

THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

AND

THE HON'BLE SRI JUSTICE GHANDRAIAH

W.P.No.12589 of 2004

Between

The Government of A.P. and others petitioners

v.

B. Venkateswarlu respondent

THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

AND

THE HON'BLE SRI JUSTICE GHANDRAIAH

W.P.No.12589 of 2004

Oral Order: (Per Sri GM, J)

This Writ Petition has been filed by the Government challenging the orders dated 30-6-2003 passed in O.A.No.6087 of 1997 by the Andhra Pradesh State Administrative Tribunal, Hyderabad in directing the petitioners to give necessary relaxation in favour of the respondent herein and to consider his case for promotion as Forester.

The case of the applicant-respondent is that he was appointed as Forest Guard on 8-2-1988 and his services were regularized as Forest Guard, he underwent Forest Guards Training from April 1991 to October 1991 in A.P. School for Forestry, Yellandu and awarded 1st class with rank no.2 out of 56 candidates. The respondent herein filed O.A.No.6087 of 1994 for a direction to consider his case for promotion to the post of Forester by relaxing Rule 5 of the A.P. Forest Sub-ordinate Service Rules in terms of the orders issued in G.O.Ms.No.207 dated 19-6-1992 as was done in case of similarly placed persons.

According to the respondent, the only objection raised by the authorities, before the Tribunal, was that the relaxation in favour similar persons was done as special case and the same cannot be a precedent and cannot be extended to him. The Tribunal on adjudication of the matter held that denial of similar benefit to the applicant is not proper and smacks of discrimination and accordingly allowed the O.A. Hence, this Writ Petition by the Government.

According to the petitioners, the respondent secured only 2nd rank in A.P. Forest School, Yellandu and he did not stand first in the final examinations as required under Rule 5 of the A.P. Forest Subordinate Service Rules which reads as follows :

“ A Forest Guard who stand first in the final examination in Forest Guard Training at the A.P. School of Forestry, Yellandu, shall be eligible for promotion as Forester in preference to his Seniors, if he is otherwise fit and is qualified for promotion as Forester.”

It is seen from the record that the respondent has submitted an application to the Divisional Forest Officer, Khammam, that while relaxing the said rule 5, the Government have issued orders promoting Sri Ganganna who secured 3rd rank in Forest Guards Training as Forester and Sri B. Babu,

Forest Guard of Khammam division who secured 2nd rank in the Forest Guards training batch 1990-91 and therefore the respondent herein requested to consider his case also for promotion.

It is contended on behalf of the petitioners that the Government has considered the above two cases on special condition, but the A.P. State and Subordinate Service Rules do not provide a provision to consider the 2nd rank persons for the promotion nor the S.T. candidate for promotion, hence, the Divisional Forest Officer could not consider the request of the respondent herein as he was not eligible for promotion in preference to his seniors as he stood only at II rank as per Rule 5. According to the Government, though the respondent herein is S.T. candidate, the rules do not provide any opportunity for promotion of the S.T. candidates in preference to his seniors as he did not stand in the first rank in the Forest Guards Examination. As per the seniority list of Forest Guards, Khammam division for the year 1993 the respondent's name is found place at Sl.No.84, there were about 65 Forest Guards who were seniors than him to be considered for promotion as Forester, if they are otherwise found eligible. There is no provision in the rules to consider the request of the respondent in preference to his seniors. The respondent has completed 5 years of service as on the date of filing of the original

application, but his seniors who have completed 20 years of service by that time could not get promotions due to non-availability of vacancies in the cadre of Forester.

It is further stated that the Government of Andhra Pradesh in accordance with G.O.Ms.No.497 dated 4-12-1986 framed special rules for the Andhra Pradesh Forest Subordinate Services. According to Rule 5, “ A Forest Guard who stands first in the final examination in Forest Guard Training at the A.P. School of Forestry, Yellandu, shall be eligible for promotion as Forester in preference to his seniors, if he is otherwise fit and is qualified for promotion as Forester. Subsequently, the Government of Andhra Pradesh has appointed one man Commission to comprehensively examine, revise and update the service rules for the various posts under the State Government and the One Man Commission has submitted its report on revision of rules relating to various categories of posts under the Andhra Pradesh Forest Subordinate Service and the Government after careful consideration has accepted the report of One Man Commission and issued the G.O.Ms.No.88 dated 19-7-2000 superceding the special rules in G.O.Ms.No.497 dated 4-12-1986. Consequence to the issuance of G.O.Ms.No.88 the old rules framed in G.O.Ms.No.497 are not in existence. It is further stated that the respondent has been awarded with punishment of stoppage of 5 increments with cumulative effect vide proceedings dated 13-7-2002.

Heard the learned counsel on either side.

It is contended by Sri P.V. Ramana, learned counsel for the respondent that it is apparent from the record that the respondent has been denied equal treatment by the State as similarly circumstanced Mr. B.Babu and B.Ganganna who

secured 3rd rank in Forest Guard Training were granted a special treatment by the State denying similar and equal treatment to the respondent. At this stage, learned Government Pleader for Service brought to our notice that the Division Bench of this Court in similar circumstances in Writ Petition NO.11865 of 2004 by its order dated 7-4-2005 while rejecting the prayer for grant of a direction to the respondents-authorities to grant relaxation of rules on par with Mr.Odelu and Mr.Ganganna, directed the State Government to pay costs in an amount of Rs.5,000/- to the petitioner therein for violating his entrenched constitutional rights to equal treatment in the area of exercise of the powers of relaxation. The Division Bench considering the facts and circumstances of the case by its elaborate order further directed that that the State Government would be at liberty to identify the person/persons responsible for the arbitrary exercise of the powers of relaxation, without principle and irrationally and to take appropriate administrative action as deemed fit in accordance with law.

The respondent secured only 2nd rank in A.P. Forest School, Yellandu, and did not stand first in the final examinations as required under Rule 5 of the A.P. Forest Subordinate Service Rules under category of Foresters. Considering the facts and circumstances of the case and in view of the order of the Division Bench referred supra, we are of the view that though relaxation of the condition mentioned in note to Rule 5 of the said Rules was given earlier in two cases, that does not give any right for consideration of his case coupled with the fact that the respondent has been awarded with punishment of stoppage of 5 increments with cumulative effect vide proceedings dated 13-7-2002, which fact was not brought to notice of the Tribunal while allowing the O.A. In the

circumstances, we are not inclined to affirm the order of the Tribunal.

In the circumstances, the impugned order passed by the Tribunal is unsustainable and the same is set aside. Accordingly, the Writ Petition stands allowed. No costs.

GM, J

GC, J

Kk/18-7-2011

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