

Supreme Court of India

P.Ganeshwar Rao & Co vs State Of Andhra Pradesh & Ors on 5 September, 1988

Equivalent citations: 1988 AIR 2068, 1988 SCR Supl. (2) 805

Author: E Venkataramiah

Bench: Venkataramiah, E.S. (J)

PETITIONER:

P.GANESHWAR RAO & CO

Vs.

RESPONDENT:

STATE OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT 05/09/1988

BENCH:

VENKATARAMIAH, E.S. (J)

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OJHA, N.D. (J)

CITATION:

1988 AIR 2068                      1988 SCR Supl. (2) 805

1988 SCC Supl. 740              JT 1988 (3) 570

1988 SCALE (2) 588

CITATOR INFO :

RF                      1990 SC1233 (13)

ACT:

Andhra Pradesh Panchayat Raj Engineering Service (Special) Rules, 1963--Recruitment to post of Assistant Engineers--State Government Notification dated April 28, 1980--Amendment of the rule--Whether prospective--Held not applicable to vacancies which had arisen before the said date.

HEADNOTE:

The Public Service Commission invited applications for direct recruitment against 51 vacancies of Assistant Engineers in the Andhra Pradesh Panchayat Raj Engineering Service. The number of vacancies was arrived at under the provisions of the Andhra Pradesh Panchayat Raj Engineering Service (Special) Rules 1963, on the basis of the total number of substantive as well as temporary vacancies which had arisen in the years 1978 and 1979. Explanation (c) in the special Rules relating to the method of recruitment of Assistant Engineers, prior to its amendment on 28.4.1980. provided that "out of every 8 vacancies among Assistant Engineers, the 2nd, 5th and 8th vacancies shall be filled in

by direct recruitment ....". The amended Explanation (c) provided that "37-1/2 of the substantive vacancies arising in the category of Assistant Engineers shall be filled by direct recruitment ...."

Some of the officers who were working as In-charge Assistant Engineers or Junior Engineers in the Panchayat Raj Department Engineering Service made representations to the state Government raising objection to the number of vacancies notified for direct recruitment, contending that the 51 vacancies notified could not be filled up any longer by direct recruitment as, according to them, after the amendment of the Rules on 28.4.1980, 37-1/2 per cent of only substantive vacancies could be filled up by direct recruitment. While the vacancies notified had taken into consideration temporary vacancies also when their representation failed to elicit any positive reply from the State Government, they instituted a petition before the Andhra Pradesh Administrative Tribunal.

Before the Tribunal the State Government pleaded that the amendment made on 28.4.1980 to the Special Rules was only prospective in effect and had no effect on the

PG NO 805

PG NO 806

vacancies which had arisen prior to that date. The Tribunal rejected the contention of the State Government.

Setting aside the judgment of the Tribunal and remanding the case to it again, this Court,

HELD: (1) It is clear from the Special Rules as they were in force prior to the amendment on 28.4.1980 that it was open to the State Government to fill 37-1/2 per cent of the vacancies (both substantive and temporary) in the cadre of Assistant Engineers by direct recruitment. [811F]

(2) The crucial words in the Explanation which was introduced by way of amendment in the Special Rules on 28.4.1980 were "37-1/2 per cent of the substantive vacancies arising in the category of Assistant Engineers shall be filled by direct recruitment." The introduction of the word 'arising' in the above clause made it applicable only to those vacancies which came into existence subsequent to the date of amendment. [811H;812A-B]

(3) This Court does not find any indication in the amendment that was made on 28.4.1980 that it would be applicable to the vacancies which had arisen prior to the date of the amendment even by necessary implication.[812E-F]

(4) The amendment made on 28.4.1980 therefore does not apply to the vacancies which had arisen prior to the date of the amendment. [813F]

Eramma v. Verrupanna & Ors., [1966] 2 SCR 626 and Y.V. Rangaiah and Others v. J. Sreenivasa Rao & Ors., [1983] 3 SCC 264, referred to.

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2069 of 1982. From the Judgment and Order dated 23 4 1982 of the Andhra Pradesh Administration Tribunal in Representation Petition No 508 of 1982.

Mrs. C. Markandeya for the Appellants.

