

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND SIXTEEN
(17.03.2016)

PRESENT
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.8754 of 2016

Between:

K.Gangadhar

..... PETITIONER

AND

State of Telangana, rep.by its
Principal Secretary, Revenue (Ser.II) Department,
Secretariat, Hyderabad and 3 others

.....RESPONDENTS

Counsel for the Petitioner : **Mr.K.RAMA SUBBA RAO**

Counsel for Respondent Nos.1 to 3 : **G.P.for Services (TG)**

The Court made the following:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.8754 of 2016

JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The unsuccessful applicant in O.A.No.415 of 2016, on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short "the Tribunal"), filed this writ petition, feeling aggrieved by dismissal of the said O.A., by its order dated 12.02.2016, only on the ground of availability of alternative remedy under Rule-26 of the Andhra Pradesh State and Subordinate Rules, 1996 (for short "the Rules").

At the hearing, Mr.K.Rama Subba Rao, learned counsel for the petitioner, submitted that the remedy of appeal under Rule-26 is available only in case where the appointing authority passes an order of either fixing the seniority of a person or affecting any conditions of service. That in the instant case, respondent No.2, who is the appellate authority, has passed the order and hence, the said Rule has no application.

Rule-26(a) & (b) of the Rules, to the extent which is relevant, reads as under:

"26.Appeal against seniority or other conditions of service:

- (a) Except where otherwise provided in these or the special rules, an appeal shall lie against an order fixing the seniority of a person or affecting any conditions of service, passed by the appointing authority, to the authority to whom an appeal would lie against an order of dismissal passed against the member of the service, class or category.
- (b) The powers in sub-rule(a) shall be exercised by the Head of the Department, if he is not the appellate authority, or by the State Government on its own motion, or on an appeal received by the Head of the Department or the State Government, as the case may be.

Under sub-rule (a) of Rule-26, appeal lies against the order of the appointing authority. Under sub-rule (b) of Rule-26, appeal lies to the State Government on its own motion, or on an appeal received by it. A proper construction of this sub-rule would leave us in no doubt that if the Head of the Department or appellate authority passes an order, the State

Government can exercise the appellate jurisdiction.

In this view of the matter, we are unable to accept the plea of the counsel for the petitioner. As the Tribunal has chosen not to exercise its jurisdiction for adjudication of the O.A., in view of the availability of the alternative remedy, exercising the power of judicial review under Article-226 of the Constitution of India, we are not inclined to interfere with the decision of the Tribunal.

Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel to dismissal of the Writ Petition, WPMP No.11089 of 2016, filed by the petitioner for interim relief, is disposed of as infructuous.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date: 17.03.2016

Dsr