

K. ANJIAH ETC.

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v.

K. CHANDRAIAH AND ORS. ETC.

MARCH 3, 1998

[G.B. PATTANAİK AND M. SRINIVASAN, JJ.]

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Service Law :

Andhra Pradesh College Service Commission (Terms and Conditions of Service of Employees of the Commission) Regulations, 1986—Regulation 9(1) and 9(2) :

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Seniority—Regulation 9(2) apparently reckoned seniority of deputationists from the date of their absorption—Validity of regulation 9(2) challenged—Held—While determining inter-se seniority of deputationists in service of the Commission their entire length of continuous service in the Government shall be the basis—Provision of Regulation 9(2) read down.

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The Andhra Pradesh Service Commission which was set up under the Andhra Pradesh College Services Commission Act, 1985 was formed by employees who came on deputation from the State Government in different batches. They were absorbed by the Commission from time to time, after obtaining their option. The Regulations of 1986 were made with the prior approval of the State Government under Section 20 r/w Section 7(3) of the Act. Regulation 9(1) provided that persons drawn from other departments will carry their service. Regulation 9(2) which was added by an amendment to the regulations provided that persons on deputation who are absorbed by the Commission shall be appointed regularly as staff in the Commission, and it also dealt with the determination of their seniority.

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The employees on deputation with the Commission challenged the vires of Regulation 9(2) before the Administrative Tribunal inasmuch as it apparently ignored the service of deputationists prior to their absorption in the Commission for the purposes of seniority. By the impugned Judgment the Tribunal has quashed Regulation 9(2) *inter alia* on the ground that it contravenes Regulation 9(1) and purports to wipe off the past service rendered by a government servant while determining his seniority.

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The present Appeal was filed by Superintendent, College Service

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A Commission contending that Regulation 9(2) has been erroneously struck down inasmuch as, an employer has a right to determine the principle on which seniority is to be determined, which may ignore service prior to absorption. Furthermore, Regulation 9(2) which provides that seniority shall be determined by the date of absorption does not violate any constitutional provision. It was also contended that Regulation 9(1) has no connection with Regulation 9(2) and hence, cannot be said to be violative of Regulation 9(2). The private respondents contended that when persons are taken on deputation in a new service, their service in the parent department ought be respected and considered for seniority, as has been done under regulation 9(1), which benefit cannot be taken away under regulation 9(2).

C The State Government contended that Regulation 9(1) and 9(2) have to be harmoniously read. Though Regulation 9(2) is clumsily drafted, it should be read down so as to uphold it.

Disposing of these Appeals, this Court

D HELD : 1.1. The provisions of Regulation 9(2) of Andhra Pradesh College Service Commission (Terms and Conditions of Service of Employees of the Commission) Regulation, 1986 can be upheld but reading down the provisions rather than striking down the same. It is cardinal principle of construction that the statute and the Rule or the regulation must be held to be constitutionally valid unless and until it is established that they violate any specific provision of the Constitution. It is the duty of the Court to harmoniously construe different provisions of any Act or Rule or Regulation, if possible, and to sustain the same rather than strike down the provisions. In doing so, it can read down a particular provision to clarify the ambiguity so that the provision can be sustained, but not to relegislate a provision.

F [41-D-G]

1.2. If a literal meaning is given to the language used in Regulation 9(2) it may appear that the benefits given under Regulation 9(1) are being ignored and the past service rendered by deputationists in their parent cadre is not being considered while determining their inter se seniority in the Commission. However, though the phraseology used in Regulation 9(2) is cumbersome, reading down the provision it is held that while determining the inter se seniority of the deputationists in the new cadre under the Commission after they are absorbed, their entire length of service in the Government has to be taken into account. [42-D-F]

H 2.1. It is a just and wholesome principle commonly applied to persons

coming from different sources and drafted to serve a new service to count their pre-existing service for determining the ranking in the new service cadre. In the present case, this principle has been engrafted in Regulation 9(1). [42-B] A

2.2. The contention of the Appellant that length of service under the Commission should be the criteria for determining the inter se seniority cannot be accepted. It is not known if the persons brought over to the Commission on deputation were given the option to be absorbed in the Commission. Further more, if such a principle is accepted, the *inter se* seniority would be dependent upon the whim of the Government and there is no rationale behind the aforesaid principle. [42-G-H] B C

RS Makashi & Ors. v. IM Menon & Ors., [1982] 1 SCC 379, relied on. *K. Madhavan & Anr. Etc v. Union of India & Ors. Etc.*, [1987] 4 SCC 566 and *Wing Commander J. Kumar v. Union of India*, [1982] 2 SCC 116, referred to.

