

P.N. Subramanyam Reddy vs Andhra Pradesh State Road Transport ... on 19 September, 1991

Equivalent citations: AIR1992SC142, [1991(63)FLR790], JT1991(6)SC145, 1991(2)SCALE619, (1992)1SCC63, [1992]3SCR11, 1991(2)UJ630(SC), AIR 1992 SUPREME COURT 142, 1991 AIR SCW 2838, 1992 LAB. I. C. 93, 1991 (2) UJ (SC) 630, 1992 (1) SCC 63, (1991) 6 JT 145 (SC), 1992 SCC (L&S) 31, (1991) 63 FACLR 790, (1992) 1 LAB LN 9, (1992) 3 SERVLR 11

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Bench: A.M. Ahmadi, S.C. Agrawal

ORDER

S. C. Agrawal,, J.

1. Special Leave granted. Heard counsel for the parties.
2. These appeals by Special Leave are directed against the judgment dated November 12, 1990 of the High Court of Andhra Pradesh in Writ Appeals Nos. 1669 and 1714 of 989 arising out of Writ Petition No. 578 of 1986 filed by the appellant.
3. The appellant joined the Transport Department of the Tirumala Tirupati Devasthanams (hereinafter referred to as TTD) on the post of Workshop Superintendent on May 4, 1968. He was appointed on the said post temporarily by a memo dated April 27, 1968. The said appointment of the appellant was subsequently regularised and he was confirmed on the said post with affect from June 11, 1970. Initially the pay of the appellant was fixed in the scale of Rs. 180-350. In 1969, it was revised to Rs. 200-400. On September 2, 1972, the Commissioner of Endowments, Hyderabad directed the TTD to revise the scales of pay of its employees in the Transport Department and to bring them at par with the scales of pay of Andhra Pradesh State Road Transport Corporation (hereinafter referred to as APSRTC) and the said revision was to be made effective from May 1, 1970. No revision was made in the pay scales of the appellant and he continued to be in the scale of Rs. 200-400. The appellant filed a Writ Petition (No. 5816 of 1972) in the High Court wherein he claimed that he should be given the scale of pay of Assistant Works Manager in APSRTC, which was, Rs. 500-900 or at least the scale of pay of Transport Engineer in TTD which was Rs. 400-800. The said Writ Petition was opposed by the Executive Officer, TTD who claimed that the post of Workshop Superintendent is equivalent to the post of Superintendent on the ministerial side in the

TTD and the appellant was entitled to the same scale of pay. The said Writ Petition was decided by a learned single Judge of the High Court (Chennakesav Reddy, J.) by judgment dated December 23, 1974. The learned Judge, after taking into consideration the qualifications of the appellant, namely, diploma in mechanical engineering, as well as the duties prescribed by the TTD for the post of Workshop Superintendent, held that the equation of the post of Workshop Superintendent to that of the Superintendent on the ministerial side of the TTD and payment of the same scale of pay to the appellant, cannot but be declared as arbitrary and unfair. The learned judge directed the TTD to consider the fixation of the scale of pay of the appellant above that of the Assistant Mechanical Foreman and below that of the Transport Engineer, with effect from May 1, 1970. In pursuance of the aforesaid direction of the High Court, the Board of Trustees of the TTD by resolution dated June 29, 1975, gave its sanction to the proposal based on the recommendation of the General Manager that since the nature of duties performed by the Workshop Superintendent is similar to that of the Transport Engineer and other Depot Managers, the said post may be put in the scale of Rs. 350-25-600-30-750. The appellant was therefore placed in the scale of Rs. 350-750 with effect from May 1, 1970. On the revision of the pay scales in 1974, as a result of merger of DA, the pay of the appellant was fixed at Rs. 600- 1100.

