

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

AND

THE HONOURABLE SRI JUSTICE R.KANTHA RAO

W.P.NO.18356 of 2010

30-07-2010

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BETWEEN;

T.Rama Devei and others

...Petitioners

vs.

The Government of Andhra Pradesh, rep. By its Principal Secretary, Panchayat Raj and Rural Development, Hyderabad and others

...Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

AND

THE HONOURABLE SRI JUSTICE R.KANTHA RAO

W.P.NO.18356 of 2010

ORAL ORDER: (Per GR,J)

Heard Sri B.Adinarayana Rao, the learned counsel for the petitioners, the learned Government Pleader for Panchayat Raj and Rural Development for the official respondents and Sri S.Satyam Reddy and S P.Srinivasulu, the learned counsel for the caveators-the non official respondents.

The writ petition is by some of the applicants in O.A.No.218 of 2010 against the order of the A.P. Administrative Tribunal, Hyderabad (the Tribunal) dated 14-07-2010 rejecting O.A.No.218 of 2010 along with other connected Original Applications filed by other persons similarly situated as the petitioners. The petitioners also seek invalidation of the Memo No.12409/E.VII.2/2009-3 dated 07-01-2010 whereby the 1st responder

(State Government) allowed appeals filed by directly recruited Mandal Parishad Development Officers (MPDO), the post in a category of service governed by the Andhra Pradesh Panchayat Raj and Rural Development Service Rules (the 1994 Rules), issued in G.O.Ms.No.492, Panchayat Raj and Rural Development & Relief (Estt.VII) Department, dated 29-07-1994.

The non-official respondents were the respondents before the Tribunal who are also directly recruited MPDOs (similarly situated as those who had preferred appeals on the basis of which the State Government had issued the Memo dated 07-01-2010), allowing the appeals. While allowing the appeals the Government declared the final seniority list of MPDOs dated 12-06-2009, issued by the Commissioner, Panchayat Raj and Rural Employment as not having been prepared in accordance with the Circular Memo dated 21-04-1999, on the ground *inter alia* that Supervisors/Extension Officers (ICDS), Women and Child Welfare Department are not entitled for appointment by transfer to the category of MPDO *qua* the 1994 Rules. The Commissioner was directed to prepare the seniority list of MPDOs afresh in accordance with the specific provisions of the A.P. State and Subordinate Service Rules, 1996 read with G.O.Ms.No.607 dated 06-11-1992 and Circular Memo dated 21-04-1999 and also to furnish alternative proposals for continuance of Supervisors/Extension Officers (ICDS), WD&CW Department in Panchayat Raj Department, considering the fact that they were working with the Panchayat Raj Department for a long time. The Memo of the Government dated 07-01-2010 is another episode of executive and quasi-judicial decisions in the tortuous and meandering course of appointment and promotions in the Panchayat Raj Department in general, and the category of MPDOs in particular.

The petitioners herein assailed the Memo dated 07-01-2010 issued by the State Government before the Tribunal on several grounds including that the State had exercised its appellate power, a quasi-judicial power without affording them an opportunity and had invalidated the final seniority list on application of certain principles which are generically prejudicial to the petitioners and therefore the Memo be declared invalid.

The learned Tribunal rejected the claims of the petitioners, in common order in O.A.No.218 of 2010 (filed by them) along with connected O.A's filed by other similarly situated officers. The Tribunal observed that in earlier litigations the Tribunal and thereafter this Court had directed the official respondents to follow the rules and prepare the seniority list in accordance with the rules and to appoint all the petitioners herein in accordance with the rules; since the Government after obtaining opinion from the Law Department, had issued the Memo dated 07-01-2010, there was no violation of principles of natural justice.

In our considered view, the decision of the Tribunal on the point of natural justice is fundamentally misconceived and unsustainable. Nowhere in the earlier rounds of litigation was it ever declared (and no such decision is brought to our notice), that the petitioners who were appointed either by direct recruitment or recruitment by transfer as Extension Officers in WD&CW Department (but posted to work as Supervisors in the Integrated Child Development Scheme -- A scheme funded by the Government of India and administered by the State), were ineligible for appointment as MPDOs under the provisions of the 1994 Rules. Apparently a certain measure of incoherence crept into the decision making process, including in the opinion by the Law Department on account of a number of posts in several Departments/wings of the Panchayat Raj Department bearing the same label "Extension Officers". The relevant service particulars of the petitioners herein, namely the appointment by Direct Recruitment or by transfer as Extension Officers in the Women and Child Welfare Department, under Rules issued in G.O.Ms.No.856, but their posting as Supervisors in the ICDS and what would be the legal effect of such a fact on the petitioners' entitlement to being considered as Extension Officers, WD&CW or otherwise was not critically examined or analysed either by the Law Department or even by the Government while issuing the Memo dated 07-01-2010. Such incoherence and peripheral analysis could have been avoided by the State Government had it issued a notice to all the affected parties including the petitioners who would then have lodged their objections which would

