

Y. RAMANJANEYULU

v.

STATE OF ANDHRA PRADESH & ORS.

March 29, 1985

[D.A. DESAI AND R.B. MISRA, JJ.]

Civil Service—Principle of Reservation of appointments extended to all departments by an Order—No appropriate and timely action taken on it by the Department—Unexplained long delay on the part of the appellant in moving for effective remedy—Effect of,

G.O.Ms.No. 559 dated May 4, 1961 issued by the respondent-State provides that the principle of reservation of appointments should be extended to all cadres of posts including posts involving promotions in all departments including the Departments of Secretariat to which it did not apply till then.

The appellant filed a Representation Petition before the Tribunal as late as 1977 contending that if appropriate action would have been taken at the time it was due as per G.O.Ms.No. 559, he would have been eligible for promotion as Deputy Registrar of Cooperative Societies in 1965 and by denying him the said promotion in violation of the aforesad Govt. order; his future promotion to the post of Joint Registrar has been adversely affected. The Tribunal dismissed the petition holding that the special rules for the Co-operative service did not contain any specific provision for the application of rule of reservation and, therefore, the appellant was not entitled to claim the benefit of the rule of reservation for promotion to the rank of Deputy Registrar between 1965 and 1972 as claimed by him. Hence this appeal by special leave.

Condoning the delay in filing the special leave petition and disposing of the appeal, the Court

HELD: (1) On a proper interpretation of the relevant Government Order, the appellant was entitled to promotion as Deputy Registrar in the year 1965 which was postponed upto October 14, 1983 when he was promoted as Deputy Registrar. Though the appellant made number of representations but he moved for an effective relief as late as 1977. Moreover, this is not the lone case and if the Court grants him the relief as claimed by him, though he has

sought relief after a very long unexplained delay, it would create chaos in the service and many promotions and reversions will have to be effected. The Court is, therefore not inclined to disturb the existing promotions and postings by holding that the appellant was entitled to promotion way back in 1965. In this background, he is entitled to some monetary compensation.

[572G-H; 573A]

(2) If the appellant is given the benefit of deemed promotion from 1965 the State cannot deny identical benefit to persons similarly situated and similarly circumstanced. And they never questioned the alleged impropriety of not giving them the benefit of the Government Order in respect of reservations in promotion posts. All these are relevant considerations and therefore the amount of backwages is fixed at Rs. 40,000 payable in one lump sum. While computing the amount, the Court has kept in view the period during which the appellant would be entitled to relief. Therefore, the amount of Rs. 40,000 awarded as compensation in the form of backwages is to be spread over for the period 1965 to 1982. Since the amount is payable in one lump sum, presumably the Government may resort to s. 192 of the Income Tax Act, but let it be made distinctly clear that the appellant is entitled to the benefit of sec. 89 of the Income Tax Act, 1961 and Rule 21A of the Income Tax Rules and is entitled to relief of spread over. The pay of the appellant shall also be fixed at Rs. 1600 i.e. the maximum of the scale of Deputy Registrar effective from January 1, 1984. [573E-H; 574B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1384 of 1935

From the Judgment and Order dated 24.3.83 of the Administrative Tribunal at Hyderabad in Representation Petition No. 1172 of 1977.

A. Subba Rao for the Appellant.

P. Ram Reddy, R.V.S.N. Chari and Sudesh Menon for the Respondents.

The Judgment of the Court was delivered by

DESAI, J. Special leave granted.

Delay in filing the special leave petition condoned.

We heard Mr. A Subba Rao, learned counsel for the appellant and Mr. Ram Reddy, learned senior counsel for the State of Andhra Pradesh.

The appellant claims that if appropriate action would have been taken at the time it was due, as per the G.O.Ms. No. 559

dated May 4, 1961 which provides that the principle of reservation should be extended to all cadres of posts including posts involving promotions in all departments including the Departments of Secretariat to which it did not apply till then, the appellant would have been eligible for promotion as Deputy Registrar of Co-operative Societies in 1965. He also claims that by denying him the promotion in violation of the afore-mentioned Govt. Order, his future promotion to the post of Joint Registrar has been adversely affected because in that event he would have long since been appointed as Joint Registrar. The appellant sought relief by filing Representation Petition No. 1172 of 1977 in the Andhra Pradesh Administrative Tribunal, Hyderabad. The Tribunal held that the special rules for the Co-operative service did not contain any specific provision for the application of rule of reservation and, therefore, in accordance with the Government Memo dated 27.3.1963, the appellant was not entitled to claim the benefit of the rule of reservation for promotion to the rank of Deputy Registrar between 1965 and 1972 as claimed by him. Alternative submission of the appellant that the action of the Government in giving the benefit of the rule of reservation to the category of Section Officers in the Secretariat in Andhra Pradesh General Service for appointment to the rank of Deputy Registrar while omitting other feeder categories from which appointments by transfers were made to the post of Deputy Registrar, was discriminatory and hence violative of Arts. 14 and 16 of the Constitution, was rejected observing that the promotion from the post of Sub-Registrar of Co-operative Societies to the post of Deputy Registrar of Co-operative Societies was in direct line of promotion and therefore, this category has been excluded from the table annexed to G.O.Ms No. 758 dated October 30, 1976. Accordingly, the representation petition was rejected. Hence this appeal by special leave.

