

S. CHINNAPPA REDDY AND ORS.

v.

STATE OF ANDHRA PRADESH AND ORS.

JANUARY 16, 1996

[A.M. AHMADI, CJ AND S.P. BHARUCHA, J.]

*Service Law—Andhra Pradesh State and Subordinate Service Rules, 1965—Public Health & Municipal Engineering Department of State—Seniority in post of Assistant Executive Engineer—State Government directed to prepare seniority list in strict conformity with directions earlier issued by this Court.*

In the Public Health & Municipal Engineering Department of the Government of Andhra Pradesh, prior to 18.8.1970, the post of Junior Engineer was filled by direct recruitment and by re-designating Supervisor as Junior Engineers, as and when vacancies were available. The State Government by GOMs No. 682 dated 18.8.1970, banned the direct recruitment of Junior Engineers. Thereafter, in exercise of emergency powers conferred by Rule 10(1)(a)(i) of the Andhra Pradesh State and Subordinate Service Rules, 1965, the State Government made temporary *ad-hoc* appointments on emergency basis but not after selection by the State Public Service Commission, which was the prescribed method of regular appointment. In 1975, the State Government, conducted a Special Qualification Test with a view to regularise the service of these temporary and *ad-hoc* appointees. It was open to these appointees who had put in two years continuous service upto 1.1.1973, to take the test and those who qualified were ranked in seniority below those who had been regularly appointed as Junior Engineers prior to 18.8.1970. In 1976 the ban on direct recruitment was lifted and selections, accordingly, were processed between 1978 and March 1979. On 14.9.1979, the State Government issued two orders directing that the services of all temporary appointees appointed by direct recruitment and continuing in service as on 9.8.1979 would be regularised without subjecting them to any written or oral test. Direct recruits of the year 1978-79 challenged the orders but the challenge was rejected by the Tribunal. The appeal filed against the order was also rejected but the Court gave certain directions in the judgment, *I.J. Divakar & Ors. v. Govt. of Andhra Pradesh & Anr.*, [1982] 3 SCC 341. The Direct recruits selected in 1978 were appointed and given seniority.

A The State Government fixed their seniority above that of the temporary appointees whose services had been, or were being regularised. This order of the State Government was challenged by those temporary appointees who had been regularised. The challenge was upheld. The direct recruits of 1978-79 filed a Special Leave Petition.

B This Court in *G.S. Venkat Reddy & Ors. v. Govt. of Andhra Pradesh & Ors.*, [1993] Supp. 3 SCC 425, directed that the candidates who had entered service after passing the Special Qualification Test shall rank immediately after the regularly appointed candidates who had entered service before the selection of these successful candidates and next to these SQT candidates will rank those who were governed by this Court's

C directive in the *Divakar* Case. No seniority list having been prepared pursuant to this judgment, the appellants filed a petition before the Tribunal. Thereafter, the State Government issued a provisional seniority list placing the direct recruits selected in 1978-79 above temporary

D *ad-hoc* appointees appointed by direct recruitment and continuing as on 9.8.1979. However, it was stated before the Tribunal that without 'basic and essential material' it will not be appropriate to proceed with the preparation of provisional seniority list as proposed. The Tribunal deduced from the material placed on record that the State Government, apparently was 'facing difficulties in reconciling the judgments of the

E Supreme Court, in *Venkat Reddy's* case and *Divakar's* case; therefore, it directed that material which was 'basic and essential', to be placed before it, 'for commencing an exercise for preparing a seniority list'. An interim order was issued that persons appointed in 1984 on the basis of the concession given in *Divakar's* case were not put above the persons who were already in the list showing the organisation of orders or appointed

F pursuant to Special Test etc.' These orders were challenged in these appeals.

Allowing the appeals, this Court

G HELD : 1.1. The Central Administrative Tribunal had over reached itself. The judgment in *Venkat Reddy's* case, delivered by a Bench of three Judges after taking note of *Divakar's* case, directed as to where those governed by *Divakar's* case were to be placed. There was, therefore, nothing in the directions which could lead to difficulty nor was there any question of 'reconciling' the same with *Divakar's* case. There was no

H justification for the Tribunal's directions to the State Government to

furnish 'basic and essential' material to enable it to commence an exercise for preparing a seniority list, nor for the direction that the parameters to be followed in preparing the seniority list should be set down by the State Government after examining Presidential orders, general and special rules, judgments of the Supreme Court other than that in *Venkat Reddy's* case and other judgments. {563; C-E}

1.2. The State Government was directed to review the seniority list that it had prepared to ensure that it was in strict conformity with the directions given in *Venkat Reddy's* case. The Tribunal could issue orders consistent with that judgment, if necessary. [563-F-G]

*G.S. Venkat Reddy & Ors. v. Govt. of A.P. & Ors.*, [1993] Supp. 3 S.C.C. 425 and *I.J. Divakar & Ors. v. Government of Andhra Pradesh & Anr.*, [1982] 3 S.C.C. 341, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1809-12 of 1996.

