

CASE NO.:
Appeal (civil) 4202 of 2003

PETITIONER:
A.P. PUBLIC SERVICE COMMISSION

RESPONDENT:
K. SUDHARSHAN REDDY & ORS.

DATE OF JUDGMENT: 04//6\001@pVs.
Y.T. NAIDU & ORS.
@
July 4, 2006

BENCH:
Dr.AR. Lakshmanan & Altamas Kabir

JUDGMENT:
J U D G M E N T

WITH
CIVIL APPEAL No. 4201/2003

ALTAMAS KABIR, J.

Pursuant to an advertisement No.2/83 published by it, the Andhra Pradesh Public Service Commission conducted recruitment to Group-II (A) Services and upon completion of the process of selection, the selected candidates were appointed in 1985 itself. In keeping with GOMS No. 502 dated 26th June, 1976, 5 % weightage marks were awarded to candidates who had obtained their basic qualifications through Telugu medium. The same was challenged before the Andhra Pradesh High Court by Non-Telugu Medium candidates in a Writ Petition, being No. 2041/1981, which was allowed by the learned Single Judge by his judgment dated 7th June, 1981. By the said judgment and order the learned Single Judge quashed the aforesaid Government Order on the ground that it was discriminatory and violative of Articles 14 and 16 of the Constitution.

Two Writ Appeals were filed from the order of the learned Single Judge, one by the State of Andhra Pradesh and the other by the Telugu Medium candidates. Both the Writ Appeals were heard analogously by a Division Bench of the Andhra Pradesh High Court which by its judgment and order dated 15th September, 1981 allowed the Writ Appeals and upheld the Government Orders whereby 5 % weightage in total marks was given to Telugu Medium candidates, upon holding that the same did not violate Articles 14 and 16 of the Constitution. Consequently, the Writ Petition filed by the Non-Telugu Medium Candidates was dismissed. The same resulted in the filing of Civil Appeal No.2914/1981 (V.N. Sunanda Reddy & Ors. vs. State of Andhra Pradesh & Ors.) in this Court. Subsequently, the State of Andhra Pradesh issued a more comprehensive Government Order No.603 dated 18th November, 1981 and extended 5 % weightage to all Telugu Medium Students who were candidates for recruitment by the Andhra Pradesh Public Service Commission to any service in the State of Andhra Pradesh. The statutory rules framed in terms of the said Government Order were once again challenged by Non-Telugu Medium candidates before the Andhra Pradesh Administrative

Tribunal at Hyderabad. The Tribunal by its order dated 18th January, 1994, allowed the said application filed by the Non-Telugu Medium candidates upon holding. as was done in the earlier matter, that the said Government Order was violative of Articles 14 and 16 of the Constitution. As will be apparent, the view taken by the Tribunal was contrary to the decision of the Division Bench of the Andhra Pradesh High Court and it resulted in a Special Leave Petition being (Civil) No. 6395/1994 filed by the Telugu Medium candidates and by the State of Andhra Pradesh by way of Special Leave Petition) No. 13446/1994. As the question involved in both the matters was the same, they were taken up together for hearing by this Court and were disposed of by a common judgment dated 25th January, 1995.

Although, at the time of the hearing of the appeals, it was sought to be urged on behalf of the State that the weightage had been given in the interest of the State to enable it to recruit persons who are better acquainted with Telugu language, which was the official language of the State, such a stand was rejected and it was held that the Division Bench of the Andhra Pradesh High Court was not right when it accepted such view. This Court held further that the Division Bench was not justified in upsetting the views expressed by the learned Single Judge.

While disposing of the said appeals, this Court took note of a submission made on behalf of Telugu Medium students that in the event the weightage given to them in recruitment was found to be faulty, those Telugu Medium candidates who had already been appointed on the basis of such weightage should not be disturbed and it was also submitted that those Telugu Medium students whose appointments could not be made on account of pendency of the proceedings should be given one further chance to compete for future recruitment in the post in question and for that purpose suitable age relaxation may be made in their case. Finding such submission to be reasonable, this Court observed and directed as follows:-