PG NO 807 B. Kanta Rao and G.N. Rao for the Respondents. The Judgment of the Court was delivered by VENKATARAMIAH, J. This appeal by special leave is filed against the Judgment dated 23.4.1982 of the Andhra Pradesh Administrative Tribunal in Representation Petition No 508 of 1982 issuing a direction to the State Government to refrain from making any direct recruitment against temporary vacancies in the cadre of Assistant Engineers under the Andhra Pradesh Panchayat Raj Engineering Service (Special) Rules (hereinafter referred to as 'the Special Rules') as amended by G.O. Ms. No. 227 dated 28.4.1980 and issuing certain other ancillary directions. The facts of the case are as follows.

Recruitment to the Andhra Pradesh State and Subordinate Services was governed by the Andhra Pradesh State and Subordinate Services Rules, 1962 (hereinafter referred to as 'the General Rules'). Rule 6 of the General Rules which dealt with the method of recruitment provided that where the normal method of recruitment to any service, class or category was neither solely by direct recruitment nor solely by transfer but was both by direct recruitment and by transfer, the proportion or order in which the special rules concerned may require vacancies to be filled by persons recruited direct or by those recruited by transfer shall be applicable only to substantive vacancies in the permanent cadre. In those Rules the expression special rules meant the rules in Part III of the General Rules applicable to each service or class of service and included ad hoc rules applicable to temporary posts. On 23.3.1963 the Governor of Andhra Pradesh promulgated in exercise of his powers conferred by proviso to Article 3(9) of the Constitution of India the Special Rules providing for the constitution of and the method of recruitment to the Andhra Pradesh Panchayati Raj Engineering Service and the Special Rules were given retrospective effect from November 1, 1960 Under the Special Rules the Andhra Pradesh Panchayati Raj Engineering Service was to consist of four categories of officers, namely, Chief Engineer, Superintending Engineer, Executive Engineer and Assistant Engineer. The post of Assistant Engineer was required to be filled up as follows: "4 Assistant (1) By direct recruitment.

Engineer

or

(2) By transfer from among

(a) Junior Engineer ;or

PG NO 808

(b) Supervisors of the Andhra  
Pradesh Panchayati Raj  
Engineering Subordinate  
Service

.....

(c) Out of every 8 vacancies among Assistant Engineers, 3 shall be filled up or reserved to be filled up by direct recruits on the results of the competitive examinations and the remaining 5 by transferees.

Note: Rules 6, 8(a)(i) and 29(b) of the General Rules for the Andhra Pradesh State and Subordinate Services shall not apply to the appointment of Assistant Engineers by direct recruitment in the Andhra Pradesh Panchayati Raj Engineering Service ..... By Notification bearing G.O.Ms. No 125 dated 28.5.1973 Explanation (c) in the Special Rules relating to the method of recruitment of Assistant Engineers was substituted by a new explanation which read as follows:

"(c) Out of every 8 vacancies among Assistant Engineers the 2nd, 5th and 8th vacancies shall be filled in by direct recruits on the results of the competitive examination and the rest of the vacancies by transfer "

Thus by the year 1978 the posts of Assistant Engineers (now designated as Deputy Executive Engineers) were to be filled up either by direct recruitment or by transfer from among Junior Engineers or Supervisors or Draftsmen Ist Grade of Andhra Pradesh Panchayati Raj Subordinate Service and if no qualified or suitable candidates were available for recruitment as stated above by transfer from any other service or on tenure basis. Out of every eight vacancies in posts of Assistant Engineers the 2nd, 5th and 8th vacancy had to be filled in by direct recruits on the result of the competitive examination and the rest of the vacancies by transfer. The Special Rules further provided that rules 6, 8(a)(i) and 29(b) of the General Rule would not apply to the appointment of Assistant Engineers by direct recruitment in the Andhra Pradesh Panchayati Raj Engineering Service and thereby it became permissible to the State Government to PG NO 809 take into consideration the number of temporary vacancies also in addition to the substantive vacancies in any year for purposes of recruitment. Three out of eight vacancies (which included both substantive and temporary vacancies) could be filled up by direct recruitment. In other words 37- 1/2 per cent of the total number of vacancies (both substantive and temporary vacancies) in the cadre of Assistant Engineers could be filled by direct recruitment. The Chief Engineer of the Andhra Pradesh Panchayati Raj Engineering Service reported to the State Government in his letter dated 25.11.1979 that the total number of posts of Assistant Engineers (Permanent and Temporary) excluding the cyclone posts available were 203 by the end of May, 1979. Out of the said 203 posts the number of posts available for direct recruitment was 75 ( $203 \times 3/8$ ) and that out of them 38 vacancies of Assistant Engineers had either been filled in by direct recruitment or notified to the Public Service Commission for selection and that the balance number of vacancies available for direct recruitment were 37 for the years 1978 and 1979. Out of these 37 remaining vacancies, as 23 posts had been filled by Assistant Engineers selected in direct recruitment, an estimate of 15 vacancies of Assistant Engineers was furnished to the Public Service Commission on 3.6.1978. For the recruitment years 1978 and 1979 the estimate of vacancies were due with the Public Service Commission in the first week of May, 1978 and of May, 1979. In accordance with the above rule then in force the State Government took the decision in February, 1980 to notify 18 vacancies for the recruitment year 1978 and 18 vacancies for the recruitment year 1979. The Chief Engineer was informed of the decision of the State Government to recruit the above said 18 plus 18, i.e., 36 vacancies in addition to the 15 vacancies already

