

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI**

WRIT PETITION No.30375 OF 2014

O R D E R

(Per Hon'ble Sri Justice Sanjay Kumar)

The Government of Telangana and its officials filed this writ petition aggrieved by the order dated 12.06.2013 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.No.1247 of 2012. The said O.A. was filed by the first respondent herein assailing the Memos dated 04.01.2012 and 27.01.2012 issued by the authorities rejecting his request for notional seniority. Consequential direction was sought to the authorities to assign him notional seniority from 28.04.2003, being the date on which candidates who responded to the very same notification were appointed, along with consequential benefits. By the order under challenge, the Tribunal accepted the plea of the first respondent and quashed the impugned Memos. The Tribunal also directed the authorities to accord notional seniority to the first respondent in the post of Assistant Training Officer (Fitter) from 28.04.2003.

By order dated 13.10.2014, this Court granted interim suspension of the order under challenge. W.V.M.P.No.1924 of 2015 was filed by the first respondent to vacate the aforesaid order.

Heard the learned Assistant Government Pleader for Services (Telangana) appearing for the petitioners and Sri Ch. Jagannatha Rao, learned counsel for the first respondent.

As comprehensive arguments were advanced covering the entire gamut of the controversy, the main writ petition is taken up for final disposal.

Notification dated 03.03.2003 was issued by the Government of Andhra Pradesh, Department of Employment and Training, Hyderabad, calling for applications for recruitment to the post of Assistant Training Officers reserved for the physically handicapped. One post of Assistant Training Officer (Fitter) was reserved for the category OC (Deaf) in Zone-V. The notification further indicated that in the event hearing impaired candidates were not available, orthopaedically handicapped candidates would be considered. In response to this notification, the first respondent, along with twelve other orthopaedically handicapped candidates and one G.Anil Kumar, who claimed to be a hearing impaired candidate, applied for the post of Assistant Training Officer (Fitter) in Zone-V. The first respondent secured 62.1 marks in the written test and stood at the first rank amongst the orthopaedically handicapped candidates, while G.Anil Kumar secured only 33.8 marks. However, as G.Anil Kumar was the only candidate who applied under the OC (Deaf) category, he was given preference and was duly appointed to the post. The first respondent submitted representation dated 10.03.2003 objecting to this appointment on the ground that G.Anil Kumar was not eligible under the Physically Handicapped (Deaf) category.

Ultimately, the Commissioner, Disabled Welfare, entertained Case No.104 of 2003, wherein he held, vide order dated 18.02.2005, that G.Anil Kumar was not eligible to be considered for the post under the category of Physically Handicapped (Deaf). Pursuant to the disqualification of G.Anil Kumar, the first respondent was appointed to the post vide proceedings dated 28.03.2006. However, as the other candidates who were appointed pursuant to the notification dated 03.03.2003 stole a march over him in terms of seniority and as his

appointment was delayed till March, 2006, due to the unlawful selection and appointment of G.Anil Kumar, the first respondent submitted representations seeking notional seniority. Under the impugned Memos dated 04.01.2012 and 27.01.2012, the authorities rejected his request. Aggrieved thereby, he approached the Tribunal. By the order under challenge, the Tribunal held in favour of the first respondent and found that the delay in his appointment was because of the wrongful act of the authorities in selecting and appointing an ineligible candidate and therefore, the first respondent was not liable to be penalized for the same. The impugned Memos were accordingly set aside and the authorities were directed to grant notional seniority to the first respondent from 28.04.2003.

Sri Ch.Jagannatha Rao, learned counsel, would place reliance on **BALWANT SINGH NARWAL V/s. STATE OF HARYANA**¹, wherein the Supreme Court observed that candidates who were selected against earlier vacancies but could not be appointed along with others of the same batch due to technical difficulties would have to be placed above those who were appointed against subsequent vacancies. Similar was the direction given by this Court in **M.L.VENKATASUBBAIAH V/s. DISTRICT EDUCATIONAL OFFICER, KADAPA**².

The case on hand stands on a better footing when compared to the decisions cited by the learned counsel inasmuch as the delay in the appointment of the first respondent was not due to any technical difficulties but owing to the wrongful selection and appointment of a wholly ineligible candidate. It was only upon the Commissioner of Disabled Welfare interfering in the matter and setting at naught such

¹ (2008) 7 SCC 728

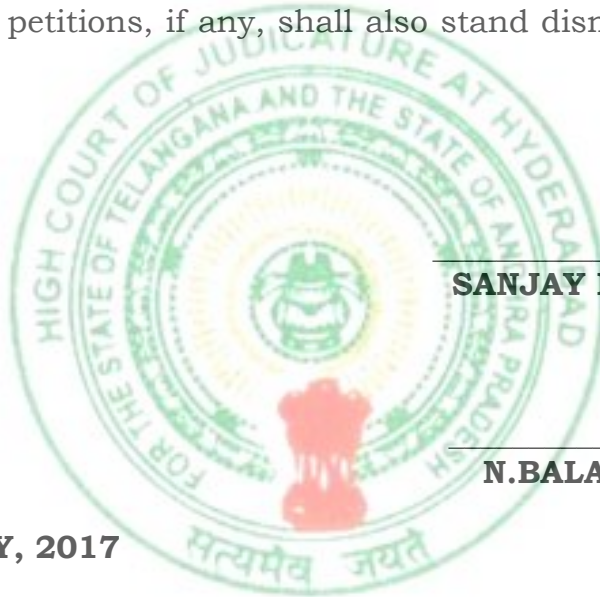
² W.P.Nos.5890, 6461 & 6580 of 2003 decided on 13.11.2003.

an illegal appointment that the candidature of the first respondent was considered.

This being the fact situation, we see no reason as to why the first respondent should be denied the benefit of notional seniority, thereby placing him on par with those appointed under the same notification in the year 2003. We therefore see no reason to interfere with the relief granted by the Tribunal to this effect.

The writ petition is devoid of merit and is accordingly dismissed.

Interim order dated 13.10.2014 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR, J

N.BALAYOGI, J

1st FEBRUARY, 2017

PGS