From the Judgement and Order dated 8.3.94 of the Andhra Pradesh State Administrative Tribunal in O.A. No. 5306/93 and 812 of 1994.

D.D. Thakur and Vivek Gambhir for the Appellants.

K. Madhava Reddy, G. Prabhakar and S. Balasubramaniam for the Respondents.

The Judgment of the Court was delivered by

**BHARUCHA, J.** Leave granted.

These appeals impugn two orders of the Andhra Pradesh Administrative Tribunal, of 8th March and 13th April, 1994. They relate to seniority in the post of Assistant Executive Engineer, earlier called junior Engineer, in the Public Health and Municipal Engineering Department of the Government of Andhra Pradesh.

Prior to 18th August, 1970, the post of Junior Engineer was filled by direct recruitment and by redesignating supervisors as Junior Engineers, as and when vacancies were available, upon their becoming graduates.

The State Government by GOMs No. 682 dated 18th August, 1970,

A banned the direct recruitment of Junior Engineers. Thereafter, in exercise of emergency powers conferred by Rule 10(1)(a)(i) of the Andhra Pradesh State and Subordinate Service Rules, 1965, the State Government made temporary and ad-hoc appointments of Junior Engineers on emergency basis. Such appointments were not made after selection by the State Public Service Commission, which was the prescribed method of regular appointment. In 1975, with a view to regularise the service of these temporary and ad-hoc appointees, the State Government conducted a Special Qualification Test (SQT). It was open to the temporary ad-hoc appointees who had put in two years continuous service upto 1st January, 1973, to take the SQT. Those who qualified were ranked in seniority below those who had been regularly appointed as Junior Engineers prior to 18th August, 1970.

In 1976 the ban on direct recruitment of Junior Engineers was lifted by the State Government and direct recruitment through the State Public Service Commission to the post of Junior Engineer was resorted to. Selections, accordingly, were processed between 1978 and March 1979. Before appointment orders in respect of those who had been selected could be issued, the State Government, on 14th September, 1979, issued two orders, being GOMs. No. 646 and 647. Under the former, the State Government directed that the services of all temporary appointees appointed by direct recruitment and continuing in service as on 9th August, 1979 would be regularised without subjecting them to any written or oral test. Under GOMs No. 647, the State Government issued orders for regularisation, thus :

"(i) the services of all temporary Government employees who were appointed by direct recruitment to any category or post and are continuing in service as on August 9, 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 LDCs, 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."

H Direct recruits of the year 1978-79 challenged GOMs Nos. 646 and 647

in a petition before the Andhra Pradesh State Administrative Tribunal. The Tribunal rejected the challenge. This Court was approached in appeal. The appeal was rejected, but certain directions were given. The Judgment is *I.J. Divakar & Ors. v. Government of Andhra Pradesh & Anr.*, [1982] 3 S.C.C. 341. The direct recruits selected in 1978 were appointed and given seniority as directed in *Divakar's* case. On 17th July, 1987, the State Government directed that the seniority of direct recruits of the year 1978-79 be fixed above that of the temporary appointees whose services had been, or were being regularised under GOMs No. 647.

The State Government's order of 17th July, 1987, was challenged by those temporary appointees who had ben regularised under GOMs No. 647 and the challenge was upheld. The direct recruits of 1978-79 thereupon filed a Special leave petition before this Court. It was heard along with Civil Appeals that related to disputes about seniority between temporary *ad-hoc* Junior Engineers and Supervisors who had been designated Junior Engineers upon graduation on the other hand. The Judgment of this Court is in *G.S. Venkat Reddy & Ors. v. Govt. of A.P. & Ors.*, [1993] Supp. 3 S.C.C. 425, and it was delivered, on behalf of a Bench of three learned Judges by one of us. (Ahmadi, J., as he then was). The judgment noted several earlier judgments, including the judgment in *Divakar's* Case. In paragraph 15 of the Judgment, a precise summary of the Court's directions was given, thus :

"15. To summarise : The Candidates who have entered service after passing the SQT shall rank immediately after the regularly appointed candidates who had entered service before the selection of the successful SQT candidates. Next to the SQT candidates will rank those who are governed by this Court's directive in the last paragraph of *Divakar* case. Thereafter the seniority will be fixed between the candidates covered under GOMs. No. 647, the upgraded supervisors and the SC/ST candidates recruited under the Rule 22(e) - limited recruitment scheme - in the light 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 GOMs No. 647 and an upgraded supervisor becomes necessary it will be effected in the terms of this judgment. Fresh orders consistent with this judgment may be issued, if necessary. Except for the modification made in regard to recruitment under the limited

A recruitment scheme, the Tribunal's order is upheld."

