

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SMT JUSTICE K.VIJAYA LAKSHMI

WRIT PETITION No.33268 of 2017

Date:05.10.2017

Between:

The State of A.P., repto by its Principal
Secretary, Health, Medical and Family
Welfare Department,
Velagapudi and two others.

And:

B.Saritha,
D/o B.Ramachandra Reddy

..... Petitioners

.....Respondent

Counsel for the petitioners: GP for Services (AP)

Counsel for the respondent: Mr. K.Venugopal Reddy

The Court made the following:

ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

Order, dated 30.11.2016, in Original Application No.5770 of 2013 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad (for short 'the Tribunal'), is questioned by the respondents in the said O.A.

The brief facts leading to the filing of this Writ Petition are as follows:-

The respondent was appointed as Typist under Compassionate Appointment Scheme, in place of her mother, on 04.8.2001. As she did not pass the Intermediate examination and Typewriting Higher Grade in English and Telugu, she was appointed with the condition that she should pass Intermediate by March, 2002 and Typewriting Higher Grade in English and Telugu by July, 2002, and the respondent has given an undertaking that she will accept the lower post, if she could not acquire the said qualifications. A memo, vide Rc.No.1709/B3/2005, was issued to her on 17.01.2006 directing her to submit the reasons for not acquiring the afore-mentioned qualifications within the prescribed time. She has submitted her explanation, dated 29.01.2006, wherein she requested for permission to acquire the requisite qualifications within a period of five years from the date of her initial appointment, *i.e.*, on or before

03.8.2006. On 22.8.2006, a further memo was issued by the petitioners to the effect that the respondent should produce the General and Technical qualifications certificates within five days from the date of the said memo, failing which, she should give her willingness to consider her appointment to a lower post such as Attender as a fresh candidate as per G.O.Ms.No.969, General Administration (SG.A) Department, dated 27.10.1995. Challenging the said proceedings, the respondent filed O.A.No.5448 of 2006, which was dismissed by order, dated 04.12.2009, and thereafter, a notice was issued to her on 12.3.2010 directing her to submit her willingness for appointment to the post of Attender as a fresh candidate, for not having acquired the requisite qualifications, within 30 days from the receipt of the said memo. As the respondent neither acquired the requisite qualifications nor conveyed her willingness for reversion, proceedings, vide Proc.No.1749/B3/2016, dated 24.9.2010, were issued by petitioner No.3 reverting the respondent as Office Subordinate in the time scale of Rs.6,700-20,110. It appears by the time of issue of the aforementioned proceedings, the respondent has acquired the requisite qualifications. However, the said proceedings were not implemented for the reasons best known to the petitioners. Almost three years later, petitioner No.1 has issued memo

No.9362H.1/2011, dated 08.7.2013, wherein proposal for regularization of the services of the respondent in the cadre of Typist was turned down as, she was already reverted as Office Subordinate, vide proceedings No. 1749/B3/2010, dated 24.9.2010. Questioning the said memo, the respondent filed O.A.No.5770 of 2013 before the Tribunal. In the said O.A., the Tribunal has granted interim order, on the strength of which, the respondent was continued as Typist. The O.A. eventually came to be disposed of by the impugned order, wherein the Tribunal held that by the time, the respondent was reverted as Office Subordinate, she has acquired the requisite qualifications and that, even the reversion order was not implemented by the petitioners till the said O.A. was filed in the year 2013.

Learned Government Pleader for Services (Andhra Pradesh) appearing for the petitioners has submitted that the respondent cannot be allowed to capitalize on the lapses of the petitioners in enforcing the conditions subject to which she was appointed to the post of Typist and that the respondent, admittedly, failed to acquire the requisite qualifications not only within the prescribed time but also within the extended time. Alternatively, she has submitted that the respondent may not be entitled to seniority as Typist at least till such time as she acquired the requisite qualifications.

Mr. K.Venu Gopal Reddy, learned counsel for the respondent, submitted that the Tribunal has assigned sound reasons for granting the relief in favour of his client and that, therefore, the impugned order is not liable to be interfered with.

We have carefully considered the submissions of the learned counsel for both the parties with reference to the record.

Admittedly, the respondent did not possess the requisite qualifications for being appointed as Typist. However, the extant Government Orders have facilitated appointment of a candidate without the requisite qualifications to a higher post subject to his/her acquiring the requisite qualifications within the stipulated time. G.O.Ms.No.969, General Administration (Services.A) Department, dated 27.10.1995, laid down in peremptory terms that if the candidate concerned fails to acquire the requisite educational/technical qualifications within the extended grace period, he/she may be considered for appointment to a lower post such as Attender for which such educational or Typewriting qualification is not prescribed.

In the case of the respondent, the time for acquiring the requisite qualifications was extended till 03.8.2006. The respondent herself at the time of her initial appointment has given an undertaking that if she does not acquire the requisite

qualifications within the stipulated time, she is liable for reversion. However, though the extended time stipulated for acquiring the requisite qualifications expired on 03.8.2006, the petitioners did not revert her till she acquired the requisite qualifications. Even this reversion order was not implemented by the petitioners for the reasons best known to them.

In the above situation, the Tribunal, on equitable consideration, granted the relief in favour of the respondent. We, therefore, do not find any error in the impugned order of the Tribunal to this extent.

As regards the alternative submission of the learned Government Pleader that in the peculiar facts of the case, even if the respondent is not liable for reversion at this length of time, she may not be entitled to seniority as Typist till such time as she has not acquired the requisite qualifications, we find merit in this submission.

Having availed the facility of being appointed to a higher post without holding the requisite qualifications, it is incumbent upon the respondent to acquire the requisite qualifications within the stipulated time or suffer the consequences thereof. Strictly speaking, the respondent was liable for reversion. However, due to the lapses on the part of the petitioners, such reversion has not taken place. However, the respondent cannot

claim with any legitimacy her seniority as Typist till she has acquired the requisite qualifications.

In the afore-mentioned facts of the case, while we decline to interfere with the impugned order of the Tribunal, we, however, direct that the respondent's seniority as Typist must be counted only from the date on which she has acquired the requisite qualifications. This must necessarily mean that for the anterior period, her service must be treated as Office Subordinate.

The Writ Petition is partly allowed to the extent indicated above.

As a sequel, WPMP.No.41383 of 2017 stands dismissed as infructuous.



JUSTICE C.V.NAGARJUNA REDDY

JUSTICE K.VIJAYA LAKSHMI

05th October 2017

DR