

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

WP MP No.10611 of 2015 in W.P.No.1492 of 2002

and

W.P.No.1492 of 2002

Common Order:

In this writ petition, the petitioner seeks the following reliefs:

- (i) *To prepare a seniority list in the cadre of Stenographers as per sub-clause 3 Rule 21 of Nizams Institute of Medical Sciences Service Rules and as per the judgement of this Honourable Court in Writ Petition No.16579 of 1994 dated 11.07.1997;*
- (ii) *Consequently review the dates of promotion of petitioner and her co-recruitees as Senior Assistants/ Superintendents/Assistant Registrar based on the selection list of Stenographers/the ranking and merit obtained for the said post;*
- (iii) *And/or direct the respondents to grant all the benefits that have been granted to 5th respondent with all consequential benefits by setting aside the rejection orders dated 30.09.1999 and 19.04.2000 in this regard;*
- (iv) *Holding the action of respondents in not doing so as bad, illegal, irrational, arbitrary, discriminatory and violative of Articles 14, 16 and 21 of Constitution of India besides being violative of ratio laid down by the Honourable Supreme Court and also this Honourable Court and violation of sub clause 3 of Rule 21 of Nizams Institute of Medical Science Service Rules by issuance of Writ of Mandamus and*
- (v) *Promote the petitioner as Assistant Registrar in the existing vacancy or grant the scale of Assistant Registrar by treating the petitioner as Senior Assistant w.e.f. 11.02.1990 i.e. on which the 3rd respondent promoted as Senior Assistant and grant all consequential benefits and to grant all the benefits as given to the 5th respondent who is junior to the petitioner.*

2) The writ petition averments in brief are thus:

a) The petitioner was selected to the post of Stenographer by the *Nizams Institute of Medical Sciences* (for short “NIMS”) after going through the process of selection and she was appointed as Personal Secretary to the Director and she reported to duty on 06.11.1986. Along with her five others including 3rd and 4th respondents were selected all of whom joined duty on different duties. One out of six candidates resigned. Ranking among the six was neither mentioned nor communicated. The services of five candidates were regularised through proceedings dated 29.06.1988 and the petitioner’s probation was declared with effect from 12.11.1988.

b) The next higher post to Stenographer (Personal Secretary) is Senior Assistant for which the feeder cadres are Secretarial Assistants and Stenographers/Personal Secretaries. Through proceedings dated 12.08.1988, NIMS issued a list of Secretarial Assistants and Personal Secretaries to appear for interview on 16.08.1989 for considering their case to the post of Senior Assistants. In the said list, the 3rd respondent was shown above the petitioner though he was junior to her. However, she did not raise any objection for it since all the candidates were called for interview. Two candidates from Secretarial Assistants and one from Personal Secretaries were promoted as Senior Assistants in 1989. Since the promoted candidate from Stenographer’s cadre resigned, 4th respondent who was working as Stenographer along with petitioner was promoted as Senior Assistant in November, 1989. Since she was shown as senior to the petitioner, she had no objection for her promotion. While so, the 3rd respondent who was junior to

the petitioner promoted as Senior Assistant in February, 1990. One of the co-recruitees—K.Satyanarayana objected and submitted a representation dated 20.03.1990 but of no avail. Later the said Satyanarayana, petitioner and several candidates from Secretarial Assistants who were of 1987 recruitees, were promoted as Senior Assistants by proceedings dated 28.06.1991.

c) While so, as per proceedings dated 01.06.1994 the NIMS released the provisional seniority list of Senior Assistants and called for objections if any, there in the 3rd respondent was shown at Sl.No.6 and petitioner was shown at Sl.No.12 taking the date of appointment in the said cadre. It was obvious that 3rd respondent who was junior to her in the Stenographer cadre, was placed above her in the promotional post. When enquired, it was falsely informed to her that 3rd respondent obtained more marks than K.Satyanarayana and petitioner in the selection for Stenographers. If the seniority list and merit list were prepared and communicated at the inception stage of Stenographers, such illegality would not have taken place. Immediately the petitioner made a representation dated 06.06.1994 objecting the provisional seniority list. However, through proceedings dated 23.08.1994 her objections have been rejected confirming the provisional seniority list and through another proceedings dated 23.08.1994, promotions to the next post of Superintendents were effected basing on the aforesaid seniority list, whereby the 3rd respondent and even some of the 1987 batch of Secretarial Assistants were promoted as Superintendents. Subsequently, the petitioner and some other Secretarial Assistants of 1987 batch were promoted as Senior Assistants

on 01.07.1991 and they were shown above the petitioner in the cadre of Senior Assistants. Thus again injustice was meted out to the petitioner.

