K. JAGANNADHA RAO

v.

STATE OF ANDHRA PRADESH & OTHERS

July 23, 1981

[A.C. GUPTA AND A.P. SEN, JJ.]

Andhra Pradesh Police Service Rules, 1966, Rule 3 (d)—Validity of—Whether Rule 3(d) is discriminatory and violative of the principles of equality in Article 16 of the Constitution of India.

Rule 5 (1) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963 classifies the Civil Services of the State into (a) State Services, and (b) Subordinate Services.

The Andhra Pradesh Police Service is one of the State services. Rule 2 of the Andhra Pradesh Police Service Rules, 1966 framed under Article 309 of the Constitution sets out three categories of officers constituting the State Service, namely; category I composed of commandants, Andhra Pradesh Special Police; category II which includes Deputy Superintendents of Police and Assistant Commissioners of Police other than in categeory III and category III comprising Deputy Superintendents of Police in various capacities including Assistant Commandants, Andhra Pradesh Special Police. Rule 3 lays down the method and conditions for appointment to posts in the different categories.

Appointment as Deputy Superintendent of Police in category II is made by (a) direct recruitment, or (b) recruitment by transfer from Andhra Pradesh Police Subordinate Service, or (c) appointment from category III of this service with the concurrence of the Public Service Commission provided that the number of such appointments does not exceed two in a calendar year. Under Rule 3 (d), "the seniority of the Deputy Superintendents of Police, category II appointed from the posts of Deputy Superintendents of the Police, category III shall be fixed in that category giving them credit for their entire service in the post of the Deputy Superintendents of Police." Rule 3 (d) thus gives a Deputy Superintendent of Police appointed to category II from category III the benefit of past service in the State Service for the purpose of seniority as against the Subordinate Service appointed Deputy Superintendent of Police in category II by promotion or a new recruit appointed to the same post directly.

Some of the Deputy Superintendents of Police in category II who were either recruited directly or "recruited by transfer" to the said posts before the 1966 Andhra Pradesh Police Service Rules came into force challenged the validity of the vires of Rules 3 (d) on the ground that the appointment of a Deputy Superintendent of Police from category III to category II is really by way of promotion and validly the seniority in category II of an officer so promoted can be reckoned only from the date of his appointment to that category II. The writ petition was dismissed by learned Single Judge. In appeal the Division Bench of the High

A Court held Rule 3 (d) invalid, taking the view that category III personnel are not equivalent to category II personnel and that the former attains the same status only on appointment to category II. Hence this appeal by respondent No. 3 in the writ petition who is a Deputy Superintendent of Police appointed from category III to category II under the 1966 rules.

Allowing the appeal, the Court

B

HELD : 1. Rule 3 (d) of the Andhra Pradesh Police Service Rules, 1966 is valid. There is nothing arbitrary or absurd in what Rule 3(d) prescribes as regards the credit regarding the length of the past service for which credit is to be given for the purpose of seniority. Whether or not some credit should be given for past service in such circumstances is a matter of policy resting with Government. That being so, in the absence of anything arbitrary or absurd in the C provision, the Court cannot examine the matter and come to its own conclusion about what should be the length of past service in which credit should be given. [75G-76B]

Tamil Nadu Education Department Ministerial and General Subordinate Service Association v. *State of Tamil Nadu and another*, [1980] 1 S.C.R. 1026, followed.

D

2. There is no basis to support a claim of superiority for category II in the facts of the case. Rule 3 (a) itself which has not been challenged, treats appointment from category III as distinct from either direct recruitment or promotion. There is no dispute on the following points :—

(i) categories II and III carry equal pay; (ii) qualifications for direct recruits to both categories are the same; (iii) promotion to either category is from the E post of Inspector of Police which is a Subordinate Service and the Inspectors of Police in their respective branches from whom promotions to the two categories are made also enjoy the same scale of pay. The mere fact that there are some differences regarding the duties of the Deputy Superintendents of Police of category II and category III and their promotional avenues do not alter the position. [76E, 74D, 73C-G]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1223 of 1977.

