

I.J. Divakar And Ors. vs Government Of Andhra Pradesh And Anr. on 21 October, 1982

Equivalent citations: AIR1982SC1555, [1982(45)FLR457], 1982LABLC1793, (1983)ILLJ217SC, 1982(2)SCALE938, (1982)3SCC341, 1982(14)UJ835(SC), AIR 1982 SUPREME COURT 1555, 1982 LAB. I. C. 1793, (1983) 1 APLJ 9.2, (1983) 1 LAB LN 327, (1982) 45 FACLR 457, 1982 UJ(SC) 835, 1983 SCC (L&S) 14, 1982 (3) SCC 341

Bench: D.A. Desai, V. Balakrishnan Eradi

ORDER

1. Second Respondent, Andhra Pradesh Public Service Commission (Commission, for short), invited applications for the posts of Junior Engineer in Andhra Pradesh Engineering Service and other allied services in the year 1977. In response to the advertisement about 4,000 applications were received. All eligible candidates were asked to appear at a viva voce test between November 1978 and March 1979. After the conclusion of the viva voce test the commission was in the process of finalising the select list. On September 14, 1979, the 1st respondent, Government of Andhra Pradesh issued G.O. No. 646 and 647. By the first mentioned G.O. No. 646 issued in exercise of the power conferred by the proviso to Sub-clause (3) of Article 320 of the Constitution, the Government excluded from the purview of the Commission all appointments made by direct recruitment to any posts in any category at all levels in the State and Subordinate Services and which were continuing temporarily on August 9, 1979, regarding any of the matters mentioned in Clause (3) of Article 320 of the Constitution of India. There is a proviso to this para which is not material. By another G.O. No. 647 of the even date, the 1st respondent regularised the services of all temporary Government servants who were appointed by direct recruitment to any category of posts and were continuing in service as on August. 9, 1979 without subjecting them to them to any test, written or oral. There are certain conditions which must be satisfied by the temporary employees covered by the G.O. before their services can be regularised.

2. Appellants were candidates who had applied for the post of Junior Engineer in response to the advertisement issued by the 2nd respondent. They with several others filed a representation petition No. 1636 of 1979 in the Andhra Pradesh Administrative Tribunal at Hyderabad seeking a direction calling upon the 2nd respondent to finalise the select list of candidates from amongst the candidates who had applied for the post of Junior Engineer and who had appeared at the viva voce test and for a further direction to the 1st respondent to make the appointments of those finding their place in the select list from amongst the appellants. In order to achieve this result the appellant questioned the validity and legality of the two G.Os. Nos. 646 and 647, the first withdrawing the posts from the purview of the Commission and the second regularising the services of temporary Government servants in accordance with G.O. 647. The Administrative Tribunal by its decision rendered on September 11, 1981, substantially rejected the contentions and dismissed the representation petition

making a recommendation that in the event there are vacancies and the select list is finalised and if any of the appellants finds his place within the zone of selection he may be appointed or may be permitted to appear at an examination relaxing the age bar, if any, he or she has suffered. Hence this appeal by special leave.

3. Mr. J. Ramamurthi, learned Counsel who appeared for the appellants raised the same two contentions before us. It was urged that the Government had no power to withdraw the posts already within the purview of the commission on the date of the advertisement and secondly that the Government has no power to regularise the services contrary to the relevant statutory rules.

4. Proviso to Clause (3) of Article 320 confers power on the Government as respects services and posts in connection with the affairs of the State to make regulations specifying the matters in which either generally or in any particular class of case or in any particular circumstances it shall not be necessary for a Public Service Commission to be consulted. Armed with this power G.O. 646 was issued withdrawing various posts from the purview of the Commission. The only contention urged was that at the time when the advertisement was issued the post of Junior Engineer was within, the purview of the Commission and even if at a later date the post was withdrawn from the purview of the Commission it could not have any retrospective effect. There is no merit in this contention and we are broadly in agreement with the view of the Tribunal that inviting the applications for a post does not by itself create any right to the post in the candidate who in response to the advertisement makes an application. He only offers himself to be considered for the post. His application only makes him eligible for being considered for the post. It does not create any right in the candidate to the post. If therefore, on September 14, 1979, when G.O. 646 was issued the appellants had no right to the post, at least they cannot be heard to contend that it was improper for the 1st respondent to withdraw the post of Junior Engineer from the purview of the Commission. In fact, it must be made distinctly clear that not merely the post of Junior Engineer but various other posts though within the purview of the Commission were withdrawn by the impugned G.O. only to the extent that there were certain direct recruits holding the posts for long number of years and as the Government had decided to regularise their services to the extent the posts were held by temporary servants eligible to get regularisation of service the corresponding posts were withdrawn from the purview of the commission. The power to make such a regulation was not disputed because the power flows from the proviso to Clause (3) of Article 320. As stated earlier, the only contention is that as in respect of the post of Junior Engineer an advertisement was already issued and the commission was in the process of selecting candidates, the power under the proviso to Clause (3) of Article 320 could not be exercised. We see no substance in this contention and the contention must be negatived.

