The State Of Andhra Pradesh And Anr. vs K. Jayaraman And Ors. on 1 October, 1974

Equivalent citations: AIR1975SC633, [1975(30)FLR1], 1975LABLC385, (1975)ILLJ256SC, (1974)2SCC738, 1974(6)UJ683(SC), AIR 1975 SUPREME COURT 633, 1974 2 SCC 738, 1975 LAB. I. C. 385, 1975 (1) LABLJ 256, 1975 (1) SERVLR 668, 30 FACLR 1

Bench: H.R. Khanna, M.H. Beg, V.R. Krishna Iyer

JUDGMENT

Beg, J.

1. A writ petition was filed in the High Court of Andhra Pradesh by nine Government servants claiming that Rule 22 of the Andhra Secretariat Service Rules (known as the A.T.A. Rules) does not apply to them "as they were reappointed on or after 1-11-1956". The relevant rule reads as follows :

> 22. Promotion as Upper Division Clerks and Superintendents and their discharge for want of vacancies.

Notwithstanding anything contained in these Rules or in the General Rules, two out of every three vacancies occurring in the categories of Upper Division Clerks and Superintendents on and from 1-11-1956 shall be filled by reappointment of probationers from Andhra and the remaining one shall be filled by promotion of a person from Telengana in the following order till the list of probationers as it existed on 1-11-1956 is exhausted.

1st Vacancy ... Andhra Probationer. 2nd Vacancy ... Telangana Probationer. 3rd Vacancy ... Andhra Probationer.

Their discharge for want of vacancies shall be in the inverse order of their promotion :

> Provided that promotions of personnel from Telengana shall be made on grounds of merit and ability seniority being considered only where merit and ability are approximately equal.

2. In their Writ petition, the petitioners did not challenge the validity of this Rule. On the other hand, their case based on the assumption that the rule was valid, was that petitioners 1 to 5, who were already holding the posts of superintendents on 1-11-1956, the date of the Reorganisation of States, were outside its purview. The respondents asserted that the A.T.A. rule bad not been

implemented so far and had to be applied without delay in the interests of justice, equity, and fairplay to all employees irrespective of the area to which they belonged. A reply also was that it applied to petitioners 1 to 5 as they were promoted on and after 1-11-1956. The real controversy, therefore, was whether petitioners Nos. 1 to 5 were or were not promoted already before 1-11-1956.

3. It is clear that, if there had been an averment, on behalf of the petitioners, that the rule was invalid for violating Articles 14 and 16 of the Constitution, relevant facts showing how it was discriminatory ought to have been set out. After this has been done, the respondents, including the State of Andhra Pradesh, could have been in a position to set up other facts which may have indicated why the rule was not discriminatory. Such questions cannot be decided without relevant assertions on questions of fact which may have to be investigated, if controverted. It is only after facts affecting the validity of such a rule have been set out and opportunity given to controvert them that a set of either admitted facts or established facts emerges by reference to which the validity of such a rule could be tested and a decision on the question could be given. The petitioners had only prayed for the quashing of the G.O. No. 929 of 29-11-1971 of the Health and Municipal Department fixing the gradation of the petitioners vis a vis other employees. They had not prayed for any declaration of invalidity of the A.T.A. Rule. The question of its validity would have affected a number of persons who were not before the Court.

4. The case was referred by a learned single Judge for decision to a Division to a Bench on the ground that it raised questions of importance which were likely to effect a large number of people. The judgment of the Division Bench, in the course of a consideration of the contentions of the parties, contained the observation that the Court had already had occasion to consider the validity of the relevant A.T.A. rules in Writ Appeal No. 170 of 1967 on 20.1-1970 and that it had held there that the A.T.A. rule was inconsistent with the provisions of the Constitution and was, therefore, invalid. It also said that the same principle had been reiterated in Sathya Kumar and Ors. v. The State of Andhra Pradesh and Ors. (1)

5. We have been taken through the judgment of the Andhra Pradesh High Court in Writ Appeal No. 170 of 1967, a copy of which has been filed. In that case, the validity of certain State Govt. Orders and Departmental orders of the Director of Public Instructions, relating to promotions of some employees contrary to relevant rules, was assailed. We do not find, in that decision, any discussion of the validity of the A.T.A. rule involved in the case before us.

6. In Sathya Kumar's case (supra), the validity certain special rules for Andhra Pradesh State judicial service was considered. It was held they were invalid for having been introduced without obtaining the prior permission of the Govt. of India under Section 115 Sub-section (7) of the States Reorganisation Act. Principles of valid classification in order to afford equality of opportunity for promotion to all those who belonged to a single class were also considered. But, here again, we find no pronouncement on the validity of the A.T.A. Rule 22 mentioned above.

7. Thus, the High Court of Andhra Pradesh seems to us to have assumed, under some erroneous impression, that it had already decided the question of validity of the relevant A.T.A. rule. We think that such an assumption, on the strength of the decisions cited, was unwarranted.

8. It appears from the judgment under appeal that only the cases of petitioners 1 to 5 were argued before the High Court. Evidently petitioners Nos. 6 to 9 had, by the time the matter came up for arguments, decided that they were not adversely affected by the A.T.A. rule Although no violation of the A.T. A rule or of rules of natural justice could be found by the High Court, it allowed the petition only by holding the relevant A.T.A. rule to be invalid. It said :

> Since no other contention was raised, we would allow the writ petition partly by quashing the impugned order, in so far as it is not confirmed by us, by holding that the A.T.A. rules do not apply. We direct the State and the Central Government to give effect to the views held by the Government of India and confirmed by us that the petitioners came to Andhra Pradesh on 111-1956 as U.D.Cs. The relevant final common gradation lists therefore would suitably be amended after giving notice to the parties concerned and the seniority fixed accordingly.

9. We think that the High Court was wholly in error in declaring the rule invalid suo moto, against the common case of both sides, found in the petition and the returns filed before the High Court, that the A.T.A. rule was valid. No cogent reason could be advanced before us for holding, on merits, that the rule was really, invalid. We, however, refrain from deciding the question of its validity as that was not put in issue by the averments made by the parties to the case. It was not, we think, a pure question of law. The invalidity of the A.T.A. rule, could not, for the reasons given above, be urged on the Writ petition before the High Court without even amendment of the petition so as to give the respondents an opportunity to meet a case of alleged invalidity of the rule.

10. Furthermore, as the petitioners 1 to 5 were held to have come to the State of Andhra Pradesh as Upper Division Clerks on 1-11-1956, they could not show how they would be adversely affected by the application of the relevant A.T.A. Rule. Thus, the petitioners concerned, who are respondents before us, failed to prove that they were even "aggrieved" persons.

11. On the conclusions reached above by us, we allow this appeal, set aside the judgment and order of the Division Bench of the Andhra Pradesh High Court, and dismiss the Writ Petition. The parties will bear own costs.