d) Challenging the illegalities, the petitioner filed W.P.No.16579 of 1994 seeking a writ of Certiorari calling for the records connected with the proceedings dated 23.08.1994 and quash the same and consequently direct the respondents to assign the petitioner correct position in the seniority list of the Senior Assistants over and above 3rd respondent and grant all consequential benefits such as seniority and promotion. In the said writ petition records were called for from NIMS and it was noticed that in terms of marks and ranks, K.Satyanarayana (respondent No.6 in the said W.P.) stood first followed by petitioner and respondent No.3. Thus, it was observed that since the petitioner obtained more marks than 3rd respondent she had to be placed in the seniority list, higher than 3rd respondent but below K.Satyanarayana. The said writ petition was allowed directing the authorities to fix the inter-se seniority of petitioner, respondent No.6 and respondent No.3 by inter-changing the names at appropriate places in the order of ranks assigned by the selection committee to them and effect the said order from the date of final selection list i.e. 23.08.1994.

e) The NIMS through proceedings dated 21.08.1997 rectified the seniority in the Senior Assistant cadre by pushing the 3rd respondent down and bringing the petitioner above him and issued a consequential proceedings dated 11.09.1997 granting notional promotion to the petitioner in the cadre of Superintendent w.e.f. 26.08.1994 i.e. the date on which 3rd respondent was promoted.

f) Pending writ petition the petitioner was already promoted as Superintendent on 15.05.1997 and as such her promotion was revised w.e.f. 26.08.1994. Though the petitioner's post as Superintendent was revised back with effect from 26.08.1994, however, her post as Senior Assistant had not been related back to 16.02.1990 on which date 3rd respondent was illegally promoted as Senior Assistant and since that relief was not granted in the writ petition, she preferred W.A.No.1111 of 1997 before the Division Bench and the same is pending by the date of filing the instant writ petition. The learned Single Judge since did not incline to quash the 2:1 ratio fixed by the Director, NIMS between the two cadre posts which was challenged by the petitioner as illegal, and consequently did not disturb the seniority of respondents 4, 5, 7 and 8 over the petitioner, the petitioner had to prefer Writ Appeal No.1111 of 1997 on that ground also.

3) While so, challenge in this Writ Petition however, are some more alleged injustices. The grievance of the petitioner is that had the authorities, pursuant to the judgment in W.P.No.16579 of 1994, rectified the ranks of entire batch of Stenographers selected in the year 1986, the petitioner may get seniority over even T.Madhumathi—4th respondent herein, and even get promotions in various cadres on the dates on which Madhumathi secured. Hence, in the writ petition the 4th respondent is added as party.

a) 5th respondent is concerned, the grievance of the petitioner is that he has been working as Legal Assistant in NIMS and wrongly advising the organisation. He not only denied the rightful claim of the petitioner but also espoused his own cause and obtained innumerable benefits for which he was

not entitled to. Originally he was appointed as Examiner in District Court, Machilipatnam on 10.06.1987 and brought on deputation to NIMS as Legal Assistant on 11.11.1989, though there is no such post in NIMS but on the ground, his wife is also working as Secretarial Assistant in NIMS. He joined in the time scale of Stenographer of 1986 batch similar to petitioner. He was junior to petitioner. However, as per representation dated 21.02.1990 he was given the scale of Senior Assistant w.e.f. 01.03.1990 i.e. even prior to the petitioner. Similarly, he was given the scale of Superintendent w.e.f. 01.01.1994 prior to the petitioner. Thus he was getting better scales earlier to petitioner. Not satisfied, 5th respondent sought for promotion on par with T.Madhumathi (4th respondent) as Assistant Registrar. Though his request was initially rejected by the Executive Board on 17.03.1998, the same was reconsidered on 14.06.1999 and he was granted the scale of Assistant Registrar with effect from 01.07.1999. Against the aforesaid acts, the petitioner made representation dated 30.07.1999 to grant her benefits on par with 5th respondent and the same was rejected on 30.09.1999 and she preferred appeal and the same was rejected by proceedings dated 19.04.2000. The petitioner again made representations on 08.12.2000, 25.06.2001 and 30.10.2001 seeking to grant her the reliefs given to the 5th respondent but her requests were not considered by the authorities.

Hence, the instant writ petition seeking several reliefs as listed at the beginning on par with respondents 3 to 5.

