

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

W.P.No.25228 of 2016

Between:

Smt. A. Adilakshmi.

.....Petitioner

And

The State of Andhra Pradesh,
rep. by its Principal Secretary,
Higher Education Department & others.

.....Respondents

JUDGMENT PRONOUNCED ON : 19.06.2017

**HON'BLE SRI JUSTICE : SURESH KUMAR KAIT
AND
HON'BLE DR. JUSTICE : SHAMEEM AKTHER**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment ? : Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals ? : Yes/No
3. Whether Their Ladyship/ Lordship wish to see the fair copy of the judgment ? : Yes/No

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE DR. JUSTICE SHAMEEM AKTHER**

WRIT PETITION No.25228 of 2016

DATE: 19.06.2017

Between :

Smt. A.Adilakshmi.

.....Petitioner

And

The State of Andhra Pradesh,
rep. by its Principal Secretary,
Higher Education Department & others.

.....Respondents.

For petitioner : Sri C.Raghu, Advocate.

For Respondents : G.P. For Services

< Gist:

> Head Note:

? CITATIONS:

Nil

C/15



HON'BLE SRI JUSTICE SURESH KUMAR KAIT
And
HON'BLE DR. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.25228 of 2016

ORDER : (Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioner has challenged the order dated 22nd April 2016, passed in O.A.No.331 of 2014, whereby, the said O.A. filed by the petitioner was dismissed.

2. Case of the petitioner is that she was initially appointed as a Typist in December 1990 and promoted as Senior Assistant in 1995. She was further promoted as Superintendent in the year 2001. Presently she is working as Research Assistant. Consequent on her appointment by transfer as Research Assistant in the year 2007 while working as Superintendent, she made a representation for fixation of her seniority in the cadre of Research Assistant over and above respondent No.3 on the ground that the post she was holding i.e. Superintendent was equal to the cadre of Research Assistant in respect of scale of pay etc., and she was promoted as Superintendent in the year 2001 itself. The 2nd respondent, through Proceedings No.A1/231/2007, dated 15.12.2007, determined the seniority of the petitioner with reference to the date of her regular appointment in the earlier post of Superintendent from 21st December 2001 and the said proceedings are in force as on today. Basing on the said proceedings, the 1st respondent issued a final seniority list of Research Assistants for the year 2009-10, wherein, the name of the petitioner was shown

at Serial No.6 while showing the name of 3rd respondent at Serial No.7. The said seniority list was not challenged by any one and the same is enforceable. In the final seniority list of Research Assistants for the panel year 2011-12 also, the name of the petitioner was shown at Serial No.3, whereas, the 3rd respondent was shown at Serial No.4, thus, the seniority list became final.

3. Learned counsel appearing on behalf of the petitioner submitted that all of a sudden, to the surprise of the petitioner, the final seniority list of Research Assistants was issued in the year 2012-13, wherein, the name of the petitioner was shown at Serial No.4 while showing the name of respondent No.3 at serial No.2, by noting against the name of the petitioner as well as respondent No.3 that the seniority claim of the petitioner vis-à-vis respondent No.3 is under examination by the Government and the final outcome is awaited. On receipt of the seniority list, the petitioner made a representation explaining her grievance in respect of fixing the seniority in the cadre of Research Assistant below the name of respondent No.3, with a request to modify the same restoring her seniority above the name of respondent No.3. The 2nd respondent through impugned Memo No.A1/14/2012, dated 17.12.2013, rejected the claim of the petitioner.

4. Learned counsel for petitioner further submitted that the 2nd respondent is not empowered to alter the seniority, determined in the year 2007 itself, in the year 2012, that too without affording any

opportunity to the petitioner. Further steps to effect the promotion on the basis of altered seniority in the year 2012-13 is also impermissible under the law.

