THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR.JUSTICE B.SIVA SANKARA RAO

WRIT APPEAL NO.1134 OF 2015

J U D G M E N T
(Per Hon'ble Sri Justice Sanjay Kumar)

The second respondent in W.P.No.16484 of 2002 is in appeal against the order dated 14.10.2015 allowing the writ petition. By the said order, the learned single Judge set aside the proceedings dated 10.12.2001 whereby the appellant-second respondent was promoted as a Senior Assistant in the University of Hyderabad.

The primary ground on which the learned Judge invalidated the proceedings dated 10.12.2001 was that the appellant-second respondent did not possess the requisite qualification as on the relevant date. Interim orders granted in this writ appeal expired by efflux of time and it is now stated that the appellant-second respondent was reverted to the post of Office Assistant and was subsequently promoted as a Senior Assistant.

The University of Hyderabad issued a notification on 31.07.2001 for filling up various posts through the process of promotion, one being that of a Senior Assistant. This promotion was to be effected on the basis of merit-cum-fitness from amongst the in-service candidates who were to face an interview before a Departmental Promotion Committee. The last date for submission of applications was 10.08.2001. The qualification required for the post of Senior Assistant was stipulated as under in the said notification:

> '25% on the results of departmental tests from amongst Office Assistants possessing a University degree with minimum continuous service of 3 years in the grade on the basis of merit-cum-fitness. (One vacancy).'

It is not in dispute that the appellant-second respondent acquired the necessary qualifications of graduation only on 14.09.2001. The record also reflects that one of the candidates for the post of Senior Assistant raised the issue of ineligibility of the appellant-second

respondent by way of a representation but the University, in its wisdom, allowed him to participate in the selection. Reference in this regard may also be made to the letter dated 19.09.2001 addressed by the appellant-second respondent to the Deputy Registrar (Personnel), University of Hyderabad, whereunder he stated that he had applied for the post of Senior Assistant; that he had passed his University examinations, having got the result through internet; and sought issuance of a hall-ticket for participation in the selection process. An endorsement was made on this letter by the University stating thus: 'In my opinion this may be accepted and let him appear in exam. He needs to produce regular certificate later. This is subject to rules and regulations approved by EC.' Though this letter is sought to be relied upon in the present appeal, the fact remains that an elaborate procedure is prescribed for relaxation of rules and the learned standing counsel for the University fairly admits that this procedure was not adhered to.

A purely technical ground urged in this appeal which warrants rejection at the outset is that the University of Hyderabad was not impleaded in the writ petition in its own name and only the Registrar of the University was made a party. This is factually incorrect as it appears that the respondent-writ petitioner filed WPMP No.44411 of 2015 in the writ petition seeking amendment of the cause title in respect of the description of the first respondent therein as the University of Hyderabad in the place of the Registrar, University of Hyderabad. It is fairly conceded by the learned standing counsel for the University that this miscellaneous petition was ordered during the pendency of the writ petition before the final order was passed.

Sri Kasa Jagan Mohan Reddy, learned counsel for the appellant-second respondent, would further contend to the effect that once the Executive Council approved the appointment of his client, challenge thereto ought not to be permitted; that the respondent-writ petitioner was the last in the merit panel of five candidates and as the second, third and fourth candidates in the panel did not raise an objection to the

appointment of his client, who stood first in the said panel, the respondent-writ petitioner cannot have *locus* to raise an objection at this stage; and that the respondent-writ petitioner is, in any event, not benefited by the invalidation of his client's appointment as he stood last in the merit panel.

These contentions however do not merit acceptance as the appellant-second respondent admittedly did not possess the required qualification as on the date of reckoning – 10.08.2001, the last date stipulated in the notification dated 31.07.2001 for receipt of applications. It is well settled that the last date for submission of applications, as prescribed in the notification, is the crucial date for ascertaining the eligibility of the candidate (See ***ASHOK KUMAR SHARMA V/s. CHANDER SEKHAR***[1]). Once the University's regulations stipulated a particular qualification and the power of relaxation in relation thereto had to be exercised in the prescribed manner, the same is binding and any steps taken at variance therewith cannot be countenanced. The appellant-second respondent therefore ought not to have been considered for promotion to the post of Senior Assistant at that time.

However, this Court is constrained to take note of subsequent events that transpired during the pendency of the writ petition.

