

A

K. BALAKRISHNA RAO

v.

THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, DIVISION NO. 1
VIJAYAWADA, ANDHRA PRADESH AND ORS.

B

MAY 1, 2007

[C.K. THAKKER AND P.K. BALASUBRAMANYAN, JJ.]

Service Law:

C

Andhra Pradesh Ministerial Service Rules—Rules 27(1) (iii) and 16—Seniority—Temporary appointee seeking re-allotment to other Department from the Department originally allotted on selection—Regularisation in the cadre of Upper Division Clerks from, the date of temporary appointment—Seniority—Reckoning of—Rule 27 (1) (iii)—Applicability of—Held: Candidate became junior most in the cadre from the date of re-allotment to the other Department at his request in terms of Rule 27(1) (iii) and as such seniority to be reckoned on that basis—Andhra Pradesh State and Subordinate Service Rules—Rule 23(a)

D

E

Appellant-temporarily appointed as Upper Division Stenographer was selected in the direct recruitment process of Upper Division Stenographer conducted by the State Public Service Commission and was allotted to the Department of Printing. On the appellant's request, he was re-allotted to the Commercial Taxes Department for appointment as Upper Division Stenographers. The services of the appellant were regularized in the cadre of Upper Division Stenographer from the date of his first or temporary appointment under Rule 23(a) of the Andhra Pradesh State and Subordinate Service Rules. Thereafter, draft seniority list of Upper Division Clerks was published and the appellant was shown at Serial No. 60 whereas he claimed to be at Serial No. 39. The objection filed was rejected Appellant filed petition before the Tribunal which was allowed. Two affected persons challenged the same. Tribunal rejected the claim of the appellant. High Court held that the appellant had to be treated as an Upper Division Clerk from the date of re-allotment of the appellant to the Commercial Taxes Department as Probationer in the cadre of Upper Division Clerks and that in terms of Rule 16 of the Andhra Pradesh Ministerial Service Rules he had to be placed as junior-most

F

G

H

in the cadre in that Department in terms of Rule 27(1)(iii) of the Rules. Hence the present appeals. A

Dismissing the appeals, the Court

HELD: 1.1. The order passed in favour of the appellant in terms of Rule 23(a) of the Andhra Pradesh State and Subordinate Service Rules specifically leaves open the question of fixing his seniority at a later point of time, Rule 16(1) of the Andhra Pradesh Ministerial Service Rules specifically provides for application of Rule 27. [Para 7] [1074-C-D] B

1.2. It is undisputed that the appellant, on his selection, was originally allotted to the Printing Department. He sought a re-allotment and after eight months, he was re-allotted to the Commercial Taxes Department. In other words, he opted to get allotted or transferred to the Commercial Taxes Department. There is no reason to confine the operation of Rule 27 (1) (iii) of the Rules only to cases of transfer at the instance of the Heads of Department and as not applicable to a re-allotment on the basis of a request by a candidate selected by the Publish Service Commission. C D

[Para 7] [1074-D-E]

1.3. High Court was justified in holding that Rule 27(1) (iii) of the Andhra Pradesh Ministerial Service Rules applied to the instant case and the appellant became the junior-most in his cadre in the Commercial Taxes Department on his being re-assigned to the Department on 25.7.1979. thus, no ground has been made out for interference with the decision of the High Court. [Para 7] [1074-E-F] E

State of Tamil Nadu & Anr.v. E. Paripoornam & Ors., [1992] Supp 1 S.C.C. 420, referred to. F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2299 of 2007.

From the Final Judgment and Order dated 22.09.2004 of the High Court of Judicature at Hyderabad in W.P. No. 34297 of 1998. G

M.N. Rao, Tushar G. Rao, A. Ramesh and Promila for the Appellant.

R. Sundervardhan, Manoj Saxena, R.K. Singh and T.V. George for the Respondents.

The Judgment of the Court was delivered by H

A **P.K. BALASUBRAMANYAN, J. 1.** Leave granted.

2. The appellant was temporarily appointed as an Upper Division Stenographer on 14.8.1976 on being sponsored through Employment Exchange. The appellant thereafter participated in a direct recruitment process of Upper Division Stenographers conducted by the Andhra Pradesh Public Service Commission and was selected on 17.1.1979. He was allotted to the Department of Printing at Hyderabad. On the request of the appellant, he was re-allotted to the Commercial Taxes Department on 25.7.1979 for appointment as Upper Division Stenographer. He joined the Commercial Taxes Department as Upper Division Stenographer. On 21.2.1980, the Deputy Commissioner of Commercial Taxes, Krishna Division, passed an order to the effect that the services of the appellant, a temporary Upper Division Stenographer in the office of the Deputy Commissioner (C.T.), Vijayawada, who was selected and allotted to Krishna Division for appointment as Upper Division Stenographer by the Andhra Pradesh Public Service Commission are regularized in the cadre of Upper Division Stenographer with effect from 14.8.1976, the date of his first or temporary appointment, under Rule 23(a) of the Andhra Pradesh State and Subordinate Service Rules. But, it was clarified that his seniority will be decided in due course. It was declared that the appellant had completed his probation satisfactorily in the cadre of Upper Division Stenographer on the afternoon of 19.8.1978. The appellant was posted as Senior Assistant (Upper Division Clerk), which was said to be an equivalent post to Senior Stenographer (Upper Division Stenographer).

