

M. JANARDHAN AND ORS.

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v.

STATE OF ANDHRA PRADESH AND ORS.

NOVEMBER 26, 1993

[A.M. AHMADI AND N. VENKATACHALA, JJ.]

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Constitution of India, 1950: Art. 309—Proviso Special Rules for Andhra Pradesh public health subordinate service framed under—Made applicable retrospectively—Whether promotion on temporary basis and subsequent regularisation of the promotees not in accordance with the Rules and therefore bad.

C

Service Law—Andhra Pradesh Public Health Subordinate Service Rules—Regularisation and inter se seniority between temporary—Direct recruits and temporary promotees—Temporary direct recruits appointed prior to appointment of temporary promotees in the cadre of Health Inspectors—On representation, the State Government regularised retrospectively the services of temporary promotees from the respective dates of their illegibility for promotion as Health Inspectors, making the temporary direct recruits junior to the temporary promotees. Whether the services of temporary Direct appointees can likewise be regularised with retrospective effect ?

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During the years 1958 to 1962, the Appellants were directly appointed as Health Inspectors in Andhra Pradesh Public Health Subordinate Service (APPHSS), on a temporary basis. During the years 1961 to 1969, the respondents cadre the feeder were temporarily promoted as Health Inspectors in the APPHSS. In the mean time, on 31st Dec. 1964 Special Rules for APPHSS were framed under Article 309 Proviso, which were given retrospective effect from 1.11.1956. The Rules required 3 years qualifying service in the feeder cadre for promotion to the post of Health Inspector. In 1968, the Andhra Pradesh Public Service Commission made selection to the cadre of Health Inspectors in APPHSS, on a permanent basis. The Appellants as well as the respondents were selected, but respondents were given rankings below the Appellants.

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Temporary promotes, respondents No. 4 to 121 approached the State Government for their regularisation as Health Inspectors from the respective dates of their eligibility for promotion on temporary basis by deleting

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- A their names from the select list so as to make them Senior to the Appellants. By proceedings dt. April, 1977 the Services of temporary promotees were regularised by the Govt. from the respective dates of their illegibility.

- B The appellants challenged the regularisation of temporary promotees with retrospective effect before the Tribunal in R.P. No. 507 of 1977 but on June 11, 1979 the Tribunal dismissed that petition.

Aggrieved thereby, the Appellants approached this court by way of special leave. Leave was granted.

- C In the meanwhile, the Appellants also made a representation to the State Govt. seeking retrospective regularisation as Health Inspectors with reference to their initial appointments on temporary basis as had been done in the case of Respondents Nos. 4 to 121, the promotees. By its order dt. 22.2.1985, the A.P. Govt. regularised the services as of direct appointees as Health Inspectors with retrospective effect. The promotees Health Inspectors challenged the retrospective regularisation of the directly appointed Health Inspectors by filing a petition before the Tribunal. By its order dated 7.3.1986, the Tribunal dismissed that petition but that order was made subject to the outcome of the Appeal pending in this Court, on 2.2.89 the respondent No. 2 submitted a report to the State Government on the follow up action.

- E Allowing the Appeal, the Court

- F HELD : 1. Rule 37 (e) of the A.P. Public Health Subordinate Service Rules enabled regularisation of temporary promotee Health Inspectors in the Cadre of APPHSS from an anterior date. However, there is no material which would show that such regularisation of the temporary promotee Respondents No. 4 to 121 had been made subsequent to their promotion, in accordance with the Rules, a pre-condition envisaged under Rule 37(e) of the Rules. Public Service Commission's deletion of names from the selection list cannot amount to their promotion in accordance with the Rules.
- G However, the Appellants have not sought to challenge on that ground and therefore, the decision cannot be made on that infirmity. [853-D-E]

- H 2. If the order of the State Government giving retrospective regularisation to promotee Health Inspectors Under Rule 37(e) of the Rules can stand, there is no good reason why the order of the said Government dt. 22.2.1985 giving retrospective regularisation for directly appointed

Health Inspectors cannot stand, particularly when giving of such retrospective regularisation is traceable to rule 23(a). [853-F-G] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 979 of 1981.

From the Judgment and Order dated 11.6.79 of the Andhra Pradesh Administrative Tribunal in Representation Petition No. 507 of 1977. B

H.S. Gururaj Rao and T.V. Ratnam for the Appellants.

K. Madhava Reddy, G. Prabhakar, T.V.S.N. Chari, Ram Kumar, Janaki Ramachandran for the Respondents. C

S.Markandeya, Ajay Singh and Ms. C. Markandeya for the intervenor.

