

CASE NO.:
Appeal (civil) 1617-1618 of 2008

PETITIONER:
THE GOVERNMENT OF ANDHRA PRADESH\005APPELLANT

RESPONDENT:
P. BHASKAR & ORS

DATE OF JUDGMENT: 27/02/2008

BENCH:
CJI K.G. BALAKRISHNAN & D.K. JAIN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NOS. 1617-1618 OF 2008
(ARISING OUT OF SLP (C) NOS. 24667-24668 OF 2005)
W I T H
CIVIL APPEAL NOS. 1619-1620 OF 2008
(ARISING OUT OF S.L.P. (C) NOS. 25382-25383 OF 2005)
CIVIL APPEAL NOS. 1621-1622 OF 2008
(ARISING OUT OF S.L.P. (C) NOS. 26434-26435 OF 2005)
CIVIL APPEAL NOS. 1623-1624 OF 2008
(ARISING OUT OF S.L.P. (C) NOS. 26436-26437 OF 2005)

K.G. BALAKRISHNAN, CJI. :

1. Leave granted.

2. The Appeals arising out Special Leave Petition (C) Nos. 24667-24668 of 2005 are filed by the Government of Andhra Pradesh and the other Appeals are filed by the officers who were aggrieved by the decision of the Andhra Pradesh High Court in Writ Petitions Nos. 10604/2004 and 10965/2005. The writ petitioners in W.P. No. 10604/2004 filed OA No. 6246 of 1998 before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short "the Tribunal") contending that they should be declared as seniors to the Deputy Collectors who were appointed on 9.12.1993, though they were appointed as Deputy Collectors on 9.12.1994.

3. The facts, in short, are as follows.

The appointment to the post of Deputy Collectors is governed by the Andhra Pradesh Civil Service (Executive Branch) Rules, 1992, framed under proviso to Article 309 of the Constitution of India. As per these Rules, 1/3rd of substantive vacancies in the category of Deputy Collectors have to be filled up by direct recruitment and 2/3rd of the vacancies by promotion from the feeder cadre of Tehsildars. Rule 22 of the Andhra Pradesh State and Subordinate Service Rules (hereinafter referred to as "the Rules") provides for reservation in favour of the Scheduled Castes, the Scheduled Tribes and other categories. Rule 22 (ii) (e) of the Rules enables the Government that if in any recruitment

qualified candidates belonging to the Scheduled Castes or the Scheduled Tribes are not available, limited recruitment confined to such candidates could be resorted to. As 2/3rd of the vacancies of Deputy Collectors have to be filled up by promotions, there was dearth of candidates in the category of the Scheduled Tribes for being promoted to the post of Deputy Collectors. In 1991 the posts of Deputy Collector to be filled up by promotion from the Scheduled Tribes candidates accumulated to 12 and then on 15.11.1990, the Head of Department sent a proposal to government to consider filling up of 12 Scheduled Tribe candidates by direct recruitment to fill up the 12 carry forward vacancies. The Government accepted the proposal and issued GO Ms. No. 264 dated 01.04.1991 and set apart 12 posts of Deputy Collectors to be filled up by the Scheduled Tribes candidates by "limited recruitment". Steps were taken to recruit the eligible candidates through the Andhra Pradesh Public Service Commission (for short "the Commission").

4. Meanwhile, as part of the general recruitment, the Commission had issued advertisement on 1.8.1990 inviting applications with a view to undertake recruitment to different categories of posts in Group 1 and 2(a) of the Andhra Pradesh State Service, including the category of Deputy Collector. This selection consisted of both 'general recruitment' and 'limited recruitment'. The process of selection consisted of preliminary examination and final examination. A preliminary examination was held on 27.1.1991, but on 5.2.1991 the Government of Andhra Pradesh revised the maximum age limit of the candidates. In view of this relaxation of age granted to the candidates, fresh applications were called for and for additional applicants a preliminary examination was held on 14.4.1991. The Commission prescribed '88' marks as cut-off marks and the main examination was held on 9.11.1991. Some Original Applications were filed before the State Administrative Tribunal challenging the selection process. The Tribunal gave certain directions. These OAs were disposed of by the Tribunal on 4.6.1992 with the following directions :-

