

Supreme Court of India

State Of Andhra Pradesh vs Subbarayudu, V.C. & Ors on 22 January, 1998

Author: D.P.Wadhwa

Bench: Sujata V. Manohar, D.P. Wadhwa

PETITIONER:

STATE OF ANDHRA PRADESH

Vs.

RESPONDENT:

SUBBARAYUDU, V.C. & ORS.

DATE OF JUDGMENT: 22/01/1998

BENCH:

SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL NOS. 5132-5133 OF 1998 THE 22ND DAY OF JANUARY, 1998 Present:

Hon'ble Mrs. Justice Sujata V.Manohar Hon'ble Mr. Justice D.P. Wadhwa Mr. K.Ram Kumar and Dr.A.Subba Rao, Advocates for the appellant.

Mr.B.Kanta Rao and Mr. S. Udaya Kumar Sagar, Advocated for the respondents.

J U D G M E N T The following Judgment of the Court was delivered: D.P.Wadhwa, J.

Judgement dated December 20, 1991 of the Andhra Pradesh Administrative Tribunal (for short 'Tribunal') is impugned before us. By this judgment the Tribunal gave a direction that Accountants belonging to Subordinate Accounts Service (SAS) of the Accountant General Office who were working on the date of take over as the Divisional Accountants in the State Service shall also be given option to be absorbed in State as per GOM(s) 304 of November 20, 1979 issued by the Government of Andhra Pradesh. According to the appellant the State of Andhra Pradesh the GOM 304 contemplated option only from Divisional Accountants in the Accountants General office on the date of take over in the State service.

As to how the controversy arose can be best seen by reference to GOM 304 itself. As to the necessity for creating a separate service for State of the Divisional Accountants, it records as under:

"The posts of Divisional Accountants are created by the State Government in the Public Works Divisions of Irrigation including Major Projects, Roads and Buildings and Public Health etc., but the administrative control i.e., recruitment to the posts, appointments, transfers, disciplinary control etc., vest with the Accountant-General, Andhra Pradesh. However, in their day to day working the Divisional Accountants come under the immediate control of Executive Engineers of the Divisions. They assist the Executive Engineers to render accounts to the Accountant-

General, Andhra Pradesh, which are different from the accounts maintained in the Treasuries. Their pay and allowances and service conditions are at present governed by the Central Government rules but they are paid by the State Government.

2. The question of taking over the cadre of Divisional Accountants from the administrative control of the Accountant-General, Andhra Pradesh has been under consideration of the State Government for some time past. A Three Man Committee was appointed by the State Government in G.O. Ms. No. 663, Irrigation and Power (Services-III) Department, dated 3rd September 1976 to advise the Government on the desirability or otherwise of taking over the cadre of Divisional Accountants from the administrative control of the Accountant-General, Andhra Pradesh. The Three Man Committee after going through the various points at issue and studying the set up in other states recommended that the cadre of Divisional Accountants be taken over by the State Government as early as possible. The report was first examined in detail by the Irrigation and Power Department in consultation with the concerned Department viz., Transport, Roads and Buildings, Housing, Municipal Administration and Urban Development, Panchayat Raj and Finance and Planning. The recommendations of the Three Man Committee were again examined by Secretaries to Government, Finance and Planning, Irrigation and Power, Transport, Roads and Buildings, Panchayat Raj and Housing, Municipal with the recommendation of Three Man Committee for the take over of the cadre of Divisional Accountants by the State Government. The Accountant-General, Andhra Pradesh was addressed in the reference 1st read above to obtain the concurrence of the Comptroller and Auditor-General of India for the State Government taking over the administration of Divisional Accountants in this State. The Accountant-General, Andhra Pradesh in his D.O. letter fourth read above had conveyed the approval of the Comptroller and Auditor-General of India to the transfer of the Cadres of Divisional Accountants to the State Government.

