

K.V. Subba Rao & Ors. Etc vs Government Of Andhra Pradesh & Ors on 24 February, 1988

Equivalent citations: 1988 AIR 887, 1988 SCR (2)1118, AIR 1988 SUPREME COURT 887, 1988 (2) SCC 201, 1988 LAB IC 1009, (1988) 1 JT 404 (SC), 1988 (1) JT 404, (1988) 1 LAB LN 911, (1988) 7 ATC 94, (1988) 1 SERVLR 775, 1988 SCC (L&S) 506

Author: Misra Rangnath

Bench: Misra Rangnath, G.L. Oza

PETITIONER:

K.V. SUBBA RAO & ORS. ETC.

Vs.

RESPONDENT:

GOVERNMENT OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT24/02/1988

BENCH:

MISRA RANGNATH

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MISRA RANGNATH

OZA, G.L. (J)

CITATION:

1988 AIR 887	1988 SCR (2)1118
1988 SCC (2) 201	JT 1988 (1) 404
1988 SCALE (1)379	

ACT:

Andhra Pradesh Revenue Subordinate Service Rules, 1961- Rules 3 and 4(e)-Determination of inter se seniority between direct recruit and promotee Deputy Tehsildars-Rule 4(e) as amended on 9.10.80 not to operate retrospectively-Rule should be followed scrupulously and State Government to effect direct recruitment at regular intervals.

Constitution of India, 1950-Article 309-Service Rules-Binding effect on State and citizens alike-By willingly abiding by the law State to exhibit an ideal situation for the citizens to emulate.

HEADNOTE:

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In 1961 the Andhra Pradesh Revenue Subordinate Services Rules were brought into force, the cadre under the rules being Deputy Tehsildars. Till then the rules in force in the erstwhile State of Madras were applicable to Andhra Pradesh. Rule 3 of the 1961 Rules provides for appointment of Deputy Tehsildars by direct recruitment or by transfer from members of the Andhra Pradesh Ministerial Service employed in the Revenue Department. It also provides that the substantive vacancies in the category of Deputy Tehsildars shall be filled or reserved to be filled by direct recruitment and recruitment by transfer in the proportion of 1:1

A writ petition was filed before the Andhra Pradesh High Court by some direct recruit Deputy Tehsildars disputing the seniority over them assigned to a group of promotees. The Single Judge dismissed the same holding that the petitioners had no cause of action within the frame of the rules. This was upheld by the Division Bench, deriving support from Rule 33(a) of the Andhra Pradesh State and Subordinate Services Rules 1962. Against this a Special Leave Petition was filed before this Court.

Meanwhile, the State Government amended Rule 4(e) of the Andhra Pradesh Revenue Subordinate Service Rules to the effect that the inter-se seniority between direct recruits to the category of Deputy Tehsildars and promotees to the category of Deputy Tehsildars shall be

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determined from the date of confirmation in the substantive vacancies in that category in the proportion of 1:1 as provided in sub-rule (b) of Rule 3. The validity of the amendment was questioned by a number of promotees (the appellants herein) before the State Administrative Tribunal with particular emphasis on its retrospective application. The Tribunal examined the matter at length and upheld the validity of the enactment. It also directed the State Government to proceed to determine the seniority accordingly. The said directions of the Tribunal are assailed in the appeals by Special Leave and the Writ Petition filed in this Court.

Dismissing the appeals, and the writ petitions, this Court,

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HELD: 1.1 The State is entitled to prescribe the manner of computing inter-se seniority and in the absence of such prescription, length of service is the basis. Rule 33 of the Andhra Pradesh State and Subordinate Services Rules, 1962 contained prescription regarding seniority and has different provisions to meet varying situations. Sub-rule (a) thereof which provides that seniority of a person is to be determined "by the date of his first appointment to such service" has obviously been misinterpreted on account of the presence of the words "unless he has been reduced to a lower rank as a punishment". It is appropriate to interpret that

rule to mean that the date of first appointment is intended to refer to continuous appointment only and the words "unless he has been reduced to a lower rank by way of punishment" are really redundant. This interpretation will have prospective application, as otherwise limitless litigation would crop up. [1124F-G; 1125C]

1.2 Rule 4(e) before amendment in 1980 provided that the seniority of Deputy Tehsildars would be determined with reference to the date of allotment maintained and ranking assigned by the Andhra Pradesh Public Service Commission in the merit list of the particular selection. That was confined to inter-se seniority of direct recruits and did not cover inter-se seniority between recruits of the two sources. In 1980, Rule 4(e) was amended and the State Government prescribed the manner of providing inter-se seniority among the recruits of the two categories. The amended rule provided the date of confirmation in the substantive vacancy as the basis. Rule 3(b) thereof fixed the reservation of direct recruits with reference to substantive vacancies at 50% and Rule 4(e) made provision with reference to seniority in the substantive vacancies, with reference to the date of confirmation. The amendment is within the competency of the State Government and is not open to challenge. This is a rule made under the proviso to Article 309 of the