5. The next contention is that G.O. No. 647 by which services of temporary Government servants holding various posts were regularized would be violative of the statutory rule and, therefore, would be bad. It was urged that even if it be conceded that the Government had the power to regularise services in certain circumstances, where the incumbents of the posts were recruited in violation or contravention of statutory rules the services of persons illegally recruited cannot be regularised because if such Power is conceded the Government would be able to act always in flagrant violation of statutory rules and it would be negation of rule of law and a contravention of Article 16 of the Constitution. It was urged that at the relevant time when the temporary servants whose services

were sought to be regularised were recruited in the category of Junior Engineers, the post of Junior Engineer was within the purview of the commission and, therefore, no one could have been recruited without being recommended by the Commission. It does appear that when the temporary servants whose services were sought to be regularised by the impugned G.O. were appointed, the post of Junior Engineer was within the purview of the Commission. Conditions of service of Junior Engineers were governed amongst others by A.P. State and Subordinate Services Rules. Rule 10(a)(i)(1) provides that where it is necessary in the public interest to fill emergently a vacancy in the post borne on the cadre of a service, class or category and if the filling of such vacancy in accordance with the rules is likely to result in undue delay, the appointing authority may appoint a person temporarily otherwise than in accordance with the said rules. The said temporary appointee must possess the qualifications, if any, prescribed for the post, class or category and if any one is appointed who does not possess such qualification he shall be replaced, as soon as possible, by a person possessing such qualification. In the face of this rule the validity of which is not in question it is futile to contend that recruitment to a post falling within the purview of the commission cannot even temporarily be made without the intervention of the Commission. It is not disputed that such temporary appointees whose services were sought to be regularised by the impugned G.O. did possess the necessary qualification. Therefore, it does transpire that the Government had the power to make temporary appointments without the intervention of the Commission to posts which were within the purview of the commission. The Administrative Tribunal has found that there was an embargo on recruitment during certain years because of the peculiar situation in Andhra Pradesh and, therefore, for manning posts falling vacant temporary appointments were made. The Government had the power to make such appointments. The Tribunal also found that the Government received representations from large number of service unions for regularising services of such temporary employees who were holding the posts for a number of years. If their services were terminated it was bound to cause heartburning. Therefore, the Government by the impugned G.O. regularised the services of those temporary Government servants who were in service on the relevant date being August 9, 1979. We are broadly in agreement with the Tribunal that the Government had the power to regularise services. Looking to the circumstances set out in the affidavit in opposition filed on behalf of the State that it had become a compelling necessity to regularise services of such temporary servants for peace and harmony in service, we are satisfied that the action of the Government was justified and was in consonance with the Rules. We find, therefore, no substance in the contention that the regularisation of services of temporary Government servants was in contravention or violation of statutory rules.

6. Even though we reject both the contentions, equity demands that the matter cannot be allowed to rest here. Appellants, fresh engineering graduates, applied for post of Junior Engineer in response to the advertisement issued by the commission. They appeared at the viva voce test. A hope was generated in their minds that if they can successfully compete and come within the zone of selection they would be able to secure Government service. By subsequent regularisation the euphoria generated by the advertisement has proved a mirage. We, therefore, asked the learned Solicitor-General who appeared for the respondents and with his atypical fairness he stated that there are still number of posts of Junior Engineer for which the requisition is pending with the Commission. In order to do justice between the parties and not to leave the appellants, fresh young engineering graduates, in lurch, we direct that the commission shall proceed to finalise the list of

selection on the basis of the viva voce tests conducted and marks assigned and forward the same to the Government within two months from today. If the appellants or any one of them fall within the zone of selection, they must be first appointed according to their place in the select list before any outsider is appointed hereafter to the post of the Junior Engineer in any branch of Andhra Pradesh Engineering Service and this must be irrespective of the Department in which post of Junior Engineer is available. The appeal to the extent herein indicated is allowed. There will be no order as to costs.