Chief Engineer and Secretary, Engineering Deptt for and on behalf of Chandigarh etc. v. KS Brar & Anr etc., [1988] suppl SCC 756 and *M. Hara Bhupal v. U.O.I. & Ors.*, [1997] 3 SCC 561, cited. D

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1402-1403 of 1995. E

From the Judgment and Order dated 14.9.94 of the Andhra Pradesh Administrative Tribunal, Hyderabad in O.A. Nos. 6742 and 2475 of 1993.

K. Ram Kumar, C. Balasubramaniam, Y. Sbba Rao, Mrs. Asha G. Nair, and Ms. S. Narayan for the Appellants. F

Mrs. K. Amareshwari, G. Prabhakar, D. Rama Krishna Reddy, Mrs. D. Bharathi Reddy and V. Dave for the Respondents.

The Judgment of the Court was delivered by

PATTANAİK, J. These appeals are directed against the order of Andhra Pradesh Administrative Tribunal, Hyderabad dated 14.9.1994 in OA Nos. 6742 of 1993 and 2465 of 1993. By the impugned order the Tribunal has quashed Regulation 9(2) of the Andhra Pradesh College Service Commission (terms and conditions of service of employees of the Commission) Regulation, 1986 (hereinafter referred to as the 'Regulation') *inter alia* on the ground that it H

A contravenes Regulation 9(1) and it purports to wipe off the past services rendered by the government servant. Superintendent, College Service Commission is the appellant.

B The brief facts of the case are that the Service Commission in Andhra Pradesh was formed under the Provisions of Andhra Pradesh College Service Commission Act, 1985 (hereinafter referred to as 'the Act'). The employees of this Commission came on deputation from the State Government in different batches and such deputationists were managing the affairs of the Commission. The Commission itself was constituted by the State Government in exercise of powers conferred upon it under Section 3 of the Act. Section 7 of the Act deals with the staff of the Commission and it stipulates that the Secretary of the Commission shall be appointed by the Government and other employees as the Commission may with the previous approval of the Government appoint from time to time. Section 7(3) of the Act provides that the terms and conditions of service of such employees of the Commission shall be such as may be provided for by Regulation. Section 7 of the Act is extracted hereinbelow in extenso:-

"STAFF OF THE COMMISSION

- E 7. (1) The staff of the Commission shall consist of :
- (a) Secretary, who shall be appointed by the Government, and
- (b) Such other employees as the commission may, with the previous approval of the Government, appoint from time to time.
- F (2) The Salary of the Secretary and other employees of the Commission, shall be such as may be prescribed.
- (3) The other terms and conditions of Service of the Secretary shall be such as may be prescribed and those of the other employees of the Commission shall be such as may be provided for by Regulations."
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Section 20 of the Act confers power upon the Commission to make Regulation with the previous approval of the Government and such Regulation may provide the terms and conditions of the Services of the employees of the Commission. In exercise of the power conferred upon the Commission under

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Section 20 read with Section 7(3) of the Act a set of Regulations were framed by the Commission and the Government examined the same and conveyed its approval as required in Sub-Section (1) of Section 20 by Government letter dated 29.11.1986. For better appreciation Section 20 of the Act is extracted hereinbelow in extenso :-

POWER TO MAKE REGULATIONS

Section 20 - (1) The Commission may, with the previous approval of the Government make regulations not inconsistent with the provisions of this Act or the rules made thereunder for discharging its functions under this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :-

(a) the terms and conditions of services of the employees of the Commission under sub-section (3) of Section 7.

