

Govt. Of Andhra Pradesh And Ors. Etc vs M.A. Kareem And Others Etc on 14 September, 1990

Equivalent citations: 1990 SCR, SUPL. (1) 482 1991 SCC SUPL. (2) 183, AIRONLINE 1990 SC 91, 1991 SCC (L&S) 1206, 1991 SCC (SUPP) 183, (1991) 2 SERV LJ 14, (1991) 17 ATC 303, 1991 SCC (SUPP) 2 183, 1991 UJ(SC) 1 210, 1991 UJ(SC) 210

Author: L.M. Sharma

Bench: L.M. Sharma, B.C. Ray

PETITIONER:

GOVT. OF ANDHRA PRADESH AND ORS. ETC.

Vs.

RESPONDENT:

M.A. KAREEM AND OTHERS ETC.

DATE OF JUDGMENT 14/09/1990

BENCH:

SHARMA, L.M. (J)

BENCH:

SHARMA, L.M. (J)

RAY, B.C. (J)

CITATION:

1990 SCR Supl. (1) 482 1991 SCC Supl. (2) 183

1990 SCALE (2) 493

ACT:

Civil Services--Andhra Pradesh Ministerial Service:
Lower Division Clerks in District Police
Offices/Units--Appointed to Chief Office--Whether entitled
to retain seniority--Employees not qualifying in general
examination--Later qualified in special qualifying examina-
tion of relaxed standard--Seniority--Fixation of.

HEADNOTE:

The respondents in the Civil Appeal, were working as
Lower Division Clerks in the district police offices/units.
Some posts of Lower Division Clerks fell vacant in the Chief
Office and it was decided to fill up the same by appointing
Lower Division Clerks with good service record from the

district police offices. Accordingly a Memorandum was issued on 21.11. 1968 which expressly stated that the appointees would be put at the bottom of the list of Lower Division Clerks already working in the Chief Office. The respondents and two others expressed their willingness to join and also to forego their seniority. Accordingly an order was passed and the respondents joined duty in the Chief Office in 1970 and were placed on probation. They completed the probation satisfactorily and were confirmed with their seniority counted from the dates they joined Chief Office.

Later, in 1983 they filed a Representation Petition before the State Administrative Tribunal that in view of Memorandum dated 18.1.1969 which stated that the condition regarding taking last rank would not be insisted upon, the respondents were entitled to count their service rendered in the district police offices/units for the purpose of seniority in the Chief Office. The Tribunal allowed the petition. The State has preferred the appeal against the said order.

The petitioners in the Writ Petitions were appointed in the years 1965 to 1967. Since they did not pass the general examination, a special qualifying examination was held in 1968. They did not appear at the examination. Another chance was given in 1974 and the petitioners successfully cleared the same. By an order dated 17.6.1976, their services were regularised with effect from 1.8.1972. The petitioners challenged the validity of the order, claiming, that their seniority

483

should be counted from the dates they were appointed.

Allowing the appeal and dismissing the Writ Petitions,

HELD: 1. It has to be appreciated that the cadre of the Chief Office is altogether different from the cadre of the district police offices/ units where the respondents were earlier appointed and they were not liable to be transferred to the Chief Office. The service conditions at the Chief Office were better, which was presumably the reason for the respondents to give up their claim based upon their past services. It is true that the differential advantage was not so substantial as to attract every Lower Division Clerk working in the district offices/units, and in that situation the letter dated 21.11.1968 had to be circulated. However, so far the respondents and the two others were concerned, they found it in their own interest to forego their claim of seniority on the basis of their past services and they did so. It is significant to note that their letters expressing their willingness to join Chief Office by foregoing their seniority were sent to the Inspector General of Police many months after the issuance of circular dated 18.1.1969 stating that the condition of foregoing seniority would not be insisted upon and they were allowed to join the Chief Office on clear understanding that they would not be entitled to count their past services. It is, therefore, idle to suggest that the respondents can now turn back and repudiate their

commitment expressly made many months after the said circular. [297G-H; 298A-B]

