

Supreme Court of India

G.S. Venkat Reddy And Others Etc. ... vs Government Of Andhra Pradesh And ... on 16 July, 1993

Equivalent citations: AIR 1993 SC 2306, JT 1993 (4) SC 240, 1993 LabIC 1958, (1994) ILLJ 18 SC, 1993 (3) SCALE 194, 1993 Supp (3) SCC 425, 1993 Supp 1 SCR 292, 1993 (3) SLJ 171 SC

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Bench: A Ahmadi, M Punchhi, K Ramaswamy

ORDER A.M. Ahmadi, J.

1. Special leave granted in S.L.P. (C) Nos. 8312/88, 5878/87 and 2592/89.

2. The controversy, which we are called upon to decide in this batch of appeals, relates to the determination of seniority between the appellants who entered service in the various engineering departments of the State initially as Supervisors and who on acquiring a degree in engineering were redesignated Junior Engineers and those graduate Junior Engineers who were temporarily appointed on adhoc basis under Rule 10(a)(i)(1) of the Andhra Pradesh State and Subordinate Service Rules (hereinafter called 'the General Rules') and whose services were later regularised under G.O. Ms. No. 647 dated September 14, 1979.

3. The factual matrix relevant for resolving the conflict may be briefly stated. The respondents Nos. 3 to 43 herein were the original petitioners in the group of petitions disposed of by the State Administrative Tribunal, Hyderabad, by its common judgment dated August 7, 1984 which is impugned in these appeals. They were recruited directly by the Government and not the Andhra Pradesh Public Service Commission (PSC) within whose purview the said post of Junior Engineers fell as there was a ban under G.O. Ms. No. 682 dated August IX, 1970 against regular appointments through PSC. To overcome the ban different departments resorted to temporary recruitment under Rule 10(a)(i) of the General Rules to fill up vacancies in their respective engineering services. The respondents Nos. 3 to 43 were accordingly recruited on temporary and adhoc basis as Junior Engineers. In course of time the question of regularisation of their services cropped up. The Government took a decision to regularise their services by lifting the ban on direct recruitment and framing special rules under the proviso to Article 309 of the Constitution providing for their regularisation through a Special Qualifying Test (SQT) to be conducted by the PSC. However, only those temporary Junior Engineers who had completed not less than two years' service as on January 1, 1973 were admitted to the SQT. Pursuant thereto the PSC issued a notification inviting application from eligible candidates for admission to the SQT who were desirous of having their services regularised. Junior Engineers serving in different departments of the State Government e.g. Roads and Buildings department, Public Health and Municipal Engineering department. Panchayati Raj Engineering department, etc., who were eligible under the special rules applied in response to the advertisement. However, those temporary Junior Engineers who were not eligible to appear at the SQT on account of the two years rule questioned the same through writ petitions filed under Article 226 of the Constitution. A learned Single Judge allowed the said petitions holding that the condition of minimum two years' service as on January 1, 1973 was unconstitutional. The issue was carried in appeal to the Division Bench of the said Court which allowed the writ appeals and dismissed the writ petitions with costs by a common judgment dated July 29, 1975. Thus ended the first cycle of litigation.

4. The PSC thus conducted the SQT with a view to selecting candidates from amongst eligible temporary Junior Engineers for regularisation of their service as direct recruits to the various engineering services of the State as gazetted Junior Engineers. Those who successfully cleared the SQT were absorbed in regular service and there is no dispute raised herein about their seniority, presumably because of the ratio of this Court's decision in *M. Nirmala v. State of Andhra Pradesh*.