4. With effect from August 10, 1975, the Transport Department of the TTD was transferred to the APSRTC and the services of the appellant were also transferred to the said Corporation. Thereafter, the appellant was posted on the post of Mechanical Foreman. The appellant filed a Writ Petition (No. 3322 of 1976) in the High Court wherein he submitted that the post of Foreman is inferior to the post of Workshop Superintendent held by him in the TTD and therefore he should be posted on the next higher post in the APSRTC which was that of Assistant Mechanical Engineer, in scale of pay of Rs. 700-1200. The said Writ Petition was dismissed by a learned single Judge (Chinnappa Reddy, J. as he then was) by order dated February 28, 1978 on the view that under Clause 13 of the agreement between the TTD and the APSRTC, only the pay of the appellant had been protected and not his status and that the question of equation of posts could not be enquired into in the Writ Petition in the absence of adequate material. The appellant filed a Writ Appeal (No. 299 of 1978) against the said decision of learned single Judge. It appears that the appellant had also made a representation that his pay should be fixed at par with that of Depot Manager in the scale of Rs. 400-800 with effect from May 1970. The said representation was rejected by the Executive Officer by order dated July 14, 1977. The appellant had submitted an appeal against the said order before the Board of the TTD which was dismissed as not maintainable. The appellant had challenged the said order of the Board of TTD in Writ Petition No. 777 of 1981 filed in the High Court. The said Writ Petition as well as Writ Appeal No. 299 of 1978 were heard together and disposed of by a Division Bench of the High Court (Raghuvir and Rama Rao, JJ.) by order dated September 1985. At the time of hearing the counsel for the TTD represented before the Court that the TTD would consider the appeal and that the appellant may make representation afresh and in view of this concession the learned Judges felt that it was unnecessary to consider the maintainability of appeal or the validity of the order impugned in the Writ Petition No. 777 of 1981 and the said Writ Petition was disposed of with the direction that the appellant was to submit representation within two weeks and the TTD%) dispose of the said representation in two months thereafter. Keeping in view the aforesaid order passed in Writ Petition No. 777 of 1981, the learned Judges disposed of Writ Appeal No. 299 of 1978 with the following observations:

In the writ petition No. 777 of 1981, we have ordered Subrahmanya Reddy to obtain from TTD authorities as indicated above. Therefore, he may make a representation to the Corporation after orders are passed by the TTD. The Corporation is directed to consider and pass appropriate orders two months after the receipt of representation by Subrahmanya Reddy. In the end if Subrahmanya Reddy is aggrieved, we reserve for him to agitate in this Court all questions which are raised in the Writ Petition. The writ appeal is accordingly ordered.

5. The representation submitted by the appellant before the Board of TTD was rejected by order dated November 25, 1985. Against the said order of the Board the appellant filed another Writ Petition (No. 578 of 1986) before the High Court. The said Writ Petition was allowed by a learned single Judge (K.Ramaswamy, J. as he then was) by judgment dated July 5, 1989. The learned Judge held that in judgment dated December 23, 1974 (in Writ Petition No. 586 of 1972) which had become binding on both the parties, a finding has been recorded that the appellant was discharging the duties which were technical in nature and treating the appellant as ministerial staff was arbitrary and fanciful and that in view of the said finding the appellant should be treated as a technical man and not as a ministerial staff in APSRTC. The learned Judge further held that on the technical side the nearest post was Assistant Director, Printing (technical) in the pay scale of Rs. 700-1200 and that the appellant should be fitted into that scale of pay as a technical man. Against the said decision of the learned single Judge, TTD as well as APSRTC filed letters patent appeals and the said appeals (Writ Appeal Nos. 1669 and 1714 of 1989 respectively) were disposed of by a Division Bench of the High Court (Ramanujulu Naidu and Iyyapu Panduranga Rao, JJ.) by judgment dated November 12, 1990. The learned Judges allowed the said appeals and set aside the judgment of the learned single Judge. It was held that in Writ Petition No. 3322 of 1986, the appellant had assailed the action of the APSRTC posting him as Mechanical Foreman and had prayed for issue of a Writ of Mandamus or any other appropriate Writ or direction cancelling the order of posting given to the appellant and directing the authorities of the APSRTC to give him a posting above the cadre of Mechanical Foreman and that the said Writ Petition was dismissed by the learned single Judge and the Division Bench did not interfere with the said order of the learned single Judge and merely permitted the appellant to make a representation to The Board of the TTD and another representation to the APSRTC subsequent to the disposal of representation by the Board of TTD. The learned Judges of the Division Bench also held that the learned single Judge (in the judgment under appeal) had lost sight of the effect of the orders passed by the two learned single Judges and the Division Bench in the earlier proceedings and while granting a limited relief to the appellant the learned single Judge wrongly treated the appellant as a technician.

6. During the cause of arguments the learned Counsel for the appellant submitted that he confines his claim to fixation of his pay on the date of his transfer to APSRTC with effect from August 10, 1975. We, therefore, do not propose to go into the question of fixation of pay of the appellant while he was employed with the TTD and will only deal with the question of fixation of his pay on the date of his transfer to APSRTC. For that purpose it will be necessary to examine the nature of the functions assigned to the appellant at the TTD at the time of his transfer to APSRTC.