Appeal by special leave from the judgment and order dated the 22nd April, 1976 of the Andhra Pradesh High Court in W.A. No. 581 of 1971.

G

K.K. Venugopal and *A. Subba Rao* for the Appellant.

P. Ram Reddy, G.S. Narayana and *G.N. Rao* for Respondent No. 1.

H

H.S. Gururaj Rao and *S. Markandeya* for Respondents Nos. 2, 5, 8, 14 and 21.

The Judgment of the Court was delivered by

GUPTA J. The vires of rule 3(d) of the Andhra Pradesh Police Service Rules, 1966 is in question in this appeal preferred by special leave. The rule was challenged as invalid by respondent Nos. 1 to 23 by filing a writ petition in the Andhra Pradesh High Court. A single Judge of the High Court dismissed the petition, his decision was reversed by a Division Bench on appeal declaring "rule 3(d) is discriminatory and violative of the principles of equality in Art. 16 of the Constitution of India."

Rule 5(1) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963, framed in exercise of the powers conferred by the proviso to Art. 309 of the Constitution of India, classifies the civil services of the State into (a) the State Services, and (b) the Subordinate Services. The State services are the superior class. The Andhra Pradesh Police Service is one of the State services. The subordinate services include, among others, the Andhra Pradesh Police Subordinate Service. The Andhra Pradesh Police Service Rules, 1966, described as Special Rules for Andhra Pradesh Police were also made in exercise of the powers conferred by the proviso to Art. 309 of the Constitution. Rule 2 of the 1966 Police Service Rules sets out the three categories of officers constituting the service, namely : category I composed of Commandants, Andhra Pradesh Special Police; category 2 which includes Deputy Superintendents of Police and Assistant Commissioners of Police, other than those in category 3 ; and category 3 comprising Deputy Superintendents of Police in various capacities including Assistant Commandants, Andhra Pradesh Special Police. Rule 3 of the Andhra Pradesh Police Service Rules, 1966 lays down the method and conditions for appointment to posts in the different categories. We are concerned in this appeal with Deputy Superintendents of Police belonging to categories 2 and 3 of the rules. Appointment as Deputy Superintendent of Police in category 2 is made by (a) direct recruitment, or (b) 'recruitment by transfer' from Andhra Pradesh Police Subordinate Service, or (c) appointment from category 3 of this service with the concurrence of the Public Service Commission provided that the number of such appointments does not exceed two in a calendar year. Rule 3 (15) of the Andhra Pradesh State and Subordinate Services Rules, 1962, also framed under proviso to Art. 309 of the constitution, defines the expression "recruited by transfer" ; from the definition it is clear that such recruitments are really by way of promotion. It is further prescribed by the 1966

A rules that officers appointed as Deputy Superintendents of Police from Category 3 to category 2 must pass certain tests and undergo further training and probation. It is also required that they must complete 8 years of service as Deputy Superintendent of Police in category 3 and shall be below 40 years of age.

B The impugned rule 3(d) of the Andhra Pradesh Police Service Rules, 1966 states : "The seniority of the Deputy Superintendents of Police, Category-2 appointed from the posts of Deputy Superintendents of Police, Category-3 shall be fixed in that category giving them credit for their entire service in the posts of the Deputy Superintendents of Police, Category-3". Rules 3(d) thus gives a Deputy C Superintendent of Police appointed to category 2 from category 3 the benefit of past service in the State Service for the purpose of seniority as against a member of the Subordinate Service appointed Deputy Superintendent of Police in category 2 by promotion, or a new recruit appointed to the same post directly.

D The writ petition out of which this appeal arises was made by some of the Deputy Superintendents of Police in category 2 who were either recruited directly or "recruited by transfer" to the said posts before the 1966 Andhra Pradesh Police Service Rules came into force Respondents Nos. 2, 3 and 4 in the writ petition are Deputy Superintendents of Police appointed from category 3 to category 2 E under the 1966 rules ; they were working as Assistant Commandants in category 3 before appointment to Category 2. The appellant before us was impleaded as the third respondent in the writ petition.

