

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**

**Review W.P.M.P.No. 11727 of 2017
in
WRIT PETITION No.7187 of 2016
and
WRIT PETITION No. 37927 of 2016**

COMMON ORDER: *(per Hon'ble Sri Justice Sanjay Kumar)*

W.P.No.7187 of 2016 was disposed of by order dated 26.08.2016 directing that the interim order dated 04.03.2016 passed in the writ petition should remain in operation till the disposal of O.A.No.279 of 2016 by the Andhra Pradesh Administrative Tribunal, Hyderabad. A request was also made to the Tribunal to take up the O.A on an out of turn basis and endeavour to dispose it of on merits, after hearing all parties concerned, in accordance with law within five weeks.

However, after passing of the aforestated order, the Andhra Pradesh Administrative Tribunal at Hyderabad stood abolished insofar employees of the State of Telangana are concerned. As the subject *lis* pertained to employees of the State of Telangana, the aforestated order became incapable of implementation as the Tribunal ceased to have jurisdiction to adjudicate O.A.No.279 of 2016 on merits.

W.P.M.P.No.11727 of 2017 was therefore filed by respondents 6 and 7 in W.P.No.7187 of 2016 seeking review of the order dated 26.08.2016 passed in the writ petition in the light of this factual scenario.

While so, respondent Nos.4 and 6 in W.P.No.7187 of 2016 along with two other Senior Assistants in the service of Religious/Charitable Institutions filed W.P.No.37927 of 2016

seeking a declaration that the authorities had a right to implement G.O.Ms.No.221, Revenue (Endowments-I) Department, dated 01.12.2015 in the interest of public administration and more so after the interim order dated 04.03.2016 passed in W.P.No.7187 of 2016 had expired and the Tribunal ceased to have jurisdiction in relation to the State of Telangana coupled with the admitted fact that none of the Executive Officers Grade III in Zone-VI were eligible even as on the date of filing of the writ petition for appointment as Executive Officers Grade II. A consequential direction was also sought to the authorities to promote the petitioners as Executive Officers Grade II in accordance with G.O.Ms.No.221 dated 01.12.2015.

The core controversy in this litigation is with regard to appointment to the posts of Executive Officers Grade II in the Endowments Department of the State of Telangana.

G.O.Ms.No.262, Revenue (Endowments-I) Department, dated 20.05.2002 was issued framing the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Subordinate Service Rules (for short 'the Rules'). The post of Executive Officer Grade II falls in Class I of the Rules. The Rules stipulate the feeder categories for filling up the post of Executive Officer Grade II - by way of promotion from the category of Executive Officer Grade III; by transfer from the category of Senior Assistants of the Andhra Pradesh Ministerial Service in the Endowments Department; and by appointment of Senior Assistants or UDCs working in Institutions published under Section 6 (a), (b), (c) and (d) of the Andhra Pradesh Charitable and Hindu Religious Institutions Endowments Act, 1987 (for short 'the Act of 1987'). The Rules

provide for rotation amongst the various feeder categories in every cycle of 10 vacancies. The 1st, 2nd, 4th, 6th, 7th, 9th and 10th vacancies are reserved for the promotion category while the 5th vacancy is to be filled up by transfer from the category of Senior Assistants from the Andhra Pradesh Ministerial Service in the Endowments Department and the 3rd and 8th vacancies are allotted to the 3rd feeder category.

While so, G.O.Ms.No.221 dated 01.12.2015 was issued by the Government of Telangana relaxing Rule 3 of the Rules insofar as it pertains to the allotment of vacancies by rotation in every cycle of 10 vacancies. Thereunder, the Government took note of the communication from the Commissioner, Endowments Department, State of Telangana, to the effect that eligible Executive Officers Grade III were not available for promotion to the posts of Executive Officer Grade II and no Senior Assistant of Andhra Pradesh Ministerial Service had opted for appointment by transfer to the said post and that there was urgent need to fill up 22 vacant posts of Executive Officer Grade II in Zone-VI and accordingly, relaxed the relevant Rule permitting the Commissioner, Endowments Department, State of Telangana, to fill up the 22 vacancies of Executive Officer Grade II in Zone-VI from the eligible candidates of the other feeder category, i.e., Senior Assistants working in Institutions published under Section 6 of the Act of 1987. The Government observed that the relaxation of the Rules was made in the interest of better administration of religious institutions and added the rider that the relaxation was to be taken recourse to, provided there were no eligible candidates from

the other two feeder categories at the time of considering the promotions.