2. So far the allegation regarding payment of travelling allowance is concerned, if some officers permitted the respondents to draw travelling allowance, this cannot be a ground to hold that it was a case of regular departmental transfer. Rule 16 of the Andhra Pradesh Ministerial Service Rules cannot, therefore, be held to be applicable in the present case. [298C-E]

3. The petition before the Tribunal was filed by the respondents after a period of 13 years of their initial appointment in the Chief Office, during which period many orders consistent with the terms of service as indicated in the Memorandum dated 21.11.1968, must have been passed in favour of the other incumbents of the service. The courts and tribunals should be slow in disturbing the settled affairs in a service for such a long period. Besides, the respondents, in the application before the Tribunal, did not implead their colleagues who have been prejudicially affected by the impugned judgment. It cannot be assumed that the respondents had no knowledge about them. Apart from the merits of the case, the petition of the respondents before the Tribunal

484

was fit to be rejected on these grounds. [298B-D]

4. There is also no merit in the contention that the respondents should not be put below those persons who had not successfully completed their probation in the Chief Office on the date the respondents joined there. [299E]

5.1 As regards the Writ Petitions, it is significant to note that although the impugned order was passed in 1976, the petitioners did not commence any legal remedy before the year 1984 when they filed the present application directly before this Court after a period of 8 years. [300C]

5.2 Though a Writ Petition was filed by some of the employees of the Central Office making similar claim of seniority the same was ultimately dismissed by this Court on August 8, 1986. [300E]

M. Nirmala and others v. State of Andhra Pradesh and Others, [1986] 3 S.C.R. 507, referred to.

5.3 The respondent-officers had joined the Central Office after qualifying at the general examination held for the purpose, and since the petitioners did not appear at the examination, they cannot be equated with the respondent officers. The general examinations for recruitment to the Central Office were held in 1964, 1965, 1966, 1967 and 1968, but the petitioners did not choose to avail of the ordinary method for joining the service. Instead they entered the service by the side door and their department, taking an attitude liberal to them and other similar officers, decided to hold special qualifying examinations. However, for the purpose of seniority the petitioners were given the advantage of two years of service rendered by them prior to their

successfully completing the special qualifying examination. Even the standard of the special qualifying examination was not the same as that of the general examination held for recruitment. [300G-H; 301A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 173 of 1986.

From the Judgment and Order dated 29.3. 1985 of the Andhra Pradesh Administrative Tribunal, Hyderabad in Representation Petition No. 1589 of 1983.

WITH Writ Petition (Civil) Nos. 11135-37 of 1984.

(Under Article 32 of the Constitution of India). C. Sitharamaiah, G. Prabhakar, D. Prakash Reddy, B. Rajeshwar Rao and Vimal Dave for the Appellants. Subodh Markandeya, W.A. Nomani, Seshagiri Rao, Mrs. Chitra Markandeya and A. Subba Rao for the Respondents. The Judgment of the Court was delivered by SHARMA, J. Civil Appeal No. 173 of 1986:

By the judgment under appeal the Andhra Pradesh Administrative Tribunal has accepted the claim of seniority pressed by the respondents in their Representation Petition No. 1589 of 1983.