5. Temporary Junior Engineers who failed to clear the SQT and those who were ineligible to appear at the SQT because of the two year rule represented to the Government for their regularisation also. Respondents 3 to 43 herein belong to the said group of temporary Junior Engineers (Gazetted). Other temporary adhoc employees serving in administrative and other branches of the State Government also pressed for regularisation of their services. Pursuant thereto the Government decided by G.O. Ms. 646 dated September 14, 1979 that all temporary employees appointed by direct recruitment in any category of posts at all levels and continuing in service as on August 9, 1979 shall be regularised without subjecting them to any written or oral test. Exercising the power conferred by the Proviso to Article 320(3) of the Constitution all such posts (except appointments to Assistants and Upper Division Stenographers in the Secretariat) were placed outside the purview of consultation with the State PSC. By another G.O. Ms. No. 647 of even date, the Government issued orders for regularisation as under:

(i) the services of all temporary Government employees who were appointed by direct recruitment to any category of post and are continuing in service as on 9.8.1979 should be regularised without subjecting them to any test written or oral;

(ii) (a) the services of all temporary employees in all categories, other than L.D.Cs, Typists and Steno-typists, in the Offices of the Heads of Departments and Junior Assistants, Typists and Steno-typists in the Secretariat, should be regularised from the next date following the date on which the last regular appointment in that category was made in the unit concerned or from the date of temporary appointment whichever is later;

(b) xxx xxx xxx The above orders are general in nature and cover cases of respondents 3 to 43 and all similarly placed employees.

6. The respondents Nos. 3 to 43 who were appointed as Junior Engineers on a temporary basis under Rule 10(a)(i)(1) of the General Rules between 1971 and 1973 but who had not passed the SQT became entitled to be regularised under the aforementioned orders of September 14, 1979. The validity of these orders came to be upheld by this Court in *I.J. Diwakar v. State of Andhra Pradesh* (1983) 3 SCC 341. Their seniority has to be determined in the light of these orders, Rule 33(a) of General Rules and other related rules to which we will advert hereafter. The Tribunal has conceded their demand and has found them to be senior.

7. The appellants, who were the respondents in the Tribunal, were initially appointed as Supervisors as they were not graduates. The pay scale of Supervisors was slightly lower than that of Junior Engineers which was a post which required the minimum entry qualification of graduation. Both the posts of Supervisors and Junior Engineers were non-gazetted posts till Junior Engineers were made

gazetted by Government orders dated June 7, 1976 with effect from February 28, 1972. Thereupon the said post ceased to belong to the Subordinate Service of the State from that date. Supervisors who acquired a degree in engineering were redesignated as Junior Engineers. Supervisors were keen to graduate for career advancement as the quota for graduates for upward movement to the post of Assistant Engineers was higher than that of Supervisors. The case of the appellants is that till gazetted status was conferred on graduates, a common seniority list was maintained of Supervisors and Junior Engineers. However, after conferment of gazetted status the rule which provided or redesignation of Supervisors as Junior Engineers on their graduation was omitted with effect from February 28, 1972. The appellants contend that the net effect of these changes introduced retrospectively was that Supervisors who were designated Junior Engineers on their graduation prior to February 28, 1972 acquired gazetted status whereas those who had graduated after February 28, 1972 but before June 7, 1976 and were redesignated Junior Engineers were placed in the category of non-gazetted and continued to belong to the subordinate service of the State. Supervisors could thenceforth become Junior Engineers by transfer only. The further vertical movement to the post of Assistant Engineers was on the basis of the percentage or quota fixed for Supervisors and Junior Engineers subject of course to the experience criteria.

8. Immediately after the above consequences fell on Junior Engineers who were erstwhile Supervisors on the retrospective effect of the orders dated June 7, 1976, representations were made by the affected Supervisors-Junior Engineers for continuance of the benefit of upgradation. Consequently on a reconsideration of the matter the Government felt that some consideration should be shown to the Supervisors who had graduated while in service. It was, therefore, decided that such Supervisors who had acquired graduate qualification while in service should be appointed temporarily as Junior Engineers with effect from June 10, 1976, vide G.O. Ms. No. 451 and 459 dated June 10, 1976 and September 25, 1976. Similar orders were issued in respect of engineering services in other departments also. This necessitated the Government to clarify matters relating to weightage, seniority, etc. The Government by subsequent orders, vide G.O. Ms. Nos. 559 and 658 dated July 18, 1977 and October 22, 1977 and similar orders pertaining to other departments clarified as under:

(ii) A Supervisor, who is appointed as Junior Engineers shall be entitled to count 1/3rd of the service rendered by him as Supervisor, before his appointment as Junior Engineer, subject to a maximum of four years, for the purpose of computing the service as Junior Engineer, which will render him eligible for consideration for promotion as Assistant Engineers.

