

THE HON'BLE SRI JUSTICE P. NAVEEN RAO
AND
THE HON'BLE SMT DR. JUSTICE G. RADHA RANI

+ WRIT PETITION No. 9659 OF 2006

% 15.02.2022

Government of Andhra Pradesh,
Rep by its., Principal Secretary,
Medical and Health Department,
Secretariat, Hyderabad & others.

.....Petitioners

And

\$ Smt. U. Shobha Rani, d/o. Late U. Balakrishna,
Aged 51 years, Lab Assistant, Gandhi Medical
College, Basheerbagh, Hyderabad & others.

.....Respondents

! Counsel for the petitioners : Government Pleader for
Services-I

Counsel for respondents : Sri S. Gopal Rao
< Gist :
> Head Note :
? Citations : ¹ (1989) 4 SCC 635
² (2008) 5 SCC 100
³ (2004) 9 SCC 65

**HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

WRIT PETITION No. 9659 OF 2006

Between:

Government of Andhra Pradesh,
Rep by its., Principal Secretary,
Medical and Health Department,
Secretariat, Hyderabad & others.

.....Petitioners

And

Smt. U. Shobha Rani, d/o. Late U. Balakrishna,
Aged 51 years, Lab Assistant, Gandhi Medical
College, Basheerbagh, Hyderabad & others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 15.02.2022

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

THE HON'BLE SMT DR. JUSTICE G. RADHA RANI

1. Whether Reporters of Local Newspapers : Yes
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

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The Court made the following:

**THE HON'BLE SRI JUSTICE P. NAVEEN RAO
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ORDER: (Per Hon'ble Sri Justice P.Naveen Rao)

Heard learned Government Pleader for Services-I, appearing for petitioners and Sri S. Gopal Rao, learned counsel for the respondents.

2. The respondents were working as Junior Analysts in Medical Colleges and Hospitals attached to the Medical Colleges. The post of Lab Assistant in Medical Colleges was organised as Category-1 of Class-XI of Andhra Pradesh Medical Subordinate Services Branch.III General-Special Rules, notified vide G.O.Ms.No.565 Medical and Health Department, dated 27.08.1979 (1979 Rules). The post of Junior Analysts was organised as Category-1 of Class-A of Andhra Pradesh Health Laboratories and Food (Health) Administration Subordinate Service Rules, notified vide G.O.Ms.No.459 Health Medical and Family Welfare (L1) Department, dated 08.09.1994 (1994 Rules). Rule-3 of the 1994 Rules prescribes the method of appointment and appointing authority to various posts. As per the said rules, the posts of Junior Analyst can be filled up by

promotion of Laboratory Technician Grade-I. If no qualified candidate is available in the Laboratory Technician Grade-I cadre, it can be filled up by promotion of Senior Technical Assistant. If no qualified candidate is available in any of the above mentioned posts, it can be filled up by promotion of Laboratory Technician Grade-II including Chemist (Cholera), Technical Assistant and Sample Custodian. According to respondents, the post of Laboratory Technician in medical colleges should also be included as one of the feeder categories to Junior Analyst as they possess requisite qualifications. Further, as they do not have any avenue of advancement in service, promotional avenue has to be created to get promotion to the post of Junior Analyst. Such course would redress both aspects of their grievance.

3. The respondents herein filed O.A.No.1278 of 2001 before the Andhra Pradesh Administrative Tribunal, Hyderabad Bench. Before the Tribunal, the respondents herein have contended that the post of Laboratory Assistant held by them was equivalent to the post of Laboratory Technician Grade-I and the scales of pay of both the posts were also same. Accepting the plea of the applicants, the Tribunal declared the post held by them as equivalent on all aspects to that of Laboratory

Technician Grade-I, which is the feeder category for promotion to the post of Junior Analyst. The Tribunal further held that no person can stagnate in the post and there has to be promotional avenue and directed the Government to make suitable amendments to Rules notified vide G.O.Ms.No.459 dated 08.09.1994, providing the post of Lab Assistant as a feeder cadre to the post of Junior Analyst. The Tribunal also directed to amend as, *“by incorporating the words ‘including Lab Assistants’ under Rule 3 of method of appointment against the post of Junior Analyst”*. The Tribunal further directed that after issuance of said amendment, the petitioners herein were directed to consider the case of the applicants against the four posts of Junior Analysts which were already ordered to be kept unfilled and further directed that those posts should remain unfilled till final orders are passed by the government carrying out the above directions.

4. In other words, the Tribunal stepped into the shoes of the employer to amend the Rules, leaving no discretion to the employer to deal with the channel of promotion and prescription of eligibility criteria to fill up the posts.

5. Article 309 of the Constitution of India requires State to take steps to make law to regulate conditions of service by an Act of State Legislature. The proviso appended to the Article enables the State to exercise power of Legislature to make Rules in the absence of a statute made by the Legislature. In exercise of this power, the State can make Rules regulating the conditions of service, conduct and discipline and also recruitment to various categories of posts. In exercise of those powers, the State notified Rules vide G.O.Ms.No.459 dated 08.09.1994, governing the conditions of service of various categories of posts in Health, Laboratories and Food Administration service including the post of Junior Analyst. Rule-3 prescribes the feeder channels for promotion to the post of Junior Analyst. The post of Lab Assistant was created in Medical Colleges and Hospitals attached to the Medical Colleges. The post of Lab Assistant is governed by separate set of Rules notified vide G.O.Ms.No.565 dated 27.08.1979 and is organised as Category-1 of Class-XI of the said rules. Thus, both the posts are governed by two separate set of rules.

