

APHC010524092024



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3331]

WEDNESDAY, THE TWENTY NINETH DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION Nos.27026 and 27865 of 2024

WRIT PETITION No.27026 of 2024

Between:

T. Venkateswarlu (Hc 1472), and Others

...PETITIONER(S)

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner(S):

1.K MURALIDHAR REDDY

Counsel for the Respondent(S):

1.GP FOR SERVICES I

WRIT PETITION No.27865 of 2024

Between:

D Suresh Babu and Others

...PETITIONER(S)

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner(S):

1.K MURALIDHAR REDDY

Counsel for the Respondent(S):

1.GP FOR SERVICES I

The Court made the following:

COMMON ORDER

Since the issue involved in these two writ petitions is the same, they are disposed of by a common order.

2. The petitioners, working as Head Constable (HC) and Assistant Sub Inspectors of Police (ASIs) in the SPSR Nellore District filed the above two writ petitions, impugning the Fax/Radio Message *vide* C.No.1142/A1/2024 dated 19.11.2024 issued by the 3rd respondent to all the Superintendents of Police, Guntur Range for sending 58 ASIs/WASIs fit to act as S.Is (civil) for attending Pre-promotional training course, without preparing provisional integrated common seniority list and calling objections from all the stakeholders and publishing Final Seniority List, as illegal, arbitrary and contrary to Rule 34 of the Andhra Pradesh State and Subordinate Service Rules,1996.

3. Petitioners were enlisted/appointed as Police Constables (civil) in the year 1989 in the office of the 5th respondent-Superintendent of Police, Nellore. All the petitioners, along with, other police constables in Prakasam District were sent to pre-promotional training, fit to act as Head Constables (civil), on 18.01.2012 at Tirupati. After completion of pre-promotional training, the petitioners were promoted to Head Constables on 22.06.2012, whereas the police constables of Prakasam District were

promoted to Head Constables on 09.06.2012. The next promotion is Sub Inspector of Police (S.I) and it is a zonal post. The Guntur range consists of Guntur, Bapatla, Palnadu, Prakasam and Nellore Districts. The 3rd respondent initially issued Fax/Radio message vide C.No.1142/A1/2024 dated 06.11.2024 to all the Superintendents of Police, Guntur Range to identify 70 ASIs/WASIs to conduct a Departmental Qualifying Examination to HCs/ASIs (civil) fit to act as S.Is (civil). Thereafter, Fax/Radio Message vide C.No.1142/A1/2024 dated 19.11.2024, impugned herein, was issued, identifying 58 candidates, sending them to the pre-promotional training course commencing from 02.12.2024 to 11.01.2025. Though the petitioners are seniors as per their enlistment as Police Constables, they were ignored and the juniors, enlisted after them as Police Constables names were forwarded. Hence, the writ petition.

4. a) A counter affidavit was filed by the 3rd respondent. It was contended, *inter alia*, that the petitioners were initially appointed as Police Constables on 09.06.1989 and later promoted as Head Constables on different dates i.e. 20.06.2012, 22.06.2012, 25.08.2012 and 27.08.2012. In Prakasam District, the police constables of the 1992 batch were promoted to Head Constables (civil) on 09.06.2012. Based on the seniority lists of the respective units, a consolidated probable list was prepared. Only the senior HCs/ASIs were taken into account, according to their date of regularization as HC (civil). No junior in the cadre of HCs/ASIs (civil) were called for the Departmental Qualifying Examination for undergoing pre-promotional training of HCs/ASIs fit to act as S.Is (civil). The date of enlistment as PCs (civil) is not a criterion for pre-promotional training.

b) In Order No.73 of A.P. Police Manual, the periods of service in a rank are prescribed as conditions precedent to promotion to the next “higher rank”, in which for promotion to the cadre of Sub Inspectors (civil) minimum service of 5 years as HCs/ASIs (civil), have to be taken as criteria. Accordingly, a Radio Message in C.No.1142/A1/2024 dated 06.11.2024 was issued calling willingness/unwillingness of HCs/ASIs as per the promotion dates in the cadre of Head Constable to attend the Departmental Qualifying Examination. As per the common integrated seniority list dated 01.11.2024, the petitioners stood from serial No.88 onwards.

