

CASE NO.:
Appeal (civil) 213 of 2003

PETITIONER:
S. NARAYANA

RESPONDENT:
MD. AHMEDULLA KHAN AND ORS.

DATE OF JUDGMENT: 08/05/2006

BENCH:
B.N. SRIKRISHNA & LOKESHWAR SINGH PANTA

JUDGMENT:
JUDGMENT

SRIKRISHNA, J. :

The appellant was initially appointed as a Lower Division Clerk through District Selection Committee on 6.11.1968 in the office of the District Panchayat. He was promoted as Upper Division Clerk (re-designated as Senior Assistant) with effect from 12.10.1970. The services of the appellant in the said category were regularised with effect from the same day. By an order issued on 12.5.1986, under Rule 10(a)(i) of the State and Subordinate Services Rules, the appellant and certain other employees came to be appointed as "Extension Officers (Pts.)" in the Andhra Pradesh Panchayati Raj (Executive Subordinate) Service. The appellant was allotted to Nizamabad District. The said order made it clear that the appointment was "Purely temporary" and that it was "...liable to be terminated at any time without assigning reasons and without prior notice..." and that such an appointment "...would not confer on...(him)... any rights of probation or preferential claims for further appointment".

By an order dated 24.9.1988, the services of the appellant were regularised in the category of Senior Assistant with effect from 12.10.1970. On 12.11.1991, the appellant made a representation to the Commissioner of Panchayati Raj and Rural Development (hereinafter "PRRD") indicating that he was not willing to work as an Extension Officer (Pts.), that he had found that the names of his colleagues on "other duty" had been included in the seniority list of Senior Assistants in the District Panchayat Office. He requested that his name also be included in the seniority list of Senior Assistant in the office of District Panchayat Office and Divisional Panchayat Office. The request of the appellant was recommended by the District Commissioner Nizamabad on 3.1.1992. On 7.4.1992 the Commissioner, PRRD published a provisional seniority list of the Extension Officer in which the appellant's name was shown at Serial No. 35 and the date of the regularisation was shown as 4.6.1986. Some employees raised objections in the provisional seniority list. After examining the objections, the Commissioner, PRRD by notice dated 9.11.1992, published a revised provisional list and sought objections from the affected employees, if any. In the list, the name of the appellant was shown at Serial No. 5(a) below one R. Prakasam and above one M. Laxma Reddy at Serial No. 6. His date of regularisation was shown as 12.10.1970. The respondent, Md. Ahmedulla Khan was shown at Serial No. 10, below the appellant.

On 15.5.1993, the Commissioner, PRRD published a final seniority list as no objections had been received. The confirmed seniority list of Senior Assistants working in the Office of District Panchayat Officers of Unit 1 Zone VI as published, indicated the name of the appellant at Serial No. 6 and the date of his appointment as Senior Assistant and date of regularisation, were shown as 12.10.1970. The name of the first respondent was shown at Serial No. 12. The date of his appointment was shown as 15.3.1972 and the date of his regularisation was shown as 7.10.1972. On

22.8.1984, the Commissioner, PRRD issued office circular No. 621/6/CPR directing Collectors to terminate the lien of all individuals who have absented themselves continuously for more than three years after serving a notice of seven days on them for termination of the lien. Accordingly on 6.9.1994, the District Collector issued a notice to the appellant for termination of his lien as Senior Assistant. The appellant submitted a representation thereagainst and also claimed that he was entitled to be promoted to the post of Superintendent on par with his juniors. On 23.10.1994, the District Collector's order terminating the lien of the appellant was served on the appellant. On 26.10.1994, the appellant once again made a representation for retention of his lien and for considering his case for promotion as Superintendent on par with his juniors in the District Panchayat Office. By another representation dated 7.11.1994, the appellant pointed out that, by not acceding to his request to take him back into his parent department, he had been subjected to injustice, inasmuch as, several juniors to him has been promoted in the parent department.

The appellant filed O.A. No. 1307/1995 before the Andhra Pradesh Tribunal (hereinafter "the Tribunal") seeking a direction to the State authorities to promote him and regularise his services as Superintendent from the date his juniors had been promoted, with all consequential benefits. This petition was disposed of by an order dated 24.3.1995, by which the Commissioner, PRRD (the second respondent therein) was "...directed to examine and consider the claim of... (the appellant herein) for promotion to the post of the Superintendent in the existing vacancy in the office of the District Panchayat Officer as per the service rules along with other eligible candidates."

The appellant filed O.A. No. 2115/1995 before the Tribunal seeking a direction to the respondent-authorities not to terminate his lien in the category of Senior Assistant until his representations dated 12.11.1991 and 7.11.1994 were disposed of. He also sought a declaration that the attempt to terminate his lien from the parent department was contrary to the Fundamental Rules and contrary to the order already passed by the Tribunal in O.A. No. 1307/1995 dated 24.3.1995. On 9.5.1995, the Tribunal made an interim order in this petition directing the respondent-authorities to follow the provisions contained in Fundamental Rules 13 to 14-B. On 9.10.1995, the Tribunal in O.A. No. 2115/95 with M.A. No. 2045 made the interim order dated 9.5.1995 absolute and accordingly disposed of the case.