4) Respondents were served but no counter was filed. When the matter came up for hearing on 09.12.2014 there was no representation for petitioner

as well as respondents 1 to 4. Learned counsel for respondent No.5, Sri P.V.Ramana appeared and submitted that petitioner who was working as Assistant Registrar by then had opted for voluntary retirement which was approved by NIMS management and relieved her from duty on the A.N. of 24.04.2007 and hence no cause survived to her in the writ petition. He produced proceedings in Rc.No.3/182/89/H1/2007 dated 25.04.2007 of the Executive Registrar NIMS to that effect. Considering the same, this Court dismissed the writ petition holding that no cause survived for the petitioner.

5) Aggrieved, the petitioner filed WPMP No.10611 of 2015 to re-call the dismissal order dated 09.12.2014 and hear the arguments of petitioner as she had a good case and in the event of succeeding the writ petition, she would get monetary benefit.

a) Notice was ordered in the said petition.

b) 5th respondent alone filed counter against the re-call petition but others did not. However, respondents 1 and 2 filed their counters in the main writ petition and so also the 5th respondent. Opposing the re-call petition, the 5th respondent would contend that since the petitioner left the organisation by submitting voluntary resignation, the writ petition was rightly dismissed and hence the re-call petition was not maintainable.

c) This Court considering the fact that irrespective of petitioner had resigned, still, if she succeeds in the writ petition she would be entitled for the monetary benefits as she fights in the writ petition against the injustice allegedly meted out to her in the matter of promotions at various cadres,

inclined to allow re-call petition and accordingly ordered the same today and consequently the dismissal order dated 09.12.2014 is set aside.

6) Coming to the main writ petition, in the counter filed by respondents 1 and 2 they would contend that the writ petition was not maintainable as the petitioner took voluntary retirement on 24.04.2007 without raising any objection relating to fixation of seniority and monetary benefits etc. and hence she cannot challenge the same in the writ petition; the authorities prepared seniority list of Secretarial Assistants and Personal Secretaries vide proceedings dated 12.08.1989 and 23.05.1991 and the petitioner had not raised any objection thereof; the petitioner filed W.P.No.16579 of 1994 questioning the action of the Institute in showing her name below the name of the 3rd respondent in the seniority list and the said writ petition was allowed setting aside the impugned proceedings dated 26.08.1994; thereafter the writ petitioner filed W.A.No.1111 of 1997 aggrieved by the order in W.P.No.16579 of 1994 insofar as **not granting** relief to the petitioner against respondents 4, 5, 7 and 8 and the said writ appeal was allowed on 04.06.2002 and the order of the learned single Judge was set aside insofar as it went against the appellant and the Division Bench directed the Executive Registrar to prepare the seniority list of Senior Assistants in the light of their judgment taking into account the total length of service put in by each of the concerned employees in the feeder categories of Secretarial Assistants and Personal secretaries without following any ratio and promote the appellant to the post of Senior Assistant with effect from the date on which her immediate junior i.e. 3rd respondent was promoted and promote her to the post of

Superintendent etc. with effect from the dates on which her immediate juniors have been promoted with all consequential benefits—pecuniary and otherwise; in compliance of the order in writ appeal, the NIMS has prepared the seniority list and given promotion to the petitioner as Office Superintendent and Assistant Registrar and paid all the monetary benefits; the petitioner accepted those benefits without any demur and subsequently she opted for voluntary retirement and relieved from duties on A.N. of 24.04.2007; the 5th respondent was appointed as Legal Assistant on transfer from Judicial Ministerial Service and the post of Legal Assistant was an isolated one and there were no promotional avenues to the said post and hence up-gradation of scales was given to him from time to time and the said Legal Assistant post cannot be compared with Secretarial Assistants and Senior Assistants etc.; when the 5th respondent repatriated and his pay scale was reduced, he filed W.P.No.23250 of 2001 and the said writ petition was allowed with a direction to treat him as regular employee of the Institute for all purposes; the prayer of the writ petitioner for granting her all the benefits that have been granted to 5th respondent with all consequential benefits was untenable because the post of Legal Assistant was entirely different, his qualification, duties and responsibilities cannot be compared with other posts and therefore, there was every justification in rejecting the petitioner's representation by the Executive Board on 30.09.1995 and 19.04.2000; some of the employees in the feeder cadre of Secretarial Assistants filed W.P.No.13419 of 1999 and obtained *status quo* against the seniority list of Secretarial Assistants and the Institute would finalize the seniority list of

Secretarial Assistants/Personal Secretaries/Senior Assistants/Office Superintendents on disposal of said writ petition. Thus, respondents prayed for dismissal of the writ petition.

