

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

AND

THE HONOURABLE SRI JUSTICE R.KANTHA RAO

W.P.NOs. 11249, 13071 and 13072 of 2010

18-06-2010

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BETWEEN;

Jayanthi Venkata Surya Subrahmanya Sarma

...Petitioner

vs.

The Commissioner of Panchayat Raj and Rural Employment A.P. Hyderabad
and others

...Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

AND

THE HONOURABLE SRI JUSTICE R.KANTHA RAO

W.P.NOs. 11249, 13071 and 13072 of 2010

ORAL COMMON ORDER: (Per GR,J)

The above writ petitions are by the same petitioner
challenging a common order dated 29-04-2010 of the Learned
A.P. Administrative Tribunal (Tribunal) in O.A.Nos.2903 of
2005, 2689 of 2007 and O.A.8136 of 2005. The petitioner also
seeks invalidation of the proceedings bearing Rc.No.
25141/CPR&RE/G3/2001 of the State Government and for a declaration
that the seniority of the petitioner in the category of Senior Assistants (C)
Zone-II i.e., at S.No.1 as reflected in proceedings dated 22-05-2001 is
immutable.

O.A.No.2903 of 2005 was filed by the petitioner herein challenging
the Government's order in proceedings dated 16-02-2006

O.A.No.2689 of 2007 was also filed by the petitioner assailing the Government's memo dated 02-03-2007, proposing review of the petitioner's seniority in the higher categories of Extension Officer (Panchayats) and Divisional Panchayat Officer consequent on revision of his seniority in the category of Senior Assistants. O.A.No.8136 of 2007 was filed by one Ms.V.Krishna Kumari, the 5th respondent in W.P.No.13071 of 2010 for a direction to the official respondents to consider her case for promotion as Divisional Panchayat Officer (DPO) and to promote her as such on par with the petitioner herein with all consequential benefits, presumably as a consequence of the redrawn and downgrading of the petitioner's seniority in the category of Senior Assistants, an aspect which will be briefly dealt with hereinafter.

The petitioner entered the service in the unit of DPO in Zone- w.e.f. 07-04-1983. He obtained *Ad hoc* promotions in clearly temporary vacancies first in 1986. He was reverted on a few occasions and re-promoted as Senior Assistant. The vacancy in the category of Senior Assistants that was available in 1986 was an exigent vacancy in temporary post created to cater to elections. It was neither a sanctioned post nor a post of a permanent tenure. Subsequently, the petitioner was regularly promoted as Senior Assistant on 25-06-1993, in a clear vacancy.

By some administrative alchemy, not apparent at this distance of time, by proceedings dated 16-10-1990 the petitioner's service in the category of Senior Assistant was regularised w.e.f. 01-04-1986 along with four others when there was no regular vacancy available for such promotion and regularisation. On the basis of the petitioner's seniority in the category of Senior Assistants reckoned w.e.f 01-04-1986, he secured further promotion as Extension Officer (Panchayats) and as DPO w.e.f. 12-08-1994 and 27-08-1998 respectively. In both of these positions, in accordance with the date of his appointment/promotion, his name was reflected at Sl.No.11 and 1 in the categories of Extension Officer (Panchayats) and DPO in the relevant seniority lists drawn up at that point of time.

Zilla Parishad employees were provincialised in 1981 and were brought on to the unit of DPO in 1987. Eventually, the State Government evolved a policy whereunder Zilla Parishad employees provincialised were

to be accorded seniority in the positions they held on provincilisation of their services and w.e.f the date of provincilisation.

Certain provincilised employees who were aggrieved by the unwarranted and anterior regularisation of the petitioner as Senior Assistant w.e.f 01-04-1986 represented to the official respondents and eventually the Commissioner, Panchayat Raj and Rural Employment in proceedings No.25141/CPR&RE/G3/01, dated 16-02-2006 and in effectuation of an earlier proceeding dated 29-05-2001 approve revision of the petitioner's seniority and the date of his regularization from 25-06-1993 i.e., date of regular promotion as Senior Assistant, approve the placing of his name at the appropriate place in the confirmed zonal seniority list of Senior Assistants of District Panchayat Officers Unit of Zone-II and communicated the revised zonal seniority list of Senior Assistants of DPO Unit of Zone-II.