3. After a detailed examination in consultation with the Accountant-General, Andhra Pradesh and in order to have proper control over expenditure and over accounts matters generally in Divisional Offices which is very essential and important in view of the heavy expenditure incurred in various engineering departments, the Government have decided that the cadre of Divisional Accountants be taken over by the State Government from the administrative control of the Accountant-General, Andhra Pradesh and a separate cadre of Divisional Accountants be constituted, under the State Government. Government accordingly direct that the cadre of Divisional Accountant be taken over for the administrative control of the Accountant-General, Andhra Pradesh and a separate cadre of Divisional Accountants be constituted under State Government with effect from 1-1-1980."

GOM 304 further records as to how and on what terms and conditions take over of the cadre of Divisional Accountants from the administrative control of the Accountant-General of the Andhra Pradesh would take place. This is in para 5 and, in relevant part, it is an under:

"(I) Options to come over to the State Service will be given to all Divisional Accountants including SAS passed Auditors/SAS Accountants whose name find place on the date of take over in the gradation list of Divisional Test passed Divisional Accountants maintained by the Accountant-General, Andhra Pradesh. The option will be subject to their accepting the service conditions of the State Government and the State scales of pay. Future chances of promotion in the State Service outside the cadre of Divisional Accountants will be open only to such persons as opt for the State Service.

(iv) S.A.S. passed Auditors/S.A.S.

Accountants borne on the
Accountant-General's cadre of

Divisional Test passed Divisional Accountants who do not opt to come over to the State service will be allowed to continue subject to availability of vacancies as Divisional Accountants on deputation but without any deputation allowance. They will be reverted to Accountant-General's become available. However those Divisional Accountants who opt to come over to the State Service, cannot revert to Accountant-General's Office."

Para 14 of the GOM states that a copy of this G.O.

shall be communicated to all the Divisional Accountants including SAS. It would also be relevant to reproduce the form of option as contained in the GOM:

"I, Sri.....S/o.....now working as Divisional Accountant in the Office of the Executive Engineer Division.....(name of the Division and district in which it is located should be specified) do hereby opt to be absorbed in the Andhra Pradesh Government's Divisional Accountants Cadre with effect from 1st January, 1980 as per the terms and conditions laid down in G.O. Ms. No. 304, Finance and Planning (Finance Wing-Works Accounts-I) Department, dated 20-11-1979. On transfer to the Andhra Pradesh State Service, I agree to be governed by the rules and regulations framed by the State Government from time to time in respect of all service matters including Classification, Control and Appeal Rules.

The option exercised herein is final and will not be modified at any subsequent date.

Signature:

Station:

Name:

The Three Man Committee, as mentioned in the GOM 304 reproduced above, which had been constituted and on the recommendation of which GOM was issued did, however, recommend that SAS Accountants working in heavy and important divisions in the State might be taken over by the State Government while constituting the separate cadre and that they be put in to Grade-I automatically. This recommendation, it would appear, did not find favour with the State Government decided to take over only the cadre of Divisional Accountants from the administrative control of the Accountant General and not the cadre of SAS. It was submitted that this action of the State Government is discriminatory as (i) it went against the recommendation of the Three Man Committee and (2) SAS Accountants had been working in the State Government on specific projects and rendering service for the last number of years. We do not think on these grounds it could be said that there is any discrimination, violating Article 14 of the Constitution. It is a matter of policy of the State Government which in its wisdom decided to create a separate cadre in the State by absorbing the Divisional Accounts working on deputation in the State and who were under the administrative control of the Accountant General, Andhra Pradesh. This Court cannot give any direction to the State Government to have a different policy and also absorb the SAS Accountants in its newly constituted service. That the State Government will use the benefit of more experienced officers of SAS cadre is for the State to consider. Merely on that ground plea of discrimination cannot be advanced.