The validity of rule 3(d) of the Andhra Pradesh Police Service Rules is questioned on the ground that the appointment of a Deputy F Superintendent of Police from category 3 to category 2 is really by way of promotion and validly the seniority in category 2 of an officer so promoted can be reckoned only from the date of his appointment to that category. To support the contention that such an appointment is by way of promotion the following features are pointed out from the 1966 rules : (ii) not more G than two persons can be appointed Deputy Superintendents of Police from category 3 to category 2 every year ; (ii) the officers have to complete 8 years of service in category 3 before they can be appointed to category 2 ; (iii) these officers have to undergo training and probation for two years. According to the writ petitioners who H are respondents Nos. 1 to 23 in this Court these features conclusively prove that the appointment of a Deputy Superintendent of Police to category 2 from category 3 is by way of promotion. These are also

the features that weighed with the Division Bench of the High Court in holding that rule 3(d) was invalid. This is what the Division Bench observed :

> "Having regard to the rule of eligibility and qualifications of service of eight years in the category-3, the tests prescribed, the probation of two years... the training... are all indicative and, in our view, decisive that category-3 personnel are not equivalent to category-2 personnel. We are further of the view, category-3 personnel attain the same status only on appointment to category-2."

There appears to be no dispute on the following points :—

(1) categories 2 and 3 carry equal pay ;

(2) qualifications for direct recruits to both categories are the same ;

(3) promotion to either category is from the post of Inspector of Police which is a subordinate service, and the Inspectors of Police in the respective branches from whom promotions to the two categories are made also enjoy the same scale of pay.

The duties of the Deputy Superintendents of Police of category 2 and category 3 are however of a different nature. The Deputy Superintendents of Police of Category 2 are normally concerned with the prevention, detection and investigation of crime and maintenance of law and order. They constitute the principal police service of the State. Assistant Commandants, Andhra Pradesh Special Police, are also designated as Deputy Superintendents of Police in category 3. They are primarily a striking force employed also for maintaining law and order, but they are not concerned with the routine duties of the principal police service. The promotional avenues for the officers of the two categories are also not the same. Officers belonging to category 2 of the Andhra Pradesh Police Service are eligible to be promoted as Commandants, Home Guards, and Assistant Superintendent of Police. They are also eligible to be considered for appointment to the Indian Police Service. Officers of category 3 are eligible to be promoted as Commandants, Home Guards, but not as Assistant Superintendents of Police, nor are they eligible to be considered for appointment to the Indian Police Service. It appears from the counter affidavit filed on behalf of the

A State of Andhra Pradesh in the High Court which is based on Government Order No. 1513 dated November 28, 1961 that the limited chances of promotion open before officers of category 3 gave rise to discontent among them, and to prevent stagnation and avoid frustration among officers belonging to that category, government decided to throw open avenues of promotion of the officers of category 3 B which were available to the officers belonging to category 2; however, the opportunity made available was a limited one in the sense that only to Deputy Superintendents of Police from category 3 were to be appointed as Deputy Superintendents of Police, category 2, in a year.

C Rule 3 (a) of the Andhra Pradesh Police Service Rules, 1966 provides that Deputy Superintendents of Police in category 2 may be appointed by (a) direct recruirment, or (b) recruitment by transfer from Inspectors of Police, class I, in the Andhra Pradesh Police Subordinate Service, which is really a promotion for them, or (c) appointment from category 3 which is a State service. The validity D of the rule 3 (a) has not been challenged. It is to be noted that rule 3 (a) itself treats appointment from category 3 as distinct from either direct recruitment or promotion. It was contended on behalf of the appellant that if appointment to category 2 from category 3 was not direct recruitment or promotion, it could only be by way of transfer. The point was urged also in the High Court. On behalf E of the appellant reference was made to fundamental rule 15 which authorises the transfer of a government servant from one post to another provided that the post to which he is transferred does not carry less pay. Rule 33 (c) of the Andhra Pradesh State and Subordinate Services Rules, 1962 says:

F > "The transfer of a person from one class or category of a service to another class or category carrying the same pay scale of pay shall not be treated as first appointment to the latter for purposes of seniority; and the seniority of a person so transferred shall be determined with reference to the date of his first appointment to the class or category G from which he was transferred."

