

P. SRINIVAS

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v.

M. RADHAKRISHNA MURTHY AND ORS.

JANUARY 30, 2004

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

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Service Law:

Seniority—Appointment Order issued to selected candidates by State Service Commission granting 60 days time to join duty—Respondent no. 1 joined duty within 60 days—Appellant sought extension of time to join duty which was granted—Appellant was placed senior to respondent no. 1 on the basis of merit which was never questioned by respondent no. 1 for over a decade—Respondent no. 1 challenging seniority of the appellant before Tribunal by contending that State Government had no power to grant extension of time which vested with State Service Commission—Tribunal dismissed the petition—High Court allowed the petition—Correctness of—Held, not correct—State Government had enabling power to grant extension of time which has been delegated to State Service Commission—Respondent no. 1 cannot challenge seniority of the appellant belatedly.

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Appellant and respondent no. 1 were among the successful candidates selected by the State Service Commission to the post of Road Transport Officer in the year 1987. The Commission issued appointment orders to the selected candidates granting 60 days time to join duty. The appellant, who was previously working in Central Government, sought extension of time as per the terms of the appointment order. The State Government extended the joining time of the appellant by 20 days. The appellant joined the duty before the date. After regularisation of the services of the selected candidates, seniority lists were periodically prepared where the appellant was shown as senior to respondent no. 1. In 1997, the appellant and respondent no. 1 were promoted as Deputy Transport Commissioner and in the promoted post also, the appellant was shown senior to respondent no. 1.

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Respondent no. 1 filed a petition before State Administrative Tribunal contending that the appellant should be ranked junior to

- A respondent no. 1 since the appellant joined the duty after the prescribed period of 60 days indicated in the appointment order; that the power to grant extension of time vested with the State Service Commission and not with the State Government; and that under a G.O. issued in 1967, the appellant is not entitled to seniority. The Tribunal dismissed the petition of respondent no.1. He filed a Writ Petition before High Court. The High Court, allowed the Writ Petition.

- In appeal to this Court, the appellant contended that the State Government granted extension of time for joining duty and that he had joined the duty within the extended time; that he was placed senior to respondent no. 1 in various seniority lists for over a decade which was never questioned at any point of time by respondent no. 1; and that the respondent cannot, after a long lapse of time, question the propriety of the State Government to extend the time of joining of the appellant.

- D Respondent no. 1 contended that the State Government had no power to grant extension of time which vested with the State Service Commission; and that the extension of time granted by the State Government to the appellant was bad in law.

Allowing the appeal, the Court

- E HELD: 1.1. The State Service Commission was enabled to extend and give further time for joining before deleting the name of the candidate concerned from the select list for not joining in time. The power of extending time given to the State Service Commission under the G.O. was not in relation to any statutory prescription and cannot be also said to be in derogation of the powers of the State Government as the ultimate repository of all Executive power. On the other hand, the State Government itself provided that the time could be extended if the State Service Commission considered it necessary. This was merely an enabling power conferred by the State Government only and the G.O. cannot be construed to be self destructive of the power of the State Government in the absence of any statutory rules as such, in this regard. The State Service Commission appears to have been enabled to grant time to effectively monitor the operation of the main list as well as the waiting list (in order of merit) without any undue lapse of time, in case the selected candidates did not join within the indicated time period. It was an executive decision of the State Government. When the State Government itself extended the time, in case of the petitioner, on the basis of the reasonableness of the

request, it cannot be said that in the absence of any order passed by the State Service Commission extending the time, the extension granted by the State Government was without authority in law. [17-B-E]

1.2. The appellant was granted extension upto 31.7.1987 to join. It was open to the State Service Commission or the State Government at that stage to direct removal of his name from the list of selected candidates. Neither the State Service Commission nor the State Government thought it appropriate to do so. On the other hand, the State Government extended the joining period and the appellant joined the post. In several periodical seniority lists thereafter, the appellant's name was placed higher than respondent no. 1. For more than a decade, respondent no.1 did not question that position. After a very long period, it was not open to respondent no.1 to turn around and say that the extension of time to the appellant was not in accordance with law. It is undisputed that both the appellant and respondent no.1 were selected in the same selection and the appellant was more meritorious in terms of marks secured by him in the selections process and ranked above the 1st respondent and the *inter se* ranking and consequent *inter se* seniority cannot be disturbed and rights flowing from such ranking cannot be denied merely because there was some delay in joining-all the more so when such delay was only of 8 days and also on account of getting relieved from the Central Government, for reasons beyond his control, which only seems to have weighed with the State Government to accord extension of time. The High Court seems to have lost sight of the fact that it was not a case where reasons were absent in the order of the State Government extending the joining time. On the contrary, the order itself indicates the reasons why the appellant had sought for extension. The State Government taking note of the factual position highlighted therein had granted extension. The High Court has erroneously held that no reasons were indicated. Hence, the appellant has to be placed higher in the seniority list than respondent no.1 in terms of the *inter se* merit ranking assigned by the State Service Commission.

