A K. SIVA REDDY & ORS. ETC.

v.

STATE OF ANDHRA PRADESH & ORS.

FEBRUARY 24, 1988

B [RANGANATH MISRA AND G.L. OZA, JJ.]

Andhra Pradesh (Roads and Buildings) Engineering Service Rules, 1967—Rule 3—Appointment of Assistant Engineers by direct recruitment, promotion and transfer—Retrospective regularisation of temporary service of promotees—Inter se seniority on the basis of regularisation—Validity of.

C

The writ petitioners herein challenge the order regularising the temporary service of promotees in the years 1972–73, 1973–74 and 1974–75 to the cadre of Assistant Engineers (Deputy Executive Engineers). They contend that the retrospective regularisation made by

D **the Chief Engineer is without authority and in gross violation of the prescription of the Rules.**

Two sets of rules are operating side by side in the State of Andhra Pradesh, the Andhra Pradesh State and Subordinate Service Rules, 1962, the other, Andhra Pradesh (Roads and Buildings) Engineering

E **Service Rules, 1967 promulgated with retrospective effect from April 1, 1965.**

Rule 3(1) of the latter rules provide for the method of recruitment of Assistant Engineers by direct recruitment or by promotion or by transfer from Supervisor or Draughtsman Special Grade or Draughts-

F **man Special Grade I of the Andhra Pradesh (R&B) Engineering Subordinate Service.**

Sub–rule (3)(a) of Rule 3 thereof prescribes that of the substantive vacancies of Assistant Engineers, 37½% shall be filled up by direct recruitment, and the remaining 62½% by transfer of Supervisors and

G **Draughtsman and by promotion of Junior Engineers. Notwithstanding this, there had been under–recruitment of Assistant Engineers by direct recruitment and the recruits through the other modes have come into the cadre far in excess of the limit provided by the rule and had been regularised.**

H **It has been contended that though five year qualifying service was**

necessary in the lower service for entitlement to consideration for promotion as Assistant Engineer, the period had been reduced to three years to enable larger recruitment from the alternate sources to the prejudice of direct recruits. A

Disposing of the writ petitions, this Court, B

HELD: 1. There is no justification at all for the State Government not to work out the provision viz. filling up by direct recruitment 37½% of the substantive vacancies. The direct recruits have been agitating from 1982 over their rights arising out of this rule and the Tribunal has called upon the State to work out the said Rule properly. Reopening the question of *inter_se* seniority on the basis of the rules from the beginning may create hardship, but the benefit of the scheme under the Rules should be made available to direct recruits at least from 1982. [22D-F] C

1.2 The State Government must ascertain the exact substantive vacancies in the category of Assistant Engineers in service. On the basis that 37½% of such vacancies were to be filled up by direct recruitment, the position should be worked out. Promotees should be confined to 62½% of the substantive vacancies and in regard to 37½% of the vacancies the shortfall should be filled up by direct recruitment. Even if promotees are placed in those posts reserved for direct recruits, no seniority shall be counted. [22F-H] D E

1.3 Regularisation made in respect of the promotees of the years 1972 to 1975 should not be disturbed as the regularisation has been subsequent to the actual commencement of continuous service in the post of Assistant Engineer. [23C] F

[The State Government has been directed to ascertain the number of vacancies upto 31.12.87 to be filled up by direct recruitment and to take steps to make direct recruitment to fill such posts, within four months and also to draw the seniority list by the end of September, 1988.] [22H; 23A-B] G

ORIGINAL JURISDICTION: Writ Petition Nos. 17165–86 of 1984 & 12401/85

(Under Article 32 of the Constitution of India)

K. Rajendra Choudhary and K. Shivraj Choudhary for the H

A Petitioners in W.P. No. 17165–86 of 1984.

M.K. Ramamurthy, Subodh Markandeya and Mrs. Chitra Markandeya for the Petitioners in W.P. No. 12401 of 1985.

K.G. Bhagat, T.V.S.N. Chari, Y. Prabhakar Rao and Ms. B Vrinda Grover for the Respondents.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. The group of writ petitions under Article 32 of the Constitution is at the instance of several directly recruited Assistant Engineers now designated as Deputy Executive Engineers in C the Engineering Service of the Roads and Buildings division of Andhra Pradesh Government. Writ Petition No. 12401 of 1985 is by 13 Assistant Engineers of the same service who were also directly recruited. The challenge in the batch of writ petitions is mainly to an order of the Chief Engineer, respondent No. 2 therein, by asking for D quashing of his order dated 8th of June, 1984 by which he regularised temporary service of promotees in the years 1972–73, 1973–74 and 1974–75 to the cadre of Assistant Engineers (Deputy Executive Engineers). According to the petitioners, the retrospective regularisation made by the Chief Engineer of the promotees to the posts of Assistant Engineers is without authority and is in gross violation of the E prescription of the Rules. They have asked for a direction to the State Government and its authorities in Writ Petition No. 12401 of 1985 to consider the claim of direct recruits for promotion as Executive Engineers and consequential reliefs. In the batch of writ petitions as also in the other writ application some promotee engineers have been impleaded as representatives of promotees and transferees in the F division.

