

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

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AND

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THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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WRIT PETITION No. 13179 of 2004

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ORDER: (per Hon'ble Sri Justice G. Chandraiah)

In this writ petition, challenge is to the orders dated 17.09.2003 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.No.5001 of 1997. The petitioners herein are the respondents, and the respondents herein are the applicants before the Tribunal. For the sake of convenience, the parties will be referred to as they were arrayed before the Tribunal.

2. The facts of the case, in brief, that led to the filing of the present writ petition are as follows:

The 1st applicant was appointed as Junior Assistant on 19.04.1991, and the 2nd applicant was appointed as Attender on 07.04.1986 and later promoted as Typist on 30.11.1990. The next promotion of the applicants will be to the post of Senior Assistant. As the post of Senior Assistant being a seniority post, a panel of candidates is prepared based on an integrated seniority list of candidates pertaining to the categories of Junior Assistants/Typists/Steno-Typists. In addition, a person seeking promotion as Senior Assistant should pass Accounts Test for Subordinate officers Part-I. The 5th respondent was appointed as Typist on 03.05.1994 as such she is junior to the applicants. The 5th respondent passed the Accounts test in June 1990, and the

applicants passed the said test in November, 1996. The 1st respondent, vide proceedings dated 07.12.1996, prepared a panel of candidates for promotion to the post of Senior Assistant, and the applicants did not figure in that panel as they did not qualify in the accounts test at the time of preparation of the said panel. In July, 1997, a vacancy of Senior Assistant arose, and the 4th respondent addressed a letter to the 1st respondent on 21.03.1997 and also to the Regional Joint Director of Technical Education on 27.05.1997, but the 1st respondent did not include the name of the applicants in the said panel as the applicants qualified the Accounts Test after the preparation of panel of candidates, and promoted the 5th respondent.

The respondents filed counter stating that as per Para-1(b) of GOMs.No.436 GA dt. 15.10.96, the gazetted and non-gazetted posts are governed by the Andhra Pradesh State and Subordinate Service Rules (APSSS Rules) and Special Rules as well as Adhoc Rules. As per Rule 6(1) of the APSSS Rules, the appointing authority prepares a list of eligible employees every year i.e., from 1st September of the year to the 31st August of the succeeding year after considering the record sheet and the qualification prescribed for the said list in the relevant special rules for promotion to the next higher category of non-selection post. For promotion to the post of Senior Assistant, Accounts Test for Subordinate Officers, Part-I is the qualification. As the applicants qualified the said Accounts Test in November, 1996, their names were not included in the list prepared for the period 01.09.1996 to 31.08.1997 and hence the applicants are not eligible for the vacancy occurred in July as the list of eligible candidates holds

good upto 31st August of succeeding year 1996. Moreover, they have not appeared in the qualifying test before 1st September, 1996 as per the clarification issued by the Government in Memo No.29114/Ser.D/99-3 dated 25.6.1999. The names of the applicants were included in the list prepared for the year 1997-98 and they were promoted on 02.06.1998; and hence, the OA is liable to be dismissed.

The Tribunal, vide impugned orders, set aside the promotion given to the 5th respondent observing that by the date of filling up of the vacancy of Senior Assistant, both the applicants have secured eligibility and that the method of preparing panels for filling a non-selection post is bad. The Tribunal further observed that the post of Senior Assistant being a seniority-based post, the applicants who are senior to the 5th respondent ought not to have been overlooked for promotion as Senior Assistants, and hence directed the respondent authorities to effect promotion of the applicants as Senior Assistants.

3. Heard learned Government Pleader representing the petitioners. Though none appeared for the respondents/applicants, as the writ petition is of the year 2004 and also one of the specially identified cases for disposal, we are inclined to proceed with the disposal of the matter.

4. Having heard the learned Government Pleader and on a perusal of the impugned orders of the Tribunal, the only point that arises for consideration is whether the impugned orders of the Tribunal are illegal.

5. The Tribunal, while elaborately discussing the case on hand,

referred to the relevant rules under the A.P. Ministerial Service Rules, 1966, and the A.P. State and Subordinate Service Rules. And further, the Tribunal had also referred to the judgment of the Supreme Court in **T. Shair Sehab v. State of Mysore**^[1]. In **Shair Sehab (1 supra)**, the apex Court held as under:

“the relevant date for consideration whether a person is qualified for promotion or not is not the date of occurrence of the vacancy, but the date of which the promotions are ordered. If an employee has passed all the departmental tests on the date on which promotions are ordered he should be considered for promotion and the argument that had the promotions been made when the vacancies actually arose long time back the employee would not have been considered for promotion on the date of occurrence of the vacancy because he was not qualified then, has no force.”

6. A reading of the impugned orders would show that the finding of the Tribunal is that there is no dispute with regard to the fact that both the 5th respondent as well as the applicants, are seeking promotion as Senior Assistants, and that in the case on hand, A.P. Ministerial Service Rules, 1966, apply. And, by the date of filling up of the vacancy of Senior Assistant, the applicants have become eligible and that the method of preparation of panels in a case of non-selection post is bad. The Tribunal further observed that the respondent authorities have overlooked the applicants who are eligible and also senior to the 5th respondent. And hence, the Tribunal has rightly set aside the promotion of the 5th respondent and gave a direction to the respondent authorities to consider the candidature of the applicants for promotion as Senior Assistant.

7. In that view of the matter, we do not find any reason to interfere with the orders of the Tribunal and the writ petition is liable

to be dismissed. Further, in the instant writ petition, the 5th respondent in the OA is not the one who is the aggrieved party, instead the respondent authorities are the ones who are aggrieved and approached this Court by way of filing this writ petition. And, though interim suspension was granted by this Court on 13.09.2004 neither the respondent-authorities have impleaded the 5th respondent nor the 5th respondent has sought impleadment as a party-respondent in this writ petition. It is also brought to the notice of this Court that the 5th respondent has not filed any separate writ petition challenging the very same orders that are impugned herein.

8. In the circumstances, the writ petition is dismissed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

U. DURGA PRASAD RAO, J

12th November, 2015

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