(b) The manner of selection of persons for appointment to the posts of teachers under sub-section (1) of Section 10;

(c) The procedure for the conduct of business of the Commission under Sub-section (2) of Sections 10 and 13; or

(d) The income and expenditure, budget, accounts and audit and annual report of the Commission."

Regulation 9, as originally approved by the Government, stood amended and the amended Regulation 9(1) reads thus :-

"The persons drawn from other departments will carry their service and they will be treated as on other duty for a tenure period to be specified by the Commission or until they are permanently absorbed in the Commission whichever is earlier."

"Regulation 9(2)-The services of those staff members working in the Commission on deputation basis and opted for their absorption in the Commission, shall be appointed regularly as the staff in the Commission, cadre to which they belong as per the orders of Government approving their appointments batch by batch and to determine the seniority accordingly. For this purpose the Commission may review the promotions already affected."

A It may be stated here that the original Regulation 9 was re-numbered as Regulation 9(1) and Regulation 9(2) was inserted by amendment. Since the Commission was being manned by the employees on deputation from the State Government, the Commission asked for exercise of option by those employees who were desirous to be absorbed permanently in the Commission.

B The private respondents are those employees who are on deputation with the Commission from the State Government and they approached the Administrative Tribunal challenging the validity of Regulation 9(2) and the Tribunal by the impugned judgment has held the said provision to be ultra virus and hence these appeals. While granting leave this Court indicated that the Special Leave is granted in so far as the validity of Regulation 9(2) is

C concerned. In this view of the matter the only question which arises for consideration is whether the aforesaid provision of Regulation 9(2) can be said to be invalid?

D Mr. Ram Kumar, learned counsel appearing for the appellants, contended that the employer has a right to determine the service conditions of the employees including the principle on which the seniority of the employees can be governed and in exercise of that power the employer, namely, Service Commission, having framed the Regulation and having indicated that the persons who are continuing on deputation can be absorbed in the Commission batch by batch as per the orders of the Government and their seniority

E naturally will be determined in accordance with their absorption and the said principle does not violate any of the constitutional provision. Mr. Ram Kumar, learned counsel, therefore, contended that the Tribunal committed an error in striking down Regulation 9(2). The learned counsel further contended that Regulation 9(1) has no connection with Regulation 9(2) in as much as Regulation 9(1) deals with a situation not connected with the determination

F of seniority of the employees and, therefore, Regulation 9(2) cannot be said to be violative of Regulation 9(1) and the Tribunal was thus in error in coming to the said conclusion. In support of his submission the learned counsel relied upon the decisions of this Court in *Chief Engineer and Secretary, Engineering Department for and on behalf of Chandigarh. etc. v. K.S. Brar & Anr. Etc.*, [1988] Suppl Supreme Court Cases, 756 and *M. Hara Bhupal v. Union of India & Ors.*, [1997] 3 Supreme Court Cases 561.

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H Mr. Reddy, learned counsel appearing for the private respondent on the other hand contended, that when persons from different sources are drafted to serve in a new service, their pre-existing length of service in the parent department should be respected and preserved by taking the same into

account in determining their ranking in the new service cadre and this has been done under Regulation 9(1) that benefit cannot be taken away for determination of the inter se seniority as per Regulation 9(2) and, therefore, the Tribunal was justified in striking down Regulation 9(2). In support of his contention the learned counsel relied upon the decisions of this Court in *Wing Commander J. Kumar v. Union of India*, (1982) 2 Supreme Court Cases 116 and *K. Madhavan & Anr. Etc. v. Union of India & Ors. etc.*, - [1987] 4 Supreme Court Cases, 566.

Mrs. Amareswari, learned senior counsel appearing for the State of Andhra Pradesh on the other hand submitted, that Regulations 9(1) and 9(2) have to be harmoniously read. The learned counsel further contended that though there has been little clumsiness in the drafting of Regulation 9(2) but the intention is clear that the deputationists on being finally absorbed in the Commission would get their seniority determined in the new cadre under the Commission by taking into account the past services rendered under the Government and, therefore, the provisions of Regulation 9(2) can be read down to the aforesaid effect and should not be struck down.

