistical officers from 03.02.1997, 09.07.1976 and 26.07.1997 respectively for all purposes including promotions to the next higher posts from due dates with attendant monetary benefits.

2 The facts in brief are that the petitioners were initially appointed as Taluq Statistical Assistant, Progress Assistant and Taluq Statistical Assistant on 26.07.1963, 04.06.1962 and 26.08.1964 respectively in the Bureau of Statistics & Economics, Andhra Pradesh and were subsequently promoted as Deputy Statistical Officers on 03.02.1977, 09.07.1976 and 26.07.1977 respectively. It is stated that as per the Andhra Pradesh Economic and Statistical Subordinate Service Rules, the posts of Deputy Statistical Officer (earlier called as Senior Investigators) are to be filled up by promotion from the category of Progress Assistants, Taluk Statistical Assistants, Junior Investigators and by direct recruitment and by transfer of Upper Division Clerks (Senior Assistants) according to rota – quota prescribed therein. In a cycle of 20 vacancies of the posts of Deputy Statistical Officers, the 6th, 11th, 16th and 20th

vacancy has to be filled up by direct recruitment and the 10th vacancy by transfer of Upper Division Clerk and the remaining vacancies have to be filled by promotion from among the Progress Assistants, Taluk Statistical Assistants and Junior Investigator as shown in the cycle. It is further stated that though the petitioners were promoted to the posts of Deputy Statistical Officers in the clear vacancies of the posts meant for promotees as per the recommendation of Departmental Promotion Committee, their promotions were treated as temporary and their services were regularized only with effect from 05.01.1982 after the posts meant for direct recruitment were filled up and their dates of regularization and seniority was also shown after final seniority lists of Deputy Statistical Officers of all the Zones I to VI were prepared by the first respondent vide proceedings in Memo No.22386/Admn/A5/87-6 Dated 01.06.1991. Aggrieved thereby the petitioners filed O.A.No.3854 of 1992 before the A.P. Administrative Tribunal contending that under Rule 2 of the A.P. Economics and Statistical Subordinate Service Rules, recruitment is provided to the post of Deputy Statistical Officer by the method of direct recruitment, promotion and transfer. The rules provide for a rotation of appointment by the said three methods in a cycle of 20 vacancies. If this cycle is followed and the direct recruitment is resorted to in a timely manner, the principle of quota / rota could be strictly followed and the inter-se seniority between the direct recruits and promotees could be fixed according to the rotation prescribed in the rule. The direct recruitment has to be done only through APPSC and where a vacancy is to be filled by direct recruitment and it could not be done

due to the inordinate delay in the selection process, the vacancy intended to be filled by a direct recruitment can be filled up by a departmental candidate due to administrative exigencies and the direct recruitee cannot claim seniority over the promotee if he joins after a long time. The petitioners contended that since their date of promotion was 1976 and 1977 respectively and since the direct recruits joined the posts much later, their services have to be regularized from their respective dates of promotion as per General Rule 33 (a) without waiting for the direct recruits, but not from the year 1982 as was done by the first respondent herein.

3 First respondent herein filed a counter stating that Rule 33 (a) of the General Rules does not apply to the applicants as they are governed by the Special Rules on the subject i.e. A.P. Economic and Statistical Subordinate Service Rules, final seniority lists of Deputy Statistical Officers of all the six zones were prepared by the Directorate of Economics and Statistics and issued in Memo dated 01.06.1991 following the rota/quota in a cycle of 20 vacancies. It is further stated that when there is rota/quota between the direct recruits and promotees, it is not possible to determine the seniority of the employees on the basis of the dates of their promotions and on the other hand it is necessary to restrict the dates of regularization of service of the promotees to those of direct recruits and without such restriction, it is not possible to follow the rota/quota system. It is further stated that the quota of vacancies meant for direct recruits should be given to them as and when they come to the department since the quota rule has not been broken down in the department. It is further stated that the petitioners were promoted against the vacancies, which arose subsequent to the vacancy which was meant for a direct recruit. Hence the date of regularization of services of the

petitioners has therefore been restricted to 05.01.1982, which was the date of joining of a direct recruit.

4 The Tribunal following the observations made by the apex Court held that the quota/rota rule should be strictly followed and under no circumstances, there can be excess recruitment from one feeder category to the detriment of the other feeder category. The Tribunal observed that when appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources and if rules are framed in this regard they must ordinarily be followed strictly. The Tribunal further observed that the petitioners were appointed in the year 1977 against the vacancies reserved for direct recruits and direct recruitment was made in the year 1982 and such of the direct recruits were given regular date of appointment as 05.01.1982 and accordingly the promotees who occupied the posts of direct recruits were also given regular dates of appointment with effect from 05.01.1982 and accordingly dismissed the said O.A. As stated supra, aggrieved by the said order dated 12.04.2000, passed by the A.P. Administrative Tribunal, Hyderabad, the petitioners preferred this Writ Petition.

5 The learned counsel for the petitioners contended that there is no valid reason or justification for the first respondent to reckon the seniority of the petitioners in the posts of Deputy Statistical Officers from an artificial date of 05.01.1982 when the petitioners were actually promoted prior to that date in clear vacant posts in Zone VI and had continuous and uninterrupted service in the said promotion posts. He relied upon the judgment passed by a division bench of this court in Writ Petition No.2169 of 2004 dated 24.07.2006 where the Division Bench dismissed the said Writ Petition filed by the department arising out of the same facts and prayed to allow the

Writ Petition.

6 It is to be seen that the petitioners were appointed in the year 1977 against the vacancies reserved for direct recruits and direct recruitment was made in the year 1982 and such of the direct recruits were given regular date of appointment as 05.01.1982 and accordingly the promotees who occupied the posts of direct recruits were also given regular dates of appointment with effect from 05.01.1982. Hence we do not find any irregularity in the method of fixing the seniority followed by the department since as and when the direct recruits are available the seniority should be fixed as per the rota/quota system and accordingly the promotees should make the way clear inasmuch as they are occupying the said post in excess of their quota. In the Writ Petition No.2169 of 2004 relied upon by the learned counsel for the petitioners the Division Bench made it clear that the said order of the Tribunal in the peculiar facts and circumstances of that case, would not amount to a precedent nor would others be entitled to approach the Tribunal belatedly and seek to have their cases treated similarly to that of the respondent therein.

7 Further, the Tribunal held that the temporary service rendered by the petitioners from 1977 to 1982 will count for all other purposes other than the seniority as they were occupying the posts reserved for direct recruits in excess of their quota and thus they are given a benefit. But, however, in view of the observations made by the Division Bench of this court in the said Writ Petition we hold that the petitioners herein cannot make it precedent to be followed the decision rendered in that Writ Petition in so far as their seniority is concerned because the petitioners are entitled to hold the posts, which are reserved in their quota/rota, and if they are occupying posts in excess of their quota, they are bound to make way for

person who comes from the other source of recruitment when they are available.

8 Hence, we see no merits in this Writ Petition and accordingly the same is dismissed. No costs.

SMT. T. MEENA KUMARI, J.

SRI GOPALA KRISHNA TAMADA, J.

11.08.2010
Kvsn /Gsn