

***THE HON'BLE SRI JUSTICE SUJOY PAUL**
AND
***THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**
+WRIT PETITION No.22195 of 2012

% 10-07-2024

Nagaraj Agnoor

...Petitioner

vs.

\$ The State of A.P., rep. by its Chief
Secretary to Government of A.P.,
Secretariat, Hyderabad and Others

... Respondents

!Counsel for the Petitioner: Smt. K.Udaya Sri

^Counsel for Respondent No.1: G.P. for General Administration
^Counsel for Respondent Nos.2 & 6: Sri Y.Rama Rao, Standing
Counsel for High Court

^Counsel for Respondent No.7: Sri G.Mohan Rao

^Counsel for Respondent No.8: Sri V.Hari Haran

^Counsel for Respondent No.9: Sri A.Narsimha

^Counsel for Respondent No.10: Sri K.Venkat Reddy

<Gist :

>Head Note :

? Cases referred

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

WRIT PETITION No.22195 of 2012
(Per Hon'ble Sri Justice Sujoy Paul)

Between:

Nagaraj Agnoor

...Petitioner

vs.

The State of A.P., rep. by its Chief
Secretary to Government of A.P.,
Secretariat, Hyderabad and Others

... Respondents

JUDGMENT PRONOUNCED ON: 10.07.2024

THE HON'BLE SRI JUSTICE SUJOY PAUL
AND
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether their Lordships wish to
see the fair copy of the Judgment? :

SUJOY PAUL, J

NAMAVARAPU RAJESHWAR RAO, J

**THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

WRIT PETITION No.22195 of 2012

ORDER: *(per Hon'ble SP,J)*

Heard Smt.K.Udaya Sri, learned counsel appears for the petitioner, Sri Y.Rama Rao, learned Standing Counsel for Telangana State High Court, appears for respondent No.2 and Sri V.Hariharan, learned Senior Counsel representing on behalf of Sri Srikanth Hariharan, learned counsel appears for respondent No.10.

2. With the consent, finally heard.

3. In this petition filed under Article 226 of the Constitution of India, the singular interesting question is as to who has the preferential right of appointment to the post of Junior Civil Judge, pursuant to the notification dated 25.01.2011. The ancillary question is, whether seniority of Feeder post shall be the determining factor for selecting the candidate or the age of the candidate.

4. Learned counsel for the petitioner, at the outset, submits that she is confining her relief only against respondent No.10.

5. The admitted facts between the parties are that the petitioner and respondent No.10, both were appointed on the basis of steno-typist (Personal Assistant). The petitioner was initially appointed on 12.07.1990 and his probation was declared on 12.01.1993. Whereas, respondent No.10 was subsequently appointed on 15.04.1991 and his probation was declared on 15.10.1993. The parties admitted that the petitioner was not only appointed prior to respondent No.10, his probation was also declared before him.

6. The petitioner, respondent No.10 and other eligible candidates submitted their candidature for the post of Junior Civil Judge by way of Transfer. The Andhra Pradesh State Judicial Service Rules, 2007 (for short "the Rules of 2007") prescribes two modes of selection to the post of Junior Civil Judge, namely:- i) Direct Recruitment and ii) Recruitment by Transfer. In the instant case, admittedly, the issue relates to "Recruitment by Transfer". Since the petitioner and respondent No.10 secured same marks i.e., 48.90, the claim of petitioner is that he should have been given preference over respondent No.10, because, he is senior to respondent No.10 on the feeder post of Steno Typist (Personal Assistant). The contention of

learned counsel for the petitioner is that by way of Rule 25 of the Rules, 2007, the Andhra Pradesh State and Subordinate Service Rules, 1996 (for short “the Rules of 1996”) were borrowed to the extent, the same are not inconsistent with the Rules of 2007 and to the extent not covered by the Rules of 2007. The Rules of 2007 do not prescribe any criteria or method to decide as to which candidate should get preference, if two candidates have secured same marks.

7. It is submitted that the Rules of 1996 deals with this situation. Heavy reliance is placed on Rule 5 and Rule 34 of the Rules of 1996. It is urged that Rule 5, in clear terms, provides that the selection although will depend on merit and the ability, the seniority needs to be considered, where merit and ability are equal or approximately equal. In the light of aforesaid, the petitioner was having preferential right and the respondents erred in giving appointment to respondent No.10 by depriving the petitioner.

8. Learned counsel for the petitioner fairly submitted that respondent No.10 was appointed on 18.03.2013 whereas, the petitioner pursuant to a subsequent selection was appointed on 17.08.2013 as Junior Civil Judge. The petitioner is not praying

that the appointment of respondent No.10 be set aside. The petitioner is also not praying for any arrears of pay from 18.03.2013. He is only claiming the seniority and notional benefits over and above respondent No.10.

9. Sounding a *contra* note, learned counsel for official respondents, submits that the Rule 25 of Rules, 2007 and Rule 5 of the Rules of 1996 are not applicable. Instead, the Circular of High Court on which heavy reliance is placed in the counter will be applicable. By placing reliance on Roc.No.125/99-R.C., dated 28.07.1999, it is submitted that the preferential right must be given to a candidate who is older in age i.e., respondent No.10. Thus, no fault can be found in the impugned action of respondents.