"...In our view this request is quite reasonable and deserves to be granted. We, therefore, direct that despite our finding that 5 percent weightage given to the Telugu medium graduates in the present case is violative of Articles 14 and 16 (1) of the Constitution, those Telugu medium graduates who have already been appointed on the strength of such weightage and who are working on their concerned posts should not be disturbed and their appointments will not be adversely affected by the present judgment. On the other hand, those Telugu medium graduates who have been selected on the strength of the weightage but to whom actual appointments have not been given on account of pendency of the present proceedings should be given a chance to compete for such posts as and when future recruitment to such posts is resorted to and for that purpose only once suitable age relaxation may be given to them in case they are otherwise found suitable on merits to be appointed in such future direct recruitment to such

posts. In other words, only on account of the fact that they have become age barred, they should not be denied appointments on the strength of their meritorious performance. This will be by way of only one time concession about age relaxation."

Consequently, Civil Appeal No. 2914/1981 was allowed, the judgment and order of the Division Bench was set aside and the decision of the learned Single Judge was restored and the Civil Appeal arising out of SLP) Nos. 6395 & 13446/1994 were dismissed and the judgment and order of the Andhra Pradesh Administrative Tribunal at Hyderabad in O.A.No. 2142/1993 was confirmed.

Despite the views expressed by this Court in the above appeals, the matter was not allowed to rest and one K. Sudharshan Reddy, the respondent No.1 before us in Civil Appeal No.4202/2003 and Sri Y.T. Naidu, who is respondent No.1 before us in Civil Appeal No.4201/2003, filed separate applications before the Andhra Pradesh Administrative Tribunal, being O.A.No.6141/1995 and O.A.No.2470/2001, under Section 19 of the Administrative Tribunal Act, 1985, complaining that the respondents had acted in a manner contrary to law by giving the advantage of weightage marks while preparing the merit list for preparation of the seniority list in view of the aforesaid judgment of this Court. It was the contention of the said applicants that the direction that the services of those Telugu Medium candidates who had been appointed on account of the weightage given should not be disturbed, did not include any condition that such candidates were to be given the benefit of weightage of 5 % of the total marks also for the purpose of computing seniority. In other words, it was sought to be contended that the protection given by the aforesaid judgment of this Court to Telugu Medium students, who had already been selected with the benefit of weightage, was only to the extent of their appointment and that for their ranking in the merit list, the additional 5% marks could not be counted.

The said argument advanced on behalf of the said two respondents found favour with the Tribunal which was persuaded to hold that the protection afforded to the Telugu Medium candidates did not extend to the counting of such weightage for the purpose of determining seniority in the cadre. The learned Tribunal, therefore, directed the Government to take follow up action to reduce the weightage marks given to the Telugu Medium candidates and to prepare the new ranking list and to fix the seniority on the basis thereof.

Both the Original Applications were disposed of by the Tribunal by its aforesaid judgment and order dated 23rd May, 2001, which was challenged before the Andhra Pradesh High Court by way of Writ Petitions Nos. 16321/1001 and 16283/2001. Both the Writ Petitions were dismissed by identical orders with the observation that the Tribunal had merely followed the judgment of this Court and the impugned order did not, therefore, suffer from any legal infirmity. These two appeals before us have been filed by the Andhra Pradesh Public Service Commission against the orders passed in the said Writ Petitions and since they involve common questions of law and fact, the same have been taken up together for hearing and disposal.

Appearing for the appellant-Commission, Mr. Ranjit Kumar, learned Senior advocate, took us through the relevant

