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D. KRISHNA MURTHY AND ANR.

v.

THE STATE OF A.P. AND ORS.

SEPTEMBER 2, 1994

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[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Andhra Pradesh Subordinate Service Rules : Rule 37(a)(i).

C

Service Law—Reversion Order attaining finality—Order operated as Res-Judicata—Direction by Tribunal to reinstate on the post from which reverted—Held not justified.

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Respondent No. 3 was appointed as Typist in the Hyderabad Water Works Department and was promoted as Upper Division Clerk. The appellants were appointed and promoted before him. Subsequent to the creation of Maneru Investigation Circle, Respondent No.3 was transferred to that Circle on the basis of his option. There, he was promoted as Head Clerk, and upgraded as Superintendent. He gave an undertaking that he will not claim any seniority or pay protection as Head Clerk either in the Circle or in his parent Department. However, later he was reverted as Senior Assistant. He unsuccessfully challenged the reversion order before the Tribunal. The review petition as well as Special Leave Petition filed against the Tribunal's order was also rejected and consequently the reversion order became final and conclusive between him and the appellants. He filed another petition for quashing the reversion which was dismissed against which he filed another special leave petition. In the meantime, the Act of 1982 under which Water Supply and Sewerage Board was constituted, was repealed and for the management of the Water Works Department and continuance of its employees the Government issued G.O. No. 590 dated 22nd September, 1993. Thereafter, another Act was passed which constituted a Board. In view of the fact that a new Act came into force and the Board was reconstituted a representation was made to this Court and this Court dismissed the petition with a direction to the Board to frame its Regulation of service conditions of employees and in case Respondent No. 3 has any grievance he was entitled to state his claim. Thereafter, respondent No. 3 filed applications before the Tribunal against his reversion and for a direction for giving promotion to him. The Tribunal

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held the his reversion was in violation of G.O. No. 590 and accordingly directed his reinstatement. A

In appeal to this court it was contended on behalf of the appellants that since the reversion order became final by dismissal of special leave petition the Tribunal was unjustified in directing the reinstatement of respondent 3. B

Allowing the appeal, this Court

HELD : 1. The Court cannot go into the legality whether Respondent No. 3 was rightly or wrongly reverted for the reason that his reversion order had become final and it operates as a res-judicata in these proceedings against him. This Court's observations in the second special leave petition that it was open to the Board to make Rules and for Respondent no. 3 to pursue the remedy thereunder does not have the effect of reviving the order of reversion which had become final. The Tribunal was wrong in giving direction to reinstate Respondent No. 3 as Superintendent and to give him consequential benefits. [94-D-E-G] C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6021 of 1994.

From the Judgment and Order dated 31.1.94 of the Andhra Pradesh Administrative Tribunal at Hyderabad in O.A. No. 1380/93. E

Narasimha P.S., Ashok Kumar and P.Kesava Pillai for the Appellants.

Venkatashwarlu-in-person. F

G. Prabhakar for the Respondent.

The following Order of the Court was delivered :

Leave granted. G

The appellants. - D. Krishna Murthy and P. Damodar Reddy were appointed as Lower Division Clerks now designated as Junior Assistants in the year 1961-62 in the Department of Hyderabad Water Works Department, Government of Andhra Pradesh. They were duly promoted as Upper Division Clerks now designated as Senior Assistants in 1969. Mr. M. H

A Venkateshwarlu, the third respondent in this appeal, was appointed as a Typist in the year 1970 and he was promoted as Senior Assistant on June 9, 1978. While they were continuing as Senior Assistants, the Maneru Investigation Circle was created for the supply of drinking water to Hyderabad city. At that time Venkateshwarlu had opted to go for the Circle. Accordingly, he was transferred as UDC to Maneru Investigation Circle. While he was working there, a vacancy had arisen for a post of Head Clerk. The post of Head Clerk was upgraded as Superintendent which he was continuing as Superintendent, when he was promoted as a Head Clerk by proceedings dated 9/10 July, 1981 under Rule 37(a)(i) of Andhra Pradesh Subordinate Service Rules, he was asked to give an undertaking that he will not claim any seniority or protection of pay scales in his parent department. On July 27, 1981, Venkateshwarlu had given the said undertaking in the following language :

"Sub : Establishment - A.P.M.-S. - M. Venkateshwarlu, Head Clerk - Submission of undertaking - Regarding.

Ref : S.E's/MIC/Hyd. Proc. No. E2/MIC/79-81/794 dated 10.7.81.

Sir,

In compliance to the Orders cited, I submit that I will not claim any seniority or protection of pay as Head Clerk either in the Circle or in my parent Circle.

This is for your favour of information and further disposal please."