5. Learned counsel further submitted that the 3rd respondent was promoted to the post of Research Assistant on 03.07.2006, whereas, in the affidavit filed before the Tribunal, it was stated that in the month of November 2007, Government has decided to wind-up the District Gazetteers Department and proposed to merge it with the office of Chief Commissioner of Land Administration (CCLA). The petitioner was promoted as Research Assistant on 06.11.2007, however, the 2nd respondent contended before the Tribunal that the petitioner was, for the first time promoted on 06.11.2007, is a misconception. In fact, the petitioner was promoted in the month of December 2001 to the post of Superintendent and it was only a transfer that was made from the post of Superintendent to the Research Assistant on 06.11.2007. Therefore, seniority of the petitioner has to be reckoned with effect from December 2001 for further promotion as Assistant Director since the service put-in by the petitioner in the post of Superintendent from December 2001 to 6th November 2007 has to be taken into consideration.

6. Learned counsel for petitioner submitted that when the petitioner was senior to respondent No.3 in the feeder cadre of Senior Assistant to the post of Research Assistant, the petitioner cannot

become junior to him in the cadre of Research Assistant. Rule 33 (d) of A.P. State and Subordinate Service Rules, 1996 is applicable to the facts and circumstances of the case, which is reproduced as under :

“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.”

7. Learned counsel further submitted that the Tribunal failed to appreciate that respondent No.3 has not put-in 5 years of minimum service in the feeder category of Senior Assistant when he was promoted to the post of Research Assistant, which is mandatory under Rule 7 of G.O.Ms.No.952, dated 30th September 1993. This shows that the promotion of respondent No.3 to the post of Research Assistant is *per se* illegal. Moreover, the stand of respondent No.1 in the counter affidavit filed before the learned Tribunal that they have

normally transferred the petitioner from the post of Senior Assistant to the post of Research Assistant which is not contemplated under G.O.Ms.No.952, dated 30th September 1993, is not correct, since, earlier, two employees i.e. P.Hanumantha Chary, who was working as Superintendent, was transferred as Research Assistant on 26.12.2001 vide LR.No.A1/936/2001, dated 26.12.2001 and Sri Kasinath, who was working as Superintendent, was transferred to the post of Research Assistant on 16.01.2010 vide proceedings No.A1/02/2010, dated 16.01.2010.

8. The answering respondent No.3, in his counter affidavit, stated that the final seniority list was communicated to him in the year 2012-13 only, wherein, his name was shown at Serial No.2, whereas, petitioner was shown at Serial No.4. The petitioner was promoted on 06.11.2007 whereas respondent No.3 was appointed by transfer to the post of Research Assistant on 03.07.2006. As per Rule 33 of A.P. State and Subordinate Service Rules, the seniority of a person in a Service, Class, Category or Grade shall be determined by the date of his 1st appointment to such Service, Class, Category or Grade. Admittedly, the petitioner was promoted on 06.11.2007, much later to the appointment of respondent No.3 by transfer to the post of Research Assistant. Therefore, the petitioner cannot claim seniority over and above respondent No.3. Rule 33(d) says, 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 1st appointment to the later Class or Category. As admitted by the petitioner, she was promoted to the post of Research Assistant from the post of Office Superintendent, therefore, it is not a transfer and Rule 33(d) is not applicable to the facts of the case of the petitioner. There is no channel provided for appointment by transfer or from the post of Office Superintendent to the post of Research Assistant, therefore, her promotion to the post of Research Assistant is against the Rules.

9. We have heard learned counsel for the parties and perused the material record placed on the file.

10. The petitioner was appointed as Typist in December 1990. She was promoted as Senior Assistant in the year 1995, thereafter, further promoted as Superintendent in the year 2001. The post of Research Assistant is governed by Special Rules of A.P. District Gazetteers Subordinate Service Rules issued vide G.O.Ms.No.952, dated 30th September 1993. As per Rule 7 of said Rules, appointment to the cadre of Research Assistant is by transfer from the cadre of Senior Assistant and one shall be an approved probationer and shall have a clean report of 5 years of continuous service in the editorial work of Senior Assistant. Thus, the post of Senior Assistant is feeder category for appointment by transfer to the category of Research Assistant.