Y.P. Rao for impleading party Respondents. Nos. 122-125. D

The Judgment of the Court was delivered by

VENKATACHALA, J. This appeal is directed against the Order dated June 11, 1979 of the Andhra Pradesh Administrative Tribunal, by which Representation Petition No. 507 of 1977 in which retrospective regularisation of the services of promotee Health Inspectors in the cadre of Health Inspectors in Andhra Pradesh Public Health Subordinate Service had been questioned by direct recruit Health Inspectors in that very cadre, is dismissed. E

The factual context which furnishes the background in which this appeal needs consideration and decision, warrants mention at the outset. F

During the years 1958 to 1962 Respondent-2 the Director of Medical & Health Services, Andhra Pradesh appointed the appellants and a few others in the Andhra Pradesh Public Health Subordinate Service (APPHSS) on a temporary basis since all of them had successfully completed Sanitary Inspector's Course in Osmania Medical College. Similarly, during the years 1961 to 1969 Respondent-2 appointed Respondents 4 to 121 who were Health Assistants. Health Sub-Inspectors, Vaccinators etc. in the feeder cadre, as Health Inspectors in cadre of APPHSS by promoting them temporarily, even though they were not qualified for appointment H

- A by promotion as Health Inspectors, in that, they had not put in the requisite service in the feeder cadre. When, in the year 1968, the Andhra Pradesh Public Service Commission (PSC) invited applications from qualified candidates for selection and their appointment as Health Inspectors in the cadre of APPHSS on a permanent basis, the appellants and Respondents, 4 to 121 who were already in the cadre of APPHSS on temporary basis,
- B applied to PSC for being selected and appointed on a permanent basis as Public Health Inspectors in the said cadre. Indeed, all of them were selected by PSC and a selection list was prepared by it giving the selectees rankings on the basis of their comparative merit. The delay in appointing the selectees according to the selection list, appears to have made some of
- C the selectees to approach the Andhra Pradesh High Court, for relief. The High Court by its Order dated September 20, 1971 in Writ Petition No. 3981 of 1970 has indeed, directed the Government to take steps to appoint the selectees in the selection list of PSC, as Health Inspectors on a permanent basis in the cadre of APPHSS.

- D However, Respondents 4 to 121, who were given rankings below the appellants in the selection list of PSC, but were not to be appointed accordingly, moved the State Government for their regularisation as Health Inspectors in the cadre of APPHSS from the respective dates of their eligibility for promotion to that cadre on temporary basis by getting their
- E names deleted from the selection list of PSC, so as to make them become seniors to appellants in the cadre.

- By then, Special Rules for Andhra Pradesh Public Health Subordinate Service, issued under the proviso to Article 309 of the Constitution of India on December 31, 1964, which were given retrospective effect,
- F required of persons in the categories of Health Assistants, Health Sub-Inspectors, Vaccinators etc. of not less than three years of service in those posts for being promoted as Health Inspectors. Respondent 2, who wished to concede to the representation of promotee Health Inspectors, appears to have written to PSC, requesting it to delete the names of Respondents
- G 4 to 121 who had been temporarily promoted as Health Inspectors, from its selection list of Health Inspectors, so as to enable to give retrospective promotion to them according to the dates on which they had become eligible for promotion as Health Inspectors. On deletion by the PSC of the names of Respondents 4 to 121, accordingly, Respondent 2 issued proceedings
- H dated April 1, 1977 ordering commencement of the Probation of

promotee Health Inspectors with effect from the dates from which they became eligible for promotion as Health inspectors, obviously in exercise of his powers under rule 37(e) of the Rules, which read :

"37 (e). If such person subsequently promoted to the higher category in accordance with the rules he shall commence his probation if any, such category from the date of such subsequent promotion or *from such earlier date as the appointing authority may determine.*"

(Emphasis supplied)

It is those proceedings which were questioned by the appellants by filing R.P. No. 507 of 1977 before the Tribunal. As that petition was dismissed by the Tribunal by its Order dated June 11, 1979, the present appeal is filed by the appellants questioning the correctness of that Order.