7) In his counter respondent No.5 would plead that the writ petition was misconceived and not maintainable; the appointment of petitioner and 5th respondent were in different and distinct categories and there can be no common seniority list between them; the benefits granted to the 5th respondent as Legal Assistant have nothing to do with the claims of the petitioner; if the contention of the petitioner that the benefits given to the 5th respondent were illegal is true, the petitioner also cannot claim such illegal benefits for herself; the petitioner unnecessarily dragged the 5th respondent to the litigation by abusing the process of the Court; she applied for voluntary retirement and left the service and therefore, the writ petition was not maintainable.

8) It may be noted, the writ petitioner filed a reply-affidavit against the counters filed by respondents 1 and 2 pleading that pending the writ petition, W.A.No.1111 of 1997 filed by the petitioner was allowed and by virtue of directions in the writ appeal the claim of the petitioner to the extent of 3rd respondent was fulfilled and fructified; so far as the claim of the petitioner relating to 4th respondent is concerned, the 4th respondent is also a co-recruitee of 1986 batch of Personal Secretaries but, however, she was promoted as Senior Assistant and Superintendent and even as Assistant Registrar w.e.f. 13.11.1989, 15.11.1993 and 25.01.1997 respectively and if proper seniority list was prepared in the lower cadre/initial cadre as directed

in W.P.No.16579 of 1994 and W.A.No.1111 of 1997 and if it was found that the petitioner secured higher marks than 4th respondent, the petitioner would be entitled for promotion to the post of Senior Assistant, Office Superintendent and Assistant Registrar with effect from the aforesaid dates when the 4th respondent was given successive promotions; further, even assuming 4th respondent was entitled to be treated as senior in the initial cadre i.e. Personal Secretaries, still the petitioner will be entitled for promotion to the post of Assistant Registrar as on 25.01.1997 on which date 4th respondent was promoted, instead of 24.02.2003 on which date the petitioner was promoted for the reason that 4th respondent did not fulfil the requirement of passing Accounts Test as per Rule 7(1) (b) of Standing Order 7 as on 25.01.1997; whereas the petitioner passed the said test in May, 1997; sofaras 5th respondent is concerned, though he was junior to the petitioner, in spells and bounds, he was given all benefits in the scale of Senior Assistant, Superintendent and Assistant Registrar much prior to the petitioner and the representation made by the petitioner on 30.07.1999 against the illegal promotion of the 5th respondent was rejected on 30.09.1999 and the appeal preferred by her was also rejected on 19.04.2000 and since such rejection was illegal, the petitioner would be entitled to all benefits on par with the 5th respondent; her taking voluntary retirement would not affect her claim in the writ petition as her claims relate to the period she was in service.

9) It may be noted that as against the above reply-affidavit filed by the writ petitioner, a rejoinder was filed by respondents 1 and 2 pleading that the petitioner was promoted as Office Superintendent and Assistant Registrar

following the orders in W.A.No.1111 of 1997 on which dates 3rd respondent was also given promotion and petitioner was paid the arrears of salary but she filed C.C.No.1184 of 2002 against the respondents for implementation of the orders in W.A.No.1111 of 1997 but the same was dismissed at the admission stage itself and thus the grievance of the petitioner was fulfilled; respondent No.4 was concerned, she was given promotions as Senior Assistant, Office Superintendent and Assistant Registrar from time to time basing on the seniority list of said cadre and writ petitioner had not filed any objections to the seniority of 4th respondent and hence the petitioner cannot claim benefits on par with 4th respondent; 4th respondent passed departmental test of Executive Officer conducted by APPSC before she was given promotion of Office Superintendent and Assistant Registrar which test was higher than the Accounts test for Subordinate Officers Part-I and II; as per Standing Order No.6 dated 25.11.1994, a person working as Senior Assistant in Accounts wing must pass Accounts test for Subordinate Officers Part I and II for being promoted as Superintendent but those tests were not mandatory for the Senior Assistants who were working in Administrative wing; since 4th respondent has been working in Administrative side from the beginning of her service, 4th respondent was given promotion without passing departmental test; further, the Director has power to consider and relax the Standing Orders and 4th respondent was promoted temporarily as Assistant Registrar and in the meanwhile she passed the test; the petitioner took voluntary retirement of her own and not because of any harassment and the petition filed by her before Human Rights Commission in HRC No.1089 of 2012 was dismissed; the

allegations made against 5th respondent that as he was working in the legal cell, he could get all the benefits was not true and correct.