notified to the Public Service Commission and was asked to sent the zone-wise break up of vacancies keeping in view the rules of special representation for Scheduled Castes, Scheduled Tribes, Backward Classes etc. After the receipt of the proposals from the Chief Engineer on 6.8.1981 the estimate of vacancies for the years 1978 and 1979 was also sent to the Public Service Commission for recruitment of Assistant Engineers. In the meanwhile the Public Service Commission had published an advertisement in or about September, 1980 inviting applications for recruitment of Assistant Engineers directly specifying 8.1.1981 as the last date for submitting the applications. In that notification the Public Service Commission had intimated that 15 vacancies were available for recruitment as per the first communication received by it from the State Government. When the process of recruitment was in progress some of the officer. who were working as In-charge Assistant Engineers or Junior Engineers PG NO 810 in the Panchayati Raj Department Engineering Service made representations to the State Government raising objection to the proposed direct recruitment of 51 Assistant Engineers on the basis of the total number of substantive and temporary vacancies which had arisen in the years 1978 and 1979 relying upon an amendment which had been made to the Special Rules by G.O.Ms. No. 227 dated 28.4.1980 by which Explanation (c) and the proviso thereunder in the Special Rules had been substituted by the following explanation and proviso:

"37-1/2 of the substantive vacancies arising in the category of Assistant Engineers shall be filled by direct recruitment on the results of the competitive examination and the remaining 62-1/2 by promotion or transfer as indicated under explanation (d) below ...."

Their contention was that the 51 vacancies which had been notified to the Public Service Commission for direct recruitment could not be filled up any longer by direct recruitment as according to them after the amendment of the Rules on 28.4.1980 only 37- 1/2 per cent of the substantive vacancies could be filled up by direct recruitment They contended that the 51 vacancies which had been notified to the Public Service Commission had been arrived at by taking into consideration temporary vacancies also and that was not permissible after the amendment. They further urged that under the Special Rules, as amended on 28.4.1980, only 8 vacancies could be filled up by direct recruitment When the above representation made by them did not elicit any positive reply from the State Government, they instituted Representation Petition No. 508 of 1982 on the file of the Andhra Pradesh Administrative Tribunal for injunction restraining the State Government and the Public Service Commission from recruiting 51 persons as direct recruits to the cadre of Assistant Engineers The petition was opposed by the State Government It pleaded that the amendment made on 28.4 1980 to the Special Rules was only prospective in effect and had no effect on the vacancies which had arisen prior to the date on which the amendment was made and, therefore, it was open to the State Government to fill by direct recruitment 37- 1/2 per cent of the total number of vacancies (substantive as well as temporary) in the cadre of Assistant Engineers which had arisen before the amendment. The Tribunal rejected the contention of the State Government and held that it was not permissible for the State Government to make recruitment to the 51 vacancies after the Special Rules were amended on 28.4.1980 irrespective of the fact that the vacancies in question had arisen prior to the PG NO 811 date of the amendment. Accordingly the Tribunal directed the State Government and the Public Service Commission to refrain from making any direct recruitment against the temporary vacancies in the Andhra Pradesh Panchayati Raj Engineering Service contrary to the Special Rules as they stood amended from 28.4.1980. Aggrieved

by the decision of the Tribunal some of the candidates, who had been selected by the Public Service Commission as Assistant Engineers, filed a special leave petition in this Court under Article 136 of the Constitution of India requesting this Court to grant special leave to appeal against the judgment of the Tribunal. On 4.6.1982 this Court granted special leave to appeal against the judgment of the Tribunal and also stayed the operation of the judgment of the Tribunal. Thereafter the State Government issued a notification bearing G.O.Ms. No. 525 dated 30.10.1982 appointing the appellants, respondent No. 4 and 48 others as Assistant Engineers (now called Deputy Executive Engineers) on temporary basis under rule 10(a)(i)(1) of the General Rules. 44 of the 51 candidates so appointed joined service as Deputy Executive Engineers. All those who joined the service accordingly have continued to be in the service of the State of Andhra Pradesh till now.