When the appeal was taken up for hearing, Mr. Ram Reddy frankly stated that if the benefit of the rule of reservation as set out in the G.O.Ms. 559 of May 4, 1961 was available to the appellant, he would become eligible for promotion to the post of Deputy Registrar wayback in 1965 or latest in 1972. He also frankly conceded that if now the appellant is given promotion out of turn when he did not take effective remedial measures till 1977, when he filed the representation petition, there would be extensive disturbance in various categories of posts because once the appellant is given the

A benefit, there are numerous similar cases to whom the same benefit will have to be extended and there will be number of promotions and reversions affecting the service.

B Mr. Subba Rao repelled the submission saying that the appellant has been making numerous representations which have fallen on deaf ears and therefore, he should not be made to suffer and be the victim of bureaucratic callousness and indifference.

C It is now admitted that the petitioner had filed Writ Petition No. 376 of 1968 in the High Court of Andhra Pradesh and in response to his request, the Government re-fixed the seniority of the appellant in the cadre of sub-Registrars of Co-operative Societies just below Shri N. Raghunatha Rao. It is also admitted that the petitioner became eligible for promotion as Deputy Registrar from the year 1965. It is further admitted that the petitioner has been working as Deputy Registrar with effect from October 14, 1983.

D The vertical line of promotion in Co-operative service appears to be sub-Registrar of Co-operative Societies moving upward as Deputy Registrar of Co-operative Societies and then to special category of Deputy Registrars and then as Joint Registrar. We were informed that the post of Registrar is an I.A.S. cadre post. The appellant as Deputy Registrar at present is in the pay scale of Rs. 1050-1600 and his substantive pay is Rs. 1400 per month. The pay scale admissible for the post of special category of Deputy Registrar is Rs. 1250-1800.

F Mr. Ram Reddy, learned counsel for the State of A.P. fairly stated that if the court does not accept the interpretation as put by the Tribunal, then obviously the appellant would be eligible for promotion from 1965. But his is not the lone case and if the court grants him the relief as claimed by him, though he has sought relief after a very long unexplained delay, it would create chaos in the service and many promotions and reversions will have to be effected. According to Mr. Ram Reddy, it is a case in which monetary compensation would be more than adequate. There is considerable force in this submission. As pointed out earlier, though undoubtedly the appellant made number of representations, he moved for an effective relief as late as 1977. We are therefore, not inclined to disturb the existing promotions and postings by holding that the

appellant was entitled to promotion way back in 1965. In this background, the appellant is entitled to some monetary compensation.

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Mr. Ram Reddy pointed out that after giving the appellant a deemed promotion from 1965, if his monthly salary is worked out according to the scale then admissible for the promotional post, roughly Rs. 1,20,000 would be payable to him. And if he is given the benefit, the State cannot deny identical benefit to persons similarly situated and similarly circumstanced. And they never questioned the alleged impropriety of not giving them the benefit of the Government order in respect of reservations in promotional posts. All these are relevant considerations and to some extent for this situation the appellant himself is to blame. Mr. Ram Reddy suggested that the adequate monetary compensation could be around Rs. 30,000. On the other hand, Mr. A. Subba Rao attempted to persuade us to give all the backwages on the footing of a deemed date of promotion. We propose to steer the middle course.

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Before we determine the amount payable as backwages, we must make it distinctly clear that while computing the amount we have kept in view the period during which the appellant would be entitled to relief at our hands. As pointed earlier, on a proper interpretation of the relevant Government order, the appellant was entitled to promotion in the year 1965 which was postponed upto 1983. Therefore, this amount which we propose to award as compensation in the form of backwages is to be spread over for the period 1965 to 1982. Now that the amount of Rs 40,000 which we are hereby awarding is payable in one lump sum, presumably the Government may resort to Sec. 192 of the Income Tax Act, but let it be made distinctly clear that the appellant is entitled to the benefit of Sec. 89 of the Income Tax Act, 1961 and Rules 21A of the Income Tax Rules and he is entitled to relief of spread over. Therefore, while computing the total amount of Rs 40,000 we have kept the spread over in view for a period of roughly 17 years which would mean that he is being awarded Rs. 2,500 per year as backwages. This would not make the income taxable, if it is not otherwise taxable. If therefore, any deduction is made towards income tax while making the payment it is incumbent upon the Andhra Pradesh authorities to take all necessary steps to obtain the

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A relief for the appellant under Sec. 89 of the Income Tax Act read with Rule 21A of the Income Tax Rules.

B The appellant is already promoted as Deputy Registrar of Co-operative Societies. The scale admissible for the post is Rs 1050-1600. We direct that the pay of the appellant shall be fixed at Rs. 1600 i.e. the maximum of the scale effective from January 1, 1984 and he should be paid Rs 40,000 in all towards backwages. We order accordingly. The payment herein directed shall be made within a period of three months from today. We order accordingly. There will be no order as to costs.

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M.L.A.

Appeal allowed in part

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