portions of the directions given by this Court which have been quoted hereinbefore and tried to explain the true meaning and purport thereof, which according to him, had been completely misunderstood both by the Tribunal, as also the Andhra Pradesh High Court. Mr. Kumar emphasized on the use of the expression "those Telugu Medium Graduates who have already been appointed on the strength of such weightage and who are working on their concerned posts should not be disturbed and their appointments will not be adversely affected by the present judgment." (underlining by us). He emphasized that the said direction could be broken up into three parts in order to understand and appreciate their true meaning and purport. It was submitted that this Court included in the scope of its order Telugu Medium candidates who had already been appointed on the strength of the weightage given. Secondly, those persons who were working on their concerned posts should not be disturbed and thirdly their appointments were not to be adversely affected. Mr. Kumar added that a conscious distinction had been made by the Court in respect of those Telugu Medium graduates who had been selected on the strength of the weightage but to whom actual appointments had not been given. Mr. Kumar submitted that in their case the Court directed that they should be given a chance to compete for such posts when future recruitment to such posts was required and for that purpose only once suitable age relaxation could be given to them in case they were otherwise found suitable on merit to be appointed in future to such posts. In addition to his aforesaid submission on the merits of the views expressed by the Tribunal and the Division Bench of the Andhra Pradesh High Court, Mr. Kumar also urged that if the judgment and order of the Tribunal and the High Court were allowed to stand, it would result in unsettling of the entire seniority position which prevailed in 1981 in different services through out the State and the same would lead to a chaotic situation. It was submitted that such an action could hardly be undertaken at such a distant point of time. In support of his said submission, Mr. Kumar referred to the decision of this Court in the case of Prabodh Verma and Ors. vs. State of Uttar Pradesh and Ors., (1984) 4 SCC 251, wherein in paragraph 28 such a scenario has been considered, discussed and dilated upon. Reference was also made to a decision of this Court in the case of Arun Tewari and Ors. vs. Zila Mansavi Shikshak Sangh and Ors., (1998) 2 SCC 332, wherein with reference to the aforesaid case, similar views have been expressed. Mr. M.N. Rao, learned senior advocate, who appeared for the respondent No1. in both the matters, on the other hand, strongly supported the view expressed by the Tribunal. Mr. Rao submitted that having held that the Government Orders granting weightage of 5% marks to Telugu Medium candidates was violative of Articles 14 and 16 of the Constitution, it could never have been the intention of this Court to perpetuate such arbitrariness and all that was protected by this Court's order were the appointments which had been made in favour of such Telugu Medium candidates who had been given the benefit of weightage in terms of the concerned Government Orders. According to Mr. Rao, to hold otherwise would be to negate the very decision of this Hon'ble Court in the earlier matter. It was further urged that the revision of the seniority list could always be done at any stage since all the required particulars were available in the office of the concerned authorities. Referring to the decision of this Court in the case of Ajit

Singh and Ors.(II) vs. State of Punjab and Ors., (1999) 7 SCC 209, Mr. Rao submitted that while discussing "the catch up role", it was observed that there should not be any difficulty in amending the seniority list since the seniority list at a particular level would have to be amended only when the senior general candidates reach the said level.

Mr. Rao urged that this Court had held that such weightage was arbitrary and that the addition of 40 marks which represented 5 % of the total aggregate marks would give the Telugu Medium candidates, a strong advantage over candidates from other mediums, particularly when competition was fierce and even one mark could tilt the decision in favour of a candidate.

Having carefully considered the submissions made on behalf of the respective parties, we are unable to agree with the submissions advanced by Mr. Rao since in our view, after having held the impugned Government Order to be violative of Articles 14 and 16 of the Constitution, it was the intention of this Court to maintain the status quo as it existed with regard to the appointments already made where certain candidates had already been given the benefit of weightage. We are inclined to agree with Mr. Ranjit Kumar that the Court intended to protect not only the appointment of such candidates but also all their service conditions, which included their right to seniority as had accrued to them at the time of their initial appointment. In our view, the said intention of this Court was quite clear from the language used. If this Court had intended that the weightage given to the concerned candidates was not to count towards their position in the merit list, it would have said so explicitly. On the other hand, while mentioning the fact of their appointment on the strength of such weightage this Court went on to say that such candidates would not be adversely affected by the judgment. In other words, the decision rendered in the judgment would not adversely affect their existing service conditions.

Furthermore, the question of seniority was never in question prior to the decision of this Court in Civil Appeal No.2914/1981 decided on 25th January, 1995.

Apart from the above, the other submission of Mr. Ranjit Kumar regarding the difficulty of unsettling the settled position after all these years cannot also be lightly brushed aside.

For the reasons aforesaid, the appeals must succeed and are allowed. The judgment and orders of the Andhra Pradesh High Court appealed against are hereby set aside along with the judgment and order dated 23rd May, 2001 passed by the Andhra Pradesh Administrative Tribunal passed in O.A.Nos.6141/1995 and 2470/2001.

There will be no order as to costs.