2. The respondents were working as Lower Division Clerks (LDCs) in the district police offices/units in Andhra Pradesh, when the question of appointing LDCs in the Chief Office arose. It was decided to give an opportunity to the LDCs working in the district police offices/units on the condition that they would be willing not to rely upon their service rendered in the district police offices/units for the purpose of seniority and that their seniority would be counted with effect from the date they joined the Chief Office. Accordingly a Memorandum Rc. No. 1020/S1/68 dated 21.11. 1968 (Annexure 'A') was issued to the district police offices/units. The choice was limited to probationers and approved probationers having good service records. The letter expressly stated that the appointees were to be put at the bottom of the list of probationers or approved probationers already working in the Chief Office. Immediately thereafter the respondents and two other LDCs, who are not parties to the present case, expressed their desire to join the Chief Office on the condition as mentioned in the said memorandum. They in positive terms declared in Annexure 'C' series their willingness to forego their seniority. After examination of their service records, orders were passed and accordingly Memorandum Rc. No. 1020/S1/68 dated 1.6. 197 (1 Annexure 'o') was issued to the heads of departments of the concerned district police offices/units. A pointed reference to the memorandum of 21.11. 1968 was made stating that the clerks in question were to take their seniority from the date of their joining the duty in the Chief Office as already mentioned in their letters. Accordingly, all the five respondents joined their duty in the Chief Office after submitting, with reference to the memorandum dated 1.6. 1970, separate letters (at pages 40-44 of the paper book) addressed to the Inspector General of Police, stating that:

"I submit that I am willing to take the last rank in seniority in the category of LDCs in Chief Office from the date reporting duty in Chief Office."

Their respective dates of joining the Chief Office are detailed in the Memorandum dated 7.9.1970, Annexure 'H' (page 47 of the paper book). They were placed on probation with the condition that if they failed to complete their probation satisfactorily they would be sent back to their original district/unit offices.

3. The respondents satisfactorily completed their probation and were substantively confirmed in the Chief Office and their seniority was counted with effect from the dates they joined the Chief Office. In 1983 they filed an application before the Andhra Pradesh Administrative Tribunal claiming that they were entitled to count their service rendered in the district police offices/units for the purpose of their seniority in the Chief Office, which has been allowed by the impugned judgment.

4. In support of their claim the respondents relied on the Memorandum Rc. No. 1020/S1/68 dated 18.1. 1969 (Annexure 'B') issued by the office of the Inspector General of Police to the heads of the district police organisations/units, stating that, "In continuation of the Chief Office memorandum cited, the Commissioner of Police, all Superintendents of Police and Commandants etc., are requested to state whether there are any L.D. Clerks willing to come on transfer to Chief Office, if the condition stipulated in the Memorandum cited regarding taking of last rank is not insisted upon. The records of the L.D. Clerks recommended should be good." It has been argued before the Tribunal as also before us that this letter clearly indicates that adequate number of clerks from the district police offices/units were not available and a decision to forgo the condition in regard to the seniority of the clerks was taken. It has been contended that in view of this departmental decision the respondents should not be bound down by their statements made in Annexures 'C' series and in their letters Annexures 'E' series. The Tribunal has accepted their plea.

5. Mr. C. Sitharamaiah, the learned counsel appearing in support of the appeal, has urged that the Memorandum Annexure 'B' does not indicate any final decision taken by the Department. The learned counsel appears to be right. A perusal of the letter makes it clear that the office of the Inspector General of Police was only making an inquiry in the terms indicated therein. It is true that presumably, sufficient number of volunteers from the district police offices/units were not available which prompted the authority concerned to issue the letter Annexure 'B', but it does not go beyond circulating a query. It cannot be suggested on its basis that there was a reversal of the policy with respect to the counting of the seniority of the incoming LDCs from the district police offices/units. It has been asserted in the counter affidavit of the State filed before the Tribunal that not a single person was allowed to join the Chief Office on the condition indicated in Annexure 'B', and it has not been denied on behalf of the respondents either before the Tribunal or before us. The respondents have not been able to produce a copy of any decision taken on the lines indicated in Annexure 'B' nor have they been able to cite even a single case of an LDC joining the Chief Office on such a supposed decision. We have, therefore, no hesitation in holding that the condition mentioned in Annexure 'B' is of no avail to the respondents.

