

PETITIONER:
GOVERNMENT OF A.P.& ANR.

Vs.

RESPONDENT:
Y. SAGARESWARA RAO

DATE OF JUDGMENT 05/09/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1995 SCC Supl. (1) 16 JT 1995 (1) 134
1994 SCALE (4) 585

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Leave granted.
2. Consequential to the reorganisation of the Panchayat Raj System under the A.P. Mandal Parishads & Zilla Praja Parishads and Zilla Pranalika, Abhivrudhi Mandais Act, 1986 (Act No. 31 of 1986) (for short the 'Act') the Governor exercising the power under proviso to Art. 309 of the Constitution read with Sec. 28 (c) of the Act made the A.P. Mandal Development Officer in A.P. Panchayat Raj service (executive branch) Ad hoc Rules in G.O.Ms. No.3 dated January 3, 1989 whereunder Rule 2 prescribed the method of appointment, namely appointment to the post of Mandal Development Officers shall be made by transfer from the categories, namely, Superintendents working in Zilla Praja Parishad offices, Divisional Panchayat officers and Extension officers working in the erstwhile Panchayat Samithies, under G.O.Ms. No.4 dated January 3, 1989 Panchayati Raj & Rural Development, a committee of five members was constituted to select the candidates by conducting special qualifying tests and prescribed the marks for the written examination and also viva voce. Consequently number of persons came to be appointed, a list of which was attached to SLP paper book for Zone III. The list has been mentioned-in the light of the orders issued by 135 the Government in G.O.Ms. No.3 dated January 3, 1989 panchayati Raj and Rural Development dated April 30, 1989 there in the respondent's seniority was determined. The respondents filed O.A. in the Tribunal contending that his scale of pay as an Veterinary Asstt. Surgeons (Extension officers) was. a gazetted post on par with the Block development officer in the erstwhile Panchayat Samithies. This scale of pay was also the same. He was also in the gazetted cadre and that, therefore, when the block development officers were absorbed and given the previous

service the respondents also should have given the same benefit to him under Rule (for short the 'Rules'). That contention was found favour with the Tribunal and it allowed the O.A.No. 38356/91 on October 1, 1993, Calling that order in question the present appeal was filed.

3. It is contended for the State that the Extension Officers were subordinate to the Block Development Officer and that, therefore when the recruitment was made in terms of G.O.Ms. No. dated January 3, 1989 and the Committee had assigned the order of seniority on the basis of merit, the respondent cannot be given seniority tagging his previous service and that, therefore, Rule 37(e) has no application. Initially the contention appealed but after looking to the orders passed as regards Veterinary Asstt. Surgeons we find that there is no force in the contention. The respondent admittedly stands on different footing. In G.O.Ms. No. 2/9 Panchayati Raj Department dated June 17, 1972 they made an amendment to the Rule and taken out the asstt. Veterinary Surgeons from the purview of the Extensions Officers. In G.O.Ms. No. 169 Panchayati Raj dated July 3, 1973 the posts of Asstt. Veterinary Surgeons had been made Gazetted and consequently they have been taken out from the purview of the administrative control of the Block Development Officers. In consequence the Veterinary Asst Surgeons no longer remained to be subordinate to the Block Development Officer. He had the pay scale at par with the Block Development Officers. Under those circumstances the respondent is entitled to tag his previous service since admittedly the B.D.Os. were given their benefit and the appointment is by transfer though by process of selection, Rule 33(c) of the Rule stands attracted.

4. The appeal is accordingly dismissed. The benefit of this order cannot go to the other subordinate Extension Officers who continued to be subordinates to the erstwhile Block Development Officers.