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Constitution and the rule can be given retrospective operation. But the State Government, while amending the rule, should have taken into consideration the practical problems which would arise as a consequence of retrospectivity. To allow the amendment to have retrospective operation is bound to create problems. Hence Rule 4(e) as amended on 9th October, 1980, shall not have retrospective effect and would operate prospectively. [1125D-G; 1126A, E]

2. Though Rule 3(b) fixes the ratio as 1:1 in respect of substantive vacancies, the recruitment has not been regular and systematic. Rules have binding effect and they bind the State and the citizens alike once they are in force. In order that law may regulate conduct, the State has to feel bound by its own laws and by willingly abiding by the law, exhibit an ideal situation for the citizens to emulate. The rule shall henceforth be followed scrupulously by effecting recruitment at regular intervals according to the scheme of the rule.[1126E-G]

[The State Government has been directed to determine the vacancies available to be filled by direct recruitment within four months and to fill up the same within four months thereafter and to draw a seniority list on the basis of rule 4(e) on or before 31.12.88.]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2635-38 of 1985.

From the Judgment and Order dated 30.10.1984 of the Andhra Pradesh High Court in R.P. Nos. 1998, 2065, 2085 of 1980 and 624 of 1982.

S.N. Kacker, A. Subba Rao, B. Sudharshan Reddy, Ramesh M. Keshwani and K. Ram Kumar for the Appellants.

Chella Seetharamiah, M.K. Ramamurthy, Ms. C.K. Sucharita, K. Rajendra Choudhary and K. Shivraj Chowdhary for the Respondents.

The Judgment of the Court was delivered by RANGANATH MISRA, J. The appeals are by special leave and are directed against the judgment of the Andhra Pradesh Administrative Tribunal in a group of representation petitions while the writ petitions are under Article 32 of the Constitution, Writ Petition 72 of 1987 being by promotee Deputy Tehsildars and Writ Petition 241 of 1987 being by another group of Deputy Tehsildars promoted by transfer.

The background of the litigations may now be indicated. A set of rules regarding recruitment of Deputy Tehsildars was in force in the erstwhile State of Madras which continued to apply to Andhra Pradesh until in 1961 the Andhra Pradesh Revenue Subordinate Service Rules (hereinafter referred to as the 'Special Rules') were brought into force. The cadre under the Special Rules consisted of Deputy Tehsildars only. Rule 3 provided:

"3. Appointment: (a) Appointment to the category of Deputy Tehsildars in this service shall be made:

i) by direct recruitment, or

ii) by transfer from members of the Andhra Pradesh Ministerial Service employed in the Revenue Department including the Office of the Commissioner of Land Revenue, Revenue Settlement parties and the office of the Director of Settlements Survey and Land Records.

(b) Substantive vacancies in the category of Deputy Tehsildars shall be filled or reserved to be filled by direct recruitment and recruitment by transfer in the proportion of 1:1".

Some directly recruited Deputy Tehsildars during the years 1962 and 1963 moved the Andhra Pradesh High Court in Writ Petition No. 1502 of 1971 disputing the seniority over them assigned to a group of promotees. They alleged that though they had completed their probation long prior to the Upper Division Clerks who were appointed by transfer as Deputy Tehsildars and had become full members of the service upon confirmation in their posts while none of the Upper Division Clerks

appointed by transfer had become full members, yet the directly recruited Deputy Tehsildars had been treated as junior and their claim to promotion as Tehsildars was being overlooked. A learned Single Judge of the High Court dismissed the writ petition by holding that there was no foundation for the grievance of the directly recruited Deputy Tehsildars and that they had no cause of action within the frame of the rules. The decision of the learned Single Judge was upheld in appeal by a Division Bench. Support for that position was derived from Rule 33(a) of the Andhra Pradesh State and Subordinate Services Rules, 1962 (hereinafter referred to as the 'General Rules'). A special leave petition was filed before this Court against the appellate decision of the High Court.

On 9th October, 1980, the State Government amended Rule 4(e) of the Special Rules with retrospective effect from 12th of October, 1961 in the manner indicated below:

"In sub-rule (e) of Rule 4 of the said Rules, for the words 'The seniority of the Deputy Tehsildar shall be determined with reference to the date of allotment maintained and the ranking assigned to him by the Andhra Pradesh Public Service Commission in the merit list of that selection', the following shall be substituted, namely, 'the inter se seniority between the direct recruits to the category of Deputy Tehsildars and the promotees to the category of Deputy Tehsildars shall be determined from the date of their confirmation in the substantive vacancy in that category in the proportion of 1:1 as provided in sub-rule (b) of Rule 3."

