

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1663 of 2011

DATED : 28.07.2016

Between:

Dr.S. Mary Jones W/o.Sri E.George,
Aged about 50 yrs, Occu : Lecturer in Education,
College of Teacher Education, Andhra Mahila Sabha,
R/o.Tarnaka, Secunderabad.

.. Petitioner

AND

Government of Andhra Pradesh,
Rep., by its Principal Secretary to Government,
School of Education, Secretariat Buildings,
Hyderabad-22 & 4 others.

.. Respondents

The Court made the following:

-
-
-
-
-
-

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1663 of 2011

ORDER:

The petitioner and 5th respondent originally belonged to Al-Madina College of Education, Mahaboobnagar. The said college was an aided institute and the petitioner and 5th respondent were appointed in aided posts. 5th respondent was lecturer in English and the petitioner was lecturer in Education. The Government cancelled the grant-in-aid to the said college. As a consequence to cancellation of grant-in-aid, the lecturers who were appointed against grant-in-aid posts were transferred to various other grant-in-aid institutions. In the said manner petitioner was transferred to Andhra Mahila Sabha College of Education (for short 'the Andhra Mahila Sabha'). The 5th respondent was transferred to A.J.College of Education, Machilipatnam, Krishna District. On his request, the earlier order of transfer was modified and 5th respondent was transferred to Andhra Mahila Sabha vide proceedings of the Director of School Education dated 07.05.2005 on the condition that the 5th respondent should take last rank among the lecturers working in Andhra Mahila Sabha and on the date of joining by the 5th respondent, the management of Andhra Mahila Sabha was directed to obtain written undertaking to that effect. Accordingly, 5th respondent gave written undertaking on 07.05.2005 while reporting to duty. By the time 5th respondent reported to duty in Andhra Mahila Sabha, petitioner already joined in the said institution, on 30.04.2005. It is not in dispute that 5th respondent was senior to

petitioner in their parent institution. However, on account of the proceedings of the Director of School Education dated 07.05.2005 and undertaking given by the 5th respondent, according to petitioner, 5th respondent became junior to her in Andhra Mahila Sabha. While so, the seniority list of lecturers working in Andhra Mahila Sabha was prepared wherein, the 5th respondent was shown as senior to petitioner. Aggrieved thereby the present writ petition is instituted.

2. Heard the petitioner as party-in-person, Sri C.M.R.Velu, learned counsel for the 4th respondent and Sri B. Narsimha Sarma learned counsel for the 5th respondent and learned Government pleader for respondents 1 and 2.

3. The first and foremost submission of the petitioner is that she was transferred to Andhra Mahila Sabha by an order dated 29.04.2005 and joined in the said service on 30.04.2005. The 5th respondent though initially posted to A.J.College of Education, Machilipatnam, on his request due to some personal difficulties expressed by him, even though no vacancy of lecturer in English was available, he was accommodated in Andhra Mahila Sabha. Further the order by which the 5th respondent was transferred to Andhra Mahila Sabha clearly states that the 5th respondent has to take last rank among the existing staff in Andhra Mahila Sabha and a declaration was directed to be obtained to that extent. The 5th respondent joined in Andhra Mahila Sabha on 07.05.2005 and therefore, he ought to have been treated as junior to the petitioner. Petitioner further submits that in the year 2012 seniority list was prepared where, the name of the petitioner was reflected above the 5th respondent but without any notice or giving opportunity, the impugned seniority was drawn showing the 5th respondent as senior to the petitioner. The petitioner further submits that in accordance with the provisions contained in Rule 35 (b) and Rule 36 (iv) of A.P.State and Subordinate Service Rules, 1996 (for

short 'the Rules'), the 5th respondent ought to have been shown as junior to petitioner and contrary to said provisions, wrong seniority was assigned to 5th respondent causing undue hardship and suffering to the petitioner. Petitioner further submits that due to loss in seniority, petitioner could not become Principal on in-charge basis.

4. Sri B. Narasimha Sarma, appearing for 5th respondent submits that 5th respondent was senior to petitioner in service in parent unit and they were initially transferred to SCERT and 5th respondent was shown senior to petitioner. The transfer of the petitioner to Andhra Mahila Sabha cannot be treated as a transfer on request and as both of them have come to Andhra Mahila Sabha on administrative grounds due to withdrawal of grant-in-aid, to the parent college, and thus the seniority assigned in the parent unit should continue to reflect and the 5th respondent cannot become junior to his own junior in the parent unit. He further submits that the declaration given by the 5th respondent that he would not claim seniority was only against other persons working in the category of lecturers appointed by the College of Teacher Education of Andhra Mahila Sabha. Whereas, petitioner was not the person appointed by the said College, and the claim of the 5th respondent vis-à-vis the petitioner for seniority, based on the seniority assigned in the parent unit is valid.

