

PETITIONER:
STATE OF ANDHRA PRADESH

Vs.

RESPONDENT:
K.V.L.NARASIMHA RAO & ORS.

DATE OF JUDGMENT: 19/04/1999

BENCH:
S.Rajendra Babu, S.N.Phukan

JUDGMENT:

RAJENDRA BABU. J.

The respondents herein were in the judicial service of the State of A.P. They were originally appointed as Munsif Magistrates in the erstwhile State of Hyderabad and after the formation of State of Andhra Pradesh their services were intergrade with those of their counterparts from different parts forming the State of A.P. As provided in the States Reorganisation Act, 1956 [hereinafter referred to as 'the Act'], the inter-state seniority amongst the judicial officers of different regions was referred to the Central Govt. and the new State of A.P. prepared a common seniority list as directed by the Central Govt. Certain litigations arose as to the norms to be adopted for fixing the seniority and ultimately the High Court the concerned officers did not actually work in the higher post and they had no right to claim monetary benefits.

Rules 26(aa) of the Fundamental Rules and Rule 40(aa) of the Hyderabad Civil Services Regulations are brought to our notice. The said Rules are in identical terms and read as under :

"(aa). The pay of a Govt. servant whose seniority/promotion has been revised and fixed from an earlier date, pay may be refixed on the basis of notional duty in the post from time to time. For this purpose the period for which the Govt. servant concerned would have officiated in the higher post if he had been promoted actually on that date may be reckoned on weighted for only such period given from the national date of promotion. The non-qualifying periods like extraordinary leave, suspension, etc., should also be deducted.

Note 1 : Monetary benefit arising out of refixation as above, shall be limited to the duty periods and arrears shall be payable only for the period during which the Govt. servant actually discharged the duties of the post. Arrears shall not be payable for the national duty periods assigned as a

result of revision of seniority position.

Note 2: While a Govt. servant who is already promoted before the revision of his seniority and who is assigned an earlier date of promotion, shall be allowed arrears resulting from the pay fixation, in manner set out in Note 1 above for the period during which he actually discharged the duties of the post, and in the case of a Govt. Servant who has been promoted before the revision of seniority but is promoted after the review he shall be allowed monetary benefit of pay fixation, from the date of promotion only.

Note 3: In the case of a Govt. servant who has already retired or died before the revision of his seniority and fixation of pay, the arrears shall be payable in the manner indicated in Note 2 above and the monetary benefit of pension/family pension or death-cum-retirement gratuity as the case may be shall be allowed from the date of retirement/death."

The High Court took the view that the provisions of Fundamental Rule 26 or Rule 40 of the Hyderabad Civil Services Regulations have no application to cases falling within the ambit of the Act and, therefore, there could be cases where grant of notional promotion should not legitimately give rise to a valid claim for payment of arrears of salary either on the ground that the officer did not actually hold the post at the relevant time or otherwise. That principle could not be applied to the present case. A wrong had been committed in unduly dealing the finalisation of seniority and giving promotions thereto and hence denial of monetary benefits to them would be arbitrary in violation of Articles 14 and 16 of the Constitution.

In normal circumstances when the retrospective promotions are effected all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier. However, on the reorganisation of States a large number of officers stood allotted from different States to the newly formed State and their services had to be intergrade on various principles and several agencies were involved in the same. The steps to be taken thereto were one of formulation of principles, publication of a provisional inter-State seniority list, inviting objections thereto, consideration of those objections in consultation with the Central Govt. and acting upon its directions to bring the seniority list in conformity with such directions. This entire exercise involved a good deal of time and gave rise to extraordinary situation. It is in those circumstances that Rules contained in the Fundamental Rule 26 or Rule 40 of the Hyderabad Civil Services Regulations have been framed. As a matter of fact, rules of erstwhile State regarding seniority are not applicable in the new State as allottees are governed by the Act and seniority is finalised therein. Even so, we do not see that there is any impediment to frame new rules affecting conditions of service of such allottees but in conformity with the Act. Surely new rules cannot be

brushed aside by saying that they are not applicable to cases coming under the Act. There is no contention either in the High Court or before us that they are formed in contravention of the Act. In this background we fail to see as to why the Rules are not applicable to the respondents as held by the High Court.

In the result, we allow this appeal, set aside the order made by the High Court and dismiss the writ petition. But there will be no order as to costs.

JUDIS