

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.35244 of 2012

ORDER:

The petitioners have filed this Writ Petition seeking a Writ of Mandamus to declare the placement of respondent Nos.2 and 3 at Sl.Nos.1 and 2 in the Final Seniority List in the cadre of Senior Assistants issued vide circular No.1334/MII/2012 dt.10-10-2012 issued by 1st respondent as illegal, arbitrary and contrary to law and to set aside the same as well as consequential proceeding dt.29-09-2014 communicating the Final Seniority List in the cadre of Superintendents placing respondent Nos.2 and 3 above the petitioners.

2. The service particulars of petitioners and respondent Nos.2 and 3 are as under:

“The service particulars of petitioners:

S.No.	Name of the Petitioner	Date of promotion as Senior Assistant with effect from	Date of Regularization as Senior Assistant with effect from
1.	D.V.Ramana Murthy	15-10-09	15-10-09
2	A.Krishna Mohan	30-08-11	30-08-11
3	D.Ramakrishna	30-08-11	30-08-11
4	G.Vasu	30-08-11	30-08-11
5	M.Venkata Akki Raju	30-08-11	30-08-11

S.No.	Name of the Respondent	Date of promotion as Senior Assistant with effect from	Date of Regularization as Senior Assistant with effect from	Remarks
1.	Mrs.K.Siva Parvathi	05-09-11 (Date of joining as Senior Assistant)	05-09-11	Although promotion order is dated 30-08-11, it shall take effect from the date of joining and she has joined on 05-09-11.
2	Smt.G.N.J.P.Kumari	02-09-11		Although promotion order is dated 30-08-11, it shall take effect from the date of joining and she has joined on 02-09-11.

3. The 1st respondent University was constituted under the NTR University Health Sciences Act, 1986 (for short “the Act”). In terms of the said statute, the Executive Council of the University is an authority specified to frame regulations in so far as the service conditions of the employees are concerned. Regulation No.33 of the Act empowers the authorities of the University to make regulations consistent with the Act. The University framed separate regulations for Ministerial Staff called NTR University Health Sciences Ministerial Services Rules, 1995 and they have been sent to the Government of Andhra Pradesh for approval and as of now, they have not been approved.

4. On 22-04-2007, the 1st respondent University, in response to a letter dt.05-12-2006 addressed by the General Secretary of the NTR University Health Services Employees Association, Vijayawada informed that the Ministerial Staff upto the cadre of Superintendent would be governed by the A.P. State and Subordinate Services Rules.

5. The petitioners' dates of regularization as Senior Assistant in the 1st respondent University are mentioned in the first table in para-2 and the dates of regularization of respondent Nos.2 and 3 in the cadre of Senior Assistant are mentioned in the 2nd table in same para.

6. It is not in dispute that respondent Nos.2 and 3 were working as Senior Stenographers and their dates of joining as Senior Stenographers in the 1st respondent University was 18-09-2000 and 17-09-2003 respectively. The posts of Senior Stenographers were converted to Senior Assistants and respondent Nos.2 and 3 joined as Senior Assistants on 05-09-2011 and 02-09-2011. This conversion was made vide proceedings No.782/MII/2011 dt.30-08-2011 and before making such conversion, no notice was given to petitioners and they were not aware of this till the provisional Seniority List was issued vide circular dt.26-09-2012.

7. Thereafter petitioners made a representation on 29-09-2012 complaining against the action of 1st respondent in placing respondent Nos.2 and 3 above them and contending that the A.P. State and Subordinate Rules alone should be applied and not the A.P. Ministerial Services Rules.

8. Rule 33 of the A.P. State and Subordinate Services Rules, 1996 provides that the seniority of a person in a service, class, category or grade, shall, unless he had 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. If this is taken into account, according to petitioners, since the date of joining of respondent Nos.2 and 3 as Senior Assistants was only on 05-09-2011 and 02-09-2011, their seniority in the category of Senior Assistant would be counted only from these dates.

9. But if the A.P. Ministerial Service Rules, 1998 are applied, under Rule 15(2)(i), the seniority of a member of the service who is appointed by conversion from the post of Special Category Stenographer to the post of Superintendent or from the post of Senior Stenographer or U.D. Typist to the post of Senior Assistant shall be fixed with reference to the date of his first appointment as Special Category Stenographer or Senior Stenographer or U.D. Typist as the case may be. So if these A.P. Ministerial Service Rules, 1998 are applied, then respondent Nos.2 and 3, who had been appointed as Senior Stenographers on 18-09-2000 and 17-07-2003 respectively would be entitled to count their service from these dates instead of 05-09-2011 and 02-09-2011 respectively.

10. If A.P. State and Subordinate Service Rules, 1996 are taken into account for determining the seniority, then the petitioners would have to be shown as seniors in the final seniority list to respondent Nos.2 and 3. But if the A.P. Ministerial Service Rules, 1998 are taken into account, then the petitioners would be juniors to respondent Nos.2 and 3.