On 20.12.1995, the District Collector, Medak passed an order (Procs. No. 392/94-81 (Pts) terminating the lien of the appellant, which is as follows:

"By virtue of holding a permanent post on his substantive appointment to the post of Extension Officer (Pts) Sri S. Narayana, has acquired a lien in the permanent post of Extension Officer (Pts) within the meaning of lien defined under Sub-Rule (13) of Rule (9) of F.R. hence, the provisions of Sub-rule (d) of F.R. 14-A is attracted in the case which reads as follows :

F.R. 14(A) Sub-rule (d)

"A Government servants lien on a post shall stand terminated on his acquiring a lien on a permanent post, outside the cadre on which he is born".

Hence, as per the provisions of Sub-rule (d) of the F.R. 14-A, the lien of Sri S. Narayana, Extension Officer (Pts) Banswada in his former post of Senior Assistant in the Unit of Collector (P.W.) Shall (stc) stands terminated with immediate effect."

On 5.1.1996, the State Government through a memorandum, directed the Commissioner, PRRD to consider the request of the appellant for promotion as Superintendent, duly following Fundamental Rule 9(13) and also keeping in mind, the orders issued by the "Tribunal. The State Government advised the Commissioner that (i) "...when an employee is confirmed in any post he

is said to possess a lien in that post under FR-9(13)" (ii) the question of termination in any post arises only if an employee has a lien in that post. As the appellant was not confirmed in the post of Senior Assistant, he could not be said to hold any lien on the post of Senior Assistant and consequently, the question of termination of his lien on that post did not arise.

By order made on 7.3.1996, the State Government set aside the order dated 20.2.1995 made by the Collector (P.W.), Nizamabad by which the lien of the appellant was terminated in the cadre of Senior Assistant. The Commissioner of Panchayati Raj and the Collector (P.W.) Nizamabad, were directed to take necessary further action as per the instructions issued in the Government Memorandum dated 5.1.1996.

On 16.4.1996, the Tribunal disposed of O.A. No. 524/1996 (with M.A. 769/96) taking notice of the fact that the State Government had already set aside the orders of the Collector terminating the lien of the appellant. Consequently, the Tribunal disposed of the application by a direction to the respondent-authorities to pass appropriate orders in pursuance of the Government Memorandum dated 5.1.1996 and 7.3.1996 within a period of three months. On 28.10.1996, the Commissioner, PRRD passed an order temporarily promoting the appellant as Superintendent w.e.f. 1.11.1996 in the appropriate scale and posted him as Superintendent in the office of District Panchayat Officer, Nizamabad. He was also informed in the said order that the promotion had been ordered on a "purely temporary basis" and that he was liable "...to be reverted to the substantive post (Senior Assistant) at any time without assigning any reasons."

On 15.11.1996, the appellant submitted a representation requesting that his seniority in the category of Superintendent be fixed on par with one Laxma Reddy, who had been promoted as Superintendent w.e.f. 1.7.1991 and whose name was shown at Serial No. 7 in the seniority list of the cadre of Senior Assistants. On 9.6.1997, the State Government called for objections from persons to the fixing of notional seniority of the appellant as claimed for. The objections were called from one P.V. Govind Swamy, one K. Gopal Reddy and the first respondent Md. Ahmedulla Khan, who were all working as Superintendents. By an order dated 12.12.1998, the State Government acceded to the representation made by the appellant. It directed that the appellant and P.V. Govind Swamy be given notional promotions as Superintendents w.e.f. 1.7.1991 on par with their immediate junior R. Laxma Reddy, retired Superintendent.

The question of promotion of Superintendents to the post of District Panchayat Officer was being considered in 1999 and the ACRs of the persons in the zone of consideration, including those of the appellants were called for. At this stage, through letter dated 22.4.1999, written by the Commissioner, PRRD to the Secretary, of the State Government, it was indicated that the name of the appellant was shown at Serial No. 1 in the category of Superintendents.

The appellant filed O.A. No. 2181/1999 before the Administrative Tribunal seeking a direction that he was entitled to hold the post of District Panchayat Officer from the date of a vacancy in July 1998 and was also entitled to all consequential benefits. He also requested that promotions already made be reviewed. This application was disposed of by the Tribunal through order dated 3.5.1999, with a direction to the respondent-authorities to examine the report of the Commissioner and take necessary action in accordance with the rules in the existing or future vacancy without any further delay.

On 3.11.1999, the first respondent filed an O.A. No. 6629/1999 before the Tribunal challenging the grant of notional seniority to the appellant and also sought a direction that he was senior to the appellant and was entitled to be promoted as District Panchayat Officer. Interestingly,

however, there was no challenge to the confirmed seniority list made, wherein the appellant was admittedly shown as senior to the first respondent at Serial No. 6 while the respondent was at Serial No. 12. The Tribunal made an interim order on 16.11.1999 suspending the order of the Commissioner, Panchayati Raj, giving notional promotion to the appellant as Superintendent. However, on 24.3.2000, the Tribunal dismissed O.A. No. 6692.1999 filed by the first respondent.