10) Heard arguments of Sri J.Sudheer, learned counsel for petitioner, Sri G.Anandam, learned counsel for respondents 1 and 2 and Sri P.V.Ramana, learned counsel for respondent No.5. None appeared for respondents 3 and 4.

11) Sri J.Sudheer, learned counsel for petitioner while admitting that pursuant to the judgment in W.A.No.1111 of 1997 and pending the present writ petition the NIMS authorities implemented the order and conferred benefits to the petitioner on par with the 3rd respondent by placing her above him, however, would contend that still the petitioner had some grievances with reference to respondents 4 and 5 and her promotions need to be effectuated on par with respondents 4 and 5.

a) In expatiation, he would submit that if the authorities implemented the NIMS Service Rules strictly as per the directions contained in W.P.No.16579 of 1994 and W.A.No.1111 of 1997 and fixed the seniority of the petitioner, respondents 4 and 5 and K.Satyanarayana in the initial cadre of Personal Secretaries and if it is found that the petitioner got higher rank than 4th respondent, she will be entitled to the promotions in the cadre of Senior Assistant, Superintendent and Assistant Registrar on the dates on which such promotions were conferred on 4th respondent. Further, the 4th respondent was given promotion as Assistant Registrar with effect from 25.01.1997 even though she did not qualify for promotion as she had not passed the Accounts Test which was a pre-requisite for promotion, but the petitioner had such

qualification and hence the petitioner would be entitled to be promoted as Assistant Registrar with effect from 25.01.1997.

b) Sofaras respondent No.5 is concerned, learned counsel would contend that he was junior to petitioner in the sense that the petitioner was appointed as Stenographer in the year 1986 whereas the 5th respondent was appointed as Examiner in District Court, Machilipatnam in the year 1987 and he was brought on deputation to NIMS in 1989 as Legal Assistant though there was no such post in the Institute and though there were no promotional posts for him, still he was given promotional scales much prior to the petitioner because of his manipulations and therefore, the petitioner also deserves promotions either prior or on par with him and her voluntary retirement has nothing to do with the claims made in the writ petition.

12) Per contra, the argument of Sri G.Anandam, learned counsel for respondents 1 and 2 is that writ petition is misconceived inasmuch as the respondent authorities have conferred all the benefits to the writ petitioner pursuant to the judgment in W.P.No.16579 of 1994 and W.A.No.1111 of 1997 and therefore, no cause survives for petitioner to claim any benefit.

a) Opposing the petitioner claiming benefits on par with the 4th respondent, learned counsel argued that as per the seniority list prepared pursuant to the judgment in W.A.No.1111 of 1997, the 4th respondent stood above Sri K.Satyanarayana, petitioner and 3rd respondent. In that view of the matter, the petitioner cannot have any grievance when the 4th respondent was given promotions as Senior Assistant, Superintendent and Assistant Registrar

prior to her. The promotion of the 4th respondent as Assistant Registrar is concerned, as she was working in the Establishment/Administrative Section but not in Accounts Section, she was not required to pass Accounts Test and on the other hand, she passed an equivalent test i.e. Executive Officer Test and considering the same she was promoted as Assistant Registrar on 25.01.1997. The petitioner has not challenged the promotion of the 4th respondent and waited till filing the instant writ petition and even in the present writ petition also, she did not claim any specific relief against the 4th respondent and it was only in reply-affidavit, that the petitioner for the first time claimed as if the 4th respondent has not passed the qualifying test and she was not eligible for promotion as Assistant Registrar. In view of such long delay there are no merits in the contention of the petitioner and she is not entitled to claim any benefit on par with 4th respondent.

b) Sofaras petitioner's claim against the 5th respondent is concerned, learned counsel vehemently argued that the selection procedure, cadre, nature of work of petitioner and 5th respondent are quite different and therefore, she cannot claim any parity with the 5th respondent. He would contend that, at any rate, since the respondent authorities have scrupulously implemented the orders in W.P.No.16579 of 1994 and W.A.No.1111 of 1997, nothing is left out for petitioner to claim in the present writ petition.

13) Sri P.V.Ramana, learned counsel for respondent No.5 also argued in the same lines and contended that the petitioner cannot claim parity with 5th respondent since their cadres are different. On this aspect he relied upon the following decisions.

1. *State of Punjab vs. Joginder Singh*¹
2. *Union of India vs. E.S.Soundara Rajan*²

14) The point for determination is:

“Whether there are merits in the Writ Petition to allow?”