11. Therefore which of these Rules apply to the post of Senior Assistant and further upto the post of Superintendent in the 1st respondent University is the question which requires to be considered.

12. It is not in dispute that after showing respondent Nos.2 and 3 as seniors to the petitioners in the final seniority list in the category of Senior Assistants dt.10-10-2012, which is impugned in the Writ Petition, respondent Nos.2 and 3 were given the promotion to the post of Superintendent on 12-10-2012 vide proceedings No.1334/MII/2012. Copies of these promotion orders have been filed by 1st respondent along with counter-affidavit. A reading of both these promotion orders clearly indicate that they were temporarily promoted to the post of Superintendent under Rule 10(a) of A.P. State and Subordinate Service Rules, 1996 and not by following A.P. Ministerial Service Rules, 1998.

13. However, in the counter-affidavit filed by 1st respondent, the 1st respondent in paragraph-2 states that it has been following A.P. State and Subordinate Service Rules and A.P. Ministerial Service Rules while making recruitment and for extending promotions to the posts falling under Ministerial cadres ever since the University was established.

14. This is a very ambiguous stand and is contrary to the reply given by 1st respondent on 22-04-2007 to the query raised under the Right to Information Act, 2005 by the General Secretary, NTR University of Health Sciences Employees Association, Vijayawada through letter dt.05-12-2006 wherein the 1st respondent has unambiguously stated that

in respect of Ministerial staff (up to the cadre of Superintendent), it is following the A.P. State and Subordinate Rules.

15. If according to the 1st respondent, it had followed the A.P. State and Subordinate Rules, 1996 while promoting respondent Nos.2 and 3 to the cadre of Superintendent on 12-10-2012, it is not known why in the impugned proceedings dt.10-10-2012, determining the final seniority in the cadre of Senior Assistant, in the remarks column (column 6), reference is made to the A.P. Ministerial Service Rules, 1998.

16. Learned Standing Counsel for 1st respondent University is unable to explain how this could have been done. It is not open to the 1st respondent University to blow hot and cold and cite the A.P. Ministerial Service Rules, 1998 for denying seniority to the petitioners over respondent Nos.2 and 3 but promote respondent Nos.2 and 3 to the post of Superintendent from the post of Senior Assistants by placing reliance on the A.P. State and Subordinate Service Rules, 1996.

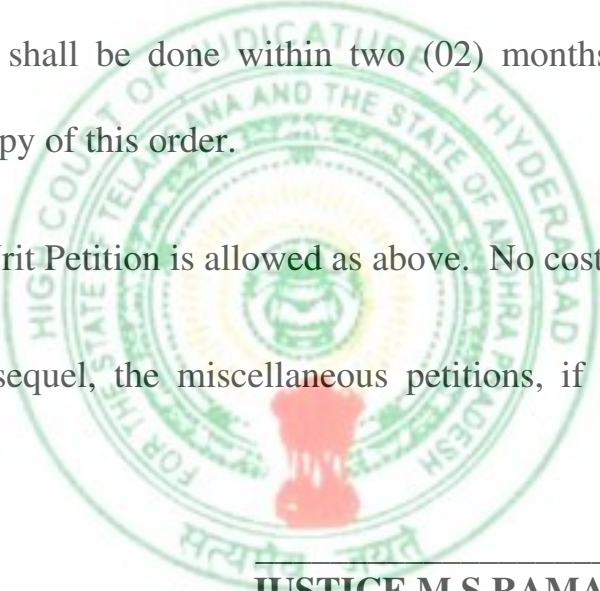
17. Although respondent Nos.2 and 3 have been served notice in the Writ Petition long back, there has been no representation on their behalf. So, it is deemed that they have no intention to contest the Writ Petition and that they admit the case of the petitioners.

18. In this view of the matter, I am of the opinion that the action of 1st respondent in placing the petitioners below respondent Nos.2 and 3 in the final seniority list communicated on 10-10-2012 by 1st respondent is contrary to law and the same is set aside. A direction is given to 1st respondent to place the petitioners above respondent Nos.2 and 3 in the

final seniority list in the cadre of Senior Assistants. Since respondent Nos.2 and 3 as well as the petitioners were subsequently promoted admittedly to the post of Superintendent and even in the final Seniority List communicated vide circular dt.29-09-2014 for the cadre of Superintendent in the 1st respondent University, the petitioners have been placed below respondent Nos.2 and 3, the said final Seniority List dt.29-09-2014 is also set aside. The 1st respondent shall review the said seniority w.e.f. 10-12-2011 giving promotion w.e.f. 10-12-2011 as Superintendents and restore their seniority above respondent Nos.2 and 3. This exercise shall be done within two (02) months from the date of receipt of a copy of this order.

19. The Writ Petition is allowed as above. No costs.

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



JUSTICE M.S.RAMACHANDRA RAO

Date: 04-11-2016
Vsv/*