

D. HANMANATH RAO AND ORS. ETC.

v.

STATE OF A.P. AND ORS. ETC.

APRIL 25, 1990

[RANGANATH MISRA, KULDIP SINGH AND
R.M. SAHAI, JJ.]

Civil Services: A.P. (Roads and Buildings) Engineering Service Rules, 1965: Rule 3(3)(a)—Assistant Engineers—Promotees and direct recruits—Inter-se seniority—Fixation of.

Sub-rule 3(a) of rule 3 of the Andhra Pradesh (Roads and Buildings) Engineering Service Rules, 1965 prescribes that the substantive vacancies in the category of Assistant Engineers 37-1/2 per cent shall be filled up by direct recruitment and the remaining 62-1/2 per cent by transfer and promotion of junior officers.

In *K. Siva Reddy v. State of Andhra Pradesh*, [1988] Suppl. SCC 225, filed by direct recruits, the Court had directed the State Government to ascertain the exact substantive vacancies in the category of Assistant Engineers in the service as on December 31, 1982, work out the quota prescribed under rule 3(3)(a) of the Rules and draw up a seniority list accordingly.

In the draft seniority list drawn up by the State Government on the basis of the guidelines, it placed the 1982 direct recruits from serial Nos. 234 to 269 without disturbing promotees upto serial No. 233 and the remainder of promotees given promotion prior to 1982 were placed against serial Nos. 270 to 300. In *C. Radhakrishna Reddy v. State of A.P.*, W.P. No. 369 of 1989 decided on November 10, 1989 the Court found the said list in accord with the directions.

In these writ petitions preferred by the promotee Assistant Engineers, it was contended for them that serious injustice had been done to them as the accrued rights of theirs had been disturbed and some of the direct recruits had been given the benefit of seniority above them by counting service prior to their actual recruitment.

Dismissing the writ petitions, the Court,

HELD: 1. A Government servant is justified in taking legal action

A when he feels that a stigma or punishment is undeserved but he is expected to bear with fortitude and reconcile to his lot suppressing disappointment when he finds a co-worker raised to a position which he himself aspired after. [707G]

B *Dr. G. Marulasiddaiah v. Dr. T.G. Siddapparadhya & Ors.*, [1971] 1 SCC 568, referred to.

C 2. In *K. Siva Reddy's* case, the Court had taken a very equitable view in not disturbing the regularisation contrary to the quota and had taken every care to ensure that the cause of justice was not made to suffer and a balance was maintained by an appropriate admixture of relief by confining the reconsideration for a period after 1982. The year 1982 was fixed on account of two features, (i) that regular disputes had been raised from that time, and (ii) a period of 5-6 years was not too long a period to give rise to a sense of conclusiveness generated by long lapse of time. The promotee-engineers should have been happy and thankful to their lot that their regularisation was not disturbed and even seniority prior to 1982 was not being affected though they had acquired these benefits out of turn. [707C-E]

ORIGINAL JURISDICTION: Writ Petition No. 1275 of 1989 etc.

E (Under Article 32 of the Constitution of India).

Ms. Rani Chhabra, K. Ramkumar, Govind Mukhoty and Vimal Dave for the Petitioners.

F M.K. Ramamurthy (NP), K.K. Venugopal, H.S. Gururaj Rao, Ms. Chandan Ramamurthi, M.A. Krishnamurthi, T.V.S.N. Chari, S. Markandeya, W.A. Nomani, G.S. Giri Rao and A.K. Raina for the Respondents.

The Judgment of the Court was delivered by

G RANGANATH MISRA, J. These are petitions under Art. 32 of the Constitution. Petitioners are promotee-Engineers of the Roads & Buildings Wing of the Andhra Pradesh Engineering Service and challenge mainly is to certain earlier decisions of this Court resolving similar disputes by judgments rendered in writ petitions and to the guidelines formulated by the State Government in the matter of the drawing up of the seniority list by way of implementation of this Court's directions.

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Facts are not in dispute. Shortly stated, under the Rules substantive vacancies in the category of Assistant Engineers have to be filled up from two sources—37-1/2 per cent by direct recruitment and the remainder of 62-1/2 per cent by transfer of Supervisors and Draughtsmen and by promotion of Junior Engineers. Regular direct recruitment had not been made as and when due and promotees beyond the limit had been put in in the place of direct recruits. While disposing of a group of petitions in a contest of this type in *K. Siva Reddy & Ors. v. State of A.P. & Ors.*, [1988] Suppl. SCC 225, a two-Judge Bench of this Court instead of disturbing the entire group of promotee-Engineers in excess of the quota, made the following direction:

“Reopening the question of *inter se* seniority on the basis of non-enforcement of the rules from the very beginning may create hardship and that would be difficult to mitigate but we see no justification as to why the benefit of the scheme under the rules should not be made available to direct recruits at least from 1982. When the State Government by rules duly framed prescribed the method of recruitment and put the scheme into operation it had the obligation to comply with it. The explanation offered by the State Government for non-compliance of the requirements of the rules does not at all impress us. We, therefore, direct that as on December 31, 1982, the State Government must ascertain the exact substantive vacancies in the category of Assistant Engineers in the service. On the basis that 37-1/2 per cent of such vacancies were to be filled up by direct recruitment, the position should be worked out. Promotees should be confined to 62½ per cent of the substantive vacancies and in regard to 37½ per cent of the vacancies the shortfall should be filled up by direct recruitment. General Rules shall not be applied to the posts within the limits of 37½ per cent of the substantive vacancies and even if promotees are placed in those posts, no seniority shall be counted. The State Government shall take steps to make recruitment of the shortfall in the direct recruitment vacancies within the limit of 37½ per cent of the total substantive vacancies up to December 31, 1987 within four months from today by following the normal method of recruitment for direct recruits. The seniority list in the cadre of Assistant Engineers shall be redrawn up, as directed by the Tribunal, by the end of September 1988, keeping the directions referred to above in view. There

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A shall be a direction issued to the State of Andhra Pradesh to make recruitment to the category of Assistant Engineers by strict compliance of Special Rules henceforth."

B The State Government came forward to implement the direction and published the draft seniority list drawn up on the basis of discussed guidelines. Keeping the directions in view the draft list placed the 1982 direct recruits from serial nos. 234 to 269 without disturbing promotees upto serial no. 233 and the remainder of promotees given promotion prior to 1982 were placed against serial nos. 270 to 300.

C Writ petition no. 369 of 1989—*C. Radhakrishna Reddy & Ors. v. State of A.P. & Ors.*, had earlier raised the same dispute. By judgment dated November 10, 1989, while dismissing the said writ petition a two-Judge Bench of this Court said:

D "In *Siva Reddy's* case this Court found that promotees had exceeded the quota and even got regularised in respect of the posts in excess of the limit. Taking into consideration the fact that regularisation had been done after the promotees had put in some years of service and disturbing regularisation would considerably affect the officers concerned, regularisation was not interfered with. This Court's intention obviously was not to take away the benefit of regularisation in respect of the officers belonging to the promotee group in excess of their quota but the Court did not intend to allow such regularised officers in excess of the quota to also have the benefit of such service for purposes of seniority. A reading of the judgment in *Siva Reddy's* case clearly indicates that this Court intended what the Government have laid down by way of guideline. We see no justification to interfere with the Government direction. A draft seniority list on the basis of such direction has already been drawn up and has been circulated. We are told that objections have been received and would be dealt with in usual course by the appropriate authorities. This writ petition had been entertained in view of the allegation that the Government direction was on a misconception of what was indicated in the judgment and in case there was any such mistake the same should be rectified at the earliest. Now that we have found that the Government order is in accord with the Court direction, this writ petition must be dismissed and individual grievances, if any,

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against the draft seniority list would, we hope, be considered on the basis of objections filed by the competent authority."

At the hearing Mr. Mukhoty, appearing in support of the main petition, vehemently contended that serious injustice had been done to the promotees and accrued rights of theirs had been disturbed. He submitted that some of the direct recruits had been given the benefit of seniority by counting service prior to their actual recruitment and relied upon observations made by this Court in some cases to the effect that for computation of length of service the period prior to selection was being counted by a deeming position of employment prior to recruitment. When called upon to substantiate his allegation, he has not been able to do so. On the other hand, the Court had taken a very equitable view in not disturbing the regularisation contrary to the quota and had taken every care to ensure that the cause of justice was not made to suffer and a balance was maintained by an appropriate admixture of relief by confining the reconsideration for a period after 1982. The year 1982 was fixed, as the reasonings indicate, on account of two features—(i) that regular disputes had been raised from that time; and (ii) a period of 5-6 years was not too long a period to give rise to a sense of conclusiveness generated by long lapse of time. The promotee-Engineers should have been happy and thankful to their lot that their regularisation was not disturbed and even seniority prior to 1982 was not being affected. Oblivious of these benefits which they have retained though acquired out of turn, they have proceeded on the footing that their cause has been affected and justice to them has been denied by placing a group of them below the 1982 recruits. We do not think that for dismissing this group of petitions anything more should be said excepting to quote with approval what this Court had said in *Dr. G. Marulasiddaiah v. Dr. T.G. Siddapparadhya & Ors.*, [1971] 1 SCC 568:

"The canker of litigiousness has spread even to a sphere of life where discipline should check ambition concerning personal preferment."

A government servant is justified in taking legal action when he feels that a stigma or punishment is undeserved but he is expected to bear with fortitude and reconcile himself to his lot suppressing disappointment when he finds a co-worker raised to a position which he himself aspired after.

A Ordinarily, we would have awarded exemplary costs but with a view to allowing an appropriate reconciliation of the petitioners to their lot and not to give them a feeling of infliction of any new injury, we refrain from doing so.

P.S.S.

Petitions dismissed.