(iii) The seniority of the Supervisors, who are appointed as Junior Engineers, shall be fixed with reference to the notional date arrived at after giving weightage of service.

By G.O. Ms. No. 428 dated March 30, 1979 provisions were made for appointment of Supervisors as Junior Engineers by transfer.

9. In consequence of the foregoing developments it is contended that Supervisors who had acquired graduate qualification after February 28, 1972 and had been designated Junior Engineers but were on account of the retrospective operation of the Government orders referred to earlier redesignated

Junior Engineers (non-gazetted) were reinstated as Junior Engineers (gazetted) with effect from the original dates of their entry into that cadre and hence they became entitled to count 1/3rd of the Service rendered as Supervisor, subject to a maximum of four years for computing their seniority. The Government fixed the inter-se seniority on that basis and showed the upgraded Junior Engineers as seniors to the Junior Engineers regularised under G.O. Ms. No. 647 both in the provisional seniority list dated January 7, 1982 and the final seniority list dated July 7, 1982. These list were successfully challenged by the latter before the Tribunal. The State Government as well as the Junior Engineers who had initially joined as Supervisors have, therefore, approached this Court by way of special leave.

10. 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. Sub-rule (2) thereof emphasises that such appointment should not ordinarily be made of a person who does not possess the qualifications for the said service, class or category. Rule 23(a) provides that if such an appointee is subsequently appointed to any service, class or category in accordance with the rules, he shall commence his probation from the date of such subsequent appointment or from such earlier date as the appointing authority may determine. Rule 33(a) next 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. If any portion of the service of such person does not count towards probation under the rules, his seniority shall be determined by the date of commencement of his service which counts towards probation. Now, in view of the ban imposed by G.O. Ms. No. 682 dated August 18, 1970 against direct recruitment pending the recommendations of the Backward Classes Commission, the Government was forced to resort to temporary recruitment in the public interest to meet the exigencies of service caused by vacancies. Such appointments were specifically permitted by Rule 10(a)(i)(1) of the General Rules framed under Article 309 of the Constitution and could not, therefore, be said to be illegal or dehors the rules but such employees would not be members of the service. Ordinarily such appointments would be a stop-gap arrangement till regular appointments are made. But as the ban continued for several years a demand for regularisation of such temporary employees who were otherwise qualified was raised by service associations as well as such employees. Consequently the Government after partially lifting the ban directed the PSC to conduct the SOT with a view to regularising the services of such temporary employees and those who successfully cleared the test were regularised and became members of the service. Since this satisfied only a small number, the pressure on the Government continued. In 1978 the PSC conducted another test but before the results were announced G.O. Ms. Nos. 646 & 647 saw the light of the day. By G.O. Ms. 646 the posts in question were taken out of the purview of the PSC by exercising power under Article 320(3) of the Constitution and thereafter the services were regularised by executive order G.O. Ms. No. 647, relevant part whereof is extracted earlier. The services of the temporary employees who had joined on or before August 9, 1979 thus stood governed under the said orders. Under Rule 23(a) since the power to fix the date of commencement of probation was with the appointing authority, the probation was directed to commence from the date of appointment. On the successful completion of the probation the appointing authority terminated the probation whereupon the probationers became the full

members of the service, vide Rule 25 of the General Rules. Now, under G.O. Ms. No. 647, while deciding on regularisation of all temporary employees appointed directly and continuing in service as on August 9, 1979 without subjecting them to any written or oral test, it was provided that their regularisation shall take effect 'from the next date following the date on which the last regular appointment in that category was made in the unit concerned or from the date of temporary appointment, whichever is later'. As we have indicated earlier because of the ban no regular appointments took place in the category of Junior Engineers for several years. Those who came through the SQT have been placed above these temporary employees regularised under G.O. Ms. No. 647. There is no dispute in regard to their seniority.