The respondent-writ petitioner was promoted as a Senior Assistant in July, 2006 and was further promoted as a Section Officer in June, 2013. However, as the appellant-second respondent secured promotion as a Senior Assistant in the year 2001 itself, he was promoted as a Section Officer before the respondent-writ petitioner in July, 2007. Pursuant to the invalidation of his promotion as a Senior Assistant in 2001, the appellant-second respondent was reverted to his original post of Office Assistant and after subsequent promotion he is presently working as a Senior Assistant. Admittedly, the respondent-writ petitioner was senior to the appellant-second respondent in the cadre of Office Assistant, having been appointed as such in September, 1989, while the appointment of the appellant-second respondent was in July, 1993.

In this regard reference may again be made to ***ASHOK KUMAR SHARMA***[1] wherein, having held the impugned appointments to be illegal in a similar fact situation, the Supreme Court did not interfere with the same taking note of the fact that such appointees had been working for several years. Similar was the approach of the Supreme Court earlier in ***DISTRICT COLLECTOR AND CHAIRMAN, VIZIANAGARAM SOCIAL WELFARE RESIDENTIAL SCHOOL SOCIETY, VIZIANAGARAM V/s. M.TRIPURA SUNDARI DEVI***[2].

Presently, the illegality in the appointment of the appellant-second respondent in the year 2001 is attributable more to the University than to the individual himself. The University ought to have been more cautious and circumspect in dealing with the case. Even if it wanted to resort to relaxation of rules, it ought to have followed the procedure prescribed therefor. Having failed to do so, it still appointed the appellant-second respondent as a Senior Assistant, overlooking his patent ineligibility. No doubt, the respondent-writ petitioner did not stand within the zone of consideration as per the merit list drawn up, but the irrefutable fact remains that he was the only one who challenged the appellant-second respondent's ineligibility by approaching this Court. Though one other candidate was stated to have made a representation in this regard, no steps were taken thereafter by such candidate. The respondent-writ petitioner was promoted as a Section Officer in 2013, while the appellant-second respondent was promoted to that post as long back as in the year 2007. By virtue of the invalidation of his promotion as a Senior Assistant in 2001, he was reduced to the post of Office Assistant but was thereafter promoted as a Senior Assistant and is presently working as such. Owing to the lapse primarily attributable to the University in dealing with the case, the appellant-second respondent now has to suffer the ignominy and heartburn of having to work as a Senior Assistant under those who were subordinate to him hitherto.

Given this fact situation, Sri G.Mohan Rao, learned counsel for the

respondent-writ petitioner, fairly accepted that his client would not insist upon giving full effect to the order under appeal so long as the appellant-second respondent is not allowed to steal a march over his client in terms of seniority by virtue of his illegal promotion in the year 2001. Sri Kasa Jagan Mohan Reddy, learned counsel for the appellant-second respondent, accepted this proposal and stated that his client would be willing to take the position next in seniority to the respondent-writ petitioner in the cadre of Section Officer and prayed that the appeal may be disposed of accordingly.

As the respondent-writ petitioner was the only person who mounted a challenge against the appellant-second respondent's promotion as a Senior Assistant in 2001 and as the candidates who stood between them in the merit panel did not even choose to air any objection all through, they can have no grievance at this stage as to the alteration of the seniority so as to protect the interests of both the parties who are before this Court. Further, the appellant-second respondent worked as a Senior Assistant after his promotion as such in 2001 and as a Section Officer from 2007 and no one, other than the respondent-writ petitioner, raised any grievance. It is therefore too late in the day for any objection to be raised by other employees to the order proposed to be passed by this Court.

In that view of the matter, the promotion of the appellant-second respondent as a Section Officer in 2007 shall stand converted as a promotion given in the year 2013 and shall be given effect to in the seniority list of Section Officers by placing him immediately after the respondent-writ petitioner. The pay scale of the appellant-second respondent would also have to be altered accordingly, but the University shall not recover the arrears of salary and allowances paid to him since 2007, being primarily responsible for this imbroglio and having already secured his services in the post of Section Officer since then. The respondent-writ petitioner shall be treated as senior to the appellant-second respondent in the cadre of Section Officer for all purposes.

The writ appeal is disposed of accordingly with the consent of all the learned counsel for the parties. Sri N.V.Sumanth, learned standing counsel for the University of Hyderabad, also agrees to disposal of the appeal in terms of the above directions. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

DR.B.SIVA SANKARA RAO, J

20th JUNE, 2016
PGS

[1] (1997) 4 SCC 18
[2] (1990) 3 SCC 655