

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**  
**AND**  
**THE HON'BLE SMT.JUSTICE T. RAJANI**

Writ Appeal No.1039 of 2017

**Judgment:** (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the learned Single Judge in W.P.M.P. No. 24721 of 2017 in W.P. No.20181 of 2017 dated 30.6.2017.

The appellant herein is the 3<sup>rd</sup> respondent in the writ petition. The 1<sup>st</sup> respondent herein filed the writ petition wherein he sought a mandamus to declare the action of the 3<sup>rd</sup> respondent in this appeal in promoting the appellant, who was not an approved probationer in the feeder category of Assistant Commissioner, as the Deputy Commissioner of Endowments by the impugned proceedings dated 24.5.2017 without finalising the objections submitted by the 1<sup>st</sup> respondent to the provisional seniority list communicated by the 3<sup>rd</sup> respondent dated 31.10.2005 ignoring the claim of the 1<sup>st</sup> respondent, who is an approved probationer, as arbitrary, illegal and contrary to Rule 3 of the A.P. Charitable and Hindu Religious Institutions and Endowments Service Rules, 2002 (for short 'the Rules') notified in G.O. Ms. No. 245 dated 8.5.2002.

Facts, to the limited extent necessary, are that the appellant joined the Endowments Department of the Government of Andhra Pradesh in the year 1977. He was appointed as an Executive Officer Grade-I in the year 2003, and was promoted as an Assistant Commissioner on 8.8.2008. He was subsequently promoted as Deputy Commissioner of Endowments on 24.5.2017. The 1<sup>st</sup> respondent-writ petitioner was appointed by direct recruitment as an Assistant Commissioner on 29.9.2011. He invoked the jurisdiction of this Court contending that the appellant was appointed as an Executive Officer Grade-I beyond the cadre strength of Executive Officers Grade-I, and though no vacancy was

available; as the appellant could not have been promoted as an Executive Officer Grade-I in the year 2003, his promotion as an Assistant Commissioner on 8.8.2008 was illegal; and, consequently, he could not have been promoted as the Deputy Commissioner, Endowments on 24.5.2017.

Our attention has been drawn by Sri V. Ravi Chandran, learned counsel for the 1<sup>st</sup> respondent-writ petitioner, to the proceedings dated 13.10.2011 to contend that the appellant was entitled to be promoted as an Executive Officer Grade-I only in the year 2011, and not in the year 2003; as a minimum service of three years is required to be rendered in the post of Executive Officer Grade-I, to be considered for promotion as an Assistant Commissioner, the appellant could only have been promoted as an Assistant Commissioner in the year 2014; and, consequently, he could not have been promoted as Deputy Commissioner by the impugned proceedings dated 24.5.2017.

It is not in dispute that the State Government is yet to take a final decision on the objection of the 1<sup>st</sup> respondent-writ petitioner that the appellant should not be treated as having been promoted as an Executive Officer Grade-I from the year 2003. It is for the Government, in the first instance, to decide whether or not the promotion of appellant as Executive Officer Grade – I from 2003 is valid; and this Court would not, in the exercise of its powers of judicial review, undertake such an exercise even before a decision is taken in this regard by the State Government.

The other contention urged before the Learned Single Judge by Sri V. Ravi Chandran, learned counsel for the 1<sup>st</sup> respondent-writ petitioner, was that the interim order of status-quo passed earlier by a Division Bench of this Court, and which was modified by order dated 24.4.2014, merely permitted the official respondents to fill up the vacancy of Assistant Commissioners from the feeder category of Executive Officers Grade-I and Superintendents, and to effect promotions to the post of

Deputy Commissioners, provided they were approved probationers in the feeder category in terms of Rule 8 of the Andhra Pradesh State and Subordinate Service Rules, 1996; the appellant was not an approved probationer in the cadre of Assistant Commissioner; and, consequently, the order of status-quo disabled the appellant from being promoted as Deputy Commissioner.

While Sri P. Gangaiah Naidu, learned Senior Counsel, would contend that the appellant's probation must be deemed to have been declared, it is wholly unnecessary for us to examine this contention as we are satisfied that irrespective of the result of the Writ Petition pending before the Division bench, wherein the order of *status quo* was passed, the appellant's promotion as Deputy Commissioner would not be affected. The writ petition, wherein the aforesaid order was passed on 24.4.2014, was filed by persons similarly situated to that of the appellant. The jurisdiction of this Court was invoked against the order of the A.P. Administrative Tribunal setting aside G.O. Rt. No. 1165 dated 28.9.2011 wherein the panels, for the three years 2006-07, 2007-08 and 2008-09, were approved. It is not in dispute, and has been admitted by the 1<sup>st</sup> respondent-writ petitioner himself before the Learned Single Judge, that, if G.O.Rt. No. 1165 dated 28.9.2011 were to be implemented, the appellant's date of promotion as Assistant Commissioner would stand revised with effect from 1.9.2007. Even if the writ petition, wherein the order of status-quo was passed, were to be dismissed later, the appellant would still be entitled to have his promotion as Assistant commissioner reckoned from 8.8.2008 instead of 1.9.2007, in which event also he would have been entitled to be promoted as Deputy Commissioner, Endowments on 24.5.2017.

It is only if the contention of the 1<sup>st</sup> respondent-writ petitioner, that the appellant's promotion as Executive Officer Grade-I in the year 2003 is illegal, were to be accepted by the Government, and the appellant is treated as having been promoted as an Executive Officer Grade-I only

from 2011, and not from the year 2003, would he be disentitled to be promoted as Deputy Commissioner, Endowments in the year 2017. As this issue is still pending consideration of the Government, neither the earlier order of status-quo passed by the Division Bench on 24.4.2014 nor G.O.Rt. No. 1165 dated 28.9.2011 would disentitle the appellant from being promoted as a Deputy Commissioner with effect from 24.5.2017.

The order under appeal is not only that the case of the 1<sup>st</sup> respondent-writ petitioner should be considered for promotion as Deputy Commissioner, but also that the promotion of the appellant as Deputy Commissioner of Endowments should be suspended. To the limited extent, the learned Single Judge has suspended the order of promotion of the appellant as Deputy Commissioner, the order under appeal is set aside. We make it clear that we have not interfered with the order under appeal in all other aspects. It is also made clear that this order shall not preclude the Government from considering the objections raised by the 1<sup>st</sup> respondent-writ petitioner, to the provisional seniority list dated 31.10.2015, in accordance with law; and the promotion of the appellant as Deputy Commissioner shall be subject to the result of the writ petition.

The writ appeal stands disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

**(RAMESH RANGANATHAN, ACJ)**

**(T. RAJANI, J)**

28<sup>th</sup> July, 2017  
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Date: 28.7.2017

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