a) "The selection for general recruitment pursuant to the advertisement No. 8/90 as well as the supplemental advertisement shall be confined to the vacancies meant for direct recruitment for the various services which were available on 01.05.1990 as contemplated by G.O. Ms.No. 103 GAD dt. 03.02.67. For this purpose the State Government should immediately arrive at the correct figure of vacancies for each service (together with reservations under Rule 22 of the General Rules) and communicate the same to the Commission. The General Administration Department under the Chief Secretary, will co-ordinate and monitor the correct number of vacancies meant for such direct recruitment. For the selection for these vacancies the result of the main examination already held together with the oral test or interview shall be basis. The Commission has to take steps to call for interview such number of candidates as are required in terms of the advertisement, keeping in view the vacancies and the ranking of the candidate in the main examination.

This process should be completed expeditiously preferably within a period of four months.

b) A separate main examination to be held for selection of the candidates for the vacancies to be filled by limited recruitment. The number of vacancies available at the relevant time including GOs of 1991 referred to earlier together with the ranking of the SC and ST candidates in the preliminary examination may be used for calling them for the main examination and for selection. The Commission to fix a separate cut off mark on the basis of the relevant criteria, namely, number of vacancies, number of candidates available and the requirements of the notification. This should also be done expeditiously preferably within a period of six months.

c) The candidates belonging to SC and ST who have come up in the general recruitment in accordance with their quota in a selection as per direction (a) need not be disturbed and the remaining candidates belonging to SC and STs to be considered for limited recruitment as per direction (b).

d) The State Government will forthwith take steps for identifying the vacancies for general direct recruitment for Group-I service arising subsequent to the relevant date in 1990 as contemplated by G.O.Ms.No. 103. On the vacancies being notified, the Commission will proceed to issue the advertisement indicating the year of which selection relates and the approximate number of vacancies. The vacancies which are to be included in the selection pursuant to this direction shall be deleted from the selection to be held as per direction (a).

e) Any candidate who has secured less than the cut off mark (i.e. 88) in the preliminary examination but has appeared pursuant to any interlocutory order of the Tribunal or otherwise, will not be considered as eligible for the main examination.

f) To dispel grievances regarding valuation in the second preliminary examination, it is appropriate that the Commission publishes on its notice-board and makes available for inspection by any candidate, list of marks obtained by candidates who are called for oral test on the basis of the result in the main examination as per direction (a).

g) The Government and the Commission take steps for regular direct recruitment as contemplated by the statutory provisions referred to earlier and G.O.Ms.No. 103."

5. Main examination for Group I of general recruitment

was conducted on 9.11.1991 and after the directions given by the Tribunal, a separate main examination was conducted for the 12 ST posts drawing the candidates from the two preliminary examinations. Deputy Collector from General recruitment I were appointed w.e.f. 9.12.1993.

6. As regards limited recruitment undertaken earlier, written test was held in May 1993 and selected candidates were appointed on 9.12.1994. The appellants who were appointed on 9.12.1994 filed O.A. No. 6246/1998 before the Tribunal claiming that they were entitled to be placed above the candidates selected and appointed as Deputy Collectors on 9.12.1993. The Tribunal rejected their claim of seniority and held that they were not entitled to be placed above the Deputy Collectors who were appointed on 9.12.1993.

7. The Deputy Collectors who were appointed on 9.12.1994 challenged this decision by filing W.P. Nos. 10604/2004 and 10965/2005 claiming the very same relief. The writ petitions were considered by a Division Bench of the High Court and the Division Bench could not agree on the question of seniority being assigned to the writ petitioner therein and the matter was placed before another learned Judge who agreed with one of the Judges of the Division Bench. The majority judgment of the High Court is to the effect that 12 Deputy Collectors who were selected by limited recruitment and appointed as such on 9.12.1994 were entitled to get seniority over the officers who were appointed as Deputy Collectors by general recruitment on 9.12.1993. The majority judgment of the High Court of Andhra Pradesh is challenged on various grounds.