6. The learned counsel for the respondents referred to r. 16 of the A.P. Ministerial Service Rules (hereinafter referred to as the Rules) and urged that when the respondents were permitted to join the Chief Office, they were allowed to do so by way of a regular transfer from one department to another and this was done for administrative exigencies of the Police Department, within the meaning of the said Rules, and not on their own request. They are, therefore, entitled to count their earlier service for the purpose of seniority. It is alleged that the fact that the respondents were paid travelling allowances for joining the Chief Office corroborates their stand. We have considered the argument addressed on behalf of the respondents along with the relevant documents but do not find any merit in their stand. It has to be appreciated that the cadre of the Chief Office is altogether different from cadre of the district police offices/units where the respondents were earlier appointed and they were not liable to be transferred to the Chief Office. The service conditions at the Chief Office were better, which was presumably the reason for the respondents to give up their claim based upon their past services. It is true that the differential advantage was not so substantial as to attract every LDC working in the district offices/units, and in that situation the letter Annexure 'B' had to be circulated. However, so far the respondents and the two others were concerned, they found it in their own interest to forego their claim of seniority on the basis of their past services and they did so. It is significant to note that their letters Annexures 'E' series were sent to the Inspector General of Police many months after the issuance of Annexure 'B' and they were allowed to join the Chief Office on clear understanding that they would not be entitled to count their past services. It is, therefore, idle to suggest that the respondents can now turn back and repudiate their commitment expressly made many months after Annexure 'B'.

7. So far the allegation regarding payment of travelling allowance is concerned, the same has been dealt with in paragraph 6 of the counter affidavit of the appellant filed before the Tribunal in the following terms:

"They cannot claim seniority now after a lapse of 13 years on the ground that they were given T.T.A. at the time of their transfer. No orders were issued from this office to the Subordinate Officer that the petitioners are eligible for T.T.A. and joining time. In fact the Dy. Insp. Genl. of Police, Hyderabad Range in his order No. 534/E/256/70 Hr. Dt. 5.6.70, addressed to Supdt. of Police, Medak had specifically informed that the petitioners No. 1 and 2 are not entitled for any T.T.A. and joining time."

[It is urged that in spite of the clarification made by the Deputy Inspector General of Police, as stated above, if some officers permitted the respondents to draw travelling allowance, this cannot be a ground to hold that it was a case of regular departmental transfer. The r. 16 cannot, therefore, be held to be applicable in the present case.

8. Mr. Sitharamaiah urged that having regard to the entire circumstances as spelt out of the different documents on the records of the present case, it should be held that the Memorandum Annexure A' issued by the Office of the 'Inspector General of Police was a mere invitation to the LDCs in the district police offices/units to apply for appointment in the Chief Office with the condition mentioned therein. and availing of the opportunity, the respondents accordingly

requested by their statements and letters for appointment in the Chief Office. It is suggested by the learned counsel that if the case be treated to be one of transfer, it has to be held, in the circumstances, to be at the request of the LDCs concerned within the meaning of r. 16 of the Rules. There considerable substance in the alter- native argument of Mr. Sithara-

maiah also, but, it is not necessary to go into this ques- tion deeper as the absorption of the respondents in the Chief Office cannot be treated by way of transfer within the meaning of the Rules.

9. Besides the above infirmities there are two other important considerations which weigh heavily against the respondents. The petition before the Tribunal was filed by the respondents after a period of 13 years of their initial appointment in the Chief Office, during which period many orders consistent with the terms of service as indicated in the Memorandum Annexure 'A' must have been passed in favour of the other incumbents of the service. The courts and tribunals should be slow in disturbing the settled affairs in a service for such a long period. Besides, the respond- ents, in the application before the Tribunal, did not im- plead their colleagues who have been prejudicially affected by the impugned judgment. It cannot be assumed that the respondents had no knowledge about them. As was rightly pointed out by Mr. Sitharamaiah, although in paragraph 4(d) of their application before the Tribunal (page 53 of the paper book) the respondents mentioned one Vijaya Chand alleged to be an officiating LDC who was put over them, they did not implead even him. We are, therefore, of the view that apart from the merits of the case, the petition of the respondents before the Tribunal was fit to be rejected on the ground of the above mentioned last two points.

