

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3352 OF 2007

V. AYYANNA

.... Appellant

Versus

GOVT. OF A.P. & ORS.

.... Respondents

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. This appeal is preferred by the appellant challenging the legality of the judgment and order dated 03.11.2003 passed by the Andhra Pradesh High Court in W.P. No. 18386 of 2003 whereby the High Court has affirmed the judgment and order of the Andhra Pradesh Administrative Tribunal at Hyderabad dated 12.12.2002. By the said judgment and order, the State Administrative

Tribunal dismissed several Original Applications filed by the applicants, including the appellant herein.

2. There were number of feeder categories under the rules framed by the State Government in G.O.Ms. No. 3845 dated 17.11.1964. The appellant and other similarly situated persons were initially appointed during the years 1971-1975. Sometime in the year 1978, the Government with the intention of having a rationalized structure of cadres of some posts, merged various categories of posts to constitute a single cadre of Health Assistants, consequent upon which, the Government of India issued a G.O.M. No. 85 dated 21.01.1978, merging 10 categories including the post of Lab Assistants, Surveillance Workers, Health Sub-Inspectors Grade-II, Microscopist, Lab Technician, Basic Health Worker, Field Assistants and Health Assistants of posts to that of Health Assistant's post. It is also to be clarified at this stage that Basic Health Workers, Superior Field Workers, Malaria Surveillance Workers were drawing lesser scale of pay than that of the pay-scale attached to the post of Multipurpose Health Assistants at the relevant time. It is

also required to be stated that the basic qualification required for appointment to the post of Multipurpose Health Assistant was that the candidate must possess the academic qualification of intermediate and must have a Sanitary Inspector Training Course [for short 'SITC'] Certificate, which was in vogue on the date of G.O.Ms. No. 85, dated 21.1.1978. The aforesaid G.O.Ms. stipulated that Basic Health workers, Malaria Surveillance Workers and others would continue to draw their own scale of pay till they acquire the SITC certificate and get converted as Health Assistants.

3. The appellant herein was not having a SITC certificate qualification as on 21.01.1978 and he acquired the said SITC certificate subsequently.
4. After the issuance of the aforesaid notification and creation of one cadre of Health Assistants, a seniority list was prepared in the cadre of Multipurpose Health Assistant Workers. The said seniority list in that cadre came to be challenged before the State Administrative Tribunal attacking the principle of fixation of seniority on the basis of qualifications. Pursuant to the aforesaid

challenge, the Tribunal decided the said issue in R.P. No. 2860 of 1987 and batch and separately in O.A. No. 5410 of 1994 and batch. In terms of the order passed by the Tribunal, the respondents proceeded to prepare a seniority list dated 03.09.1998.

5. The appellant herein and some other persons, without seeking any review of the earlier orders passed by the Tribunal in R.P. No. 2860 of 1987 and batch and O.A. No. 5410 of 1994 and batch, which had incidentally become final and binding and pursuant to which the aforesaid seniority list was prepared in the year 1998, challenged not only the aforesaid seniority list, but also the principle laid down by the Tribunal in the earlier orders passed in R.P. No. 2860 of 1987 and batch and O.A. No. 5410 of 1994 and batch. The State Administrative Tribunal, after considering the issues raised by the appellant herein and others, dismissed the said petition on the ground that the principle of fixation of seniority in the cadre of Health Assistants was already settled in view of the decision in the aforesaid R.P. and

O.A. which had since become final and binding and, therefore, no interference was called for.

6. Being aggrieved by the said order, the appellant herein and others filed various Writ Petitions before the High Court which were taken up together, and by a common judgment and order dated 03.11.2003, High Court dismissed all the Writ Petitions including that of the appellant herein. Being aggrieved by the said judgment and order of the High Court, present appeal by way of a Special Leave Petition is filed on which we heard the learned counsel appearing for the parties.

7. Counsel appearing for the appellant submitted before us that the appellant, pursuant to the G.O.Ms. No. 85 dated 21.01.1978, is entitled to get his seniority in the category of Multipurpose Health Assistant from the date on which their services were regularized in the category of Basic Health Worker / Field Worker / Malaria Surveillance Worker, etc. He also submitted that the very principle settled by the Tribunal in R.P. No. 2860 of 1987 and batch and O.A. No. 5410 of 1994 and batch is illegal and contrary to law. It was his further submission that

seniority should always be counted from the date of appointment and, therefore, giving the benefit of seniority from an artificial date is arbitrary and required to be set aside and quashed.

8. Counsel appearing for the respondent, however, refuted the aforesaid allegations and submitted that the criteria of fixation of seniority having been settled by the State Tribunal in R.P. No. 2860 of 1987 and batch and O.A. No. 5410 of 1994 and batch, and the appellant having not taken any steps to get the same set aside and quashed by filing a separate petition before the Tribunal, the said principle, which has become final and binding, cannot be challenged at such a distant stage. It was also submitted that the appellant was working in the scale lower than that of Multipurpose Health Assistant and, therefore, he cannot ask for his seniority from the date of issuance of the notification by the State Government creating single cadre effective from 21.01.1978, but he would be entitled to get his seniority once he acquired the qualification of acquiring the SITC certificate, which

was one of the essential qualifications for appointment to the said post.