Too much stress was placed on the interpretation given to clause (i) of para 5 of the GOM 304 as held by the Tribunal. It was contended that the expression "whose names find place on the date of take over, in the gradation list of Divisional Test passed Accountants and not to SAS passed Auditors/SAS Accountants. We do not think it is right way of looking at this clause. The Accountant General does maintain a gradation list of Divisional Test passed Divisional Accountants and in that list the names of those Divisional Accountants who passed SAS test would also find place till those SAS passed persons are absorbed in the Cadre of SAS. It does appear to us that the Tribunal reached its conclusion on the interpretation of clause (i) of para 5 while looking at this clause only as it was not having the benefit of whole of the GOM 304. This clause (i) read with clause (iv), the operative words of para and the option to be exercised unmistakably show the State Government wanted to take over cadre of Divisional Accountants only. In our view, there is no ambiguity in clause (i) of para 5 of the GOM for us to go into to the recommendation of the Three Man Committee to take a view consistent with that taken by the Tribunal. While considering the clause equitable consideration do not come into play. When clauses are clear, effect has to be given to it and no question of any strict or liberal construction would arise.

We were referred to a decision of this Court in J.G. Prasada Rao and Others vs. Secretary to Government and others [(1996) 7 SCC 51] which decided the inter-se seniority of the Divisional Accountants absorbed in State service by virtue of GOM 304. This Judgment refers to framing of Rules under proviso to Article 309 of the Constitution constituting Andhra Pradesh Divisional Accountants Service under the Andhra Pradesh Divisional Accounts Officers Service Rules, 1981 which came into force with effect from January 1, 1980. This judgment is no help in these proceedings on the issues raised before us.

There is another aspect of the matter which we must refer to. When SAS Accountants were not given the benefit of GOM 304 to exercise their options on the ground that her names were not found in the gradation list of Divisional test passed Divisional Accountants in the office of the Accountant General, they filed writ petitions in the Andhra Pradesh High Court which were allowed on October 12, 1982 with a direction that those SAS Accountants who were working on the date of take over as Divisional Accountants, shall also be given options and if they opt they shall be absorbed and placed in the Selection Grade of Divisional Accountants. The State Government filed an appeal against that judgment of the single Judge before the Division Bench of the High Court which was dismissed. Thereafter in compliance with the directions of the High Court the State Government issued another GOM dated July 24, 1985 calling for options from SAS Accountants. Those who gave options were accepted and absorbed in the newly created service by issuing a separate GOM on February 27, 1986. It so happened that two of the Divisional Accountants who were not parties in the writ petitions filed separate appeals before the Division Bench claiming that they were affected parties and questioned the judgment of the learned single Judge allowing the writ petitions of the SAS Accountants. By this time, the Division Bench of the High Court noticed that at the Supreme Court had rendered a Judgement and as per Article 371-D of the Constitution, the High Court had no Jurisdiction to entertain service matters pertaining to state Government employees and that the employees had to agitate their grievances only in the Administrative Tribunal. In view of the decision of the Supreme Court, the Division Bench allowed the writ appeal filed by the Divisional Accountants and dismissed the writ petitions filed by the SAS Accountants. The SAS Accountants, therefore, approached the Tribunal which gave the judgment in their favour which is now impugned before us. On the basis of their background, it was submitted before us that since the judgment of the learned single Judge in writ petitions filed by the SAS accountants had been affirmed in appeal earlier by Division Bench, the second Division Bench could not have dismissed the writ petitions and set aside the judgment and order of the learned single judge. We are not going into the validity or the orders passed by the two Division Benches as SAS Accountants did not come up in appeal in this Court against the order of the Division Bench subsequently made dismissing the writ petitions. We would, however, only like to say the second Division Bench if it was of the opinion that it has to take a different view than that taken by the first Division Bench the matter should as a matter of propriety have been referred to a larger bench. It is certainly a question of self-discipline which court should observe.

These appeals are, therefore, allowed the impugned judgment of the Andhra Pradesh Administrative Tribunal is set aside and OAs filed by the respondent are dismissed.