

## **M. Nirmala & Ors vs State Of Andhra Pradesh & Ors on 8 August, 1986**

**Equivalent citations: 1986 AIR 2102, 1986 SCR (3) 507, AIR 1986 SUPREME COURT 2102, 1987 LAB IC 509, (1987) 1 LAB LN 86, (1986) JT 140 (SC), 1986 SCC (L&S) 699, 1986 (3) SCC 647, (1986) 2 CURLR 293, (1986) 53 FACLR 514**

**Author: M.M. Dutt**

**Bench: M.M. Dutt, O. Chinnappa Reddy**

PETITIONER:

M. NIRMALA & ORS.

Vs.

RESPONDENT:

STATE OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT 08/08/1986

BENCH:

DUTT, M.M. (J)

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REDDY, O. CHINNAPPA (J)

CITATION:

1986 AIR 2102                      1986 SCR (3) 507

1986 SCC (3) 647                JT 1986    140

1986 SCALE (2) 214

CITATOR INFO :

D                      1992 SC 922 (16)

ACT:

Seniority computation of-Temporary employees who were exempted from appearing at any qualifying examinations and whose posts were withdrawn from the purview of the Public Service Commission by G.O. MS 646 dated 14.9.1979-Whether their seniority should be computed from the respective dates of their appointments after April 1974 and above the Service Commission candidates-Rule 33(a) of the A.P. State Subordinate General Services Rules.

HEADNOTE:

The petitioners in Writ Petition 106 of 1980 are

working in Group IV Services in various departments of the Government of Andhra Pradesh. Most of them were appointed after 1974, under the General Rule 10(a)(i)(l) on a purely temporary basis due to the existence of a ban on direct recruitment. After the lifting of the ban partially special qualifying tests were held for regularising their services in 1974 and 1976. As they did not put in two years of qualifying service as on 1.1.73 and 1.1.76 respectively, they could not take the said examinations. In 1976 there was another test conducted by the Public Service Commission wherein about 82000 candidates appeared. The petitioners did not appear in the said test. Among the several candidates who were appointed sometimes in 1977 and 1978 were Respondents 18 to 108. The petitioners were, however, granted complete exemption from appearing at any examination by GOMS 646 dated 14.7.1979 and the posts held by them were withdrawn from the purview of the Public Service Commission. Earlier to the said Notification Government issued a memo No. 1806/ Ser-B/78-2 Gad dated 25.1.79 proposing to fix inter-se seniority between the Public Service Commission candidates who qualified in 1976 and the temporary employees including the petitioners who did not appear at the qualifying test. Being aggrieved, the Service Commission candidates including respondents 18 to 108 in the Writ Petition, filed R.P. No. 447/79 before the State Administrative Tribunal whose decision went in favour of the Service Commission candidates. Hence the Civil Appeal No. 2735/86 by the State of Andhra Pradesh. In both the

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Writ Petitions and the appeal the question related to the computation of seniority of the Service Commission candidates and the temporary employees whose services were regularised by GOMS 647 dated 14.9.79 after exempting them from passing the qualifying examination etc. by GOMS 646 dated 14.9.1979.

Dismissing the petition and the appeal, the Court,

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HELD: 1. The petitioners cannot claim that their seniority should be computed from the respective dates of their appointments after April 1974. The petitioners were not appointed on a regular basis, but by way of stop-gap arrangements to be replaced by the appointment of qualified candidates. The petitioners failed to avail themselves of the opportunity of qualifying themselves for regular appointments by appearing at the special qualifying test held in 1976, although they were eligible for the test. The Government order being GOMS No. 647 dated September 14, 1979 does not support their claim of seniority from the respective dates of their appointments after April 1974. Under the said GOMS No. 647, the services of the employees belonging to Group IV services would be regularised from the date of last regular appointment in that category or from the date of temporary appointment, whichever is later and

subject to the decision of the Andhra Pradesh Administrative Tribunal. The Andhra Pradesh Administrative Tribunal held that the appointments of the Public Service Commission candidates were regular appointments. The appointments of the Public Service Commission candidates are, therefore, the last regular appointments as contemplated by GOMS No. 647. In view of the said decision of the Andhra Pradesh administrative Tribunal and the directions contained in GOMS No. 647, the services of the petitioners will be regularised subsequent to the respective dates of appointments of the respondents Nos. 18 to 108 or the other employees in Group IV services, who were appointed pursuant to their being successful in the special qualifying test held by the Public Service Commission in 1976. The petitioners have not challenged the said GOMS No. 647; on the contrary, they have placed reliance upon the same and have also prayed for the implementation of the same. [512B-G]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 106 of 1980 Under Article 32 of the Constitution of India. with Arising out of Special Leave Petition (Civil) No. 2775 of 1980.

