

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

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AND

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THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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WRIT PETITION No. 23911 of 2004

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ORDER: (per Hon'ble Sri Justice G. Chandraiah)

This writ petition is filed aggrieved by the orders dated 15.10.2004 in the Review MA.No.1802 of 2002 in O.A.No.3666 of 1993 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. The petitioner herein is the applicant before the Tribunal.

2. The background of the case, precisely, is that the applicant, who was appointed as a Physical Education Teacher on 04.07.1988, and later promoted as Physical Director Grade-II on 08.05.2000 approached the Tribunal by way of filing O.A.No.3666 of 1993 with the grievance that though certain vacancies of Physical Director Grade-II arose in the year 1991, two of his seniors, viz., Mr. V. Sree Ramulu and Mr. M. Mallesham whose services were not regularised by the date of arising of vacancies, were given promotion overlooking the applicant whose services were regularised and was qualified for promotion. The Tribunal, vide orders dated 30.08.2000, dismissed the said O.A. observing that though the services of the seniors of the applicant were not regularised as of 1991, but however, it is a fact that the said seniors entered into service on 25.06.1983, i.e., much prior to the applicant, and they have also put in eight years of service. The Tribunal further observed that though the said seniors were not approved probationers at the relevant point of time, but however their services were regularised with effect from 25.06.1983 itself, and further the fact of completion of eight years of service without any adverse remark, in

itself, is a satisfactory completion of probation. With regard to the contention of the applicant that he is entitled for notional seniority, the Tribunal observed that a case of notional seniority would arise only when a junior is promoted ahead of a senior or when the seniority of a person is revised with retrospective effect or when the adverse remarks in his service records were later expunged thereby he becomes entitled for promotion with retrospective effect. And hence, in normal circumstances, there cannot be any place for hypothetical considerations that, had the applicant's case been considered, he would have got promotion and such other presumptions.

Aggrieved by the orders dated 30.08.2000 in O.A.No.3666 of 1993, the applicant approached this Court by way of filing W.P.No.23901 of 2001. This Court, by orders dated 20.11.2001, disposed of the writ petition advising the applicant to file a Review Petition before the Tribunal, and further recording that the Tribunal, apparently, has not gone into the aspect of alleged illegal promotion of respondents 3 and 4 therein, and that it has not considered the argument of the applicant that by the date of arising of vacancy, the applicant was qualified for promotion, but the respondent authorities have not filled the vacancy with the applicant at the relevant point of time, instead kept the post vacant till the services of respondents 3 and 4 were regularised.

Pursuant to the orders dated 20.11.2001 passed by this Court in W.P.No.23901 of 2001, the applicant filed a review petition in Rev.MA.No.1802 of 2002, seeking review of the orders dated 30.08.2000 in O.A.No.3666 of 1993. The Tribunal, vide the impugned orders, dismissed the review petition, questioning which the applicant is before this Court with this writ petition.

3. The 1st respondent herein-Regional Joint Director of School Education, filed counter. A perusal of the counter would show that five vacancies of Physical Director Grade-II were identified in Zone-V and

the 1st respondent addressed letter dated 03.08.1990 to all the District Education Officers of Zone-V, to prepare a panel of 12 qualified Physical Education Teachers for the purpose of considering for promotion to the cadre of Physical Director Grade-II. In the seniority list, the petitioner stood at Serial No.10 and Mr. V. Sree Ramulu and Mr. M. Mallesham, who are senior to the petitioner stood at Serial Nos.8 and 9, respectively. And the unofficial respondents Mr. Mahaboob Mohiuddid and Mr. K. Vijaya Rao, stood at Serial Nos.6 and 7, respectively. Four vacancies were filled up with the said candidates at Serial Nos.6, 7, 8 and 9, and one post of Physical Director Grade-I at Government High School, Old Jagtial, was not filled up. It is also stated in the counter that, in the meantime, the Government issued G.O.Ms.No.40/Edn dated 07.02.1992 integrating the seniority of Government and Panchayat Raj teachers, but however, the said G.O. was no longer in operation due to several Court cases. Later, the Government issued G.O.Ms.No.538/Edn, dated 20.11.1998 regarding APSESS Rules and G.O.Ms.No.505/Edn, dated 16.11.1998 regarding APES Rules, as per which the Regional Joint Director of School Education is competent to fill up the posts of Lecturers in Physical Education in DIETs, and for the Physical Director Grade-II posts at the District Level, the District Education Officers are competent authorities. However, the said G.Os., were set aside by this Court in W.P.No.11325 of 2000, dated 18.09.2003, and the matter is now pending before the Hon'ble Supreme Court. It is further stated in the counter that as no junior to the petitioner was given promotion ahead of the petitioner, the case of notional seniority also does not arise and hence there is no illegality in the action of the respondents or infirmity in the order of the Tribunal.

4. Heard learned counsel for the petitioner and the learned Government Pleader for Services.

5. The contention of the petitioner is that Mr. V. Sree Ramulu and Mr. M. Mallesham, who were admittedly senior to the petitioner having been appointed in 1983, but as their services were not regularised and their probation not declared as on the date of arising of vacancy, should not have been promoted, instead the petitioner whose services were regularised should have been promoted. It was his further specific contention that the respondents, instead of promoting the petitioner at the relevant point of time, waited till regularisation of the services of seniors and they have not given any reasons for their wait. The said contentions of the applicant were discussed by the Tribunal elaborately at Paragraph 3 of the Order in the Rev. MA., (issue also referred at Paragraph 7 of the Order in O.A.), wherein it was observed that the respondents have made enquiries as to why the services of the seniors were not regularised though they have put in eight years of service, and as there were no adverse remarks, it was deemed that that they have satisfactorily completed their probation though a declaration of probation was, in fact, not made. However, the services of the seniors came to be regularised later with effect from 25.06.1983 i.e. the date of their joining service and therefore the contention of the applicant that the services of the seniors were not regularised and the respondents have waited till the services of the seniors were regularised, without their being any reason, was incorrect. Further, all the incumbents who were promoted prior to the petitioner were admittedly senior to the petitioner and none was junior, and hence, the aspect of notional promotion from a back date also does not arise as no junior was promoted ahead of the petitioner. The Tribunal has elaborately discussed all the aspects of the issue and held that the persons promoted prior to the petitioner were senior to the petitioner and that their services were regularised. In view of the cogent reasons given by the Tribunal, we do not see any ground for interference of this Court, either on facts or law, under Article 226 of the Constitution of India, and

the writ petition is liable to be dismissed.

6. The writ petition is accordingly dismissed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

U. DURGA PRASAD RAO, J

23rd November, 2015
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