A group of promotees who are appellants in the civil appeals went before the Andhra Pradesh Administrative Tribunal questioning the validity of the aforesaid amendment with particular emphasis on its retrospective application. The Tribunal referred the matter to a three- Judge Bench thereof. Before the Tribunal, it was canvassed on behalf of the appellants that the prevailing rule regarding seniority was in Rule 33 of the General Rules and in the absence of any provision in the special Rules, the principle in Rule 33 was applicable for determining inter se seniority in the cadre of Deputy Tehsildars. The claim of the direct recruits had been negated by the High Court and the dispute was pending decision of this Court. There was no scope for the State Government to amend the Rules in 1980 to the prejudice of the promotees. Even if Government wanted to change their policy regarding determination of inter se seniority, it should have been made applicable prospectively and that the seniority already determined on the basis of Rule 33 of the General Rules should not have been disturbed. The determination of seniority on the basis of the date of confirmation worked out prejudice for the promotees. The Tribunal examined the matter at length and came to the following conclusion:

"As a quota rule has been provided in the Special Rules relating to the recruitment of Deputy Tehsildars from two sources, after recruitment there is an imperative need to integrate the aforesaid two sources. After integration necessity arises for fixing inter se seniority of persons who have come from the two different sources for facilitating promotions to the next higher posts. There being no rule of relative seniority between direct recruits and rank promotees, and the General Rule 33(a) being incapable to bring integration, Government have rightly felt to enact a rule for integration of the two sources in one cadre and fixation of inter se seniority among members drawn

from the said two sources.

Confirmation adopted as the formula for
determination of inter se seniority is

constitutionally valid. There is no question of any discrimination in laying down a rule of seniority based on the principle of confirmation. The promotee Deputy Tehsildars not having been recruited against the substantive vacancies have not acquired any vested interest so as to be protected against the impugned rule of seniority. Their inter se seniority in the class of temporary Deputy Tehsildars against the nonsubstantive posts, evidently, determined under General Rule 33(a) remains unaffected by the impugned seniority rule. Thus, the said rule does not offend Articles 14 and 16 of the Constitution. It is free from any vice what-so-ever and cannot therefore be assailed. The General Rule 33(a) is incapable of determination of inter se seniority between direct recruits and promotee Deputy Tehsildars despite the fact that the promotees belonging to the latter class are approved probationers and their recruitments are regular to the category of Deputy Tehsildars. Since their posts are outside the permanent cadre, they cannot bring their seniority in the category of Deputy Tehsildars into the permanent cadre and press it against the direct recruits who are members of the permanent cadre from the beginning. The seniority between them (after judgment) and the direct recruits shall be determined on the basis of the impugned rule of seniority, which, according to us is a valid enactment. The Government shall now proceed to determine the seniority accordingly."

These directions of the Tribunal are assailed in appeal before this Court.

Writ Petition No. 72 of 1987 is by 17 promotees during the period 1966 to 1971 while Writ Petition No. 241 of 1987 is by 21 Deputy Tehsildars promoted by transfer from the posts of Upper Division Clerks also during the same period.

The cadre does not have a prescribed strength and temporary appointments seem to have become the rule as the history of the service shows. Even though the ratio of 1:1 is prescribed in regard to the substantive vacancies, direct recruitments were made only in the years 1963, 1964, 1965 and 1966 and for a decade to follow there was no direct recruitment. When demand for more hands in the category of Deputy Tehsildars became pressing supernumerary posts were created from time to time and such posts were filled up by promotion. Rule 33(a) of the General Rules dealing with seniority, as far as relevant, provides:

"The seniority of a person in service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade"

Relying upon this provision, seniority was being determined of promotees without taking into account the fact that there had been intervening reversions to the lower posts from which promotion to the post of deputy Tehsildar had been granted.

The legal position is well-settled that the State is entitled to prescribe the manner of computing inter se seniority and in the absence of such prescription length of service is the basis. A series of recent decision of this Court has made that position certain. Rule 33 of the General Rules contains prescription regarding seniority and has different provisions to meet varying situations. Sub-rule