11. That takes us to the question whether the Supervisors upgraded as Junior Engineers can claim seniority over the temporary employees on the plea that they fall within the expression 'last regular appointment'. We have already pointed out the historical background in regard to the appointment of supervisors and their designation as Junior Engineers on graduation. Their entry qualification for Supervisors and those of the Junior Engineers were undoubtedly different. While for Junior Engineers the minimum educational requirement was as Graduate in Engineering, a Supervisor need not be graduate. The pay scale of the Supervisors was admittedly slightly below that of the Junior Engineers. They, therefore, belonged to separate cadres. Even though both the Supervisors and Junior Engineers were selected through the State Public Service Commission, considerations for selection may be different. A Supervisor was redesignated as a Junior Engineer on his acquiring a degree in Engineering, subject to availability of posts. Such upgraded Junior Engineers could not claim weightage of service as Supervisors for counting their experience as Junior Engineers for further promotion. In SLP(C) No. 12 of 1975 decided on February 24, 1975 this Court clarified:

However, having studied the rules carefully and in the light of a decision of this Court in *State of Gujarat v. C.G. Desai*, we are satisfied that the petitioner who is a Degree holder must qualify under Rule 6 by being a Junior Engineer of five years' experience. He cannot, when there is a shortfall in his period make up by attracting his service as Supervisor.

The averment that a common seniority list of Supervisors and Junior Engineers was maintained has been disputed and there is no finding of fact recorded by the Tribunal in support thereof. It is, however, not in dispute that Supervisors as well as Junior Engineers were non-gazetted till the issuance of the order dated June 7, 1976 made effective from February 28, 1972. After the said orders Supervisors who acquired a degree after the cut-off date, i.e. February 28, 1972, could aspire to be designated Junior Engineers (Gazetted) only by the mode of transfer in view of the amendment in the rules by G.O. Ms. No. 428 dated March 30, 1979. The note at the foot of the said G.O. Ms. is of relevance. By virtue thereof a Supervisor appointed Junior Engineer by transfer on or after February 28, 1972 became entitled to count 1/3rd of his service as Supervisor, subject to a maximum of 4 years, for computing the service as Junior Engineer for further promotion as Assistant Engineer. This was however subject to the condition that he should have completed at least one year's service as Junior Engineer to become eligible for promotion to the said post of Assistant Engineer. But no such weightage was to be allowed to a Supervisor who had not completed three years' service as Supervisor prior to becoming a Junior Engineer. The benefit of weightage is restricted to a Supervisor who has been appointed a Junior Engineer and who seeks further

promotion as an Assistant Engineer.

