

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE MRS. JUSTICE ANIS

CONTEMPT CASES No. 1944 AND 2077 OF 2014

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

Contempt Case No. 1944 of 2014 has been instituted by the petitioners in Writ Petition No. 8487 of 2013. This Writ Petition along with four other cases has been dealt with by a Division Bench, which by its judgment dated 23.04.2014, disposed of all these cases, modifying the order passed by the Andhra Pradesh Administrative Tribunal (for short, 'the Tribunal') in O.A.Nos. 10548, 8650, 8649, 8648 and 10554 of 2012. In paragraph 3 of the order passed by the Division Bench of this Court in the aforementioned Writ Petitions, the petitioners were granted liberty to file objections to the show cause notice by raising all contentions including the plea of limitation and laches on the part of the applicants before the Tribunal and accordingly, they did raise the plea relating to limitation and laches on the part of the original applicants before the Tribunal. Now the Regional Deputy Director, Survey & Land Records, Kakinada, by his endorsement, dated 09.12.2014, agreed with the view canvassed by the writ petitioners and accordingly, the further action pursuant to the show cause notice dated 05.02.2013 was dropped. It is therefore, represented by Sri Aka Venkata Ramana, learned counsel for the petitioners in C.C.No. 1944 of 2014 that the cause in this Contempt Case does not survive for further adjudication.

C.C.No. 2077 of 2014 has been instituted by the sole petitioner by name Sri P. Durga Prasad. It is the assertion of the petitioner in this Contempt Case that the order passed by this Court in W.V.M.P.No. 1228 of 2013 in W.P.M.P.No. 9031 of 2013 in Writ Petition No. 7208 of 2013, dated 23.04.2014 has been violated by the respondents. It will be appropriate to notice that what the petitioner Sri P. Durga Prasad referred to is the same order which we have referred to in the preceding paragraphs. We have already noticed that the Division

Bench has preserved liberty to the petitioners in C.C.No. 1944 of 2014 to raise all such pleas including the plea of limitation and laches on the part of the original applicants before the Tribunal, in response to the show cause notice which was issued to the petitioners in the above C.C.No. 1944 of 2014 on 05.02.2013. It is thus clear that the present C.C.No. 2077 of 2014 is the one, which was instituted by the opposite group to the petitioners in C.C.No. 1944 of 2014.

The entire controversy has been generated all due to the order dated 31.12.2012 passed by the Tribunal at the admission stage in O.A.Nos. 10548, 8650, 8649, 8648 and 10554 of 2012.

Both the sets of the government servants are the members of the ministerial establishment of the Survey & Land Records Department of the Government of Andhra Pradesh. Their conditions of service relating to promotion, seniority, etcetera are regulated by the Andhra Pradesh Ministerial Service Rules, 1966. These 1966 Rules have been superseded by the Andhra Pradesh Ministerial Service Rules, 1998. Notwithstanding this supercession, since we are required to deal with a situation prevailing prior to 1998 Rules coming into force, we need to refer to the 1966 Rules. Promotion is regulated by Rule 23, which spelt out that promotion has to be ordered on the basis of seniority-cum-fitness. In other words, subject to rejection of the unfit, promotion is regulated by the seniority alone. It is not in doubt that the petitioners in C.C.No. 1944 of 2014 are seniors in the unit of seniority concerned to the petitioner in C.C.No. 2077 of 2014. It is also the assertion that the petitioners in C.C.No. 1944 of 2014 are seniors to all the applicants in the O.As. instituted before the Tribunal. It is also not in doubt that they were all granted promotions as Senior Assistants much prior to 01.04.1994 and that the petitioner in C.C.No. 2077 of 2014 and the other applicants in the O.As. before the Tribunal have not challenged any such promotion. In fact, it is not one promotion alone, but they have also got a further promotion as Office Superintendent, which also remained unchallenged. But however, the State

Government, through a memo dated 02.04.1994, got published an Erratum in the Andhra Pradesh Gazette. In paragraph 3, it was spelt out that a mistake has crept in while getting the Andhra Pradesh Ministerial Service Rules, 1966 published. More specifically, sub-rule (2) of Rule 23 of the said Rules, in Annexure – II, prescription of certain departmental tests, pass of which is a condition precedent, has been shown insofar as Survey, Settlement and Land Records Department is concerned as available only to the post of Office Superintendent, whereas it should have been reflected that pass in those departmental tests is also required for promotion to the post of Upper Division Clerk (since re-designated as Senior Assistant). For promotion to a Lower Division Clerk (since re-designated as Junior Assistant) as an Upper Division Clerk, by the Erratum published on 02.04.1994, it was now made clear that he has to pass the Revenue Test Part-I, II and III, apart from Account Test for Subordinate Officers Part I. By virtue of this Erratum, dated 02.04.1994, the pass in these departmental tests has become the requisite criteria to render one eligible for promotion to both the posts of Upper Division Clerk (Senior Assistant) and Office Superintendent. The claim of the petitioner in C.C.No. 2077 of 2014 and also those applicants in the O.As. before the said Tribunal was that the petitioners in C.C.No. 1944 of 2014 and similarly-placed employees, have not passed the departmental tests, but yet, they were promoted as Senior Assistants and Office Superintendents. But for the promotion thus accorded to them, erroneously, the petitioner in C.C.No. 2077 of 2014 and the other applicants before the Tribunal would have earned such promotions. Virtually conceding to this request, the Tribunal passed the orders on 31.12.2012. It is not in doubt that the petitioners in C.C.No. 1944 of 2014 and any other similarly-placed individual were not impleaded as party respondents.