6. The Government can prescribe qualifications to hold a post. There are thousands of categories of posts in the Government service. Therefore, it is possible to prescribe same

qualifications to more than one post. Thus, merely because a person possess qualifications prescribed to a post but appointed to another post, he cannot claim to treat him on par with other post, governed by different set of rules or organised in a different department.

7. It is settled principle of law that mere possession of qualifications and mere prescription of same scales of pay does not make two different posts equivalent. Further, it is also settled principle of law that the Court or the Tribunal has no technical competence or expertise to determine the equation of two posts and it should be best left to the employer to decide how to organise the posts and how to treat two or more posts as equivalent.

8. Having regard to these settled principles of law, we fail to appreciate how the Tribunal ventured into deciding the issue on equivalence of the post of Lab Assistant with that of Lab Technician Grade-I, when these two posts are governed by different set of rules, born on different cadres and with different environment.

9. It is also settled principle of law that it is not for the Court or the Tribunal to make rules or to amend or direct to amend the rules in a particular manner, even when the Tribunal or the Court assumes as correct. Again, it is for the employer to regulate the conditions of service, hierarchy of posts, promotional avenues and eligibility criteria. It is permissible for employer to treat two posts of similar nature having same eligibility criteria and suitability, to treat differently. It is for the employer to restrict consideration for elevation to a particular post only from a category of post excluding another category of post. Be that as it may, it is not for the Court or the Tribunal to amend the rules or direct to amend the rules in a particular manner.

10. The Tribunal seem to have been pursued to take such view and gave directions to amend the rules on the ground that the post of Laboratory Assistant in medical colleges is a solitary post and no promotional avenues are created. It is one thing to say that person working in a particular post must have avenues for advancement in service and should not be made to stagnate but it is not within the realm of the Tribunal or the Court to give direction to create promotional avenue in any

manner to a particular post. At the most, Court can direct the employer to look into the grievance.

11. In **Council of Scientific and Industrial Research Vs. K.G.S. Bhatt**¹ the Hon'ble Supreme Court was dealing with the issue of lack of promotional avenues and stagnation of an employee in the same post for a long time. The Hon'ble Supreme Court observed:

"It is often said and indeed, adroitly, an organisation public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See: Principles of Personnel Management by Flipo Edwin B. 4th Ed. P.246). Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisory." (See: Personnel Management by Dr. Udai Pareek p. 277). There cannot be any modern management much less any career planning man-power development, management development etc. which is not related to a system of promotions.

11.1. In **Food Corporation of India v. Parashotam Das Bansal**², the Hon'ble Supreme Court considered earlier decisions on the aspect of providing promotional avenues and went to the extent of holding that in a given case Superior Court can issue necessary direction to remove stagnation. The Hon'ble Supreme Court held:

¹ (1989) 4 SCC 635

² (2008) 5 SCC 100

“12. When employees are denied an opportunity of promotion for long years (in this case 30 years) on the ground that they fell within a category of employees excluded from promotional prospect, the superior court will have the jurisdiction to issue necessary direction.

13. If there is no channel *of promotion in respect of a particular group of officers resulting in stagnation over the years, the court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction* to issue direction to make a scheme cannot be denied to a superior court of the country.”

(emphasis supplied)

11.2. In **State of Tripura Vs. K.K.Roy**³ while holding that promotional avenues ought to have been created and holding that employer was entitled to two higher grades, Hon’ble Supreme Court found fault with high Court to grant higher scales. Paragraph 8 reads as under:

8. The learned counsel appearing for the appellant, is, however, correct in his submission that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India could not have issued a writ of or in the nature of mandamus directing the appellant herein to grant a scale of pay which would be equivalent to Grade II or Grade I of the judicial service of the State. **[Ed.: Para 8 corrected vide Corrigendum No. F.3/Ed.B.J./4/2004 dated 15-1-2004]**

12. Thus, in a given case, superior Court may issue direction, that too, to make a scheme but cannot amend a rule on its own or to direct to make a rule in a particular manner. Having regard to the settled position of law, the Tribunal erred in directing amendment of rules, that too in a particular manner

³ (2004) 9 SCC 65

and to grant promotion. The order of the Tribunal is unsustainable and accordingly set aside.

13. It is also pertinent to note that the stagnation in a post is not an unusual phenomenon in Government or any service. There are several posts which are solitary and created for a particular purpose to attend to the service of the employer. In order to remove the frustration resulting in stagnation to some extent, the State Government has formulated scheme of granting periodical financial upgradation.

14. None of these aspects were considered by the Tribunal and it appears that the Tribunal was swayed by the emotional appeal of the respondents herein, namely, that they were made to stagnate for years together, that they have all the suitability and eligibility to aspire for promotion, and that the duties, responsibilities, eligibility criteria and pay attached to the post of Junior Analyst was same as prescribed to the post of Lab Technician Grade-I.

15. It is also pertinent to note that according to the petitioners, the post of Laboratory Assistant held by the respondents was created in medical colleges whereas the post of Junior Analyst was created for a different purpose and

organised in a different service. The institute of Preventive Medicine, the Directorate of Medical Education and Directorate of Health and Family Welfare were separated in the year 1981 and different units were created in these departments/organizations. According to petitioners herein, respondents were working in a different environment, in different department/organization and cannot compare their post to the post of Junior Analyst born in different department. This aspect was not even looked into by the Tribunal.

16. For all the aforesaid reasons, the orders of the Tribunal in O.A.No.1278 of 2001 dated 12.03.2004 are not sustainable and are set aside. Accordingly, the Writ Petition is allowed. Miscellaneous petitions, pending if any, shall stand closed.

P. NAVEEN RAO, J

DR. G. RADHA RANI, J

15th February, 2022
PT

Note:

L.R.copy to be marked - Yes
B/o.
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