As in consequence of the proceedings dated 16-02-2006 of the Commissioner, Panchayat Raj the revision of seniority and promotions in the category of Extension Officer (Panchayats) and DPO did not proceed expeditiously, the 5th respondent in W.P.No.13071 of 2010 file O.A.No.8136 of 2005 for the relief sought therein which has already been adverted to supra.

Later, the State Government by the memo dated 02-03-2007 and on the basis of a report of the Commissioner, Panchayat Raj's letter dated 09-10-2006 (pointing out certain lapses in preparation of seniority list of Junior Assistants and Senior Assistants of DPO Unit of Zone.II), authorised the Commissioner to revise the seniority list of Junior Assistants and Senior Assistants of DPO Unit of Zone.II subject to the conditions and procedure prescribed in Rule 24 of A.P. State and Subordinate Service Rules and in accordance with the guidelines set out in the proceedings dated 02-03-2002, the details of which may not be relevant for the purposes of these writ petitions.

The Tribunal by the common order dated 29-04-2010, dismissed O.A.Nos.2903 of 2005 and 2689 of 2007 filed by the petitioner assailing the orders of the Commissioner of Panchayat Raj dated 16-02-2006 and the memo of the State Government dated 02-03-2007, concluding that the revision of seniority was occasioned on the clear error administratively.

committed in regularising the service of the petitioner in the category of Senior Assistants w.e.f 1986 by an order of the year 1990, in a factual setting where no clear vacancy of Senior Assistant existed; O.A.8136 of 2005 filed by Ms.V.Krishna Kumari and in the light of the orders passed by the learned Tribunal in O.A.No.2903 of 2005 and 2689 of 2007, directed the official respondents to examine the case of Ms.Krishna Kumari whether she was senior to the petitioner and to promote her as DPO if she was otherwise eligible and qualified by duly considering the fact of the altered seniority of the petitioner as Senior Assistant w.e.f from 25-06-1993 and pass appropriate orders within the time stipulated by the learned Tribunal if Ms.Krishna Kumari was not already promoted to the said post.

In the light of the factual narrative above and in the context of the inherent powers of the Government to revise administrative orders to correct errors and give effect to the rule of law and justice as pointed by the Supreme Court in ***R.R.Varma Vs. Union of India***^[1] and in the context of the generality of powers available to the State Government under the A.F. State and Subordinate Service Rules, 1986 and in particular Rule 23, the exercise of power of review/appointments made or regularisation affected illegally and contrary to the factual and legal position cannot be assailed on grounds of lack of jurisdiction. Even though considerable time has passed after the retrospective regularisation of the petitioner in the category of Senior Assistants, in 1990, the Government is competent to take a decision to review and rectify a patently illegal order. It is not in dispute that the petitioner was put on notice before the revision of his date of regularisation in the category of Senior Assistant. As principles of natural justice and fair opportunity have been complied and as the petitioner has no substantive legal basis for canvassing the sustenance of his earlier date of regularisation in the category of Senior Assistants w.e.f 1986 *qua* the illegal order of regularisation of the year 1990, this court is not inclined to exercise its discretion to invalidate the order of Tribunal upholding the orders of Commissioner, Panchayat Raj and the State Government in revising the seniority of the petitioner in the category of Senior Assistants and consequent higher promotions of the petitioner on the basis of such irregularly reckoned seniority in the feeder category of

Senior Assistant. The consequent direction in favour of Ms.Krishna Kuma the applicant in O.A.8136 of 2005 by the learned Tribunal in the commo judgment is also impeccable and is a logical corollary of its decision i O.A.No.2903 of 2005 and 2689 of 2007.

On the aforesaid analyses, there are no merits in these writ petitions.

The writ petitions are accordingly dismissed at the stage of admission but in the circumstances without costs.

Needless to mention that while revising the promotion of the petitioner in the category of Extension Officer (Panchayats) and DPC consequent on the alteration of the petitioner's date of regularisation in the category of Senior Assistants i.e., 25-06-1993 the petitioner must be afforded opportunity of making a representation after a proposal of alteration of seniority in the said two categories is communicated to him by the appropriate and competent authority.

GODA RAGHURAM,J

R.KANTHA RAO,J

18TH JUNE 2010.

TSNR

[\[1\]](#) AIR 1980 SC 1461