P.S. Potti, K.R. Chaudhary, Miss Malini Poduval and Miss R. George for the Petitioners.

M.K. Ramamurthy, T.V.S.N. Chari and Miss. V. Grover for the Respondents in W . P . No . 106 of 1980.

K. Ram Kumar for the Appellant in C.A. No. 2735 of 1986.

A. Subba Rao for the Respondents in C.A. No. 2735 of 1986.

The Judgment of the Court was delivered by DUTT, J. The Writ Petition No. 106 of 1980 under Article 32 of the Constitution of India preferred by the petitioners, Smt. M. Nirmala & 309 others, and the appeal by special leave filed by the State of Andhra Pradesh have been heard together as they involve the common question as to the seniority of certain employees of the Government of Andhra Pradesh in Group II and Group IV services. Group II services relate to the posts of Junior Assistants in the Secretariat and Group IV services relate to the posts of Lower Division Clerks, Lower Division Assistants, Lower Division Typists and Steno-Typists.

The petitioners are working in Group IV services in various Departments of the Government of Andhra Pradesh. On August 18, 1970 by G.O. Ms. No. 682, the Government of Andhra Pradesh put a ban on direct recruitment of all categories of State and subordinate services, pending the recommendations of the Backward Classes Commission. In spite of the said order baning direct recruitments, the Government had to appoint employees in all Departments in view of exigencies of circumstances and in the public interest. Such appointments were made under the General Rule

10(a)(i)(1) on a purely temporary basis. Most of the petitioners were appointed after April, 1974 as temporary employees under General Rule 10(a)(i)(1). Indeed, General Rule 10(a)(iii) provides that a person appointed under clause (i) shall, whether or not he possesses the qualifications prescribed for the service, class or category to which he is appointed, be replaced as soon as possible by a member of the service or an approved candidate qualified to hold the post under the rules. In view of clause (iii) of General Rule 10(a), the appointments of the petitioners were to be replaced as soon as possible by qualified and approved candidates.

In 1973, the ban on recruitment through Public Service Commission was partially lifted. By G.O. Ms. No. 725 dated December 28, 1973, the Government of Andhra Pradesh directed the Public Service Commission to conduct a special qualifying test for recruitment in Group IV services with a view to regularising the temporary appointments made during the ban period. One of the conditions of eligibility for appearing at the said qualifying test was, as fixed by the Public Service Commission, two years of service as on 1.1.1973. As the petitioners were appointed after April, 1974, the question of their appearing at the said qualifying test did not arise. It appears that those who appeared at the said test were all absorbed in the regular service. On the representation of the temporary employees who were not absorbed, the Public Service Commission conducted another special qualifying test as directed by the Government by G.O. Ms. No. 787 dated November 9, 1976. The petitioners could not avail themselves of the said test as they had not put in two years of service as on 1.1.1976 as fixed by the Public Service Commission.

The temporary employees including the petitioners who were appointed on or after January 2, 1974, became eligible only in 1976 in which year a test for recruitment through Public Service Commission was conducted to facilitate all temporary employees including the petitioners to compete for regular appointments. About 82,000 candidates appeared in the test for Group IV services. The petitioners, however, did not appear at the said qualifying test even though they were eligible for the same. At the same time, the petitioners and others, who did not appear at the qualifying test in 1976, began to put pressure on the Government for their absorption. The Government was also prevented from replacing the temporary employees including the petitioners by the candidates who were successful in the said qualifying test. The successful candidates were appointed to additional posts in Group II and Group IV services sometime in 1977 or 1978. The temporary employees made a representation to the Government that their appointments should be regularised without requiring them to appear at the special qualifying test. The Government seems to have yielded to the pressure brought to bear upon it by these temporary employees, as a result of which the appointments of successful candidates in the said test could not be regularised. By Memo No. 1806/ Ser B/78-2 dated 25.1.1979 the Government proposed to fix the inter se seniority between the Public Service Commission candidates, that is, those who passed in the qualifying test held in 1976 and the temporary employees who did not appear at the qualifying test. Being aggrieved by the said Memo, certain Public Service Commission candidates belonging to Group II services filed a representation petition being R.P.No. 145/79 before the Andhra Pradesh Administrative Tribunal. i; Subsequently, another representation petition being R.P. No. 447 of 1979 was filed by certain other Public Service Commission candidates belonging to Group IV services including the respondents Nos. 18 to 108 in the Writ Petition.