It is not necessary for purposes of this judgment to decide all the contentions which had been raised by the petitioners who had filed the representation petition before the Andhra Pradesh Administrative Tribunal since the Tribunal has allowed the petition only on one ground, namely, that the recruitment in question was governed by the Special Rules as amended on 28.4.1980 and not by the rules which were in force when the vacancies in question arose. It is clear from the Special Rules as they were in force prior to the amendment on 28.4.1980 that it was open to the State Government to fill 37-1/2 per cent of the vacancies (both substantive and temporary) in the cadre of Assistant Engineers by direct recruitment. It is also not in dispute that during the years 1978 and 1979 the position of the vacancies was such that it was permissible for the State Government to appoint 51 Assistant Engineers by direct recruitment. The only question which has now to be considered is whether the amendment made on 28.4.1980 to the Special Rules applied only to the vacancies that arose after the date on which the amendment came into force or whether it applied to the vacancies which had arisen before the said date also. The crucial words in the Explanation which was introduced by way of amendment in the Special Rules on 28.4.1980 were "37-1/2 per cent of the substantive vacancies arising in the category of Assistant Engineers shall be PG NO 812 filled by the direct recruitment". If the above clause had read "37- 1/2 per cent of the substantive vacancies in the category of Assistant Engineers shall be filled by the direct recruitment" perhaps there would not have been much room for discussion. The said clause then would have applied even to the vacancies which had arisen prior to the date of the amendment but which had not been filled up before that date. We feel that there is much force in the submission made on behalf of the appellants and the State Government that the introduction of the word 'arising' in the above clause made it applicable only to those vacancies which came into existence subsequent to the date of amendment. In *Eramma v. Verrupanna & Ors.*, [1966] 2 S.C.R. 626 the words "the property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter" in section 8 of the Hindu Succession Act, 1956 came up for consideration. In that case this Court held that the words "the property of a male Hindu dying intestate shall devolve" occurring in section 8 made it very clear that the property whose devolution was provided for by that section must be the property of a person who had died after the commencement of the Hindu Succession Act and it could not be the property which belonged to a Hindu male who had died before the said Act came into force. The effect of the use of the word 'arising' in the Special Rules qualifying the word 'vacancies' is also the same. The clause which was introduced in the Special Rules by the amendment made on 28.4.1980 cannot, therefore, be interpreted as having any effect on the vacancies which had arisen prior to the date of the amendment. We do not find any indication in the amendment that was made on 28 4 1980 that

it would be applicable to the vacancies which had arisen prior to the date of the amendment even by necessary implication In the instant case the State Government had taken the decision even before the amendment came into force to fill up the vacancies by direct recruitment according to the law prevailing then. Had it been the intention of the State Government, while promulgating the amendment that the amendment should be applicable to the vacancies which had arisen prior to the date of the amendment simultaneously the State Government would have addressed a letter to the Public Service Commission to make recruitment in accordance with the Special Rules as amended on 28.4.1980 No such action was taken by the State Government in this case. We may at this stage refer to another decision of this Court in *Y. V. Rangaiah and Others etc. v. J. Sreenivasa Rao and Others*, [ 1983] H 3 S.C.C. 264 in which in a similar situation this Court has observed in Paragraph 9 at page 289 thus:

PG NO 813 "The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules "

The facts of the case before us are in no way different from the facts involved in the above decision In view of the foregoing we are of the view that the observations made by the Tribunal to the following effect, namely:

"In this case the rules for recruitment have been changed on 28.4.1980. Hence, prima facie it would not be legal to make direct recruitment against temporary vacancies, even if the vacancies were at an earlier date ear-marked for direct recruits ..... In these circumstances, there is, in my opinion, no scope for direct recruitment against temporary vacancies after 28.4.1980, i.e., the date on which the rules were amended as stated above."

are unsustainable. We hold that the amendment made on 28.4.1980) does not apply to the vacancies which had arisen prior to the date of the amendment We accordingly set aside the judgment of the Tribunal and remand the case to it again to decide in the light of the above observations the other contentions which had been raised by the persons who had filed the Representation Petition before the Tribunal and to dispose of the case on the basis of the findings to be recorded by it on those contentions The appeal is accordingly disposed of. There is no order as to costs.

R.S.S.

Appeal disposed of.