In the meantime, a representation is made to the State Government on behalf of the appellants - Health Inspectors who had been temporarily appointed as Health Inspectors between the years 1957 and 1963 and who were appointed as Health Inspectors permanently on the basis of their selection by PSC and pursuant to the order of the High Court made in a Writ Petition, seeking their retrospective regularisation as Health Inspectors with reference to their initial appointment on temporary basis, as had been done in the case of Respondents 4 to 121, who had been promoted as Health Inspectors in the cadre of Health Inspectors of APPHSS from the Feeder cadres. By its Memorandum No. 46/HI/84-11, M&H dated 22-2-1985, the Andhra Pradesh Government made an order which reads, thus :

"In G.O. Ms. No. 3842, Health, dated 31.12.1964 adhoc rules were framed governing various posts under Andhra Pradesh Public Health Subordinate services, These rules were given retrospective effect from 1.11.1956 in G.O, Ms. No. 802, Health dated 29.12.1981 certain categories included as Feeder category for promotion to the post of Health Inspectors were given retrospective effect ranging from 1.11.1956 to 7.9.1965.

2. The Director of Health & Family Welfare had appointed certain Health Inspectors directly in the Year 1962. The Andhra Pradesh

A Public Service Commission conducted interviews for the post of Health Inspectors in 1968. The Health Inspectors appointed temporarily have appeared for interviews and the services of these candidates on selection were regularised in 1969. Due to giving retrospective effect to the certain amendments issued the persons holding those posts has become seniors as their services were regularised retrospectively. Therefore, the Andhra Pradesh Health (Inspectors (Direct Recruits) Association has represented that they were appointed as Health Inspector in 1962, temporarily and they were fully qualified to hold the posts of Health Inspectors compared to the personnel holding feeder categories have become seniors to them. They, therefore, requested to regularise their services from 1962 to 1968 as they are not responsible for the delay in holding the examination by the Andhra Pradesh Public Service Commission.

D 3. The Government have examined the representation of A.P. Health Inspectors (Direct Recruits) Association and consider that personnel working in the feeder category were given the benefit of retrospective regularisation of services from 01.11. 1965 to 07.09.1965 in view of giving retrospective effect to certain amendments issued and who were fully qualified to hold the post had become juniors and they hereby decide to regularise the services of direct recruit Health Inspectors with retrospective effect of their continuance in temporary services on the following conditions subject to the outcome of the SLP (Civil No. 7995/79) pending before the Supreme Court.

F That the regularisation of direct recruits Health Inspectors should be done with retrospective effect by arranging the seniority as per the merit list assigned by the A.P. Public Service Commission by giving notice to the persons to be affected.

G The Director of Health & Family Welfare is instructed to take action to regularise the services of direct recruits Health Inspectors as noted above.

H This Memorandum issued with the concurrence of General Administration (Ser.D) Department vide their U.G.No. 1013/Ser. D/84-1 dated 28.11.1984."

Promotee Health Inspectors challenged the said order relating to retrospective regularisation of Health Inspectors (Appellants) who had been directly appointed temporarily and later on appointed on the basis of their selection by PSC, by filing Representation Petition before the Tribunal. These petitions were dismissed by the Tribunal by an Order dated 7.3.1986 made thereon, the operative portion of which reads thus :

"To sum up whatever consequential steps have been taken in pursuance of Memo No. 46 dt. 22.2.1985 should be treated as tentative and the final decision in regard to the retrospective regularisation of direct recruits should be taken by the Government after itself considering all the objections or representations made in this connection. As far as consequential steps taken in pursuance of G.O. Ms. No. 802, are concerned the appointing authorities should consider any objections that may be raised against the revision of dates or regularisation on the basis of the said G.O. Ms. and give their decision thereon before giving effect to revised dates of regularisation on the basis of the said G.O. Ms. No. 802.

I might make an incidental observation that litigation among the various categories of Health Inspectors is the result of Government frequently tampering with the cadre of Health Inspectors in order to give benefit to one group or other.

An interesting point to be noted is that Memo No. 46 has been issued to give benefit to direct recruits keeping in view certain developments in favour of direct recruits and the judgment of the Tribunal in R.P. 507/77. The decision taken i.. Memo No. 46 has been made subject to the decision in the appeal filed in the Supreme Court against the Judgment in R.P. 507/77. The decision in the present R.Ps. will also be subject to the same condition in the circumstances of the case."

