

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. 36339 of 2015

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

This writ petition is filed seeking to set aside the order dated 08.08.2012 in O.A.No.8336 of 2010 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad.

2. The petitioners herein are the respondents and the 1st respondent herein is the applicant in O.A.No.8336 of 2010 before the Tribunal, and hence, they are referred as such, for convenience.

3. The pleaded case of the applicant, precisely, is that consequent to the notification issued for the posts of Multipurpose Health Worker in the year 1995, the applicant, who passed Intermediate and undergone Midwives Training, apart from acquiring Diplomas in Health Promotion and also Nutrition, had applied for the post and stood successful in the selection process. However, as some unsuccessful candidates filed a case in O.A.No.196 of 1996 before the Tribunal, her appointment was delayed and she was appointed on 30.03.1997 as Multipurpose Health Worker (Female) in PHC, Ankoli, Adilabad District. For the purpose of effecting promotions to the post of Health Educator, which is a promotional post of Multipurpose Health Worker, the respondents have drawn up a Seniority List, consisting of her batch-mates who were

selected against the very same notification issued in 1995 in which the applicant also got selected, and the candidates were serving in the same post as that of the applicant. The applicant figured at Serial No.56 (Seniority No.64) in the Seniority List. It is stated that first sixty candidates in the Seniority List were promoted as Health Educators. However, as the applicant was appointed in 1997, her seniority was taken from 01.04.1997 and she was placed at Seniority No.64. It is her grievance that due to a case filed by certain unsuccessful candidates, she suffered delayed appointment for no fault of hers, and was also placed at incorrect seniority and though she is eligible in all respects, she was not promoted as Health Educator merely because she was appointed at a later date from that of other applicants whereas her batch-mates were promoted. In this backdrop, the applicant instituted the aforesaid O.A before the Tribunal.

The respondents filed counter stating that the applicant is governed by the Andhra Pradesh State and Subordinate Service Rules, 1966 (Rules, for short) and that her seniority is determined as per her date of joining and not as per the date of notification and hence there is no merit in the issue raised by the applicant.

The Tribunal, after hearing both the sides, allowed the O.A. by order dated 08.08.2012, and directed the respondents to consider the case of the applicant for promotion to the post of Health Educator along with the candidates of 1995 batch, based on the applicant's eligibility and applicable Rules.

Calling in question the legality of the order of the Tribunal, the present writ petition is filed.

4. Heard the learned counsel for the writ petitioners. None appeared for the 1st respondent/applicant.

5. Learned counsel for the writ petitioners would submit that seniority of a candidate is reckoned from his date of joining as per Rule 33 of the Rules, and due to filing of O.A.No.196 of 1996 before the Tribunal, and that the applicant was a party to the said O.A., and as the O.A. was disposed of in the year 1997, the applicant was appointed on 30.03.1997. It is further submitted that seniority

list is prepared at District Level for each District separately.

6. A perusal of the order impugned would show that the Tribunal, considering the judgment of Hon'ble Supreme Court in **Balwant Singh Narwal and Others v. State of Haryana and Others**, held that the facts of the case in the said judgment would apply to the facts of the present case. The apex Court, in **Balwant Singh (1 supra)** held that, in respect of a recruitment notification, if some candidates could not be appointed along with other candidates, due to certain technical difficulties, the seniority of such delayed appointees shall be placed above the candidates who are appointed against subsequent notification/vacancies. The Tribunal, in view of the Hon'ble Supreme Court judgment, rightly held that placing the applicant's name below the candidates of 1996 batch candidates cannot be tenable, and hence the applicant is entitled for notional seniority under 1995 batch and that she should be placed at the bottom of the Seniority List of 1995 batch candidates, but above the candidates of 1996 batch.

7. Hence, we do not see any reason to interfere with the orders passed by the Tribunal.

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

G. CHANDRAIAH, J

U. DURGA PRASAD RAO, J

12th November, 2015

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