have fertilised the inputs of the State Government properly and enabled it to reach a correct and wholesome conclusion, on consideration of all relevant facts and applicable legal principles. The Government disabled itself from proper exercise of appellate jurisdiction on account of a fundamentally unsound notion that there was no distinction between exercise of executive power and that of quasi judicial power. The Government was clearly exercising an appellate jurisdiction while considering the appeals of the directly recruited MPDOs challenging the final seniority list issued by the Commissioner of Panchayat Raj. What is more, the Government formulated principles on the basis of which the final seniority list dated 12-06-2009 was quashed. The Government held that Supervisors/Extension Officers, ICDS, WD & CW Department are ineligible for appointment as MPDO, in terms of the 1994 Rules. Facially this may be a correct position in law, but is substantially unsound since the petitioners directly recruited or by transfer as Extension Officers in the Women and Child Welfare Department are governed by the Rules issued in G.O.Ms.No.856 but were however posted as Supervisors in the ICDS and while working as such were appointed as MPDOs. On the basis of the principles spelt out by the Government in its appellate order in the Memo dated 07-01-2010, the Commissioner, Panchayat Raj while revising the seniority list is likely to be confused as to how to treat the petitioners.

An appellate exercise would be a futile exercise if it fails to resolve a controversy and adds to the confusion. This futile appellate exercise could have been avoided had the Government not violated the principle of natural justice.

The Tribunal committed an error in rejecting the challenge to the Memo dated 07-01-2010 (on the ground of violation of principles of natural justice), by observing that the ineligibility of the petitioners for appointment as MPDOs was earlier determined. We find no such determination either in the earlier judgment of the Tribunal dated 26-08-2004 in O.A.No.5587 of 2003 or in the judgment of this court dated 11-06-2007 in W.P.Nos.4261 of 2005 and 12493 of 2005. The assumption by the Tribunal that the

petitioners were ineligible for appointment as MPDOs since they were Extension Officers re-designated as such from the category of Supervisor in the ICDS is an assumption which has no basis in fact nor an foundation in earlier precedents, the judgment of the Tribunal or of the High Court, to which the petitioners were parties. At any rate, since the Government is exercising an appellate jurisdiction while considering appeals preferred by directly recruited MPDOs, it was required to hear the affected parties which it failed to do. On this singular ground, the Memo dated 07-01-2010 ought to have perished.

For the aforesaid reasons, the order of the Tribunal dated 14-07-2010 dismissing/rejecting O.A.No.218 of 2010 is quashed. The Memo issued by the 1st respondent bearing No.12409/E.VII.2/2009-4 dated 07-01-2010 is also quashed. The State Government is directed to consider the appeals *de novo* after issuing a notice to all the affected parties including the petitioners herein duly indicating *prima facie* the reasons or the principles, if any, on the basis of which it proposes to invalidate the earlier final seniority list of MPDOs dated 12-06-2009 issued by the Commissioner, Panchayat Raj pertaining to the category of MPDOs. As disputes regarding seniority in the category of MPDOs are pending for a considerable time and adversely impacts harmony in the service, we consider it appropriate to direct the Government to hear and dispose of the appeals against the seniority list dated 12-06-2009 expeditiously and preferably within a period of three (3) months from the date of receipt of a copy of this Order.

Nothing in this order shall be construed as an expression by this Court on the merits of the claims of the petitioners or the non-official respondents herein and the Government shall consider the appeal preferred, duly considering all the objections lodged by the appellants and other parties, individuals to whom notices on the pending appeals shall now be issued by the Government.

The writ petition is allowed as above. No order as to costs.

GODA RAGHURAM,J

R.KANTHA RAO,J

30th JULY 2010.

TSNR