(a) which provides that seniority of a person is to be determined "by the date of his first appointment to such service" has obviously been mis-interpreted on account of the presence of the words 'unless he has been reduced to a lower rank as a punishment'. It could not be the intention of Rule 33(a) to compute seniority from the date of first appointment even though it was not a continuous one. For instance, a person is appointed to the post of Deputy Tehsildar on promotion on 1st of January, 1970 and is reverted to the lower post, not by way of punishment but on account of exigencies of service or otherwise, on 31st of March, 1970. He is again promoted to that post on 1st January, 1980 and continues to hold that promotional post. Another person is promoted to the post of Deputy Tehsildar on 1st April, 1970 and continues to hold that post without break. If the interpretation adopted by the State Government of Rule 33(a) is accepted, it would mean that the first person on account of having been first appointed on an earlier date to the promotional post would rank senior to the second person. This obviously could not have been the intention of the rule. It is appropriate to interpret that rule to mean that the date of first appointment is intended to refer to continuous appointment only and the words 'unless he has been reduced to a lower rank by way of punishment' are really redundant. We are aware of the fact that this rule has been widely applied for determining inter se seniority and in case challenge to fixation of inter se seniority is permitted to be raised on what we have stated above, limitless litigation would crop up. We would, therefore, make it clear that the interpretation which we now give of this rule shall have prospective application and unless there be any litigation already pending challenging the interpretation of this rule no new litigation would be permitted on that score.

We have already pointed out that the law is that it is open to the State to provide a rule for determining inter se seniority. Rule 4(e) of the Special Rules before amendment in 1980 had provided that the seniority of Deputy Tehsildars would be determined with reference to the date of allotment maintained and ranking assigned by the Andhra Pradesh Public Service Commission in the merit list of the particular selection. That obviously was confined to inter se seniority of direct recruits and did not cover inter se seniority between recruits of the two sources. Therefore, the General Rules had been relied upon. In 1980, by the impugned amendment to Rule 4(e) of the Special Rules, the State Government prescribed the manner of providing inter se seniority among the recruits of the two categories. The amended rule provided the date of confirmation in the substantive vacancy as the basis. Rule 3(b) fixed the reservation of direct recruits with reference to substantive vacancies at 50% and Rule 4(e), therefore, made provision with reference to the seniority in the substantive vacancies with reference to the date of confirmation. The amendment in terms is within the competency of the State Government and is not open to challenge. This is a rule made under the proviso to Article 309 of the Constitution and as settled by this Court in exercise of that power the rule can be given retrospective operation. The impugned amendment has been given retrospective operation from 12th October, 1961. From the judgment of the Tribunal we find that the authority of the State Government to make a rule for future application was not seriously disputed but what was assailed was the retrospectivity given to the amendment.

Indisputably many of the promotees on the basis of seniority already assigned to them have been holding posts of Tehsildars, Deputy Collectors and Special Grade Deputy Collectors. Many have retired from service having enjoyed those promotional benefits. Promotions between 1961 and 1971 on the basis of the seniority assigned under Rule 33(a) of the General Rules is under challenge. That period is a distant one from now varying between 17 to 27 years. To allow the amendment to have retrospective operation is bound to create problems. The State Government while amending the rule should have taken into consideration the practical problems which would arise as a consequence of retrospectivity. It should have taken into account the far reaching adverse effect which the rule, if given such retrospective effect, would bring about in regard to services of scores of employees and the disquiet it would result in by disturbing settled situations. We are, therefore, not of the view that the rules should be given retrospective effect from 1961. It would, however, be wholly justified and appropriate to give the rules prospective operation by fixing 9th October, 1980 as the date from which it should take effect. We accordingly direct that Rule 4(e) as amended on 9th October, 1980, shall not have any retrospective effect and would operate prospectively.

Though Rule 3(b) fixes the ratio as 1:1 in respect of substantive vacancies, the recruitment has not been regular and systematic. We have come across several instances where the State Government do not take steps to give effect to their own rules and, therefore, though there is one mode of prescription, in action a different situation is brought about. Rules have binding effect and they bind the State and the citizens alike once they are in force. In order that law may regulate conduct, the State has to feel bound by its own laws and by willingly abiding by the law exhibit an ideal situation for the citizens to emulate. We disapprove of the callous conduct of the State and direct that the rule shall henceforth be followed scrupulously by effecting recruitment at regular intervals according to the scheme of the rule. The State shall within four months from today compute the substantive vacancies in the cadre and determine the quota of direct recruits to the rank of Deputy Tehsildars and after working out the vacancies available to be filled by the direct recruitment on the basis of 50 per cent of the total number, fill up the same by making direct recruitment within a period of four months thereafter. Once that is done and regular recruitment is effected, the impasse which has now been created would not continue.

The State is directed to draw up the seniority list on the basis of rule 4(e) on or before 31st December, 1988. We have given a long time to eliminate the scope for making for an application for extension.

The Civil Appeals are dismissed. The Writ Petitions shall have also the same fate except to the extent that Rule 4(e) as amended shall have prospective application. In the Civil Appeals we leave the parties to bear their own costs throughout. There would be no order for costs in the Writ Petitions.

G.N.

Appeals and Petitions dismissed.