

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.35723 of 2016

Order: (per V.Ramasubramanian, J.)

The School Education Department of the State of Andhra Pradesh has come up with the present writ petition challenging an order passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, allowing an application filed by the respondents 1 to 4 herein.

2. Heard the learned Government Pleader for Services I (Andhra Pradesh). Mr. Ch.Jagannatha Rao, learned counsel, takes notice for the respondents 1 to 4.

3. In a recruitment conducted by the District Selection Committee (DSC) 1996, the respondents 1 to 4 herein were selected and appointed as School Assistants by the proceedings dated 07-10-1996 issued by the District Educational Officer, Krishna District. The respondents 1, 2 and 4 herein joined duty on 15-10-2016 and the 3rd respondent joined duty on 19-10-1996.

4. It appears that the respondents 6 to 10 herein were promoted to the post of School Assistants and they joined in the promoted post subsequent to the date of the respondents 1 to 4 getting directly recruited.

5. It appears that a Seniority List of School Assistants was prepared in January, 2009 and promotions to the post of Head Masters were effected in 2011. Though the respondents

1 to 4 herein were given appropriate placements, they could not get promotion due to want of vacancies.

6. Again when another Seniority List was prepared on 29-8-2012, the respondents 1 to 4 herein were shown as seniors to the respondents 6 to 10. It appears that objections were filed on 31-8-2012 to the Seniority List by a few persons and a Final Seniority List was prepared on 06-9-2012, from out of which promotions were effected on 15-9-2012 and 01-11-2012.

7. It appears that one more Seniority List dated 29-11-2012 containing the names of 8 candidates including the names of 3 from the list dated 06-9-2012 was released. Contending that the names of 5 candidates newly added in the Seniority List dated 29-11-2012 should not have been included, the respondents 1 to 4 herein gave objections on 02-12-2012. But a Final Seniority List was released on 05-12-2012.

8. Challenging the Seniority List dated 05-12-2012, the respondents 1 to 4 herein filed O.A.No.9650 of 2012 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. The Tribunal allowed the application by an order dated 26-8-2015 on the ground that the respondents 6 to 10 herein joined the post of School Assistant subsequent to the date of joining of the respondents 1 to 4 herein. Aggrieved by the said order, the respondents 6 to 10 have not come up

with any writ petition, but the State has come up with the present writ petition.

9. The main ground on which the State opposes the order of the Tribunal is that under Rule 33(b) of the Andhra Pradesh State and Subordinate Service Rules, 1996, the Appointing Authority is entitled to fix the seniority of a person based upon the rule of reservation or the order of preference. In addition, it is the contention of the State that under Rule 33(a), (b) and Rule 34 of the A.P. State and Subordinate Service Rules, the date of joining and order of merit and subject criteria form the basis for fixing the seniority in the promotion post.

10. We have carefully considered the above submissions.

11. Though the facts as pleaded by the respondents 1 to 4 herein who were the applicants before the Tribunal as well as the facts pleaded by the State in the present writ petition are not very clear, the counter affidavit filed by the District Educational Officer (DEO) before the Tribunal on behalf of the State throws light upon the basic facts which are necessary to decide the controversy in issue. As seen from para-5 of the counter affidavit filed by the DEO before the Tribunal, the applicants before the Tribunal (respondents 1 to 4 herein) were directly recruited as School Assistants in the selection held in DSC 1996. But persons who were promoted from the post of Secondary Grade Teachers to the post of School

Assistants in the same year joined duty subsequently. Those promotees appear to have contended that they have been working from 1979 and 1989 respectively in the feeder category and that when the promotees as well as the direct recruits joined the superior post at or about the same time, the promotees should be given seniority in terms of Rule 33(a). In para-6 of the counter affidavit filed by the DEO, it is stated that orders of promotion were issued on 07-10-1996, which was the same date on which orders of appointment for direct recruits of DSC 1996 were also issued. According to the DEO, promotees joined duty on 14-10-1996 and the person who secured first rank in DSC 1996 (direct recruitment) joined duty on 31-10-1996. Therefore, the DEO took a stand before the Tribunal that all persons directly recruited in DSC 1996 will have the same date of regularisation namely 31-10-1996, the date on which the first ranker in the direct recruit joined. Hence the Director of School Education took a stand that the impugned Seniority List was in accordance with Rule 33(a).

