

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

WRIT PETITION No.36755 of 2014

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ORDER: (Per RR,J)

The order under challenge in this writ petition is the order of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') in O.A.No.6877 of 2011, dated 11.07.2014.

The first respondent, a Police Constable in Band Group, Head Company, 5th Battalion, invoked the jurisdiction of the Tribunal questioning the legality of the proceedings dated 06.05.2010, the consequential order dated 07.07.2010, and the memo dated 16.12.2010. He sought a direction to the petitioners to assign him seniority in the cadre of Band Police Constables from 17.03.2004, and place him above the third respondent.

The first respondent herein was initially appointed as a Police Constable in the first petitioner battalion on 03.05.1994, and his services were later regularized. The third respondent was appointed in the same battalion as a Police Constable on 15.10.1995. The fourth petitioner herein deputed the first respondent for band training vide proceedings dated 17.03.2004 and, pursuant thereto, the first respondent successfully completed his training. He was also conferred an award by proceedings dated 29.05.2004. The third respondent was selected as a Band Police Constable in September, 2004 and sent for training. As his name was not shown in the seniority list of Band Police Constables, the first respondent submitted a representation to the second petitioner in the year 2005. Basing on the said representation, the

second petitioner relaxed the upper age limit, and directed that he be absorbed in the Band Group. In the provisional seniority list, the third respondent and another were shown above the first respondent. The first respondent, thereafter, submitted a representation to the second petitioner requesting that he be placed above the third respondent in the seniority list, but no avail. Aggrieved by the order rejecting his request, the first respondent invoked the jurisdiction of the Tribunal.

In the counter-affidavit filed before the Tribunal, the petitioners herein contended that, as per the memo dated 07.09.1996, the maximum age limit for inclusion in the specialized group is 35 years; the first respondent was overaged by the time of selection as a Band Police Constable in the year 2004; his case was, therefore, not considered for selection; subsequently, by memo dated 22.06.2005, his name was directed to be included as a reserve candidate for the year 2005; his name was, accordingly, included as a reserve candidate in the said year, and he was continued in the Band Group in the existing vacancy; and, therefore, his name figured below the name of the third respondent, in the seniority list for the year 2005.

In the order under challenge, the Tribunal held that there was no provision in the service rules to the effect that police constables, who were over and above the age of 35 years, were not eligible for conversion or absorption in Band Police Constable wing; in the absence of any prohibition in the service rules, no reliance could be placed on executive instructions; memos/guidelines cannot over-ride service conditions issued in the form of rules under Article 309 of the Constitution of India and other relevant Rules; and, therefore, the impugned orders need to

be set aside.

Before us, learned Government Pleader for Services would contend that, as the first respondent was granted relaxation in age and was appointed only in the year 2005, he was not entitled for seniority above those who were appointed in the year 2004.

Selection, for the post of Band Police Constables, took place in the year 2004. It is not in dispute that the first respondent was placed at serial No.2, and the third respondent at serial No.7 of the select list. But for the action of the petitioners, in holding that the first respondent had crossed the upper age limit of 35 years, he would have been appointed as a Band Police Constable in the year 2004 itself, and not the third respondent. The subsequent action of the second petitioner, in granting age relaxation, can only mean that the first respondent was eligible for appointment in the year 2004 itself and, consequently, he was entitled to be assigned his seniority from 17.03.2004, and be placed above the third respondent in the seniority list. The third respondent herein, who was fifth respondent before the Tribunal, remained *ex parte* and did not even contest the matter before the Tribunal. By the impugned order, the Tribunal has only conferred the benefit of promotion and notional seniority on the first respondent, and has denied him monetary benefits. 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. There shall be no order as to costs. The miscellaneous petitions, pending if any, shall stand closed.

RAMESH RANGANATHAN,J

M.SATYANARAYANA MURTHY,J

20th January, 2015
GHN