

HON'BLE MR JUSTICE R. KANTHA RAO

Writ Petition No.27423 OF 2012

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ORDER:

This writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking a writ of mandamus declaring the impugned order passed by the 3rd respondent in R.C.No.A1/317/2012, dated 16.06.2012, rejecting the claim of the petitioner for fixation of pay on par with 4th respondent (Junior to petitioner) as highly illegal, arbitrary, and violative of Articles 14 and 16 of the Constitution of India.

Heard Sri G.V. Shivaji, learned counsel appearing for the petitioner, learned Government Pleader for Endowments appearing for the respondents 1 and 2, Sri V.T.M. Prasad, learned counsel appearing for the 3rd respondent and Sri K.Anand Rao, the learned counsel appearing for the 4th respondent.

The short question requires determination in the present writ petition is whether the petitioner is entitled to the pay scale on par with the 4th respondent.

It is submitted by the learned counsel appearing for the petitioner that the petitioner was initially appointed as Record Assistant on 29.02.1988 and thereafter he was promoted to the post of Junior Assistant on 03.07.1990. He was further promoted to the post of Senior Assistant on 05.05.1996. It is submitted that the petitioner passed B.Com. apart from departmental test under Endowments Act and Rules and also the Accounts Test for Subordinate Officers Part I & II. While so, the respondents declared the provisional seniority list of senior assistants working in the establishment of 3rd respondent as on 01.02.2000 wherein the petitioner was shown at Sl.No.5 and the said seniority list was confirmed vide proceedings of the 3rd respondent, dated 02.06.2000 wherein the place of the petitioner remained at Sl.No.5. The date of entry into service of the 4th respondent was 15.07.1993 and he was originally shown at Sl.No.7 and he was promoted along with the petitioner to the post of Senior Assistant. Thereafter, the respondents 2 and 3 promoted the 4th respondent vide proceedings dated 23.09.2002 and in pursuance thereof, the 3rd

respondent issued promotional order in favour of the 4th respondent vide proceedings dated 24.09.2002.

Since the petitioner was overlooked for promotion and the 4th respondent was promoted, the petitioner filed W.P.No.23889 of 2002. The learned single Judge while disposing of the said writ petition observed that though giving promotion to the 4th respondent ignoring the seniority of the petitioner is contrary to the service rules, it cannot be interfered with as the petitioner was also given promotion with effect from 09.05.2005. It is further observed by the learned single Judge that the 4th respondent is admittedly junior to the petitioner in the cadre of Senior Assistant, the same benefit has to be extended to the writ petitioner also. However, the learned single Judge was not inclined to cancel or set aside the promotion of the 4th respondent dated 24.09.2002. The learned single Judge while allowing the writ petition observed that all the benefits which were given to the 4th respondent in pursuance of his promotion, shall also be given to the writ petitioner, as he is senior to the petitioner. Subsequently, the pay scale of the 4th respondent was upgraded, but the claim submitted by the petitioner to fix his pay in the same pay scale was rejected by the third respondent vide proceedings dated 16.06.2012. Challenging the said proceedings, the present writ petition is filed.

In W.P.No.23889 of 2002, the finding that the petitioner is senior to the 4th respondent and that the petitioner is entitled to the same pay scale of the 4th respondent was recorded specifically by the learned single Judge and the same became final. Therefore, the third respondent ought not to have rejected the claim of the petitioner wherein he sought for fixation of his pay on par with the 4th respondent. The writ petition therefore deserves to be allowed.

In the aforementioned circumstances, the writ petition is allowed. The third respondent is directed to fix the pay of the petitioner on par with the 4th respondent in the category of Assistant Executive Officer, however, not exceeding the statutory limits prescribed under the Endowments Act. There shall be no order as to costs.

The miscellaneous petitions, if any, pending in this writ petition shall stand closed.

R.KANTHA RAO, J

Date:28.10.2015

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THE HON'BLE SRI JUSTICE R.KANTHA RAO

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