c) Out of the senior most 70 probable list, none objected to the seniority list. The most junior called from Prakasam District in the probable list was enlisted as a Police Constable (civil) in the year 1992, however, promoted to HC (civil) on 09.06.2012. The most junior called from Nellore District in the probable list was enlisted as a Police Constable (civil) in the year 1989 and promoted to HC (civil) on 22.06.2012. A provisional integrated seniority list of HCs/ASIs (civil) was prepared on 01.11.2024(“B” list as HC (civil)). The names of the petitioners are not in the probable list of HCs/ASIs (civil) fit to act as S.Is (civil) and eventually, prayed to dismiss the writ petitions.

5. In W.P.No.27865 of 2024, a reply affidavit was filed reiterating the averments in the writ affidavit. It was stated that the 3rd respondent had not prepared the integrated seniority list as required under Rule 2 (b) (ii) of the A.P. Police Subordinate Service Rules (for short “**APPSS Rules**”). The 3rd respondent has not reckoned the seniority as per Rule 15 (a) of the **APPSS Rules** and Rules 33 (a) and 34 of A.P. State and Subordinate Services Rules, 1966.

6. Heard Sri K.Muralidhar Reddy, learned counsel for petitioners and Sri S.Raju, learned Assistant Government Pleader for Services-I for respondents.

7. Learned counsel for petitioners would submit that the 3rd respondent failed to adhere to Rule 2(b) (ii) and 15 of the Andhra Pradesh Police Subordinate Service Rules issued under G.O.Ms.No.1263, G.A. (Rules) Department dated 26.08.1959. He would also submit that the seniority of a person in the class, category or grade shall be determined as per the date of his first appointment to such class, category or grade. He would submit that the petitioners were enlisted as Police Constables in the year 1989, whereas the persons identified by the 3rd respondent were enlisted as Police Constables in the year 1992. He would submit that the provisional integrated seniority list was not communicated to the petitioners, enabling them to submit objections.

8. Per *contra*, learned Assistant Government Pleader for Services-I, would submit that though the petitioners were enlisted/appointed as Police Constables in the year 1989, the persons whose names were mentioned in the probable list, were promoted as Head Constables before the petitioners. He would also submit that the integrated provisional seniority list of HCs/ASIs (civil) of Guntur Range as of 01.11.2024 (based on HC (civil) 'B' List) was prepared and all the petitioners were shown from serial No.88 onwards. He would submit that the seniormost 70 probable list was prepared and none of them raised objections regarding the seniority.

9. Now, the points for consideration are:

- a) **Whether the respondent authority failed to adhere to Rules 2(b) (ii) and 15 of the Andhra Pradesh Police Subordinate Service Rules?**
- b) **Whether preparation of the Civil 'B' list, is as per the Rules?**
- c) **Whether enlistment as a Police Constable, the criterion to reckon Seniority for eligibility to promotional training test to the post of SI (civil) or the seniority in the feeder category i.e. Head Constable?**

10. The points framed are interrelated and hence, they are dealt with commonly.

11. The Andhra Pradesh Police Subordinate Service Rules are special Rules issued *vide* G.O.Ms.No.1263, G.A. (Rules) Department dated 26.08.1959. Rule 2 of the APPSS Rules prescribes the method of Appointment and Promotion. Rule 2 (b) (ii), which is relevant is extracted below:

“(ii) Promotion to the posts of Inspectors of Police, Reserve Inspectors, Inspectors of Police Communications and Police Transport Organisation of Classes I, V and VI shall be made by the appointing authority from a list of candidates approved by the Inspector General of Police. **Promotion to the posts of Sub-Inspectors, Reserve Sub-Inspectors, Assistant Reserve Sub-Inspectors and Head Constables of Class I, IV, VI and VII and Radio Supervisors, Radio Technicians, Grade I, Operators, Carpenter (Head Constable) and Blacksmith (Head Constable) of Class IV shall be made by the appointing**

authority from a list of candidates prepared by that authority.”
(emphasis added)

12. Rule 15 speaks about Seniority. Rule 15 (a), which is relevant is extracted below:

“(a) The Seniority of a person in the class or category or grade, shall, unless he has been reduced to lower rank as a punishment be determined by the date of his first appointment to such class or category or grade. If any portion of the service of such person does not count towards his probation under the General Rules his seniority shall be determined by the date of commencement of his service which counts towards probation.”