10. Learned counsel for respondent No.10 almost borrowed the same arguments and submitted that the selection of respondent No.10 was justifiable.

11. The parties confined their argument to the extent indicated above. We have heard the parties at length and perused the record.

12. The aforesaid factual backdrop makes it clear that it is admitted between the parties that the petitioner right from his appointment and confirmation, is senior to respondent No.10. It is also admitted that the petitioner and respondent No.10, pursuant to the same notification, submitted their candidature and participated in the selection and secured same marks i.e. 48.90. Thus, the singular question needs to be decided is what should have been the criteria for selecting the candidate, if both the candidates have secured same marks.

13. As noticed above, the parties are at loggerheads on the question of criteria which can be made applicable for determination of preferential right. The petitioner placed reliance on the Rules of 2007 and the Rules of 1996, whereas the official respondents placed reliance on the Circular of the High Court dated 28.07.1999.

14. For ready reference, it is apt to consider the relevant provisions. Rule 25 of the Rules of 2007 reads as under:

“25. Applicability of General Rules: The A.P. State and Subordinate Service Rules, 1996, **which are not inconsistent with these Rules and to the extent not covered by these Rules**, shall apply to the Service.

(Emphasis Supplied)

15. A plain reading of this Rule leaves no room for any doubt that the Rules of 1996 were borrowed to the extent the Rules of

2007 are silent or not inconsistent with the Rules of 2007. The Rules of 1996 can be pressed into service to the extent not covered by the Rules of 2007. Thus, there is no manner of doubt that the Rules of 1996 have been borrowed in the Rules of 2007.

16. During the course of hearing, learned counsel for official and unofficial respondents could not point out any provision from the Rules of 2007 which can throw light on the criteria when merit of both the candidates is same. Thus, the Rules of 1996 must operate to that extent. Rule 5 of the Rules of 1996 which deals with selection posts reads thus:

“5. Selection Posts:-

- a) All first appointments to a State Service and all promotions/appointment by transfer in that Service **shall be made on grounds of merit and ability, seniority being considered only where merit ability, seniority being considered only where merit and ability are approximately equal**, by the appointing authority as specified in sub-rule (a) of Rule 6 from the panel of candidates. Such panel shall be prepared as laid down in Rule 6 by the appointing authority or any other authority empowered in this behalf.”

(Emphasis Supplied)

17. A plain reading of clause (a) of Rule 5 makes it crystal clear that where merit and ability is same or approximately equal, the seniority should be the criteria for selecting the candidate.

18. Thus, a conjoint reading of the Rule 25 of Rules of 2007 and the Rule 5 of Rules of 1996 makes it clear that the petitioner being senior to respondent No.10 had preferential right of appointment over respondent No.10 who was selected merely because he was older in age.

19. So far as the circular of High Court on which reliance is placed by official respondents is concerned, on the forehead of the said circular, the subject is noted as under:

“ HIGH COURT OF ANDHRA PRADESH :: HYDERABAD.

R.O.C.No.125/99-RC

DATED: 28-7-1999.

C I R C U L A R

SUB: PUBLIC SERVICES – **Recruitment to the posts under APJMS and APLGS** in all the units in the State – Furnishing of Roster Points to the notified vacancies and preparation of Common Merit Lists of selected candidates – Certain Instructions – ISSUED.”

20. The subject shows that it deals with recruitment to the post under APJMS and APLGS. The circular was not issued for recruitment/selection to the Judicial Services. The said circular for yet another reason cannot be pressed into service. The statutory Rules of 2007 and 1996 cover the aspect of preferential right for selection, and therefore, no executive instruction can supersede the statutory rules. The rules must prevail as per concept of '*dominion paramountcy*'.

21. The conundrum is whether the appointment of respondent No.10 should be set aside, and in lieu thereof, the present petitioner should be directed to be appointed from the said date?

22. Pertinently, learned counsel for the petitioner fairly submitted that the petitioner is not interested in setting aside the appointment of respondent No.10. Instead, he is praying for seniority with notional benefits from the date respondent No.10 was appointed.

23. Admittedly, respondent No.10 was appointed on 18.03.2013, whereas the petitioner was appointed on 17.08.2013. The gap is only of few months. In this backdrop, we are inclined to hold that the petitioner had the preferential right of appointment over and above respondent No.10 and the petitioner was erroneously deprived from fruits of selection despite his seniority over and above respondent No.10. Thus, it is directed that the petitioner shall be treated to be notionally appointed from the date respondent No.10 was appointed. The petitioner shall get all consequential benefits, except arrears of backwages. The petitioner shall rank senior to respondent No.10 from the date of his initial appointment.

24. The Writ Petition is **allowed** to the extent indicated above. There shall be no order as to costs. Miscellaneous applications pending, if any, shall stand closed.

SUJOY PAUL, J

NAMAVARAPU RAJESHWAR RAO, J

Date: 10.07.2024
Note: L.R. marked.
TJMR