[17-E-H; 18-A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 628 of 2004. G

From the Judgment and Order dated 22.11.2002 of the Andhra Pradesh High Court in W.P. No. 25433 of 2001.

Ranjit Kumar and R. Santhana Krishnan for C.S.N. Mohan Rao for the H

A Appellant.

R. Venkataramani and G. Ramakrishna Prasad for the Respondents.

The Judgment of the Court was delivered by .

B ARIJIT PASAYAT, J. Leave granted.

Appellant questions correctness of the judgment rendered by a Division Bench of the Andhra Pradesh High Court which by the impugned judgment held that respondent no.1 was to be ranked senior to the appellant in the seniority list. The view taken by the Andhra Pradesh Administrative Tribunal C at Hyderabad (for short 'the Tribunal') holding that the appellant was senior to respondent no.1 was upset.

Factual scenario which is also almost undisputed is as follows :

The Andhra Pradesh Service Commission (for short 'the Commission')

D issued an advertisement inviting application from eligible candidates to be appointed to the post of Road Transport Officer (for short 'the RTO'). Appellant and Respondent no.1 and others responded to the advertisement. On 13.5.1987 appointment order was issued to the appellant and other selected candidates including respondent no.1 after they were successful in the selection process conducted by the Commission. In the appointment order 60 days time was granted to the appellant as well as other selected candidates to join the post i.e. the selected candidate was to join the duty on or before 12.7.1987. At the relevant time, the appellant was employed with the Central Secretariat as Section Officer. Therefore, he made a request to the Government of Andhra Pradesh to extend the time as per clause 3 for joining the duty in terms of E F appointment order. On 25.6.1987, the Government vide its memo dated 25.6.1987 extended the joining time and permitted the appellant to join duty on or before 31.7.1987. In reality the appellant joined on 21.7.1987. By Govt. memo no.470 dated 10.10.1991 appellant's services in the post of RTO were regularized. Seniority lists were periodically prepared and circulated on 28.3.1989, 13.5.1993 and 27.5.1996 where the appellant was shown as senior G to respondent no.1. There was no challenge to the same by the 1st respondent, at any of the relevant points of time.

In 1997, both the appellant and respondent no.1 were promoted as Deputy Transport Commissioner and in the promoted post also, appellant H was shown at Sl.No.14 as against 1st respondent shown as Sl. No. 17. In the

seniority list prepared on the basis of notional dates given in G.O.M.S.No. 153 dated 14.8.1997 was said to have been approved and communicated by Transport Commissioner in his proceedings dated 19.6.1995 also the appellant was shown as senior to respondent no.1. Respondent no.1 approached the Tribunal only at this stage making a grievance that his representation regarding fixation of seniority was not being disposed of. By order dated 17.5.2000 in OA No. 2369 of 2000 the Tribunal directed the concerned authorities to dispose of the representation said to have been made for relief. On 26.5.2000 a combined list of RTOs was published as noticed above, where the appellant was shown as senior at SI.No.41 to respondent no.1 shown as SI.No.44. Subsequently on 31.5.2000 provisional seniority list of DTCs was published as indicated above. Respondent no.1 assailed the seniority lists dated 26.5.2000 and 31.5.2000 before the Tribunal in OA No. 3381 of 2000. During pendency of the matter before the Tribunal, the Government issued GOMs No.14 dated 29.1.2001 showing respondent no.1 as senior to the appellant in the seniority list. In view of this memo, respondent no.1 wanted disposal of his application before the Tribunal as infructuous, but the Tribunal refused to accept the prayer observing that there was challenge to the correctness of the same in some connected matters.

The stand of respondent no.1 before the Tribunal was that since the appellant had joined the duties after the prescribed period of 60 days indicated in the appointment order, he had to be ranked junior to respondent no.1 who had joined earlier. It was submitted that Government could not have extended the joining report and it was the Commission alone which is competent to do it. In any event, the effect of G.O.Ms. 822 dated 18.9.1967 made the position clear that if a person does not join within the stipulated time not only there was power to withdraw his selection but even if somebody had joined later, the fact that he did not join within the stipulated period of 60 days disentitled him from seniority. Tribunal did not accept this plea. It also found no substance in the plea that the date of joining would govern seniority if the concerned employee had not joined within the time stipulated in the appointment order. It took note of the fact that Government had permitted the appellant to join by 31.1.1987, and in fact, he had joined on 21.1.1987. Referring to Rule 33(b) of the Andhra Pradesh State and Subordinate Service Rule 1962 (in short 'the Rule'), it held that the appointing authority may at the time of passing an order appointing two or more persons simultaneously to a service, fix the order of preference among them and when such order has been fixed, seniority is to be determined in accordance with it. Appellant, indisputably was placed on the basis of merit performance in *inter se* ranking higher than

A the respondent no.1. Obviously, he has to be treated necessarily as senior to the respondent no.1.