3. A draft seniority list of Upper Division Clerks was published and objections were invited. The appellant was shown at Serial No. 60. Claiming that he was entitled to be at Serial No. 39 in the light of the order passed under Rule 23(a) of the State and Subordinate Service Rules regularizing his service with effect from 14.8.1976, he filed an objection and a representation. Since his objection and subsequent representation did not yield fruitful result, the appellant approached the Andhra Pradesh Administrative Tribunal with a claim numbered as R.P. No. 3055 of 1987. Apparently, he did not implead any of the other Upper Division Clerks who would have been affected if his claim for being ranked at Serial No. 39 was accepted. But the Administrative Tribunal without regard to that fact allowed his application. A petition for reconsideration of the question, filed by two persons who were affected, was rejected by the Tribunal. This resulted in the affected persons, approaching this Court by way of a Petition for Special Leave to Appeal. This Court by judgment dated 29.8.1997 in Civil Appeal No. 5890 of 1997, set aside the

orders of the Tribunal and remanded the claim of the appellant to the Tribunal for being decided afresh on merits after hearing the aggrieved parties who were before this Court. Thereafter, the Tribunal rejected the claim of the appellant mainly on the basis that the appellant had sought a transfer to the Commercial Taxes Department from the Department to which he was originally allotted on selection and had thereby become junior most in the Department in terms of Rule 16 of the Andhra Pradesh Ministerial Service Rules. The Tribunal also did not accept the contention of the appellant that his seniority should be counted from 14.8.1976 in any event and not from 5.8.1980. Feeling aggrieved, the appellant approached the High Court of Andhra Pradesh. The High Court accepted the claim of the appellant to the extent that the appellant had to be treated as an Upper Division Clerk with effect from 25.7.1979 as the re-allotment of the appellant to the Commercial Taxes Department as Probationer in the cadre of Upper Division Clerks was on 25.7.1979. But, the High Court also took the view that since the appellant had been re-allotted to the Commercial Taxes Department at his request, in terms of Rule 16 of the Andhra Pradesh Ministerial Service Rules, he had to be placed as junior-most in the cadre in that Department in terms of Rule 27(1)(iii) of the Rules. Feeling aggrieved, the appellant has come up to this Court.

4. Learned Senior Counsel for the appellant contended that the High Court had wrongly interpreted Rule 27(1) of the Rules. When the appellant was posted as Upper Division Clerk, he was entitled to count his seniority as Upper Division Stenographer by virtue of G.O.M.S. No. 635 dated 13.9.1979 by which proviso (iv) to sub-Rule (1) of Rule 27 was substituted. He also contended that Rule 16 of the Andhra Pradesh Ministerial Service Rules had no application in respect of allotment made by the Public Service Commission and it applied only to cases where after allotment by the Andhra Pradesh Public Service Commission, transfers are effected by Unit Officers in consultation with each other pursuant to the request made by an employee for transfer from one departmental unit to another departmental unit. He also submitted that even if Rule 16 is held to be applicable, when he was re-allotted in the year 1979, he was the only person holding that post in the cadre and hence his seniority should be reckoned on that basis.

5. On behalf of the respondents, it is submitted that the Tribunal and the High Court were justified in holding that the appellant became the junior-most in the cadre on 25.7.1979 on his re-allotment to the Commercial Taxes Department at his request and that the order passed in terms of Rule 23(a) of the Andhra Pradesh State and Subordinate Service Rules, reserving the

A fixing of his seniority to a later date does not enable him to get out of the effect of Rule 27(1)(iii) of the Andhra Pradesh Ministerial Service Rules. Rule 16(1) also made such a transfer subject to Rule 27. The decision in *State of Tamil Nadu & Anr. v. E. Paripoornam & Ors.*, [1992] Supp 1 S.C.C. 420 was relied on to contend that the temporary service of the appellant prior to his regular appointment could not be counted for seniority. It was submitted that there was no reason to interfere with the decision of the High Court.

6. The High Court has assigned to the appellant the date 25.7.1979 in the cadre of Upper Division Clerk. In this appeal by the appellant, we do not see any reason to interfere with that finding.

C 7. The order passed in favour of the appellant in terms of Rule 23(a) of the Andhra Pradesh State and Subordinate Service Rules specifically leaves open the question of fixing his seniority at a later point of time. The argument on behalf of the appellant that Rule 27(1)(iii) of the Andhra Pradesh Ministerial Service Rules cannot be applied to the appellant cannot be accepted. Rule D 16(1) of the Andhra Pradesh Ministerial Service Rules specifically provides for application of Rule 27. It is undisputed that the appellant, on his selection, was originally allotted to the Printing Department. He sought a re-allotment and after eight months, he was re-allotted to the Commercial Taxes Department. In other words, he opted to get allotted or transferred to the Commercial Taxes Department. We see no reason to confine the operation of Rule 27(1)(iii) of the Andhra Pradesh Ministerial Service Rules only to cases of transfer at the instance of the Heads of Department and as not applicable to a re-allotment on the basis of a request by a candidate selected by the Public Service Commission. In our view, the High Court was justified in holding that Rule 27 of the Andhra Pradesh Ministerial Service Rules applied in the case on hand and the appellant became the junior-most in his cadre in the Commercial Taxes Department on his being re-assigned to the Department on 25.7.1979. We are therefore not satisfied that any ground has been made out for interference with the decision of the High Court.

8. In the light of this, we find no reason to interfere with the decision of the High Court. We affirm the same and dismiss this appeal.