15) **POINT**: As can be seen, writ petitioner’s case had a chequered career and this is the second round of litigation. In the earlier round of litigation in W.P.No.16579 of 1994, her grievance appears to be two fold: (i) the NIMS authorities have not prepared the seniority list of Stenographers/Personal Secretaries basing on the rank and on the false pretext that 3rd respondent had superior rank, granted him promotions prior to her; (ii) for promotional post of Senior Assistant, the feeder cadres are Secretarial Assistants and Stenographers/Personal Secretaries. The Director of NIMS without any authority and approval from the Governing Council, earlier fixed the ratio of 1:1 between the two feeder cadres and later changed into 2:1 with effect from 01.07.1991. The respondents 4, 5, 7 and 8 in W.P.No.16579 of 1994 were originally appointed as Secretarial Assistants in the year 1987 subsequent to the appointment of the petitioner as Stenographer in 1986 and by applying the ratio of 2:1 they were promoted to the post of Senior Assistants before the petitioner and placed above her. The NIMS authorities released the provisional seniority list of Senior Assistants on 01.06.1994. The petitioner submitted representations raising several objections against the above anomalies and by order dated 23.08.1994 her objections were rejected confirming the provisional seniority list. Hence, the petitioner filed

¹ AIR 1963 SC 913

² AIR 1980 SC 959

W.P.No.16579 of 1994 seeking a writ of Certiorari calling for the records relating to the proceedings No.3/225/E1/92 of 1st respondent dated 23.08.1994 and to quash the same and consequently direct the respondents to assign the petitioner correct position in the seniority list of the Senior Assistants over and above the 3rd respondent and grant all consequential benefits including seniority and promotion.

a) In W.P.No.16579 of 1994, learned single Judge opined that the main controversy was, however, with regard to inter-se seniority in the same cadre i.e. Personal Secretary between the petitioner and the 3rd respondent and resolving the said controversy was necessary in the writ petition. Inasmuch as the respondents 4, 5, 7 and 8 were from a different category, they have been made a party to the writ petition as they were persons likely to be affected by any decision in the writ proceedings as they were placed above the petitioner in the impugned seniority list. The learned single Judge accordingly proceeded and verified the record produced by the NIMS authorities and found petitioner obtained more marks than 3rd respondent and opined therefore, that she had to be placed in the seniority list at the rank higher than 3rd respondent but below Sri K.Satyanarayana—6th respondent. Ultimately, the learned single Judge allowed the writ petition and directed respondent No.1 to fix the inter-se seniority of petitioner, respondent No.3 and respondent No.6 by inter-changing their names at appropriate places in the order of ranks assigned by the selection committee to respondent No.6, petitioner and respondent No.3 and effect in that order of ranking from the date of final seniority list i.e. 23.08.1994. Thus, the learned single Judge has

not resolved the validity of the ratio fixed by the NIMS and propriety in placing respondents 4, 5, 7, and 8 above the petitioner. Aggrieved, the petitioner filed W.A.No.1111 of 1997 before the Division Bench of this High Court.

b) Pending above Writ Appeal, the petitioner fumigated the instant writ petition against some more alleged misdeeds of respondents 1 and 2. According to her, since the 3rd respondent was promoted as Senior Assistant with effect from 16.02.1990, she should also get promotion with effect there from. Further, since the authorities have not prepared the seniority list in the cadre of Stenographer as per Rule 21(3) of Nizams Institute of Science Service Rules (for short NIMS Service Rules), the petitioner was not quite sure whether Smt.T.Madhumathi—4th respondent who was a co-recruitee and who was given promotions ahead of petitioner, was in fact, senior to her in rank or not. Therefore, it is the wish of the petitioner that the authorities should prepare seniority list in the cadre of Stenographer as per Rule 21 (3) of NIMS Service Rules and consequently review the dates of promotion of the petitioner and her co-recruitees in all cadres. It is also her grievance that 4th respondent was promoted as Assistant Registrar without her having passed the Accounts Test, which was pre-requisite for promotion. Respondent No.5 is concerned the petitioner alleges that he was the root cause for her travails. He was appointed as Examiner in District Court, Machilipatnam in the year 1987 and brought on deputation to NIMS as Legal Assistant though there was no such post and though cadre wise he was junior to the petitioner, he had been given promotional scales from time to time much earlier to the

petitioner. She gave representations against the authorities granting him promotional scales ahead of her but they were rejected by orders dated 30.09.1999 and 19.04.2000. According to the petitioner, he was the man behind in seeing her representations were rejected. Thus, it is the claim of the petitioner that authorities shall accord her also the benefits that have been granted to the 5th respondent.

Hence the instant writ petition.

