

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

W.P. No.2067 of 2005

Between:

The Commissioner of Social Welfare,
Masabtank, A.P., Hyderabad and others. ... Petitioners

And

C.Ramanaiah ... Respondent

JUDGMENT PRONOUNCED ON 07.12.2015

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**THE HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
marked to Law Reporters/Journals. :
3. Whether their Ladyship/Lordship wish to
see the fair copy of the Judgment? :

**THE HON'BLE SRI JUSTICE G. CHANDRAIAH
AND**

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

W.P. No.2067 of 2005

ORDER: (Per the Hon'ble Sri GC, J)

This writ petition has been filed by the Government questioning the order dated 31.10.2002 passed in O.A. No.5195 of 1992 by the Andhra Pradesh Administrative Tribunal at Hyderabad.

The sole respondent herein was the applicant filed O.A. No.5195 of 1992 under Section 19 of the Administrative Tribunals Act, 1985 with a prayer to issue an order or direction to call for all the connected records including the impugned seniority list dated 03.12.1991 in Proceedings Roc.No.A2/591/91 issued by the 3rd respondent, District Collector (Social Welfare), therein and quash the same as illegal and further to declare that the applicant's services in the Tribal Welfare Department shall be reckoned while fixing seniority in the cadre of Grade-II Wardens in Social Welfare Department.

The learned Tribunal vide its impugned order dated 31.10.2002 disposed of the said O.A. directing the respondents therein to count the entire service of the applicant including the services rendered by the applicant in the Tribal Welfare and his seniority has to be fixed after considering both the services and notional benefits should be given after the date of filing of the petition and consequently the monetary benefits should be given if the applicant comes within the zone of consideration of seniority, necessary orders should be passed by considering his case for promotion within a period of six weeks, from the date of receipt of a copy of the order, if already retired from service, no monetary benefits be given but pension should be fixed on the basis of revision effected as per above guidelines. Aggrieved by the same, Government filed the present writ petition.

Along with the writ petition, Government also filed WPMP. No.2777 of 2005 wherein sought to suspend the orders passed in O.A. No.5195 of 1992 dated 31.10.2002 by the learned Tribunal and this Court on 10.02.2005 while ordering *rule nisi* granted interim suspension.

On behalf of the applicant vacate petition in WVMP. No.581 of 2005 has been filed and when this matter has been taken up by this Court on 28.11.2005

none were appeared therefore, the vacate petition was directed to be listed along with the writ petition and the main writ petition itself was directed to be listed for final hearing.

Today when the matter has been listed under the caption specially identified cases this matter has been taken up for hearing,

The learned Government Pleader submitted that the applicant was earlier working in the Tribal Welfare Department and at his request and option to take last rank in the list of Wardens in Social Welfare Department, he was absorbed as Warden, Grade-II in Social Welfare Department vide proceedings dated 05.11.1981. He has reported for duty as Warden in Social Welfare Department on 20.11.1981.

His services have been regularized in the cadre of Warden Grade-II w.e.f. 20.11.1981 in Social Welfare Department according to the provisions of Rule 16(1) of A.P. Ministerial Services Rules. He also submitted that since the applicant was absorbed in the Social Welfare Department at his request on the condition that he will take last rank in Social Welfare Department in the cadre of Grade-II Warden, question of taking the applicant as Grade-I Warden, though he got qualification, does not arise. Since the learned Tribunal failed to consider the case on proper perspective and passed the impugned order erroneously therefore, he requested to set aside the impugned order and to allow the writ petition.

As could be seen from the record, it is not in dispute that the applicant was earlier working in the Tribal Welfare Department and thereafter, he was transferred to Social Welfare Department.

Only dispute is that the service rendered by the applicant in Tribal Welfare Department had not been considered while absorbing him in Social Welfare Department for which the Government had taken the ground that at his request and option to take last rank in the list of Wardens in Social Welfare Department so he was absorbed as Warden, Grade-II. To that effect the Government had filed a proceedings in Roc.No.C/1538/81 dated 05.11.1981 wherein categorically mentioned that *“the following teachers who possess the said requisite qualifications and working in the department noted against each have requested to absorb them as wardens in the Social Welfare*

Department. They are given their option to take last rank in the orders of warden grade-II.” In the said proceedings the applicant’s name was placed at SI.No.1. Without disputing the said proceedings, the applicant approached the Tribunal and the learned Tribunal passed the impugned order with the following observation, which reads as under:

“In this case, the respondents were directed to produce the letter in which the applicant sought for transfer on his own request, agreeing to take a last rank but, no such letter is produced by the respondents even though, it is ordered twice and in spite of granting so much of time and passage of such a long time. In the absence of such production of the letter, it cannot be taken that it is a request transfer, but, it has to be treated as a transfer made on administrative grounds.

So, the respondents are directed to count the entire service of the applicant including the services rendered by the applicant in the Tribal Welfare and his seniority has to be fixed after considering both the services and notional benefits should be given after the date of filing the of this petition and consequently the monetary benefits should be given if the applicant comes within the zone of consideration of seniority, necessary orders should be passed by considering his case for promotion within a period of six weeks, from the date of receipt of a copy of this order, if already retired from service no monetary benefits be given but pension should be fixed on the basis of revision effected as per above guidelines.”

From the above, it is clear that the impugned order was passed only on the ground that even in spite of granting time to produce the letter in which the applicant sought for transfers on his own request, agreeing to take a last rank but no such letter is produced by the writ petitioner herein. Therefore, in the absence of such production of the letter, the learned Tribunal had

considered the transfer of the applicant as a transfer made on administrative ground in stead of request transfer.

The reasons best known to the writ petitioner that why the proceedings dated 05.11.1981, which has been filed as material paper in the present writ petition, could not be produced before the learned Tribunal. If the same had been produced before the learned Tribunal such an impugned order could not be expected from the learned Tribunal. At any rate, since the proceedings dated 05.11.1981 has been placed before this Court to the effect that the applicant had requested to absorb him as Warden in the Social Welfare Department and he has given his option to take last rank in the orders of Warden Grade-II, which has not been disputed by the applicant, at the relevant point of time, we deem it appropriate to set aside the impugned order.

Accordingly, impugned order is set aside and this writ petition is allowed.

As a sequel, miscellaneous petitions, if any, stands closed.
There shall be no order as to costs.

JUSTICE G.CHANDRAIAH

JUSTICE U.DURGA PRASAD RAO

Date: 07.12.2015
LSK