It is a fundamental principle that if a promotion accorded to a particular person is squarely called in question, a *lis* has got to be brought impleading him as a respondent. By doing so, he will be

provided an opportunity of hearing by the adjudicating body. In the absence of any such proper and necessary parties, the *lis* is incapable of being effectively adjudicated. This apart, an order of promotion granted is required to be called in question in quick time. If a promotion order, which is granted prior to 02.04.1994, has not been called in question for more than 15 years, the promotee is entitled to sit back and consider that his promotion is not liable to be challenged at any time later on. Unfortunately, the Tribunal has not inquired as to the reasons why O.As. have been instituted in the year 2012, before it embarked upon the exercise of entertaining them. If a government servant submits a representation, even after lapse of years from the time the cause of action actually arose, some times, such a representation would evoke some response. In the instant case, the applicants claimed before the Tribunal that their representations have been rejected only in the year 2012 and hence, challenging the order of rejection, they were instituting the O.As. in the year 2012. It is therefore, incumbent upon the Tribunal to find out as to whether the representations could have been possibly entertained by the State Government or any other subordinate agency thereto in the year 2012 about a matter, which had taken place some time much prior to 01.04.1994. No such fundamental enquiry has been carried out. The consequence is the litigation is persisting.

But for the Erratum being published on 02.04.1994 by the State Government, till then, the department as well as the employees serving there were allowed to gain an impression that a pass in the departmental tests is only required for one to earn promotion to the post of Office Superintendent but not to the post of Upper Division Clerk (Senior Assistant). But for that impression, which the Unit Heads have gained, they would not have accorded promotion to the petitioners in C.C.No. 1944 of 2014 or their like. The explanation offered by Sri Y.S. Venkat Rao, learned counsel for the petitioner in C.C.No. 2077 of 2014 was that the petitioner in that Contempt Case

and the other applicants before the Tribunal were under the impression that all those persons, who earned promotion as Upper Division Clerks are all qualified by passing the departmental tests. The explanation offered would hardly cut the ice. While it is not difficult for us to understand that one employee in the unit may not be in the know of the fact whether another employee of the same unit has passed a particular departmental test or not, but it is certainly incumbent upon him, if he wishes to litigate, to ascertain all the necessary facts, at the first instance, itself. A party cannot wait for a number of years like 15 years and then assert saying that he has verified the facts only now and hence, he can litigate about an event that has taken place 15 years back. If we were to allow this, the very concept of seeking redressal for every grievance in real quick time would lose its significance and meaning and the concept of laches on the part of a litigant will have to be completely ignored. For the sheer failure of the Tribunal to embark upon the basic necessary exercise, before it decided the set of O.As. brought before it, on 30.12.2012, the parties have faced the present litigation. We sincerely regret that a proper effort, if only has been put in, the unwarranted litigation could have been easily avoided.

For no fault of the petitioners in the Contempt Cases, they have been thrust the above litigation. Therefore, the order passed by the Regional Deputy Director on 09.12.2014 dropping all further action, pursuant to the show cause notice dated 05.02.2013, is only liable to be upheld. The claim made by the other set of employees is a hopelessly belated one. This Court, on the previous occasion, while deciding the Writ Petitions, has granted liberty to the petitioners in C.C.No. 1944 of 2014 to raise a plea with regard to the laches on the part of the claimants to the contra. Therefore, we are of the opinion that the order passed by the Regional Deputy Director on 09.12.2014 is in accord with the order passed by this Court.

Sri Venkat Rao, learned counsel would submit that the same pleas raised by the petitioners and their like have been rejected by the

same Deputy Director earlier and once he rejects a similar plea, he becomes *functus officio* and therefore, the order passed by him subsequently dropping all further action pursuant to the show cause notice is not maintainable in law.

We are afraid, this contention lacks merit, for, the petitioner in C.C.No. 2077 of 2014 and the like of his are parties and in their presence, by a common order passed on 23.04.2014, the Division Bench of this Court granted liberty to the petitioners in C.C.No. 1944 of 2014 to raise a plea relating to the delay and laches in reply to the show cause notice dated 05.02.2013 and therefore, the official respondents are under a legal obligation to consider the same by virtue of the order passed by this Court to which they are parties. It is therefore, incumbent upon the Regional Deputy Director to have considered the objections raised by the petitioners in C.C.No. 1944 of 2014 and that is as a part of discharge of the duty as directed by this Court to be performed. Hence, no exception need be taken thereto.

Contempt Case No. 2207 of 2014 is therefore, dismissed.

In C.C.No. 1944 of 2014, no further action is needed to be initiated in view of the orders passed by 09.12.2014, which is in accord and in conformity with the directions issued by this Court on 23.04.2014. Hence, this Contempt Case also stands dismissed. No costs.

Consequently, the miscellaneous applications, if any shall stand dismissed.

NOOTY RAMAMOHANA RAO, J

ANIS, J

1st September 2015

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