16) Pending the present writ petition, W.A.No.1111 of 1997 was disposed of on 04.06.2002. The Division Bench agreed with the contention of the petitioner/appellant and observed that fixation of ratio 1:1 and changing the same to 2:1 was unauthorised and illegal and it cannot be applied for promotion to the post of Senior Assistant from the feeder cadres of Secretarial Assistants and Personal Secretaries. It further observed that if the ratio was eschewed, it was just and reasonable that the appointing authority should determine the seniority of the appellant and the unofficial respondents for promotion to the higher post taking into account the total length of service in the feeder category. The Writ Appeal was accordingly allowed setting aside the order of the learned single Judge insofar as it went against the appellant and in substitution thereof, the proceedings of the Director of NIMS dated 23.08.1994 were quashed and respondents 1 and 2 were directed to prepare the seniority list of Senior Assistants taking into the total length of service put in by each of the concerned employees in the feeder categories of Secretarial Assistants and Personal secretaries without following any ratio and promote the appellant to the post of Senior Assistant with effect from the

date on which her immediate junior, 3rd respondent was promoted and promote her to the post of Superintendent etc. with effect from the dates on which her immediate juniors have been promoted with all consequential benefits—pecuniary and otherwise.

17) Respondents 1 and 2 in their counter specifically pleaded that they have implemented the directions in W.P.No.16579 of 1994 and W.A.No.1111 of 1997 as well. They also pleaded that some of the employees of feeder cadre of Secretarial Assistants have filed W.P.No.13419 of 1999 and obtained *status quo* order in respect of seniority list of Secretarial Assistants and the said writ petition was pending and that the Institute would finalise the seniority list of all categories—Secretarial Assistants/Personal Assistants/Senior Secretarial Assistants/Office Superintendents on disposal of above writ petition. The said fact was confirmed by petitioner. In fact in her reply-affidavit, the petitioner stated that W.A.No.1111 of 1997 was disposed of during the pendency of present writ petition and by virtue of the same the claim of the petitioner to the extent of 3rd respondent was fulfilled/fructified. Learned counsel for writ petitioner, Sri J.Sudheer would fairly concede that the petitioner has no grievance as against the 3rd respondent by virtue of subsequent events i.e. disposal of Writ Appeal.

In the light of above, petitioner's claims with reference to respondents 4 and 5 alone need to be adjudicated in the instant writ petition.

18) Petitioner and the 4th respondent were admittedly selected for the post of Stenographer in the year 1986. The claim of the petitioner *qua* 4th

respondent is that if the authorities prepared the seniority list in the category of Stenographers as per Rule 21(3) of NIMS Service Rules and as per the directions in W.P.No.16579 of 1994 and if the petitioner by virtue of her rank stood above the 4th respondent, then the petitioner would be entitled to be promoted as Senior Assistant, Superintendent and Assistant Registrar on the dates when the 4th respondent was promoted to those posts as the authorities have promoted the 4th respondent to those posts prior to petitioner on the premise that the 4th respondent was senior to petitioner by virtue of rank.

19) The following is the comparative statement showing the details of the 4th respondent and petitioner as revealed from the material papers submitted by both parties.

Sl.No.	Name of candidate	Date of joining as Personal Secretaries	Joining as Senior Assistant	Joining as Superintendent	Joining as Assistant Registrar
1	T.Madhumathi (R4)	03.11.1986	13.11.1989	15.11.1993	25.01.1997
2	P.Srilakshmi (Petitioner)	06.11.1986	Originally 01.07.1991 but revised as 16.02.1990 by virtue of judgment in W.A.No.1111 of 1997	Originally 15.05.1997 but revised as 25.08.1994 by virtue of judgment in W.A.No.16579 of 1994	24.02.2003

20) As can be seen, admittedly the 4th respondent was given promotions in each cadre earlier than petitioner. The question is, yet, whether the petitioner can have any grievance under law. The copy of the proceedings in Rc.No.3/97/86/H3 dated 01.11.2002 produced by the respondents 1 and 2 along with material papers would show that the authorities, pursuant to the

judgment in W.P.No.16579 of 1994 and W.A.No.1111 of 1997, have prepared a seniority list which is as follows:

1. Sri J.Bhaskar Rao
2. Sri K.Mohan
3. Smt.T.Madhumathi
4. Sri K.Satyanarayana
5. Smt.P.Srilakshmi
6. A.Ramachandra Rao

The above would indicate that T.Madhumathi—4th respondent stood above K.Satyanarayana, petitioner and 3rd respondent in the order of ranking and seniority. The endorsement on the above copy shows that petitioner had received copy of the above proceedings without any protest. Thus the petitioner has not challenged the above fixation of seniority. Since the 4th respondent was senior to petitioner since the inception stage, she would naturally get promotions in different cadres prior to petitioner and for that matter the petitioner cannot ventilate any grievance.