No seniority list have been prepared pursuant to the judgment in *Venkat Reddy's* case, the appellants moved the Tribunal. To this petition before the Tribunal, the *ad-hoc* temporary appointees were impleaded upon their application. They also filed an application before the Tribunal questioning the placement in seniority of direct recruits selected in 1978-79 above themselves.

On 21st January, 1994, the State Government issued a provisional seniority list placing the direct recruits selected in 1978-79 above temporary ad-hoc appointees who were covered by GOMs No. 647.

The Tribunal, on 3rd March, 1994, called upon the concerned officers of the State Government to appear before it to explain the parameters which they proposed to follow for preparing seniority lists.

On 8th March, 1994, the first of the two orders impugned in this appeal was passed. It stated that the Government Pleader had placed before the Tribunal a letter dated 7th March, 1994, which indicated that the State Government wanted to "proceed on the basis of the judgment of the Supreme Court in *G.S. Venkat Reddy's* case for preparing fresh provisional seniority list..... Without considering the implication of the presidential order, the general and special rules and the other judgments of the Supreme Court and any other judgments of the erstwhile judgment in this Department (sic) and executive instructions of the Government in a comprehensive manner it will not be appropriate to proceed with the preparation of provisional seniority list as proposed which may give rise for further controversies." The Tribunal directed the State Government to prepare the parameters for preparation of the seniority list after examining this material, the initial organisation of the cadres, the cadre strength, the persons allotted at that time and the vacancies that had arisen thereafter.

On 13th April, 1994, the second of the impugned orders was passed. It referred to a statement of the parameters which the State Government proposed to adopt. The Tribunal quoted a part of para 13 thereof, as follows :

"The summary in the present judgment (*Venkat Reddy's* case and direction in the *Divakar's* case as explained do not go together."

The Tribunal deduced from this that the state Government, apparently, was

"facing difficulties in reconciling the judgments of the Supreme Court". The Tribunal considered it appropriate to direct material, which was "basic and essential", to be placed before it "for commencing an exercise for preparing a seniority list". A list of the required material followed. An interim order was issued that "persons appointed in 1984 on the basis of the concession given in *Divakar's* case are not put above the persons who are already in the list showing the organisation of orders or appointed pursuant to SQT or GO 647 or limited recruitment."

It seems to us that the Tribunal has over-reached itself. As aforesaid, the judgment in *Venkat Reddy's* case was delivered by a Bench of three learned Judges after taking note of *Divakar's* case. The Directions given in *Venkat Reddy's* case indicate where those governed by *Divakar's* case are to be placed. There is, therefore, nothing in the directions which can lead to difficulty nor is there any question of "reconciling" the same with *Divakar's* case. We find no justification for the Tribunal's directions to the State Government to furnish "basic and essential" material to enable it to commence an exercise for preparing a seniority list, nor for the earlier direction that the parameters to be followed in preparing the seniority list should be set down by the State Government after examining Presidential orders, general and special rules, judgments of the Supreme Court other than that in *Venkat Reddy's* case and other judgments.

The orders of the Andhra Pradesh Administrative Tribunal dated 8th March and 13th April, 1994 are, accordingly, quashed and set aside. The State Government is directed to review the seniority list that it has prepared to ensure that it is in strict conformity with the directions given in *Venkat Reddy's* case and precisely summarised in paragraph 15 thereof. This seniority list, after such review, shall be placed before the Tribunal, which shall examine it only with a view to ensuring that it is in accordance with the directions contained in *Venkat Reddy's* case. The only discretion it has in this behalf is that indicated in paragraph 15 of *Venkat Reddy's* case namely, that it may issue orders consistent with that judgment, if necessary. The applications pending before the Tribunal shall also be disposed of in the light of the judgment in *Venkat Reddy's* case.

The appeal is allowed accordingly. There shall be no order as to costs.

R.A.

Appeal allowed.