13. While Rule 2 of the Rules deals with a class of employees eligible to be considered for the post of Sub-Inspector, Rule 15 speaks of the seniority of a person in the class or category or grade. It further makes it clear that the seniority shall be determined **by the date of his first appointment to such class or category or grade.** (emphasis added)

14. The words by the date of his first appointment to such class or category or grade gain significance. The contention of learned counsel for petitioners that the petitioners were appointed/enlisted as Police Constables in the year 1989 and hence, their seniority must be reckoned from 1989 in the class or category or grade to the post of Sub-Inspector, in the opinion of this Court, falls to ground and it has no merit consideration.

15. The Head Constable/ASI is the feeder category to the post of Sub Inspector of Police (civil). The words “first appointment to such class or category or grade” should mean employees working in that category, are

eligible to be promoted to the post of next category. One should not be oblivious to the birth of an employee in a particular cadre or grade.

16. It is profitable to refer to some of the precedents on this aspect.

17. In **Ganga Vishan Gujrati Vs. State of Rajasthan**¹, the Hon'ble Apex Court held thus:

“45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in [**Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 : 1990 SCC (L&S) 339**].

18. The principle was reiterated by the Hon'ble Apex Court in **State of Bihar Vs. Akhouri Sachindra Nath**², and held thus:

“Retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre. So also, seniority cannot be given with retrospective effect so as to adversely affect others. Seniority amongst members of the same grade must be counted from the date of their initial entry into the grade.”

19. This view has been re-affirmed by a Bench of three Judges of the Hon'ble Apex Court in **P. Sudhakar Rao Vs. U.Govinda Rao**³.

20. In the case at hand, the petitioners might have been enlisted as Police Constables in the year 1989, however, the other candidates who

¹ (2019) 16 SCC 28 : 2019 SCC OnLine SC 1072

² 1991 Supp (1) SCC 334 : 1991 SCC (L&S) 1070

³ (2013) 8 SCC 693

are identified and fit for training though appointed in the year 1992, were promoted/enlisted as Head Constables prior to enlistment of petitioners in the cadre of HC/ASI. As per the integrated seniority list prepared, the petitioners' seniority starts from 84 onwards.

21. The common integrated list of Head Constables/ASIs (civil) as of 01.11.2024 was prepared. In the said list, the senior most HCs/ASIs 70 persons called for to attend the Departmental Qualifying Examination *vide* Radio Message in C.No.1142/A1/2024 dated 06.11.2024 and those employees did not challenge the seniority list. As per the seniority list, the most junior called from Prakasam District in the probable list was enlisted as PC (civil) in the year 1992 and promoted as HC (civil) on 09.06.2012. The most junior called from Nellore District in the probable list was enlisted as PC (civil) in the year 1989 and promoted to HC (civil) on 22.06.2012. The most senior among the petitioners was enlisted as PC in the year 1989 and promoted as HC (civil) on 22.06.2012.

22. Thus, the above discussion makes the thing more than discernable that the respondent authority adhered to Rules 2 and 15 of the Rules. Even in the integrated provisional seniority list of HCs/ASIs impugned in the writ petition, some of the Head Constables of Nellore District, though enlisted as Police Constables on 09.06.1989, promoted as Head Constables on 05.09.2011, were also considered.

23. Given the facts and circumstances of the case, since the respondent authority adhered to the Rules and issued Radio/Fax Message *vide* C.No.1142/A1/2024 dated 06.11.2024, this Court does not find any merit in these writ petitions and the same are liable to be dismissed.

24. Accordingly, both the Writ Petitions are Dismissed. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE SUBBA REDDY SATTI

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