11. But the above contention was completely fallacious. Rule 33(a) of the A.P. State and Subordinate Service Rules, 1996, reads as follows:

“33. SENIORITY: - (a) The seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade.

Provided that the seniority of a probationer or approved probationer in a service, class or category from which he stood reverted on the 1st November, 1956 or prior to that date, shall be determined in the state wide gazetted posts and the non-gazetted posts in the Departments of the Secretariat and the offices of the Heads of Departments with reference to the notional date of continuous officiation with or without breaks in that service, class or category prior to the 1st November, 1956 to the date of re-appointment made thereafter, but it shall not disturb the inter-seniority which obtained in the Andhra State. (This proviso shall be in force till 31st October, 1996).”

12. If one goes by Rule 33(a), the seniority of a person in a service or category should be determined with reference to his first appointment. The first appointment of the direct recruits was ordered on 07-10-1996. Merely because the person who secured the first rank in the direct recruitment joined on 31-10-1996, it is not possible for the State to count the seniority of all direct recruits only from that date namely 31-10-1996, ignoring the date of joining of each one of them. It is true that as among them, the person who secured second rank in the direct recruitment cannot claim seniority over the person who secured first rank merely on the basis of his earlier date of joining. But when it comes to his claim vis-à-vis a promotee is concerned, even according to Rule 33(a) he has to be assigned seniority on the basis of his date of joining.

13. Interestingly the petitioner/State, in this case, is guilty of taking two contradictory stands. Before the Tribunal the petitioners pitched their claim upon Rule 33(a). Before

this Court the petitioners are pitching their claim on Rule 33(b) which reads as follows:

“33(b). The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason the order of preference among them; and where such order has been fixed, seniority shall be determined in accordance with it.

Provided further that the order of merit or order of preference indicated in a list of selected candidates prepared by the Public Service Commission or other selecting authority, shall not be disturbed *inter se* with reference to the candidates position in such list or panel while determining the seniority in accordance with this rule and notional dates of commencement of probation to the extent necessary, shall be assigned to the persons concerned, with reference to the order of merit or order of preference assigned to them in the said list.”

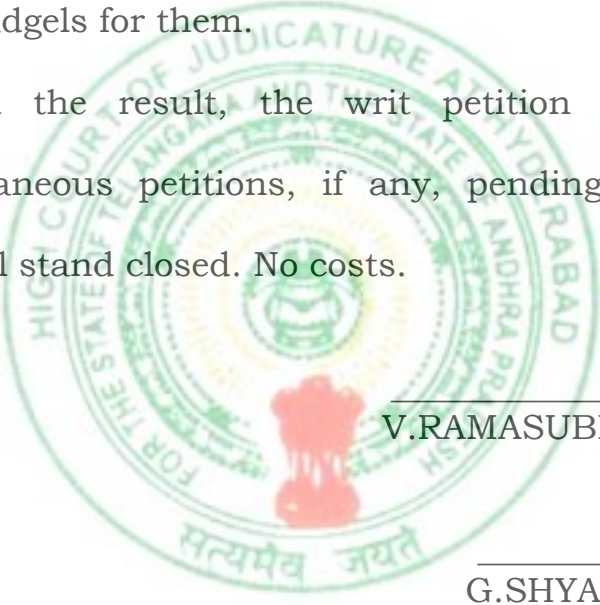
14. Rule 33(b) does not have any application to the fixation of seniority of persons appointed on the same day from two different streams. Primarily Rule 33(b) applies to cases of direct recruitment where the selected candidates are fitted against roster points, by applying the rule of reservation. While making direct recruitments, persons selected in the order of merit are first fitted against the roster points available as against General Categories. Thereafter the roster points for reserved categories are filled up. Therefore, it is in such cases that the Appointing Authority may have to pass an order under Rule 33(b) as to how to reckon the seniority of a person, whose rank in the order of merit is different from the roster point against which he is fitted. Rule

33(b) has no application to an *inter se* dispute between a direct recruit and a promotee.

15. Therefore, we are of the considered view that the Tribunal has done justice and the order of the Tribunal does not call for any interference.

16. It is interesting to note that the respondents 6 to 10 herein have not chosen to come with any writ petition challenging the order of the Tribunal. Therefore, the State could have left the matter to be agitated by them rather than taking up cudgels for them.

17. In the result, the writ petition is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.



V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

05th December, 2016.
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AND
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(per VRS, J.)



05th December, 2016.
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