8. It is submitted by the Counsel appearing for the State that the seniority of the officers who are directly recruited to the service is determined as per Rule 33 of the Rules. The relevant portion of Rule 33 is as follows:

"Rule 33. Seniority:

(a) The seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade. If any portion of the service of such person does not count towards probation under Rule 10 (a), (iv), 10(c), 16, 37(d), or 42(d) his seniority shall be determined by the date of commencement of his service which counts towards probation.

This sub-rule shall be deemed to have been in force on and from the 1st October, 1933 in the case of State Services and on and from the 1st October, 1934 in the case of subordinate services; but shall not affect the seniority of any member of a service, which may have been fixed expressly or by implication before the 19th November, 1941 or any orders as to seniority which may have been passed by competent authority before the 19th November, 1941:

Provided that the seniority of a

probationer or approved probationer in a service, class, category or grade from which he stood reverted on the 1st November, 1956 or prior to that date, shall be determined in the state-wide gazetted posts and the non-gazetted posts in the Departments of the Secretariat and the offices of the Heads of Departments, with reference to the notional date of continuous officiation arrived at by adding the total length of officiation with or without breaks in that service, class, category or grade prior to the 1st November, 1956 to the date of re-appointment made thereafter in accordance with the provisions of sub-rule (c) of Rule 8; but it shall not disturb the inter-se-seniority which obtained in the Andhra State.

(emphasis supplied)

(b) The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason the order of preference among them; and where such order has been fixed, seniority shall be determined in accordance with it;

Provided that for the purpose of promotion to the next higher category of gazetted posts, the inter-se-seniority of persons recruited direct to the subordinate services during the period commencing on the 1st November, 1956 and ending with 31st December, 1973, separately in Andhra and Telangana regions, shall be determined by the ranking assigned by the Andhra Pradesh Public Service Commission in the common ranking list or by the competent authority as the case may be, after following the rule of reservation.

- (c) \005..
- (d) \005.
- (e) \005.
- (f) \005."

9. Based on the above rule, it was contended that the Deputy Collectors by limited recruitment were appointed only on 9-12-1994 whereas Deputy Collectors who are recruited by general selection were appointed to the service on 9-12-1993. Therefore, in any case, the officers who are subsequently appointed cannot claim seniority over the officers who have already been appointed previously.

10. The Counsel for the respondents drew our attention to Rule 22 (ii) (e) of the Rules which says that the limited recruitment confined to candidates belonging to Scheduled Castes or, as the case may be, Scheduled Tribes shall be made immediately after the general recruitment to select and appoint qualified candidates when the reserved candidates are not available in the general recruitment. Rule 22 (ii) (e) reads as follows:

"If in any recruitment qualified

candidates belonging to the Scheduled Castes or as the case may be the Scheduled Tribes are not available for appointment to any or all the vacancies reserved for the Scheduled Castes or, as the cases may be, Scheduled Tribes, a limited recruitment confined to candidates belonging to the Scheduled Castes and/or as the case may be Scheduled Tribes, shall be made immediately after the general recruitment to select and appoint qualified candidates from among persons belonging to these communities to fill such reserved vacancies."

11. It was pointed out that in the earlier recruitment, sufficient Scheduled Tribe candidates were not available and, therefore, the Government issued direction to fill up the vacancies of Scheduled Tribe candidates and such recruitment should have been made first and then the general recruitment should have been made by the Commission.

12. In order to decide the above controversy raised by the appellants and the respondents, it is to be noticed that, in this case, the Commission issued an advertisement no. 8/90 for selection to the post of Deputy Collectors and various other categories. This advertisement was for selecting the candidates for general recruitment as well as for limited recruitment. The Commission conducted a Combined Preliminary Examination on 27.1.1991. A cut off mark of '88' was fixed for selecting candidates to appear for the main examination. The result of the Preliminary examination was announced on 25.7.1991. The main examination was scheduled to be held on 9.11.1991. Original applications were filed before the Administrative Tribunal challenging the cut off mark that was fixed at '88'. The Tribunal held that the cut off mark of '88' was illegal. It was directed that there should be a separate main examination for the limited recruitment candidates and this separate main examination was conducted only in May 1993. By that time, the general recruitment candidates were already selected and they were appointed on 9-12-1993. It may also be important to note that when advertisement no. 8/90 was issued by the A.P. Public Service Commission, the number of candidates to be recruited by limited recruitment was not fixed and the number of posts were identified only by the Government Order dated 1.4.1991. It is also to be noted that these 12 posts ought to have been filled up by promotion of ST candidates. As sufficient candidates were not available in the feeder category to fill up the post of Deputy Collectors, they were sought to be recruited by limited recruitment. It may also be noticed that a series of original petitions were filed before the Administrative Tribunal and they had given several directions as to how selection is to be conducted. That is evident from the Order passed by the Tribunal on 4.6.1992. This ultimately caused delay in the appointment of Deputy Collectors who were recruited by limited recruitment and they could join only on 9.12.1994. There may be delay on the part of the Commission in conducting the selection of the limited recruitment. Though they initially intended to have the combined recruitment of general as well as limited candidates, this did not happen due to various reasons.