4.1. According to learned counsel for the 5th respondent Rule 35 (a) of the Rules, applies to the facts of the case and in terms thereof the 5th respondent is entitled to seniority over the petitioner and therefore, the seniority assigned to petitioner is valid and do not call for interference. According to learned counsel, Rule 36 of the Rules has no application to the facts of the case. He further submits that though there was no vacancy of Lecturer in English 5th respondent was brought without reference to the vacancy is not relevant for the purpose

of consideration of this issue, since petitioner has never questioned the posting of 5th respondent to a different post.

4.2. Learned counsel for the 5th respondent also contended that the 5th respondent retired from service on 30.04.2016 on attaining the age of superannuation and did not gain any additional benefits on account of assigning higher seniority.

5. Sri C.M.R.Velu appearing for Andhra Mahila Sabha submits that in terms of the directions issued by the Government, seniority was determined as the Andhra Mahila Sabha was bound by the directions of the Government.

6. Learned Government pleader justifies the order issued by the Commissioner and Director of School Education on 01.12.2010. According to learned Government pleader in accordance with provisions contained in Rules 33 (d), 35 (a) and 36 (iv) of the Rules, the 5th respondent is senior to the petitioner and seniority was correctly reckoned in the orders impugned and there is no illegality in the said decision and 5th respondent was given higher seniority in view of clear mandate of the relevant rule.

7. To appreciate the rival contentions, it is useful to analyze the relevant provisions of A.P. State and Subordinate Rules, 1996. They read as under ;

Rule 33 (d):- *The transfer of a person from one class or category of a service to another class or category of the same service, carrying the same pay or scale of pay shall not be treated as first appointment to the latter class or category for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the date of his regular appointment in the class or category from which he was transferred. Where any difficulty arises in applying this sub-rule, seniority shall be determined by the Government, if they are the appointing authority and in other cases, the authority next higher to the appointing authority shall determine the seniority.*

Rule 35:- Fixation of seniority in the case of transfers on request or on administrative grounds :- (a) *The seniority of a member of a service, class or category transferred from one unit of appointment to*

another unit of appointment, on administrative grounds, shall be, determined with reference to the date of seniority of such member in the former unit.

(b) The seniority of a member of a service, class or category, who is transferred on his own request from one unit of appointment to another unit of appointment shall be fixed with reference to the date of his joining duty in the latter unit of appointment.

Rule 36 :- Inter-se seniority where the dates of commencement of probation are same :- *The seniority of the persons in the service shall be determined as follows :*

(iv) in respect of persons appointed on transfer on administrative grounds, shall be from the date on which the individual was placed on probation in the original department; and

(v) in respect of the persons appointed on request transfer, the date of joining of such person in the new department/unit.

8. The facts in issue are in very narrow compass. There is no dispute that the petitioner and 5th respondent belong to Al-Madina College of Education, Mahabubnagar and petitioner is junior to 5th respondent. Consequent to withdrawal of grant-in-aid to the said college, the lecturers appointed against the aided posts were accommodated in various other institutions. Initially petitioner and 5th respondent were posted to SCERT and later petitioner was posted to Andhra Mahila Sabha and 5th respondent to A.J. College of Education, Machilipatnam. After the posting, 5th respondent requested the Director of School Education to consider for posting him in Andhra Mahila Sabha as he was suffering from Appendicular Mass and was getting medical aid and his age old parents health condition was not good and his two female children were in secondary education. The Management of Andhra Mahila Sabha agreed for taking the 5th respondent by adjusting him against the post in lecturer in Philosophy and in due consideration of the said request, 5th respondent was posted to Andhra Mahila Sabha. The relevant portion of the order reads as under :

“The Correspondent, A.M.S.College of Education, Hyderabad is requested to obtain an undertaking from the individual to the affect that he takes last rank among the existing staff working in their college before his joining and submit the date of joining of the incumbent in their college immediately. His personal file will be sent in due course after obtaining

the same from the Al-Madina College of Education, Mahabubnagar.”

