

HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

HON'BLE SMT JUSTICE ANIS

WRIT PETITION No.7237 OF 2014

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

This Writ Petition is preferred by the respondents in Original Application No.413 of 2010, instituted by the first respondent herein, on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad.

The first respondent sought for a declaration that he is entitled for the benefits of pay scales, service seniority, increments, etc., on par with those candidates belong to 1989 batch.

The relevant facts are that the first respondent/ applicant was one among the several thousands of people who appeared for selection of Special Teachers in the year 1989. Though the selections were finalized, orders appointing them have not been issued. That resulted in several cases being filed before the Tribunal as well as in this Court. Ultimately, the matter was carried to the Hon'ble Supreme Court and based upon the judgment of the Hon'ble Supreme Court, the qualified candidates who have been selected earlier came to be appointed and in that process, 182 candidates in Karimnagar District were appointed on 19th August, 1996. The first respondent/applicant, who is one such candidate, has accepted the assignment and joined the service. Subsequently, his services have been removed on

17th September, 2001, nearly after five years period, on the ground that the marks obtained by him at the selections are not available. That resulted in the first respondent/applicant moving O.A.No. 6317 of 2001 before the Tribunal, which was allowed on 4th June, 2002 and the respondents in that O.A. were directed to appoint the applicant in any of the existing vacancies. Ultimately, the first respondent/applicant was issued orders of appointment on 14th November, 2009, but started treating him as a candidate appointed afresh. It is in the above backdrop that above O.A.No.413 of 2010 came to be instituted.

Heard the learned Government Pleader as well as

Sri P.Kishore Rao, learned counsel on behalf of the first respondent.

What really baffled us is this: the first respondent/ applicant was figuring in the merit list of the candidates selected for appointment as Special Teachers pursuant to the recruitment drive undertaken in the year 1989. But yet, such candidates were not appointed. After the Hon'ble Supreme Court rendered its judgment, the first respondent/applicant has been appointed on 19.08.1996 and five years thereafter, his services were sought to be terminated on the ground that the marks obtained by him during the selection process are not readily available. One wonders as to how the selected candidate is responsible for either preserving or the missing of register of marks. The confidential records relating to selection are supposed to be maintained by the agency which has undertaken the selection process. The selected candidates will not gain any access thereto, normally. Therefore, the onus lies on those who are making allegations about the missing record to demonstrate as to how the opposite person can be held responsible or accountable for his actions. Unless, a clear case is made out that the candidate has wrongfully been selected, orders of appointment issued to him five years prior thereto could not have been cancelled. The officers functioning under the control of the petitioners herein have failed to demonstrate the same. In that view of the matter, no exception can be drawn to the finding recorded by the Tribunal in O.A.No.6317 of 2001 filed by the first respondent/applicant. Therefore, the order of termination passed earlier against the first respondent/applicant on 17th September, 2001, cannot impact in any manner the first respondent/applicant at all.

As a measure of implementation, of the directions issued by the Tribunal, the petitioners came to be issued orders of appointment on 14.11.2009. But, however, it is set out that the appointment so made is liable to be treated as having been made afresh. No fresh appointment could have been made on 14.11.2009 without it being preceded by a process of selection carried out in accordance with law. If a person, whose services have been terminated, stakes a claim for reinstatement pursuant to a judgment rendered by a Court competent to try the lis, the reinstatement of such an individual would not normally amount to appointment afresh unless the Court, which tried the lis earlier, directs that the order of appointment should be treated as if it is made afresh. We have not found any such warrant in the order passed by the

Tribunal on the previous occasion while deciding O.A.No.6317 of 2001.

In that view of the matter, the action of the petitioners herein in treating the order of appointment of the first respondent/applicant dated 14.11.2009 as one made afresh is clearly unsustainable. We, therefore, do not see any justifiable reason to interfere with the order of the Tribunal passed in O.A.No.413 of 2010. If the petitioners really wanted to press in service any special equities, such as non-entitlement of payment of wages for the period of not rendering service, the same ought to have been pressed before the Tribunal, which is the forum liable to examine the questions of fact, at the first instance. No new question of fact be addressed to the High Court, which entertains a judicial review exercise.

Hence, we have no hesitation to dismiss this Writ Petition and we do so accordingly. But, however, without costs.

Miscellaneous Petitions, if any, pending in the Writ Petition, shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

Date: 11.08.2015

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