10. Finally the learned counsel for the respondents said that in any event they should not be put below those persons who had not successfully completed their probation in the Chief Office on the date the respondents joined there. We do not find any merit in this submission either. Accordingly, the judgment under appeal passed by the Andhra Pradesh Administrative Tribunal is set aside and the Representation petition of the respondents is dismissed. The appeal is allowed, but, in the circumstances, there will be no order as to costs.

Writ Petitions (Civil) Nos. 11135-37 of 1984:

11. These applications under Article 32 of the Constitu- tion have been filed by the three petitioners who were appointed during the years 1965-67 in the Central Office of the Inspector General of Police (now redesignated as Direc- tor General and Inspector General of Police), Andhra Pra- desh. Since they had not passed the general examination held for the purpose, a special qualifying examination was held in 1968 to facilitate the petitioners and other similarly situated persons to pass at the test. The petitioners, however, did not appear at this examination. Another special qualifying examination was held in 1974 and the petitioners successfully cleared the same. Thereafter, by an order dated 17.6. 1976 (Annexure 'E'), their services were regularised with effect from 1.8.1972. Their claim in the present case is for counting their sen- iority with effect from their initial dates of appointment in the years 1965-67

12. It has been contended by the learned counsel for the petitioners that they were not qualified for the 1968 examination and at the very first opportunity available to them in 1974, they passed the special qualifying examination and, therefore, they should not be penalised by ignoring their services rendered before 1.8. 1972."

13. It is significant to note that although the impugned order was passed in 1976, the petitioners did not commence any legal remedy before the year 1984 when they filed the present application directly before this Court after a period of 8 years.

14. By way of a preliminary objection, Mr. Subbarao, the learned counsel appearing for some of the officers impleaded as respondents in this petition, has drawn our attention to the fact that earlier a writ application, being W.P. No. 106 of 1980, was filed by some of the employees of the central office making similar claim of seniority and the present petitioners specifically stated that their case would be governed by the judgment in the earlier writ petition which was ultimately dismissed by this Court on August 8, 1986 (M. Nirmala and Others v. State of Andhra Pradesh and Others, [1986] 3 SCR 507. Mr. Subbarao contends that after the dismissal of the earlier case, the petitioners now cannot be permitted to urge any new ground in support of their claim. The reply on behalf of the petitioners is that if the earlier writ application had been allowed, they would also be entitled to succeed, but after its dismissal their claim cannot be rejected without examination of the additional questions which did not arise in the earlier case.

15. On merits the reply on behalf of the Government of Andhra Pradesh is that the respondent-officers had joined the office of the Inspector General of Police after qualifying at the general examination held for the purpose, and since the petitioners did not appear at the examination, they cannot be equated with the respondent officers. The general examinations for recruitment to the central office were held in 1964, 1965, 1966, 1967 and 1968, but the petitioners did not choose to avail of the ordinary method for joining the service. Instead they entered the service by the side door and their department, taking an attitude liberal to them and other similar officers, decided to hold special qualifying examinations. It is contended that in these circumstances the rule as laid down in Memorandum No. 473/Y1/70-5 dated 24.7. 1970 (Annexure 'VII') is clearly applicable, and for the purpose of seniority the petitioners were given the advantage of two years of service rendered by them prior to their successfully completing the special qualifying examination. The argument is well founded. The learned counsel also pointed out that the standard of the special qualifying examination was not the same as that of the general examination held for recruitment.

16. Besides the weakness in the case of the petitioners as mentioned above, the delay of 8 years on their part to initiate legal remedy is fatal and these writ petitions are fit to be rejected on this ground alone. The writ applications are, therefore, dismissed with costs payable to the respondents represented by Mr. Subbarao.

G.N. Appeal allowed and writ petition dismissed.