

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

W.P. No.2763 of 2014

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This Writ Petition is preferred against the order passed by the Andhra Pradesh Administrative Tribunal (for short 'Tribunal') in O.A.No.5373 of 2011 dated 07.11.2012.

The first respondent, a member of the Scheduled Castes, sought appointment, to the post of Municipal Commissioner Grade – III, under the physically handicapped quota. The Andhra Pradesh Public Service Commission, by its proceedings dated 02.01.2001, furnished a list of selected candidates for being appointed to the said post. The first respondent filed O.A.No.9917 of 2001 before the Tribunal for being appointed as a Municipal Commissioner Grade – III in the 6th vacancy earmarked for the physically handicapped. The Tribunal disposed of the O.A, by its order dated 09.03.2005, directing that the case of the first respondent be considered, and he be appointed as a Municipal Commissioner Grade – III. In the aforesaid order, the Tribunal noted that, since no other person was claiming the right for being appointed to the said post, as the first respondent was the only physically handicapped candidate, and as his disability was not disputed even in the counter affidavit filed by the Government, his candidature be considered for appointment. The Commissioner and Director of Municipal Administration, Hyderabad was directed to consider the first respondent's case for being appointed as a Municipal Commissioner Grade- III in any existing vacancy to be filled up under the physically handicapped quota, and to pass appropriate orders. Against the said order of the Tribunal, W.P.No.28227 of 2005 was filed before this Court and was,

subsequently, withdrawn on 20.04.2009. Consequently the order, in O.A.No.9917 of 2001 dated 09.03.2005, attained finality.

G.O.Ms.No.456 dated 14.07.2009 was issued appointing the first respondent as Municipal Commissioner Grade – III in the 6th vacancy earmarked for the physically handicapped, in the Group –II examination under notification No.10/1999. It was specified in the said order that the first respondent was not entitled to claim any seniority by virtue of the said order.

The first respondent submitted a representation thereagainst requesting the government to grant him the benefit of notional seniority. His request was rejected by proceedings dated 17.02.2011 holding that, as per Rule 33 of the Andhra Pradesh State and Subordinate Service Rules, 1996 (for short 'the Rules'), his request, for being given the benefit of notional seniority, could not be considered as his seniority was required to be determined from the date of his first appointment.

Questioning the said proceedings dated 17.02.2011, the petitioner invoked the jurisdiction of the Tribunal which, by the order under challenge herein, held that, as the appointment of the first respondent was delayed for no fault of his and, as he was appointed belatedly, he was entitled to his rank in the selection list, and he be given appointment accordingly. The Tribunal noted that it had earlier passed orders in the year 2005, whereas the order of appointment was issued only in the year 2009; the provisions contained in Rule 33 of the Rules would apply only when the candidates were appointed simultaneously, and joined within time; and, since the delay in appointment of the first respondent was for no fault of his, and as he had received orders of appointment of Municipal Commissioner Grade – III only in the year 2009, though the Tribunal had passed orders as early as in the year 2005, the Government should grant the first

respondent the benefit of notional seniority from the date of the order of the Tribunal i.e. 09.03.2005 till issuance of G.O.Ms.No.456 dated 14.07.2009.

Learned Government Pleader for Services would contend that the first respondent has not questioned the proceedings in G.O.Ms.No.456 dated 14.07.2009; Rule 33(a) of the Rules requires seniority to be reckoned only from the date of appointment, and not from any date prior thereto; and the first respondent is entitled to have his seniority reckoned only from the date of his actual appointment, and not from any period prior thereto.

Rule 33 of the Rules has no application as the delay in appointing the first respondent as a Municipal Commissioner Grade – III was for no fault of his, and was solely on account of the failure of the Government in not complying with the order of the Tribunal in O.A.No.9917 of 2001 dated 09.03.2005. We see no reason to deny the first respondent the benefit of notional seniority on the hyper-technical plea that G.O.Ms.No.456 dated 14.07.2009 was not subjected to challenge, as the first respondent had submitted a representation against fixation of his seniority, in terms of G.O.Ms.No.456 dated 14.07.2009; and, on his request being rejected by proceedings dated 17.02.2011, he invoked the jurisdiction of the Tribunal questioning the said order of rejection.

The Tribunal has denied the 1st respondent the benefit of notional seniority from 2001 to 2005, and has merely granted him the benefit of notional seniority from the date of its earlier order in O.A.No.9917 of 2001 dated 09.03.2005, though recruitment to the post of Municipal Commissioner Grade – III took place in the year 2001. The order of the Tribunal does not suffer from any legal infirmity necessitating interference under Article 226 of the Constitution of India.

The Writ Petition fails and is, accordingly, dismissed.
Miscellaneous petitions pending, if any, shall also stand dismissed.
There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY,J

Date:02.02.2015
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