The rule adds:

> Where any difficultly or doubt arises in applying this H Sub-rule, seniority shall be determined by the appointing authority."

Of course rule 3 of the Andhra Pradesh Police Service Rules not states specifically that appointments to category 2 from category 3 shall be considered as transfer making rule 33 (c) of the Andhra Pradesh State and Subordinate Services Rules applicable. The answer of the respondents is that such appointments could not be treated as transfer because category 2 and category 3 are not of equal status. There is however no rule saying that services in category 3 are inferior to those in category 2; both are State Services. The learned single Judge of the High Court explains in his judgment why the fact that the Deputy Superintendents of Police in category 3 have to pass tests and undergo training and probation for appointment to category 2 does not warrant the conclusion that such appointment are by way of promotion:

> "Since the higher posts of Additional Superintendents of Police, Posts in the Indian Police Service etc., involve what may be called the ordinary police duties with which the members of the Andhra Pradesh Special Police are not likely to be familiar, the Government has further prescribed that officers appointed from category 3 to category 2 must pass certain tests and undergo further training and probation. It is important to realise that the appointment of some outstanding officers from category 3 to category 2 is designed to achieve the two fold object of providing avenues of promotion for such outstanding officers and injecting new but proven blood, as it were, into category 2. If this twin object is realised it becomes evident that appointment to category 2 from category 3 cannot be considered to be a promotion."

In our view the explanation given by the single Judge is sound. We find no basis for the claim that category 3 is inferior to category 2 in status.

We do not however think it necessary to decide whatever appointments to category 2 from category 3 amount to transfer attracting rule 33 (c) of the Andhra Pradesh State and Subordinate Services Rules. Under Rule 3 (a) of the Andhra Pradesh Police Service Rules, 1966 appointment from category 3 is one method of recruitment to category 2 and the only question is whether giving credit to such appointees for past service in another category in the State Service is justified. We have mentioned above the points of similarity in matters of recruitment and promotion to the two respective categories. It has been noticed also that they carry the same scale of

A pay. Whether or not some credit should be given for past service in such circumstances is a matter of policy resting with government. We do not find anything arbitrary or absurd in what rule 3 (d) prescribes, and that being so, the court cannot examine the matter and come to its own conclusion about what should be the length of past service for which credit should be given. In *Tamil Nadu* B *Education Department Ministerial and General Subordinate Service Association* v. *State of Tamil Nadu and another.*(1) this Court considering a similar contention that the length of service taken into consideration for fixing seniority had worked hardship on some of the employees, took the view that in such matters the court can only take an "overall view and should not attempt "a meticulous C dissection" of the matter. Once the principle is found to be rational", it was observed, a few "instances of hardship cannot be a ground to invalidate the order or the policy...this is an area where, absent arbitrariness and irrationality, the court has to adopt a hands-off policy". There is nothing irrational in giving the Deputy Superintendents of Police appointed to category 2 from category 3 D credit for past services rendered by them in category 2 from 3 which is also a State Service as category 2. The main ground on which the length of the past service for which credit has been given is questioned in this case is not that it was not rational but that category 3 being inferior in status to category 2, no credit could at all be given for past service in category 3. We found no basis to E support the claim of superiority for category 2 and in the facts of the case we do not think that the length of past service for which credit has been given is improper.

Accordingly we allow this appeal, set aside the decision of the Division Bench and restore that of the learned single Judge F dismissing the writ petition. The parties will bear their respective costs.

S.R. *Appeal allowed.*

(1) [1980] 1 S.C.R. 1026.