

S. JAFFAR SAHIB
v.
SECRETARY A.P.P.S.C. AND ORS.

OCTOBER 24, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Service Law—Appointment—Challenge of—After Lapse of 9 years—Held, cannot be entertained—Limitation Act.

Civil Procedure Code, 1908 : Order I Rule 9—Non Impleadment of necessary party—Effect of—Held, no Court or Tribunal can pass any order against the person whose rights would be affected without impleading him as party.

Appellant, a general category candidate, was denied appointment to the post of Deputy Collector for the recruitment year 1980-81. There were 10 vacancies, out of which 5 were reserved and 5 were for general category candidates. Respondents 4 to 9 (candidates of Backward Classes) were appointed.

Appellant challenged the appointment of the above-mentioned respondents, in 1987 before Administrative Tribunal on the ground that in the said appointment Rules of Reservations were violated since appointed persons from the reserved category were more than the percentage meant. Tribunal dismissed the application on the ground of laches, but observed that the representation could be considered for future vacancy. Appellant did not challenge the order of the Tribunal but made representation before the Public Service Commission which was rejected. Appellant filed another application in 1990 challenging the 1981 appointment, which was dismissed on the ground of laches. Review to the order was also dismissed.

In appeal to this Court, appellant contended that the appointments, having made contrary to Rules of Reservations, were invalid and inoperative.

Dismissing the appeal, this Court

HELD : 1. The contention of the appellant cannot be accepted at this

A belated stage. On the admitted facts that appointment of respondents to the post of Deputy Collector was made in the year 1981, an application before the Tribunal in the year 1990, could not have been entertained after lapse of 9 years. [721-F, H, 722-A]

B 2. Without impleading a person as a party whose rights would be affected, no Court/Tribunal can pass any order against him. In view of the fact that appellant has not made the affected persons parties to the proceedings, there is no justification for interference under Article 136 of the Constitution. [722-B]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13238 of 1996.

From the Judgment and Order dated 24.8.94 of the Andhra Pradesh Administrative Tribunal at Hyderabad in R.M.A. No. 2191 of 1994 read with O.A. No. 40498 of 1990.

D Appellant-in-Person.

K. Ram Kumar for the Respondent No. 1-3.

The Judgment of the Court was delivered by :

E PATTANAIAK, J. Leave granted.

F This appeal by special leave is directed against the order of the Andhra Pradesh Administrative Tribunal dismissing the appellant's application registered as O.A. No. 40498 of 1990 and the order dismissing the review application filed by the appellant which was registered as M.A. No. 2191 of 1994 by order dated 24th August, 1994.

G The Secretary, Andhra Pradesh Public Service Commission has issued an advertisement for the 20 posts in Group I services in the cadre of Deputy Collector for the recruitment year 1980-81 by a Notification dated 28th January, 1980. The appellant who was qualified and eligible to apply for the same, appeared at the written test conducted by the Public Service Commission and also appeared in the interview which was held on 19th January, 1981. It was decided to fill-up 10 posts of Deputy Collector out of which two posts were meant for Scheduled Castes, one for Backward Class Group 'A' and two for Backward Class Group 'D' and rest 5 for

H

candidates from open competition. The appellants belong to the last category whereas respondents 4 to 9 belong to Backward Classes category. The appellants challenging the appointment of the respondents on the ground that in making the appointment the concerned authority violated the provisions of the Rules of Reservations and in fact appointed persons from reserved category more than the percentage of reservation meant, filed an application in the Andhra Pradesh Administrative Tribunal which was registered as R.P. No. 6652. The Tribunal, however, did not interfere with the appointments made in the year 1981 on the ground of laches on the part of the appellants to approach the Tribunal but observed that the representation of the appellants may be considered for any future vacancy. The appellants thereafter made a representation to the Public Service Commission and the Commission rejected the same holding that the Commission has no power to consider anybody's application on compassionate ground. The appellants then filed a fresh petition before the Tribunal which was registered as O.A. No. 40498 of 1990 and the said application was dismissed by Tribunal on the ground of laches taking into account the fact that a selection made as early as in the year 1980 cannot be annulled in the year 1994 when the application challenging the said selection was filed as late as in 1990. The appellants then filed an application for review and the review application having been rejected by the impugned order dated 24th August, 1994, has approached this Court.

The appellants appeared in person in this Court and contended that appointments having been made contrary to the Rules of Reservations, the said appointments are invalid and inoperative. The appellants' right to be appointed was illegally taken away and therefore this Court should annul the appointment of the respondents forthright and direct reconsideration of the appellants' appointment. We are unable to accept this contention at this belated stage. As has been stated earlier the appellants challenged the appointment of the respondents before the Tribunal in the year 1987 and the Tribunal did not interfere with the appointments made in the year 1981 and the said order became final not being challenged in any higher court. The appellants then filed second round of petition in the year 1990 which was rejected by the Tribunal on the ground of laches and the application for review stood dismissed on the ground that there is no error of law apparent on the face of the order which can be reviewed by the Tribunal. On the admitted facts that appointment of respondents to the post of Deputy Collector was made in the year 1981, an application before the

- A** Tribunal in the year 1990 could not have been entertained after lapse of 9 years. Then again there is an additional hurdle on the part of the appellant namely affected persons are not made parties to the proceedings. It is too well settled that without impleading a person as a party whose rights would be affected, no Court/Tribunal can pass any order against him. In the aforesaid premises we find no justification for our interference under
- B** Article 136 of the Constitution with the impugned order of the Tribunal. The appeal is accordingly dismissed but in the circumstances there will be no order as to costs.

K.K.T.

Appeal dismissed.