13. Once the appointment had already taken place, under normal circumstances, the seniority is to be fixed on the basis of Rule 33(a) of the Rules. The Deputy Collectors who were recruited by general recruitment were appointed one year prior to the appointment of the contesting respondents herein. They claimed seniority over the candidates who were appointed one year prior to their appointment and filed the OA before the Tribunal only in the year 1998, about 4 years after their joining the service. Moreover, the fact that all the officers who were given posting on 9.12.1993 as Deputy Collectors were not impleaded in the Original Application. It was argued that the question of seniority was agitated before the Tribunal and the Government was a party and there was no finalization of the seniority till the date of the filing of OA. However, it is difficult to believe that they were not aware that they were treated as juniors to the officers who were already appointed and that the seniority list was not maintained till that date.

14. The contention of the Counsel for the respondents that Rule 22(ii)(e) has application in a situation where general recruitment is held and when sufficient number of reserved category candidates were not available and then Government orders for a limited recruitment, such limited recruitment confining to reserved candidates shall be made immediately after the general recruitment.

15. In the instant case, 12 vacancies of Deputy Collectors were decided to be filled up by limited recruitment and the posts were identified on 1.4.1991. All the 12 posts were ordered to be filled up by limited recruitment as there were no sufficient candidates to fill up by promotion. Rule 22(ii)(e) is applicable only when there is general recruitment and when there were no reserved candidates, these posts were to be filled up by a limited recruitment. Such a limited recruitment should be held immediately after the general recruitment is made. The rule 22(ii)(e) is intended to protect the interests of the reserved candidates and if again a general recruitment is made, there will be non-availability of reserved candidates and even if they are recruited subsequently, they would be much junior to the general candidates and they would be ranked as very junior to all the general candidates who had been appointed earlier. But as these 12 vacancies came to be converted from the promotion vacancies, they had a different channel of limited recruitment as the candidates were not available for promotion. But unfortunately such recruitment could not be done by the Public Service Commission in time, thereby their appointment could be made much after the general recruitment. As the facts disclose, there was only one general recruitment and that was followed by the limited recruitment of these 12 posts.

16. The two learned Judges of the High Court were of the view that Rule 22(ii)(e) is to be applied and the candidates recruited by limited recruitment have been appointed early and as there was delay in their appointment for no fault of theirs, they were entitled to get seniority over the candidates who were already appointed on 9.12.1993. This cannot be justified in the facts and circumstances of the case. It may be due to the delay caused by the Public Service Commission that there could not be timely appointment of the candidates who were recruited by limited recruitment. Various orders passed by the Tribunal also stood in the way of having recruitment as scheduled by the Commission. All

those orders had become final and they are binding on the authorities.

17. As the contesting respondents were appointed as Deputy Collectors vide G.O.M. Order No. 1251 dated 9.12.1994 they are not entitled to be placed above the Deputy Collectors who were appointed vide G.O.M. Order No. 1265 dated 9.12.1993. The Appeals arising out of SLP (C) Nos. 24667-24668 of 2005 filed by the Government of Andhra Pradesh are allowed.

18. The Appeals arising out of SLP (C) No. 25382-25383 of 2005; SLP (C) No. 26434-26435 of 2005 and SLP (C) No. 26436-26437 of 2005 are accordingly disposed of in the light of the Judgment in the appeal filed by the State.

JUDIS