12. Reliance was however placed on Clause (i) of the note which is similar to Clauses (ii) and (iii) of G.O. Ms. Nos. 559 and 658 extracted earlier which grants a similar weightage for computing the seniority of a Supervisor on his redesignation as a Junior Engineers. To appreciate the contention based thereon we may once again revert to the situation arising from the orders dated June 7, 1976 brought into force from February 28, 1972. Thereunder Supervisors who had acquired a degree before the cut-off date stood on one footing and those who had acquired the degree on or after that date stood on a different footing. Since we are not concerned with the former we will confine ourselves to the position governing the latter only. As pointed earlier, supervisors who acquired the degree on or after February 28, 1972 could no more be designated Junior Engineers except by transfer. No such transfer could take place unless there existed a vacancy in that cadre. This led to an agitation which prompted the Government to issue G.O. Ms. Nos. 451 (Irrigation and Power Department) and 459 (P.H. & M.E. Deptt.) dated June 10, 1976 and September 25, 1979, respectively, directing that such graduate supervisors should be 'temporary' as Junior Engineers with effect from June 10, 1976. Here two things are required to be noted, namely, (i) such appointments were to be temporary and (ii) effective from June 10, 1976 and not from the date of acquisition of degree. Now if these appointments as Junior Engineers are treated as Temporary appointments under Rule 10(a)(i)(1) they would be governed by G.M. Ms. No. 646 for the purpose of regularisation and their regularisation would be in terms of G.O. Ms. No. 647. In that case their entry would at the earliest be from the date of acquisition of degree subject to availability of posts in the cadre of Junior Engineers (Gazetted). In that case they would not be entitled to weightage and their seniority would have to be fixed after the last regular appointment. But the case put forward on their behalf is based on the Proceedings No. 192/E1(1)/71 dated August 8, 1977 by which the Chief Engineer acting on G.O. Ms. No. 559 dated July 18, 1977 granted deemed date appointments by transfer to those who acquired the degree on or after February 28, 1972 from notional dates on temporary basis. But such appointments by transfer did not have the backing of any rule as the relevant rules came to be amended for the first time by G.O. Ms. No. 428 dated March 20, 1979. Unfortunately no formal orders of appointment by transfer came to be made after the rules were so altered. That is a finding of fact recorded by the Tribunal difficult to assail. If that be so, ever though the authorities were conferred power by the said order of March 30, 1979, they failed to exercise the same. The Tribunal was, therefore, right that the said employees did not fall within the pur view of the expression 'last regular appointment' which are the key words of G.O. Ms. No. 647 dated September 14, 1979.

13. That brings us the case of S.D. Venkateswarlu and P.V. Vasanth who were appointed on August 17, 1979 and August 11, 1978, respectively through the PSC on the basis of limited recruitment under Rule 22(e) for SC/ST candidates. A person is said to be 'Recruited Direct' to a post, category or class in a service, in case his first appointment thereto is made otherwise than (i) by promotion (ii) by transfer or (iii) by re-employment. The appointment of the said two candidates can be said to be direct recruitment within the terms of this definition found in Rule 3(14). Since their recruitment was under limited recruitment lor SC/ST candidates, it was contended that the same was not part of a normal recruitment. As pointed out earlier the normal recruitment to the post of Junior Engineers under the rules was through the PSC. Rule 22(e) of the General Rules provides that if in any

recruitment qualified candidates belonging to the SC/ST are not available for appointment to any of the vacancies reserved for them, a limited recruitment confined to candidates belonging to the SC/ST shall be made immediately after the general recruitment to select and appoint candidates belonging to these communities to till the reserved vacancies. The Tribunal has taken the view that since regularisation through SQT could not be described as general recruitment, the very basis for limited recruitment was contrary to Rule 22(c). Further, holds the Tribunal, such limited recruitment cannot be said to be normal recruitment' and hence cannot be equated to 'regular appointment' referred to under G.O. Ms. No. 647 dated September 14, 1979. We are afraid we find it difficult to subscribe to this line of reasoning. In the first place there is no dispute that both these candidates were selected by the State PSC pursuant to limited recruitment undertaken under Rule 22(e). That rule specifically permits a limited recruitment confined to candidates belonging to SC/ST candidates. It is an enabling provision which can be put to use if in any recruitment qualified candidates from SC/ST are not available for appointment. This may be done immediately after the general recruitment is over. There was a large scale recruitment through the PSC of those who passed the SQL Resides these by the Court's order in Diwakar's Case (supra) the PSC was directed to finalise the list of selection on the basis of the viva voce test of those who had applied in response to PSC's advertisement. It was further directed that those who fell within the zone of selection must be appointed first according to their place in the list before any outsider is appointed to the post of the Junior Engineer irrespective of the department in which the post is available. Thus a large number of temporary employees got absorbed into the service through the State PSC. Such appointments were regular, backed by rules and it is for the reason that they were given seniority over those absorbed by the thrust of G.O. Ms. No. 647. If sufficient number of SC/ST candidates were not available among those selected through SQT and viva voce the shortfall had to be made up through limited recruitment envisages by Rule 22(e). The Tribunal has with respect, taken a very narrow and pedantic view in holding that such recruitment through SQT and viva voce could not be said to be general recruitment within the meaning of that expression used in Rule 22(e). Such a narrow interpretation would be to the detriment of SC/ST candidates. In Nirmala's case (supra) such appointments through the PSC were described at page 651 as 'the last regular appointments as contemplated by G.O. Ms. No. 647'. We have, therefore, no hesitation in holding that the appointments of the aforementioned two candidates belonging to the SC/ST group through the PSc under Rule 22(e) were perfectly in order and normal and would attract 'the regular appointment' expression employed in G.O. Ms. 647. In this view of the matter we disapprove of the view taken by the Tribunal in this behalf.