There are two sets of rules operating side by side in the State of Andhra Pradesh which are relevant. The first is known as the Andhra Pradesh State and Subordinate Services Rules promulgated with effect from March 7, 1962 under the proviso to Article 309. These have been G referred to as 'General Rules' and for convenience we maintain the same term in our judgment. On June 27, 1967, another set of rules known as Andhra Pradesh (Roads and Buildings) Engineering Service Rules with retrospective effect from April 1, 1965, were promulgated. These have been referred to as 'Special Rules' by the Administrative Tribunal and in our judgment those will also be referred to that way. H Under Rule 3(1) of the Special Rules the method of recruitment to the

category of Assistant Engineers has been provided and the methods are:

(i) By direct recruitment; or

(ii) By promotion of Junior Engineers; or

(iii) By recruitment by transfer from Supervisor or Draughtsman Special Grade or Draughtsman Special Grade I of the Andhra Pradesh (R&B) Engineering Subordinate Service.

Sub-rule (3)(a) of Rule 3 prescribes that of the substantive vacancies in the category of Assistant Engineers, 37½% shall be filled up by direct recruitment and the remaining 62½% by transfer of Supervisors and Draughtsmen and by promotion of Junior Engineers. The main complaint of the direct recruits has been that notwithstanding this prescription in the rules, there has been under-recruitment of Assistant Engineers by direct recruitment and the recruits through the other two modes have come into the cadre far in excess of the limit provided by the rule and regularisation of such recruitment has been made by exercising powers under Rule 23 of the General Rules. In the writ petition it has been pleaded that though five year qualifying service was necessary in the lower service for entitlement to consideration for promotion as Assistant Engineer, the period has been reduced to three years to enable larger recruitment from the alternate sources to the prejudice of direct recruits. Reference has been made in the writ petition to the decision of the Andhra Pradesh Administrative Tribunal and it has been contended that inspite of such decision and in the teeth of the rules, Government have failed to make direct recruitment and have prejudiced their claim to seniority. The respondents have controverted these allegations.

By a separate judgment delivered today, we have dismissed Civil Appeal No. 1995 of 1977 which was by two direct recruits to the post of Assistant Engineer. The conclusion has been on the basis of the facts stated therein.

A reference to the Tribunal's decision against which the two connected appeals have been filed would show that the matter was examined by a Full Bench of the Tribunal and the Tribunal did point out that the direct recruits were placed at a disadvantageous position and the seniority rule should not be allowed to over-ride the recruit-

ment rules. The Tribunal found that the Full Bench decision had not been annulled by the State Government or set aside by this Court and was, therefore, binding on the State of Andhra Pradesh. In the impugned decision, the Tribunal, therefore, held:

> ".....I would not like to issue directions straightaway to prepare the seniority list on the basis of the decision rendered in the Full Bench decision but while allowing the revision petition direct the Government to prepare the seniority keeping in mind the principle laid down in the Full Bench decision. The petitioners if feel aggrieved against the decision are given the liberty to approach this Tribunal for redressal of their grievance".

The scheme contained in the sub–rule, as indicated above, is that 37½% of the substantive vacancies are to be filled up by direct recruitment. There is no justification at all for the State Government not to work out this provision of the rule. The direct recruits have been agitating over their rights arising out of this rule and Government have turned their deaf ear. At least from 1982 the dispute has been systematically raised and by the impugned decisions the Tribunal has called upon the State to work out the said rule properly.

Reopening the question of *inter se* seniority on the basis of non–enforcement of the rules from the very beginning may create hardship and that would be difficult to mitigate but we see no justification as to why the benefit of the scheme under the rules should not be made available to direct recruits at least from 1982. When the State Government by rules duly framed prescribed the method of recruitment and put the scheme into operation it had the obligation to comply with it. The explanation offered by the State Government for non–compliance of the requirements of the rules does not at all impress us. We, therefore, direct that as on 31.12.1982, the State Government must ascertain the exact substantive vacancies in the category of Assistant Engineers in the service. On the basis that 37½% of such vacancies were to be filled up by direct recruitment, the position should be worked out. Promotees should be confined to 62½% of the substantive vacancies and in regard to 37½% of the vacancies the shortfall should be filled up by direct recruitment. General Rules shall not be applied to the posts within the limites of 37½% of the substantive vacancies and even if promotees are placed in those posts, no seniority shall be counted. The State Government shall take steps to make recruitment of the shortfall in the direct recruitment vacancies within the

limit of 37½% of the total substantive vacancies up to 31.12.1987 within four months from today by following the normal method of recruitment for direct recruits. The seniority list in the cadre of Assistant Engineers shall be redrawn up, as directed by the Tribunal, by the end of September, 1988, keeping the directions referred to above in view. There shall be a direction issued to the State of Andhra Pradesh to make recruitment to the category of Assistant Engineers by strict compliance of Special Rules hence forth.

In view of what we have stated above and following the principle indicated in the connected Civil Appeal which we have seperately disposed of today, we are of the view that the regularisation made in respect of the promotees of the years 1972 to 1975 should not at this point of time be disturbed particularly when the regularisation has been subsequent to the actual commencement of continuous service in the post of Assistant Engineer. We would, however, reiterate that the directions given in Writ Petition No. 12401 of 1985 is equally applicable to the petitioners in the group and the State Government is directed to give effect to the judgment with meticulous care.

There would be no other direction in the batch of writ petitions nor would there be any direction for costs therein but Writ Petition No. 12401 of 1985 is allowed to the extent indicated above. Hearing fees therein is assessed at Rs.3,000 to be paid by the State of Andhra Pradesh.

G.N. Petitions disposed of.