Aggrieved by the relaxation of the Rules as aforestated, four Executive Officers Grade III, the petitioners in W.P.No.1787 of 2016, filed O.A.No.279 of 2016 before the Tribunal. By order dated 09.02.2016, the Tribunal directed that further promotions if any to be made to the post of Executive Officer Grade II shall be subject to the final result of the O.A. Aggrieved by the denial of further interim relief, the applicants in the O.A filed W.P.No.7187 of 2016.

By interim order dated 04.03.2016, this Court restrained the authorities from filling up the quota earmarked for Executive Officers Grade III under G.O.Ms.No.262 dated 20.05.2002 with any category of employees other than the Executive Officers Grade III pending further orders. However, when the matter was taken up for further hearing, the final order dated 26.08.2016 was passed by this Court directing that the interim order dated 04.03.2016 should remain in operation till the disposal of the O.A and requesting the Tribunal to do so within five weeks from the date of receipt of a copy of the order.

However, in view of the intervening development of the abolition of the Tribunal insofar as the State of Telangana is concerned, the aforestated order has become unworkable and incapable of implementation. The parties are therefore before this Court once again.

In the light of this development, the Review Petition is granted and the matter is taken up for rehearing.

Sri J. Sudheer, learned counsel for the writ petitioners in W.P.No.7187 of 2016, would inform this Court that they have

attained eligibility to be considered for promotion to the posts of Executive Officer Grade II as on date.

Sri P. Bala Krishna Murthy, learned senior counsel appearing for the review petitioners in W.P.No.7187 of 2016 and the petitioners in W.P.No.37927 of 2016, does not dispute this fact. He would however contend that they were not eligible as on the date panels were drawn up for filling the posts and therefore, the beneficiaries of the relaxation of the rules under G.O.Ms.No.221 dated 01.12.2015 should be given priority in terms thereof.

This argument however loses sight of the fact that under the 3rd proviso to Rule 6(b) of the A P State and Subordinate Service Rules, 1996, a panel of candidates drawn up for filling a category of posts has to be reviewed after 6 months and those who attained eligibility in the interregnum are also to be included. That apart, the relaxation under G.O.Ms.No.221 is to be applied only at the time of considering promotions/appointments, which has not come to pass owing to the interim orders passed by this Court. It would therefore be necessary for the authorities to review the panel drawn up, if any, in terms of the rules and take recourse to the relaxation provided under G.O.Ms.No.221 dated 01.12.2015 only if eligible candidates from the other two feeder categories are not available.

As the challenge by the writ petitioners in W.P.No.7187 of 2016 to the relaxation of the Rules *vide* G.O.Ms.No.221 dated 01.12.2015 was in the context of its effect upon their career growth and as they are now not adversely affected by such relaxation owing to the fact that they attained eligibility to be considered for promotion in their own right, their very challenge to the relaxation

of the Rules *vide* G.O.Ms.No.221 dated 01.12.2015 has become purely academic. At the cost of repetition, G.O.Ms.No.221 dated 01.12.2015 itself provides that the relaxation is to be taken recourse to only if no eligible candidates from the other two feeder categories are available at the time of considering promotions.

That being so, we see no reason to continue the interim order dated 04.02.2016 passed in W.P.No.7187 of 2016. The writ petitioners in W.P.No.7187 of 2016, being candidates under the promotion feeder category would be entitled to be considered for appointment to the posts of Executive Officer Grade II by way of promotion if they are found eligible in the review and it is only in the event there are insufficient eligible candidates from either the promotion feeder category or the feeder category which provides for appointment by transfer from Senior Assistants from the Andhra Pradesh Ministerial Services in the Endowment Department, that relaxation of the Rules would be necessary.

Leaving it open to the authorities to do so, if warranted, the order dated 26.08.2016 passed in W.P.No.7187 of 2016 is recalled.

The authorities shall therefore review and consider the candidature of the writ petitioners in W.P.No.7187 of 2016 and such other Executive Officers Grade III, who may have attained eligibility to be promoted in their own right, as against the reserved vacancies in the prescribed cycle of 10 vacancies under G.O.Ms.No.262 dated 20.05.2002. In the event, eligible candidates for promotion are not available or are insufficient and if eligible Senior Assistants from the Andhra Pradesh Ministerial Services do not opt for appointment by transfer, the authorities are at liberty to take recourse to the relaxation of the rule provided under

G.O.Ms.No.221 dated 01.12.2015 and fill up the existing vacancies in the posts of Executive Officer Grade II.

Review WPMP No.11727 of 2017 in W.P.No.7187 of 2016 is ordered accordingly.

In the light of this order, no further orders are required to be passed in W.P.No.37927 of 2016, which is accordingly closed.

Pending miscellaneous petitions in both the writ petitions shall stand closed in the light of this final order. No order as to costs.

Date: 24.03.2017

SANJAY KUMAR, J

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M. SEETHARAMA MURTI, J