14. In W.P. No. 367 of 1988, the petitioner Shivraj, a S.C. candidate recruited through limited recruitment procedure by PSc entered service under the appointment order dated May 2/1979 though he took charge on June 22, 1979. On account of the view taken by the Tribunal in regard to such recruitment he has had to slide down in the seniority list. Counsel urged that Rule 22(e) being part of the General Rules framed under Article 309 of the Constitution would prevail over the executive order G.O. Ms. No. 647. In support he invited our attention to the case law on the point but it is unnecessary to advert to the same as there is no apparent conflict between the statutory rules and the executive order. For the foregoing reasons assigned for upholding the claim of S.D. Venkatashwarlu we must uphold his contention also.

15. To summarise : The candidates who have entered service after passing the SOT shall rank immediately after the regularly appointed candidates who had entered service before the selection of the successful SOT candidates. Next to the SQT candidates will rank those who are governed by this Court's directive in the last paragraph of Diwakar's Case (supra). Thereafter the seniority will be fixed between the candidates covered under G.O. Ms. No. 647, the upgraded supervisors and the SC/ST candidates recruited under the Rule 22(e) limited recruitment scheme in the list of this judgment. The judgment and order of the Tribunal will stand modified to the extent it concerns the SC/ST candidates recruited under the Rule 22(e) limited recruitment scheme. If as a consequence of this modification readjustment of inter-se seniority between a candidate governed by G.O. Ms. No. 647 and an upgraded supervisor becomes necessary it will be effected in the terms of this judgment. Fresh order consistent with this judgment may be issued, if necessary Except for the modification made in regard to recruitment under the limited recruitment scheme, the Tribunal's order is upheld.

16. Consequently C.A. Nos. 2027-34 of 1987 and appeals arising from SLP(C) Nos 5878 of 1987, and 2592 of 1989 will stand dismissed with no order as to costs except in relation to the aforementioned SC/ST candidates who entered through the limited recruitment test undertaken by the State PSC. The appeal arising from SLP (C) No. 8312 of 1988 will also stand disposed of and the seniority of the incumbent will be determined afresh in terms of the ratio of this judgment. Writ Petition No. 367 of 1988 is allowed as prayed for. In view of the disposal of this batch of cases, the interim orders made by this Court in different I.As. and C.M. Ps. will stand vacated but since the State Government will have to revise the seniority list in the light of the Tribunal's order as modified hereinabove, the State Government will be well advised not to effect any reversions till then and if on the revision of the seniority list reversions become inevitable the State Government may consider protecting such employees by creating supernumerary posts, if need be, to avoid heartburns and disturbances to service and to those who have been working on those posts for long spells and who were promoted on the seniority lists prepared by the State Government.

17. In case of any difficulty parties may approach the Tribunal for directions pursuant hereto.