11. The 3rd respondent was appointed as Typist on 28.11.1992 and promoted as Senior Assistant on 15.01.2002. Since he passed all the

departmental tests i.e. Accounts Test Part-I and Part-II, he is fully eligible and qualified for appointment by transfer/promotion as per the Special Rules. Therefore, he was appointed by transfer/promoted as Research Assistant on 03.07.2006, whereas, the petitioner, who was working as Superintendent, was appointed by transfer as Research Assistant on 06.11.2007, though there is no channel for appointment by transfer from the post of Superintendent.

12. It is pertinent to mention here that after appointment of the petitioner as Research Assistant, she made a representation to the official respondents seeking to fix her seniority as per Rule 33(d) of A.P. State and Subordinate Service Rules, determining her service from the date of her regular appointment in the regular post of Superintendent, on 21.12.2001. Considering the representation, the 2nd respondent issued Proceedings No.A1/231/2007, dated 15.12.2007 fixing her seniority in the cadre of Research Assistant with effect from 21.12.2001. In the final seniority list of Research Assistants for the year 2009-10, the name of the petitioner was shown at Serial No.6, whereas, the 3rd respondent was placed at Serial No.7. Thereafter, for the year 2011-12 also, the name of the petitioner was placed at Serial No.3, whereas, the 3rd respondent was placed at Serial No.4. But in the final seniority list of Research Assistants issued for the year 2012-13, the name of the petitioner was shown at Serial No.4 while showing the name of 3rd respondent at Serial No.2.

13. The fact remains that the petitioner was appointed to the post of Research Assistant on 06.11.2007, whereas, respondent No.3 was appointed by transfer as Research Assistant on 03.07.2006. Admittedly, the 3rd respondent was appointed much earlier to the petitioner, as such, he is senior to the petitioner. Accordingly, the respondents have issued a final seniority list for the year 2012-13 placing the name of the 3rd respondent above the petitioner by following Rule 33(d) of A.P. State and Subordinate Service Rules.

14. The contention of the petitioner that she is entitled to seniority with effect from 21.12.2001 i.e. the date on which she was promoted as Superintendent as per Rule 33(d) of A.P. State and Subordinate Service Rules. However, this plea cannot be accepted, as the said Rule is applicable to the persons who are appointed by transfer from the same service. The petitioner was working as Superintendent which falls under Ministerial Service Rules, whereas, the post of Research Assistant is governed under A.P. District Gazetteers Subordinate Service Rules. Therefore, Rule 33(d) of A.P. State and Subordinate Service Rules is not applicable to the case of the petitioner.

15. The further contention of the petitioner is that basing on the seniority list issued for the year 2012-13, the official respondents are taking up promotions to the post of Assistant Director. In the counter affidavit before the Tribunal, it was mentioned that there was no

proposal to fill-up the vacancy of Assistant Director and further mentioned that a clarification from the Government is pending. It is evident from the counter affidavit that the seniority lists are prepared at the time of effecting promotions to the higher cadres depending upon vacancy position and those seniority lists were not communicated. Only the final seniority list for the year 2012-13 was communicated, and as such, the contention of the petitioner that her name was shown over and above 3rd respondent in the seniority lists for the years 2009-10 and 2011-12 cannot be accepted. Moreover, the Proceedings dated 15.12.2007 are not supported by any note orders and there are no signatures. The said proceedings were not communicated to the 3rd respondent or to Smt. T.Annapurna, Research Assistant, who are immediate affected parties.

16. In view of the facts recorded above, we are of the considered opinion that the petitioner has joined in service much later to the 3rd respondent and since the category of Superintendent is governed by A.P. Ministerial Service Rules, whereas, the post of Research Assistant is governed by A.P. District Gazetteers Subordinate Service Rules, Rule 33(d) of A.P. State and Subordinate Service Rules is not applicable to the case of the petitioner.

17. Finding no merit, the writ petition is dismissed. Consequently, the order dated 22nd April 2016, passed by the A.P. Administrative Tribunal, Hyderabad, in O.A.No.331 of 2014 is hereby confirmed.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

DR. SHAMEEM AKTHER, J

19th June 2017

N.B: L.R. copy be marked.
(b/o)
ajr