Respondent no.1 questioned correctness of the Tribunal's judgment by filing writ petition before the Andhra Pradesh High Court. It was contended that power of extension was available only to the Commission and not the State Government. Further the GO itself merely provided that in case a person does not join within the stipulated time, the effect was that his name is to be removed from the list of selected candidates, except in cases where the Commission considers that there are valid reasons for extending the period.

C Relying on the prescription in GO.Ms. 822 GA (Services-A) Department dated 18.9.1967 the High Court accepted respondent no.1's stand and directed that he is to be treated as senior. It was held so since appellant did not join within the period of 60 days and thereby he lost also seniority to which he was entitled to on the basis of merit ranking.

D Learned counsel for the appellant with reference to the order of the Government of Andhra Pradesh pointed out that the State Government itself, in his case had granted time upto 31.1.1987 and, in fact, the appellant had joined admittedly even before that date. That being so, there was no question of appellant losing his seniority fixed initially based on merit ranking. In the present case the name of the appellant was not removed from the list. He was permitted to join by grant of further time and continued as senior to respondent no.1 as shown in various seniority lists, and there was no challenge to any of them, at the appropriate point of time. Admittedly, the appellant joined in the year 1987 and after more than a decade it was not open to respondent no.1 to question the propriety of the extension of time given by the State Government enabling the appellant to join within the extended time. The 1st respondent had no infeasible right to question the extension of time granted by the State Government and at any rate to question the same, at any time according to will and pleasure. The long lapse of time and laches on his part disentitles the 1st respondent to claim any such relief at the belated stage almost after a decade.

G *Per contra* learned counsel for respondent no.1 submitted that the State Government had no authority to extend joining time. It was only the Commission which has power to do so and the High Court rightly observed that the extension given to the appellant was itself bad and, therefore, the benefit of the Rules stipulated in terms of seniority of the candidates who were selected during one selection has to be reckoned in accordance with

appointment in the selection was not available to be given. A

We find that the GO.Ms. 822 dated 18.9.1967 issued by the Government of Andhra Pradesh was dealing with the question of fixing the time limit for the candidates selected by the Commission to join when they were to be appointed by direct recruitment. Taking the factual position as prevailing then, it was indicated that the time limit to be normally 60 days. It was further stipulated therein that in case they did not join within stipulated time, their names could be removed from list of selected candidates. Service Commission was enabled to extend and give further time for joining before deleting the name of the candidate concerned from the select list for not joining in time. The power of extending time given to the Commission under the G.O. was not in relation to any statutory prescription, and cannot be also said to be in derogation of the powers of the State Government as the ultimate repository of all Executive power. On the other hand, the Government itself provided that the time could be extended if the Commission considered it necessary. This was merely an enabling power conferred by the Government only and the G.O. cannot be construed to be self destructive of the power of the Government, in the absence of any statutory rules as such, in this regard. The Commission appears to have been enabled to grant time to effectively monitor the operation of the main list as well as the waiting list (in order of merit) without any undue lapse of time, in case the selected candidates did not join within the indicated time period. It was an executive decision of the Government. When the Government itself extended the time, in case of the petitioner, on the basis of the reasonableness of the request it cannot be said that in the absence of any order passed by the Commission extending the time, the extension granted by the Government was without authority in law. B
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It can be also looked at from another angle. The appellant was granted extension upto 31.7.1987 to join. It was open to the Service Commission or Government at that stage to direct removal of his name from the list of selected candidates. Neither the Commission nor the Government thought it appropriate to do so. On the other hand, the Government extended the joining period and the appellant joined the post. In several periodical seniority lists thereafter the appellant's name was placed higher than respondent no.1. For more than a decade, respondent no.1 did not question that position. After a very long period it was not open to respondent no.1 to turn around and say that the extension of time to the appellant was not in accordance with law. It is undisputed that both the appellant and respondent no.1 were selected in the same selection and the appellant was more meritorious in terms of marks. F
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- A secured by him in the selection process and ranked above the 1st respondent and the *inter se* ranking and consequent *inter se* seniority cannot be disturbed and rights flowing from such ranking cannot be denied merely because there was some delay in joining-all the more so when such delay was only of 8 days and also on account of getting relieved from the Central Government, for reasons beyond his control, which only seems to have weighed with the
- B State Government to accord extension of time also. The High Court seems to have lost sight of the fact that it was not a case where reasons were absent in the order of the Government extending the joining time. On the contrary, the order itself indicates the reasons why the appellant had sought for extension. The Government taking note of the factual position highlighted therein had
- E granted extension. High Court has erroneously held that no reasons were indicated.

- F In the above background, the inevitable conclusion is that the appellant was to be placed higher in the seniority list than respondent no.1 in terms of the *inter se* merit ranking assigned by the Service Commission. The Tribunal was right in its view, while the High Court could not be held to be so. We set aside the judgment of the High Court and restore that of the Tribunal so far as the appellant is concerned.

The appeal is allowed but in the circumstances without any order as to costs.

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B.S.

Appeal allowed.