The first respondent challenged the order of the Tribunal before the High Court of Andhra Pradesh by Writ Petition 6531/2000. The Division Bench of the High Court allowed the writ petition and set aside the order of the Tribunal dismissing O.A. No. 6692/1999 filed by the first respondent. Aggrieved thereby, the appellant is before us.

The learned counsel for the appellant criticised the impugned judgment of the High Court as having proceeded on a total misappreciation of the facts. He pointed out that the High Court observes : (vide page 18)

"In the case on hand the case is still worse to (sic) the 4th respondent. Not only (sic...was) the 4th respondent was (sic) appointed as Extension Officer, Pts, with effect from 4.6.1986, but also subsequently his services were regularised and confirmed in that post with effect from that date..."

The counsel contended that the High Court seemed to have lost sight of the fact that regularisation and confirmation were distinct and different concepts in service jurisprudence and that regularisation did not ipso facto result in confirmation in any post.

Counsel drew our attention to the judgment of this Court in B.N. Nagarajan v. State of Karnataka,¹ (hereinafter "Nagarajan"). This Court in categorical terms rejected the argument that regularisation and permanence and confirmation meant the same thing. Reiterating the observations made in State of Mysore v. S.V. Narayanappa,² and R.N. Nanjundappa v. T. Thimmiah,³ this Court in Nagarajan (supra), observed :

"Firstly, the words "regular" or "regularisation", do not connote permanence. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to the methodology followed in making the appointments. They cannot be construed so as to convey an idea of the nature of tenure of the appointments."⁴

It was also observed : "...when rules framed under Article 309 of the Constitution of India are in force, no regularisation is permissible in exercise of the executive powers of the Government under Article 162 thereof in contravention of the rules"⁵

Closure on this issue must surely be attained after the recent judgment of a Constitution Bench of this Court in Secretary, State of Karnataka v. Umadevi (3),⁶ After reviewing the cases that we have already adverted to, especially Nagarajan (supra), the Constitution Bench declared:

"...the words "regular" or "regularisation" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects

as are attributable to methodology followed in making the appointments. This court emphasised that when rules framed under Article 309 of the Constitution of India are in force, no regularisation is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognised therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated

in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised and that it alone can be regularised and granting permanence of employment is a totally different concept and cannot be equated with regularisation."7

The learned counsel for the appellant also urged that the High Court had misunderstood the concept of a lien on a post. He contended, and rightly in our view, that there was nothing like lien on a post, unless a person was made permanent in a post. Strong reliance was placed on the observations of this Court in *Triveni Shankar Saxena v. State of U.P.*,⁸ wherein after examining the concept of lien in Government service, it was observed : "...a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier"⁹, with which view, we are in agreement.

Falling upon the aforesaid decisions of law, learned counsel for the appellant contended that the appellant had never been confirmed in any permanent post and as such, it could not be said that he had a lien, which was capable of being terminated. He drew our attention to the order of the Collector (Panchayat Wing), Nizamabad dated 16.12.2001, by which it was declared :

"Under Rule 29 of (sic-the) Andhra Pradesh State & Subordinate Service Rules, 1962, the service of Sri S. Narayana as approved probationer in the category of Senior Assistant are confirmed and he is declared to be a Full Member of the services as Senior Assistant with effect from the said date i.e., 12.10.1970"¹⁰

The counsel contended that this order in no uncertain terms made it clear that the confirmation of the appellant in service came about only when the order dated 16.12.2001 was passed, albeit when it was made retrospectively from 12.10.1970. Consequently, it is urged that there could never have been an occasion for the District Collector, Medak to pass orders dated 20.12.1995 to terminate the non-existing lien of the appellant. He, therefore, submitted that the expression "'Full member" of a service" is defined in Rule 3(8) of the applicable Rules and there was no material before the High Court that there was any order made for confirmation of the appellant under Rule 29 at any time before 16.12.2001.

For the first respondent, however, it is contended that regularisation is the same as confirmation in service, and therefore, lien would operate from the said date. We are afraid that we cannot accept this contention in the face of clear authority to the contrary, to which we have already referred. Counsel for the first respondent also contended that any relief given, to the appellant should not affect any benefit of service, emoluments, allowance and pension etc. available to the first respondent. We do not see how this apprehension can arise. The order of the Tribunal does not in any way show that the first respondent's service benefits are affected. All that it ensures is that justice is rendered to the appellant. The learned counsel for the State submitted that the State would submit to any orders passed by this Court. We also notice that the State Government has not filed any counter-affidavit in opposition to the appeal.

In the circumstances, we find merit in the contentions urged on behalf of the appellant. We are also of the view that the High Court erred in interfering with the order of the Tribunal. In the result, we allow this appeal and set aside the impugned judgment of the High Court. The order of the Tribunal dated 24.3.2000, made in O.A. No. 6692/1999 dismissing the application of the first respondent, is affirmed. No order as to costs.

JUDIS