9. In the light of the aforesaid submissions of the counsel appearing for the parties, we have considered the records in depth. The appellant was working as Basic Health Worker which was carrying a lesser pay-scale than that of the Multipurpose Health Assistant. The aforesaid post to which the appellant was appointed and on which he was working as on 21.01.1978, did not belong to or was equivalent to the post of Health Assistant. However, the State Government, in order to have a rationalized structure of posts, merged various categories of posts to constitute a single cadre of Health Assistants. Consequently, the Government also issued the aforesaid G.O.Ms. No. 85 dated 21.01.1978 merging various posts including that of the Basic Health Worker to Multipurpose Health Assistant. It may be stated at this stage that under the then existing rules framed by the Government which was in operation and in vogue as on 21.01.1978, the qualification for appointment to the post of Health Assistant was intermediate pass with a

certificate of Sanitary Inspector Training Course. The appellant did not have the said qualification as he did not possess a certificate of the aforesaid nature, therefore, although his post was merged with that of the Multipurpose Health Assistants, he was not given the same pay-scale till he had acquired the aforesaid qualification or possessing a SITC certificate. The aforesaid actions were taken by the respondents pursuant to the specific stipulations in the notification itself which stated that Basic Health Workers, Malaria Surveillance Workers and others would continue to draw their own scale of pay till they acquire SITC certificate and get converted as Health Assistants. The appellant was not having SITC certificate qualification as on 21.01.1978 and he had acquired SITC certificate subsequently.

10.State Government subsequently issued revised rules in G.O.Ms. No. 273, Health dated 24.04.1989 as far as the post of Multipurpose Health Assistant is concerned. The said rules were given retrospective effect from 01.04.1983 and an order was also issued on 30.03.1982 by the State

Government to prepare a seniority list in the feeder categories as per G.O.Ms. No. 85 dated 21.01.1978.

11. The follow-up action taken by the State Government was challenged by some of the employees by filing R.P. No. 1530/1985. The State Tribunal disposed of the said R.P. by its judgment dated 05.07.1986. Subsequent thereto, another judgment was rendered by the said Tribunal in R.P. No. 2860/1987 and batch which was delivered on 25.09.1987 in which various directions were issued to Respondents for preparation of the seniority list. Subsequently, OAs No. 5410/94 and batch were filed seeking a direction to the Respondents to implement the judgment dated 25.09.1987. The above OAs were disposed of on 28-11-1995 issuing directions to the State Govt. in terms of the directions issued earlier in the judgment dated 25.09.1987 in R.P. No. 2860/1987 and batch. In both the judgments, i.e. the judgment dated 25.09.1987 in R.P. No. 2860/1987 and batch and the judgment dated 28.11.1995 in OAs No. 5410/94 and batch, it was categorically held that Basic Health Workers and others who were not required to pass

Sanitary Inspector Training Course for regularization in their service but who were designated as Health Assistant on passing the SITC shall count their seniority in the category of Health Assistants from 21.01.1978/01.01.1980 or from the date of passing the SITC, whichever is later, the *inter se* seniority among them being determined on the basis of their length of service in the lower category of Basic Health Workers etc.

12. Consequent upon the directions given in the aforesaid judgments, a seniority list was prepared on 03.09.1998, the legality and validity of which was challenged before the Tribunal and also before this Court.

13. The aforesaid facts make it crystal clear that the orders which were passed by the Tribunal in the earlier litigation had become final and binding and the final seniority list was prepared in compliance thereof. The effect of the said final seniority list is that the appellant would get his seniority in the aforesaid cadre from the date he has obtained the SITC certificate and not from a prior date. It is needless to point out, and also made clear hereinbefore, that possession of a SITC certificate is an

essential qualification, and as such, the appellant could not have claimed his seniority from a retrospective date. He could get his seniority only from the date when he acquired such a certificate in terms of the provisions of the rules.

14.As the principles stated say that the persons who have been re-designated as Health Assistants on passing the SITC certificate would count their seniority in the cadre as Health Assistant from 21.01.1978/01.01.1980 or from the date of passing the SITC certificate whichever is later, the Tribunal upheld the aforesaid position and held that the appellant would be entitled to get his seniority on the aforesaid principle, i.e., from 20.01.1978/01.01.1980 or from the date of passing the SITC certificate, whichever is later. The aforesaid findings recorded by the Tribunal, which reiterated the earlier orders passed by the Tribunal on 25.09.1987 and 28.11.1995, appear to be just and proper and cannot be said to be in any manner to be arbitrary.

15.In terms of the circular issued by the Government, the appellant although appointed initially to the category of

Health Assistant, could not be so appointed on a regular basis till he had passed the SITC and therefore, his seniority will have to be counted from the date when he obtained such a certificate or from 21.01.1978/01.01.1980, whichever is later, and he could not have claimed for a seniority position prior to the effective date as he was not eligible to hold such a post.

16.Considering the facts and circumstances of the case, we are of the considered opinion that the judgment and order passed by the High Court affirming the judgment and order passed by the Tribunal is legal and valid and that there is no infirmity in the said orders.

17.Consequently, we find no merit in this appeal, which stands dismissed but we leave the parties to bear their own costs.

.....J
[J.M. Panchal]

.....J

[Dr. Mukundakam Sharma]

New Delhi,
September 23, 2010.