21) Then, the promotion of the 4th respondent to the post of Assistant Registrar w.e.f. 25.01.1997 is concerned, the contention of petitioner is that 4th respondent did not fulfil the requirement of passing Accounts Test for Subordinate Officers Part-I and II conducted by APPSC as required under Rule 7(1)(b) of Standing Order 7, dated 21.11.1994 as on 25.01.1997, whereas the petitioner passed the said test by May, 1997 and the 4th respondent passed the said test much later than the petitioner and if 4th respondent was not promoted as Assistant Registrar w.e.f. 25.01.1997, the petitioner would have been promoted as Assistant Registrar from May, 1997 and therefore, the petitioner is to be treated as Assistant Registrar on par with

4th respondent from 25.01.1997. Whereas the contention of respondents 1 and 2 is that 4th respondent passed departmental test of Executive Officer conducted by APPSC before she was given promotion of Office Superintendent and Assistant Registrar, which test was higher than the Accounts Test. They would further contend that as per Standing Order 6 dated 25.11.1994 a person for promotion/appointment by transfer to the post of Superintendents/Senior Assistants in the Accounts Wing must pass the Accounts Test of Subordinate Officers but there is no such need to pass the said test by the Senior Assistants and Superintendents who are working in Administrative Wing and since the 4th respondent was working on Administrative side, she need not pass Accounts Test and so she was given promotion. Further, the Director has power to relax the Standing Orders and moreover, the 4th respondent was promoted temporarily as Assistant Registrar and in the meanwhile, she passed the test.

a) The claim of the petitioner *qua* the 4th respondent is preposterous and cannot be accepted. Irrespective of the fact whether or not 4th respondent attained requisite qualification and whether or not authorities have power to relax condition, admittedly, the petitioner too had not attained the qualification by 25.01.1997 as she passed the Accounts Text only in May, 1997 and therefore, she could not be a competitor for 4th respondent when she was given promotion. The petitioner has not challenged the promotion of 4th respondent as Assistant Registrar either after January, 1997 or atleast after May, 1997 with the allegations as now contended, by filing a writ petition. Even in the present writ petition also, the petitioner has not made any

allegations of the alleged disqualification of 4th respondent and no relief is claimed to that effect in the list of reliefs. It is only in reply-affidavit, the petitioner for the first time alleged as if the 4th respondent had not attained required qualification by 25.01.1997 and that petitioners promotion as Assistant Registrar should also be effected from 25.01.1997. Such a belated claim of the petitioner, who too admittedly not attained qualification at the relevant time, cannot be considered at this length of time.

22) The petitioner cannot have grievance against respondent No.5 either. As rightly contended by learned counsel for 5th respondent, the petitioner and 5th respondent belonged to two different categories. The petitioner was appointed as Stenographer/Personal Secretary, whereas 5th respondent belonged altogether to a different institution i.e. he was Examiner in District Court, Machilipatnam and later he was brought on deputation as Legal Assistant to NIMS. It may be that his initial appointment as Examiner was in the year 1987 which was subsequent to petitioner as Stenographer. However, their appointment and nature of duties are quite different. Since in deputation post he had no promotional avenues, the authorities might have considered his case and granted promotional scales from time to time. Hence, petitioner cannot draw any analogue with him.

23) In **Joginder Singh**'s case (1 supra) when the provincialised teachers were treated differently from Government teachers in some respects and when the provincialised teachers contended it as violation of Article 14, the Apex Court held that the two services started as independent services and the qualifications prescribed for entry into each service were different and the

method of recruitment and the machinery for the same were also being different and the general qualifications possessed by and large by the members of each class being different, there was no question of *inter se* seniority between the members of two services, nor any comparison between the two in the matter of promotion for accepting an argument based on Article 14 or Article 16(1). It further held that they started dissimilarly and they continued dissimilarly and any dissimilarity in their treatment would not be a denial of equal opportunity. In *E.S.Soundara Rajan*'s case(2 supra) also the Apex Court expressed the same view. The ratio in those decisions would equally apply with all force to the present case. Therefore, the petitioner's contention cannot be accepted.

24) So, at the outset, there are no merits in the writ petition. Accordingly, the writ petition is dismissed, but in the circumstances no costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 27.09.2016

Murthy/Scs