9. As directed by the Director of School Education an undertaking was obtained from the 5th respondent and 5th respondent joined in duty on 07.05.2005. The undertaking given by the 5th respondent reads as under :

“I. Dr.K.Ratnakar Rao, Lecturer/Junior Assistant Cum Typist/Record Assistant/Attender in Education, now allotted to College of Teacher Education, Andhra Mahila Sabha, Osmania University Road, Hyderabad, do here by submit the undertaking, terms of Proceedings of DSE RC.No.314/N2-3/2004, dated 7.5.2005 that I am willing to take the last rank in the seniority of list of CTE AMS in College of Teacher Education, Andhra Mahila Sabha, Hyderabad and will not claim seniority over the person working in the category of Lecturers appointed by the College of Teacher Education, Andhra Mahila Sabha now or in future. I also agree to draw the same scale of pay either UGC/State as sanctioned to me as per the flyleaf approved by DSE.”

10. Though the order of Director of School Education clearly states that the 5th respondent shall take the last rank among the existing staff working in Andhra Mahila Sabha, learned counsel for the 5th respondent would submit that since the undertaking given by 5th respondent was only not to claim seniority among lecturers appointed by the College of Teacher Education and therefore, said undertaking has no application insofar as the petitioner is concerned.

11. It is seen from the undertaking given by the petitioner that there are two limbs in the undertaking. In the first limb, 5th respondent said that he would be willing to take last rank in the seniority list of CTE AMS and in the second limb he states that he would not claim seniority over the persons working in the category of lecturers appointed by the College.

12. In the light of the submissions made and the relevant orders and the undertaking given by the 5th respondent, it is relevant to note the scope of Rule 35 of the Rules.

13. Rule 35 (a) mandates that a person transferred from one unit of

appointment to another unit of appointment on administrative grounds, would retain his seniority in the previous unit of appointment. Sub-Rule (b) of Rule 35, on the contrary denies such seniority, if transfer was made on request from one unit of appointment to another unit of appointment and the seniority would be fixed with reference to date of joining. It is not in dispute that the date of joining of 5th respondent is later to the date of joining of petitioner in the present employment. Thus, in terms of this provision, 5th respondent can compute the service for seniority only from 07.05.2005, by which date petitioner was already working in the said institute. It is also not in dispute that 5th respondent was initially transferred to A.J.College of Education and the said transfer was reviewed and was posted to Andhra Mahila Sabha on his request. Thus the subsequent transfer and posting to Andhra Mahila Sabha is a request transfer but not transfer on administrative grounds. Only if a transfer is made on administrative grounds, the person so transferred retains his seniority. Otherwise he would have to take the last rank in the seniority. The order of Director of School Education as extracted above also clearly mandates to take last rank. When the statutory Rules mandate certain procedure for determination of seniority and relevant rule is clear and unambiguous and the order of Director of School Education is also clear and unambiguous, merely because 5th respondent gave a different kind of undertaking, his transfer to Andhra Mahila Sabha cannot be treated as administrative transfer to claim seniority under Rule 35 (a), as sought to be contended.

14. Though learned counsel for the 5th respondent contended that Rule 36 has no application, he also contends that Rule 36 is applicable only where the date of commencement of probation is same, by referring to the heading of the Rule. The text of the rule deals with different contingencies for determination of seniority. The provisions as extracted above are only relevant for this case. Sub-rule

(iv) is similar to Rule 35(a) and Sub-rule (v) is similar to Rule 35 (b). Rule 33 (d) also deals with situation when transfer of a person was made in normal course. Rule 33 (d) has to be read in consonance with Rules 35 (b) and 36 (v).

15. A cumulative reading of these rules would make it clear that if transfer is made on request by a person he would lose his past seniority and has to take last rank in the new unit on the date when he joins the duty. Thus, in the instant case, as 5th respondent joined on 07.05.2005 as against the petitioner joining on 30.04.2005, petitioner is entitled to be shown as senior to 5th respondent. The order of the Commissioner dated 01.12.2010 which was implemented by showing seniority of 5th respondent vide proceedings of the 4th respondent dated 31.12.2010 is contrary to the mandate of the Rules and therefore not sustainable. The Commissioner's order is contrary to his own order issued earlier on 07.05.2005 where he has imposed a clear condition of taking last rank. Thus, the proceedings under challenge are liable to be set aside and are accordingly set aside.

16. Writ petition is accordingly allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO, J

28th July, 2016
Rds