

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

CONTEMPT CASE No. 1742 OF 2015

ORDER: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This Contempt Case is initiated complaining that the respondent has purposefully and deliberately violated the directions contained in Writ Petition No. 18531 of 2012.

The petitioner herein instituted O.A. No. 12946 of 2009 before the Andhra Pradesh Administrative Tribunal, challenging the correctness and validity of the orders passed on 18.02.2009 by the District Educational Officer, Vizianagaram District, according promotion as School Assistant in favour of one Sri E. Sai Krishna Rao, the 4th respondent to the said O.A. The claim of the applicant that he is entitled to be promoted as a School Assistant in preference to the said E. Sai Krishna Rao, the 4th respondent to the O.A., has been upheld by the Tribunal for the reason that both the petitioner herein as well as the said Sai Krishna Rao appeared for selection in DSC 1998 and that in the overall merit list prepared, the petitioner herein figured at merit ranking No. 489, as he has secured 66 marks, whereas the said Sai Krishna Rao was figuring at Sl.No. 607, based upon the total marks secured by him standing at 65. When once two candidates compete for the same selections and that too by the same selecting agency, which draws a comparative merit list of candidates, the candidates, who have secured more merit are liable to be treated as senior to those who have secured less merit. The rationale behind being that those who have secured more merit have a right of first choice for appointment in comparison to those who have secured lesser merit ranking. Therefore, in the matter of promotion as a School Assistant, the District Educational Officer, Vizianagaram could not have ignored or failed to consider the place and claim of the present petitioner for such promotion and simultaneously, could not have preferred or taken up for consideration the claim of Sri E. Sai Krishna Rao. Hence, the Tribunal has set aside the order dated 8.02.2009, according promotion to the said Sri E. Sai Krishna Rao. The Tribunal has also declared that the petitioner is entitled to consequential benefits, such as arrears of salary, seniority, further promotion, etcetera. That order

of the Tribunal in O.A.No. 12946 of 2009 was the subject matter for consideration in Writ Petition No. 18531 of 2012, which was instituted by the Government of Andhra Pradesh, the Director of School Education and the District Educational Officer, Vizianagaram, challenging the correctness of the view of the Tribunal in that O.A. That Writ Petition came to be dismissed by this Court, by its order dated 01.07.2014, confirming the view taken by the Andhra Pradesh Administrative Tribunal in O.A.No. 12946 of 2009 as the correct one.

In view of the order passed by this Court in Writ Petition No. 18531 of 2012 dismissing the said Writ Petition and duly confirming the view taken by the Tribunal in O.A.No. 12946 of 2009, the District Educational Officer has passed the order on 23.06.2014 promoting the petitioner as a School Assistant with effect from the date on which initially Sri E. Sai Krishna Rao was promoted. The seniority of the petitioner herein in the cadre of School Assistant was also ordered to be reckoned with effect from the said notional date of appointment. When it came to the question of payment of arrears of salary, the District Educational Officer has pointed out that as per FR 26(aa), the petitioner herein, having not discharged the duties of a School Assistant, between 18.02.2009 up to 23.06.2014, is not entitled to be paid any salary and allowances in the cadre of School Assistant, but however, his pay will be fixed notionally in the cadre of School Assistant with effect from 18.02.2009 treating him to have been promoted as such with effect from the said date.

This action of the respondent, it is urged by the learned counsel for the petitioner as contumacious warranting initiation of action against him.

It is not in dispute that it is Sri E. Sai Krishna Rao, who has been promoted on 18.02.2009 and he continued to function till such time he was reverted from the post of School Assistant by realizing the error committed in according such promotion to Krishna Rao ignoring the claim of the petitioner. Therefore, for discharging the duties of School Assistant, salary attached to the said post has been paid to Sri Sai Krishna Rao during the said period. Now, if the petitioner were to be paid any such salary, simultaneously for the period from 18.02.2009 also, it would amount to making payment to two individuals in the rank of School Assistant as against one sanctioned post.

The State Government is bound by the principles of financial discipline. They can only draw funds from the Treasury towards payment of salary and allowances

corresponding to the sanctioned number of posts. Hence, equal number of employees alone can be paid salary and allowances. More number of employees than the sanctioned strength cannot be paid salary and allowances. At best, in a given case like in the present case, notional fixation of pay can only be resorted to, so that on the physical plane, the employee, who has been erroneously denied promotion, would not lose the benefits of drawing higher salary from the time his status gets restored pursuant to intervention of a Court. Therefore, we find no error much less any contempt committed by the respondent for us to initiate any action against him. Accordingly, this Contempt Case stands dismissed.

It goes without saying that by fixing the pay of the petitioner herein notionally with effect from 18.02.2009 up to his actual date of assumption as a School Assistant, he would be entitled for such notional benefit and upon such promotion, his salary and allowances shall be drawn from the stage where the notional fixation stops.

NOOTY RAMAMOHANA RAO, J

ANIS, J

24th November 2015

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