In view of the rival submissions at the Bar the only question that arises for consideration is whether the provisions of Regulation 9(2) shall be upheld by reading down the same or the language used in the said provision is not susceptible to be read down and should be struck down by the Tribunal? It is a cardinal principle of construction that the Statute and the Rule or the Regulation must be held to be constitutionally valid unless and until it is established they violate any specific provision of the Constitution. Further it is the duty of the Court to harmoniously construe different provisions of any Act or Rule or Regulation, if possible, and to sustain the same rather than striking down the provisions out right. In other words the Court has to make an attempt to see if the different provisions of the Regulation can survive and in making that attempt it is open for the Court to read down a particular provision to clarify any ambiguity so that the provision can be sustained but not to relegate a provision. This being the parameters under which a Court is required to scrutinise the provisions of any Act or Regulation when the same is challenged, we would now examine the validity of Regulation 9(2). Admittedly when the Commission started functioning after being constituted by the Government in exercise of powers under the Act the employees came on deputation from the State Government to man the job in the Commission. When the Commission finally takes a decision to permanently absorb these deputationists after obtaining their option the question of their inter se

A seniority in the Commission crops up and Regulation 9(2) deals with the said situation. In the case of *R.S. Makashi & Ors. v. I.M. Menon and Ors.*, [1982] 1 Supreme Court Cases 379, this Court had indicated that it is a just and wholesome principle commonly applied to persons coming from different sources and drafted to serve a new service to count their pre-existing length of service for determining their ranking in the new service cadre. The said principle was reiterated by this Court in *K. Madhavan's case* (supra). A three Judge Bench judgment of this Court in the case of *Wing Commander J. Kumar* (supra) also reiterated the aforesaid well known principle in the service jurisprudence, and in the case in hand this principle has been engrafted in Regulation 9(1). The question that arises for consideration is whether the benefits conferred upon a deputationist under Regulation 9(1) has been taken away by Regulation 9(2)? The Tribunal has come to the aforesaid conclusion and accordingly has struck down. If a literal meaning is given to the language used in Regulation 9(2), it may appear that the benefits conferred under Regulation 9(1) is given a go bye and the past services rendered by the deputationists in their parent cadre is not being taken into account while determining their inter se seniority in the new cadre under the Commission. But as has been contended by Mrs. Amareswari, learned senior counsel appearing for the State Government who is the authority for approval of the Regulation that the phraseology used in Regulation 9(2) is no doubt little cumbersome but it conveys the meaning that the total length of service of these deputationists should be taken into account for determining the *inter se* seniority in the new service under the Commission and the past service is not being wiped off. We find considerable force in this argument and reading down the provision of Regulation 9(2) we hold that while determining the inter se seniority of the deputationists in the new cadre under the Commission after they are finally absorbed, their past services rendered in the Government have to be taken into account. In other words the total length of service of each of the employees would be the determinative factor for reckoning their seniority in the new services under the Commission. Mr. Ram Kumar, learned counsel appearing for the appellant vehemently urged that length of service under the Commission should be the criteria for determining the inter se seniority but we are unable to persuade ourselves to agree with the aforesaid submission of the learned counsel. It is not known that when the persons were brought over to the Commission from the Government on deputation whether their option had been asked for or not? Further such a principle if accepted then the inter se seniority would be dependent upon the whim of the Government, and we see no rationale behind the aforesaid principle. The two decisions on which Mr. Ram Kumar, learned counsel placed

reliance in support of his contention infact do not lay down the aforesaid proposition. We have, therefore, no hesitation to reject the submission of Mr. Ram Kumar. A

In the aforesaid premises we dispose of these appeals by reading down the provisions of Regulation 9(2) in the manner as indicated earlier rather than striking down the same and hold that while determining the inter se seniority of the deputationists in the services of the Commission their entire length of continuous service shall be the basis. These appeals are disposed of accordingly. But in the circumstances there will be no order as to costs. B

S.K.

Appeals allowed.