7. As pointed out earlier in his judgment dated December 23, 1974 in Writ Petition No. 5816 of 1972, Chennakesav Reddy, J. considered the question whether the post of workshop Superintendent in the TTD could be equated with the post of Superintendent on the ministerial side. The learned Judge has taken note of the fact that the appellant is holder of the diploma of mechanical engineering (second class) and also the duties of the Workshop Superintendent as defined in the circular issued by the General Manager on May 7, 1986 wherein it is clearly mentioned that the workshop Superintendent shall supervise the monthly maintenance of the vehicles and prepare the advance programme of vehicles, he should personally test the vehicles before and after the monthly maintenance work is completed, he is responsible for the maintenance and care of cars, vans, break-down squads so that services are not delayed or cancelled and when a defect is rectified he should endorse to that effect in the appropriate column of the log sheet of the vehicle and he has to maintain complete record relating to the work specified, and produce for inspection when required. The learned Judge held that having regard to the overall assessment of the qualifications of the appellant and the duties prescribed by the TTD for the appellant in the circular dated May 7, 1968, the equation of the post of Workshop Superintendent to that of the Superintendent on the ministerial side of the TTD and payment of the same scale of pay to the appellant cannot but be declared as arbitrary and unfair. The learned Judge directed the TTD to consider the fixation of the scale of pay of the appellant above that of the Assistant Mechanical Foreman and below that of the Transport Engineer with effect from May 1, 1970. This would show that the learned Judge had clearly held that in the matter of fixation of pay, the appellant could not be treated as being employed on the ministerial side and by directing that his pay scale should be fixed above that of Assistant Mechanical Foreman and below that of Transport Engineer, the learned Judge clearly implied that he should be treated as being employed on the technical side.

8. The matter was thereafter considered by the Board of TTD and by its resolution dated June 29, 1975 the Board accepted the recommendations of the General Manager that the duties performed by the appellant were similar to the duties of the Transport Manager and on that basis fixed the pay for the post of Workshop Superintendent in the scale of Rs. 350-750 and the appellant was placed in the said scale of pay with effect from May 1, 1970.

9. After the revision of the pay scales in 1974, on account of merger of DA, the pay scale of the appellant was revised and he was placed in the pay scale of Rs. 600-1100. That was the pay scale of the appellant at the time of transfer of the Transport Department of the TTD to the APSRTC on August 10, 1975. It is not disputed that in the APSRTC an Assistant Director (Non-technical) was in the pay scale of Rs. 600-1100 whereas Assistant Director, Printing (technical) was in the pay scale of Rs. 700-1200. This would indicate that in the matter of fixation of pay on his transfer to the APSRTC on August 10, 1975 the appellant has been treated at par with persons on the non-technical side and has not been equated with the employees on the technical side. This is not in consonance with the decision of Chennakesav Reddy, J. referred to above. The learned Judges of the Division Bench of the High Court, have not, in our opinion, rightly construed the said decision. It is no doubt true that the learned Judge (Chennakesav Reddy, J.) has not used the word 'technician' in the judgment but the whole tenor of the judgment indicates that qualifications and nature of duties which the appellant was required to discharge were such that he could not be equated with employees on the ministerial side and should be treated as an employee on the technical side. K.Ramaswamy, J. was,

therefore, right in proceeding on the basis that the necessary inference that can be drawn from the judgment of Chennakesav Reddy, J. in Writ Petition No. 5816 of 1972, is that the appellant should be treated as a technical man and not as a ministerial staff.

10. As regards the judgment of Chinnappa Reddy, J. dated February 28, 1978 in Writ Petition No. 3322 of 1976 and the decision of the Division Bench in Writ Appeal No. 299 of 1978 arising out of the said decision, it may be stated that the learned judges of the Division Bench in their order dated September 2, 1985, while disposing of the Writ Appeal No. 299 of 1978, have clearly observed '.... In the end if Suorahmanya Reddy is aggrieved, we reserve for him to agitate in this Court all questions which are raised in the Writ Petition.' These observations indicate that all questions which had been raised by the appellant in the Writ Petition which had been disposed of by Chinnappa Reddy, J. by judgment dated February 28, 1978 had been reserved so as to enable the appellant to agitate the same in the event of his being aggrieved by the order passed by the TTD or the APSRTC on his representation. In these circumstances, the observations made by Chinnappa Reddy, J. in his judgment dated February 28, 1978 in Writ Petition No. 3322 of 1976 cannot be set up as a bar to the appellant agitating the said questions in a Writ Petition No. 578 of 1986 which was filed by him after the rejection of his representation by the Board of the TTD.

11. For the reasons aforesaid, we are of the opinion that the learned Judges of the Division Bench were not right in setting aside the order of the learned single Judge and holding that the appellant was not entitled to be placed in the pay scale of Rs. 700-1200 applicable to Assistant Director, Printing (technical). The appeals are, therefore, allowed and the judgment and order of the Division Bench of the High Court in Writ Appeals Nos. 1669 and 1714 of 1978 are set aside. It is directed that the appellant should be placed in the scale Rs. 700-1200 with effect from August 10, 1975 and his pay should be revised accordingly. He would be entitled to payment of arrears payable to him as a result of the said revision of his pay scale. No order as to costs.