F Pursuant thereto he was promoted. It would appear that the post of Head Clerk was upgraded as Superintendent, while he was continuing as a Superintendent he was reverted as Senior Assistant on March 14, 1985. Mr. Venkateshwarlu challenged the said order of reversion in RP No. 444/85 before the Andhra Pradesh Administrative Tribunal which was dismissed on merits by Order dated 7th January, 1986. His Review Petition was also dismissed. He filed a SLP in this Court which came to be dismissed on April 12, 1986. Thus his order of reversion became final and conclusive between him and the appellants and thereby he remained to be junior to the appellants as Senior Assistant.

H Thereafter Venkateshwarlu filed another RP No. 6617/87 seeking

quashing of the reversion order which was dismissed by the Tribunal on July 18, 1988. Thereafter he filed SLP No. 13514/88. It may be relevant at this juncture to state some antecedent history with regard to the constitution of Hyderabad Metro Water Supply and Sewerage Board. The Board came to be constituted by an Act of 1982. That Act came to be repealed by an Ordinance issued by the Governor and the Ordinance was allowed to be lapsed. In that context for the management of the Water Works Department and continuance of the employees and the Scheme the Government had issued GO No. 590 dated 22nd September, 1993 in which the Chief Engineer Public Health was constituted as a Special Officer and he was asked to function as an Officer on behalf of the Government. Thereafter, another Act came to be passed which constituted a Board with which presently we are not concerned. While the new Act has come into force and the Board was re-constituted, a representation was made to this Court on November 1, 1990, when the SLP had come up for hearing that since the New Board was constituted and Rules are to be made, then this Court while dismissing the SLP made observations thus :

"Heard learned counsel for the parties. We direct that Hyderabad Metro Water Supply and Sewerage Board to frame its regulations indicating the service conditions of the employees as contemplated under the Statute within six months from today expressly regulations so framed in case the petitioners have any grievance to make he is entitled to as state that claim."

Thereafter Venkataswarlu filed two OAs in the Tribunal namely, OA No. 2757/92 seeking to consider the representation of Venkataswarlu against the reversion of him from the post of Superintendent to Senior Assistant without notice to him it being illegal and OA No. 1380/93 for direction to promote him to the post of Deputy General Manager. The Tribunal in the impugned order dated 31st January, 1994 allowed the OAs and declared that the reversion of the appellant-Venkataswarlu is in violation of GO No. 590 and that therefore it is illegal, and directed to reinstate him as Superintendent. Challenging that order the appellants-respondents before the Tribunal have filed this appeal.

It is contended by Sh. Narasimha the learned counsel for the appellant that since the order of reversion as a Superintendent was allowed to become final by dismissal of RP 444/85 and the SLP dismissed by this Court, the Tribunal was unjustified in directing to reinstate Venkataswar-

- A lu to the post of Superintendent which cannot be done. It is also contended that the effect of the new Act and the GO has no effect on the reversion order which was allowed to become final and that therefore the order is illegal. It is contended by Venkataswarlu who appeared in person that when Maneru Investigation Scheme was constituted, while he was working as UDC in Hyderabad Water Works Department, he was opted to go as Senior Assistant and was promoted as Head Clerk when the vacancy had arisen he was entitled to continue in Maneru Investigation Scheme in their capacity. While allowing others who were similarly promoted and there is no parent department, namely Hyderabad Water Works Department which was previously existing, reverting him as Senior Assistant is clearly illegal, and allowing others to enjoy benefit as Superintendent and denial further promotion thereof is in violation of Art. 14.

- D We find no force in the contention of Sri Venkataswarlu. We cannot go into the legality whether he was rightly or wrongly reverted as Senior Assistant from the post of Superintendent for the reason that his reversion order had become final and it operates as a *res-judicata* in these proceedings against him.

- E It would appear that when this Court made observations in the second SLP, referred to earlier, that it was open to the Board to make Rules and for Venkataswarlu and another to pursue the remedy thereunder, it *does not* have the effect of reviving the order of reversion which had become final. The Tribunal has gone on a wrong track, namely, the legality of the constitution of the Board under the new Act after the lapse of the Ordinance and the effect of G.O. 590 issued earlier to the new Act. As regards the parties are concerned the above events have no consequence as the erstwhile employees of the Hyderabad Water Department of Government, namely the appellant as Senior Assistant from 1969 and Venkataswarlu as Senior Assistant since 1978. Under these circumstances, we are clearly of the opinion that the Tribunal was wrong in giving direction to reinstate Mr. Venkataswarlu as Superintendent and to give him consequential benefits. The appeal is accordingly allowed.

G Mr. Narasimhan has placed before us the undertaking given by Mr. Venkataswarlu which we have taken on record.

T.N.A.

Appeal allowed.