The State Government having taken pursue action on the basis of the Order of the Tribunal and obtained reports thereon from Respondent 2, issued G.O. (Ms) No. 105, Health dated 2.2.1989, the operative part of which reads, thus :

"4. The Director of Health has submitted his reports along with the dates of regularisation of direct recruit Health Inspectors,

- A Zone-wise and they are examined and it is decided that the direct recruits, who were temporarily appointed and subsequently appointed by the Andhra Pradesh Public Service Commission may be given the dates of regularisation zone-wise as shown in the statements I, II, III, IV, V, VI Annexed to this order. It is also
- B decided that the Departmental Promotees, who have also been selected by the Andhra Pradesh Public Service Commission, will be given the dates of regularisation either the dates of selection by the Andhra Pradesh Public Service Commission or the dates of their promotion whichever is advantageous to them.
- C 5. The Government, therefore, approve the dates of regularisation of the Health Inspectors temporarily appointed directly and subsequently selected by Andhra Pradesh Public Service Commission zone-wise as shown in the Statements I, II, III, IV, V, VI annexed to this order and communicate to the Director of Health. The
- D Director of Health is requested to issue necessary instructions to the concerned Regional Directors to review the dates of regularisation of promotees (Departmental candidates) with reference to the orders issued in G.O. Ms. No. 802, Health, dated 28-12-1981, strictly, according to the rules position i.e., minimum service of 3 years in the feeder category etc. duly fixing the appropriate stage
- E for regularisation after considering the objections from the affected parties fixing a date for the purpose and take a final decision on the integrated seniority of the Health Inspectors in the respective zones, subject to outcome of the appeal filed in the Supreme Court against the orders of the Andhra Pradesh Administrative Tribunal
- F in R.P.No. 507/77. The departmental promotees, who have also been selected by the Andhra Pradesh Public Service Commission, shall be given the dates of regularisation either the dates of selection by Andhra Pradesh Public Service Commission or the dates of their promotion after completion of minimum required period of 3 years in the feeder category by deleting their names
- G from the Andhra Pradesh Public Service Commission list, whichever is advantageous to them."

It becomes apparent from the orders made by the State Government from time to time and the orders of the Tribunal relating to regularisation of Health Inspectors who were directly appointed temporarily in APPHSS,

that all of them are made subject to the decision of this Court in the appeal pending against the earlier order of the Tribunal in R.P. No. 507/77, that is, the present appeal under consideration. A

Having regard to the aforesaid orders made by the State Government and the Tribunal in favour of the appellants subsequent to the order of the government which was affirmed by the Tribunal's order under the present appeal, the learned counsel for the appellants submitted before us that the appellant's would rest content if they are given the benefit of the orders contained in Memorandum No. 46/HI/84-11, M&H dated 22.2.1985 and G.O. (Ms.)No. 105, Health, dated 2.2.1989 of the Government of Andhra Pradesh, having regard to the hard fact that prolonged litigation may not do good to either of the contesting parties. The submission, so made on behalf of the appellants, warrants our acceptance if regard is had to the facts and circumstances of the case and its agonising history. As seen from rule 37 (e) of the Rules to which we have adverted to earlier, it has enabled regularisation of temporary promotee Health Inspectors in the cadre of APPHSS from anterior date. However, we are not shown any material which would show such regularisation of the temporary promotee Respondents 4 to 121 had been made after their subsequent promotion in accordance with the Rules, a pre-conditions envisaged under rule 37 (e) of the Rules. PSC's deletion of their names from the selection list cannot amount to their promotion in accordance with the Rules. B C D E

Be that as it may, the said flaw was not sought to be availed of, on behalf of the appellants to have the order of the Tribunal under appeal set aside, by way of concession. We do not, therefore, propose to base our decision in this appeal on that infirmity. However, if the order of the State Government giving retrospective regularisation to Promotee Health Inspectors under rule 37(e) of the Rules can stand, we do not see any good reason why the order of the State Government in memo No. 46/HI/-84-11, M&H dated 22.2.1985 giving retrospectively regularisation for directly appointed Health Inspectors cannot stand, particularly when giving of such retrospective regularisation is traceable to rule 23 (a), which corresponds to rule 37 (e) and reads : F G

"Rule 23. (a) *Date of commencement of probation of persons first appointed temporarily* : If a person, having been appointed temporarily under sub-rule (a) or sub-rule(c) of Rule 10 to a Post H

- A borne on the cadre of any service, class or category or having been appointed to any service, class or category otherwise than in accordance with the rules governing appointment thereto is subsequently appointed to any service, class or category in accordance with the rules, *he shall commence his probation from the date of such subsequent appointment or from such earlier date as the appointing authority may determine.*"
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(Emphasis supplied)

- C Hence, giving due regard to the peculiar facts of the case and the circumstances in which Orders of retrospective regularisation of temporary promotees and temporary direct appointees, as Health Inspectors in the cadres of APPHSS are made, we uphold those Orders and the subsequent Order made by the State Government in G.O. (Ms.) No. 105, Health dated 2.2.1989, as to fixation of *Inter se* seniority among them and dispose of this appeal accordingly, with no costs.
- D A.G. Appeal allowed.