While the said representation petitions were pending before the Andhra Pradesh Administrative Tribunal, the Government of Andhra Pradesh issued G.O.Ms. No. 646 dated September 14, 1979 whereby the temporary employees including the petitioners were exempted from appearing at any examination and the posts held by them were withdrawn from the purview of the Public Service Commission. By another order, being G.O.Ms. No. 647 dated September 14, 1979, the Government directed regularisation of the temporary employees including the petitioners without subjecting them to any test, written or oral. One of the conditions of such regularisation, as contained in clause (b) of the G.O.Ms. No. 647, is that "in the case of temporary Junior Assistants, Typists and Steno-Typists in the Secretariat and L.D.Cs, Typists and Steno-Typists in the offices of the Heads of Departments, their services should be regularised from the date subsequent to the date of last regular appointment in that category or from the date of temporary appointment whichever is later and subject to the decision of the Andhra Pradesh Administrative Tribunal before which representation petitions in this regard are pending." At this stage, it may be stated that R.P. No. 145 of 1979 and R.P. No. 447 of 1979 were both decided by the Tribunal in favour of the Public Service Commission candidates, holding that their appointments were regular and their seniority should be computed from the respective dates of regular appointments under the General Rule 33(a) which, inter alia, provides that the seniority of a person in a service, class, category or grade shall be determined by the date of his first appointment to such service, class, category or grade. The State of Andhra Pradesh being aggrieved by the said order of the Tribunal passed in R.P. No. 145 of 1979, has preferred the instant appeal by special leave.

It is not in dispute that the Public Service Commission candidates including the respondents Nos. 18 to 108, who belong to Group IV services, were appointed sometime in 1977 or 1978 pursuant to their being successful in the special qualifying test held by the Public Service Commission in 1976. In view of General Rule 33(a), the seniority of the respondents should be computed from the respective dates of their appointments as held by the Administrative Tribunal. The petitioners, however, claim that their seniority should be computed from the respective dates of their appointments after April, 1974 so that they maybe placed before the respondents Nos. 18 to 108 in the seniority list.

In our view, the claim of the petitioners is untenable. The petitioners were not appointed on a regular basis, but by way of stop-gap arrangements to be replaced by the appointment of qualified candidates. The petitioners failed to avail themselves of the opportunity of qualifying themselves for regular appointments by appearing at the special qualifying test held in 1976, although they were eligible for the test. The Government order being G.O.Ms. No. 647 dated September 14, 1979 on which much reliance has been placed by Mr. Patti, learned counsel appearing on behalf of the petitioners, does not support their claim of seniority from the respective dates of their appointments after April, 1974. Under the said G.O.Ms. No.647, the services of the employees belonging to Group IV services would be regularised from the date of last regular appointment in that category or from the date of temporary appointments whichever is later and subject to the decision of the Andhra Pradesh Administrative Tribunal. The Andhra Pradesh Administrative Tribunal, as stated already, held that the appointments of the Public Service Commission candidates were regular appointments. The appointments of the Public Service Commission candidates are, therefore, the last regular appointments as contemplated by G.O.Ms. No.

647. In view of the said decision of the Andhra Pradesh Administrative Tribunal and the directions contained in G.O.Ms. No.647, the services of the petitioners will be regularised subsequent to the respective dates of appointments of the respondents Nos. 18 to 108 or the other employees in Group IV services, who were appointed pursuant to their being successful in the special qualifying test held by the Public Service Commission in 1976. The petitioners have not challenged the said G.O.Ms. No. 647; on the contrary, as stated already, they have placed reliance upon the same and have also prayed for the implementation of the same. The petitioners, therefore, cannot assail the findings of the Andhra Pradesh Administrative Tribunal and claim that their seniority should be computed from the respective dates of their appointments after April, 1974.

WE have also considered the findings of the Administrative Tri-

bunal and we are of the view that the findings arrived at by it are quite legal and justified, and no exception can be taken to the same.

For the reasons aforesaid, both the Writ Petition and the appeal are dismissed. However, in view of the peculiar facts and circumstances of the case, there will be no order as to costs.

S.R.

Petition and appeal dismissed.