

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.39655 of 2016

ORDER :

Heard the counsel for petitioners, the learned Government Pleader for Services (Telangana) for respondent nos.1 and 2, and Sri L. Prabhakar Reddy, counsel for respondent nos.3 to 5.

2. The petitioners herein were initially appointed as Assistant Project Officers / Community Organizers on 24.11.1991 and 01.12.1991 under the scheme for 'Urban Basic Services for the Poor'. After written test and interview they were selected and appointed as Assistant Project Officers / Community Organizers on the above dates.

3. Along with petitioners, some others such as respondent nos.3 to 5 in 1992 and 1993 were also appointed.

4. When the services of petitioners were terminated in 1997 without conducting any enquiry, they filed O.A.No.5099 of 1995 before the Andhra Pradesh Administrative Tribunal. The Tribunal dismissed the same.

5. The petitioners assailed the same in WP.No.34411 of 1997 in this Court which was allowed on 24.08.2004. The Division Bench of the High Court held as follows :

“40. Accordingly, we set aside the orders of tribunal and declare that the termination orders issued on 3.7.1997 are illegal and arbitrary. Consequently, they are entitled for reinstatement with attendant benefits, which they could have got, but for the illegal termination.

41. It is also not disputed that similarly situate persons were absorbed as Community Organisers by virtue of the G.O.Ms.No.547 M.A. & U.D.D. dated 13.10.1998. But, for the illegal termination, the petitioners could have also been absorbed as Community Organisers. Under those circumstances, we direct that the petitioners shall be deemed to have been absorbed as Community Organisers from the date their counter-parts in other Municipalities were absorbed in pursuance of G.O.Ms.No.547, M.A. dated 13.10.1998 and they are entitled for all the benefits including the scales of pay from the date their counter-parts were absorbed. However, they are not entitled for backwages and other monetary benefits from the date of termination till the date of this order.

42. The Writ Petition is accordingly allowed. In view of the order passed above, we need not consider the validity of the Order in O.A.No.5099 of 1995 as the petitioners have been directed to be absorbed in accordance with the G.O.Ms.No.547 M.A. dated 13.10.1998.

43. No costs.”

6. While the above Writ Petition was pending, the State Government issued G.O.Ms.No.547 Municipal Administration and Urban Development (UBS) Department dt.13.10.1998 framing the Andhra Pradesh Urban Poverty Alleviation (Municipal

Administration) Subordinate Service Rules. As per these Rules, similarly situated persons were absorbed as Community Organisers. The respondent nos.3 to 5 herein were absorbed as per the above Rules.

7. However, since the High Court in W.P.No.34411 of 1997 had directed that petitioners would be deemed to have been absorbed from the date of absorption of their counter-parts in the other Municipalities, the petitioners would be entitled to all the benefits as per the said judgment including the scale of pay from the date their counter-parts were absorbed.

8. The said judgment of the Division Bench of the High Court was confirmed in S.L.P.(Civil)No.4740 of 2010 on 01.04.2010.

9. The petitioners were thereafter reinstated as Community Organisers by proceedings dt.16.04.2013.

10. Even the rules notified in G.O.Ms.No.547 dt.13.10.1998 state that absorption would be included in the term 'appointment' as regards Community Organisers posts and Rule 19 of the Rules specifically states that "the Rules will not adversely affect any member of service who was appointed as a Community Organiser on or before the issuance of these Rules, and all such persons so appointed shall be deemed to be appointed under these Rules with effect from the date of appointment in the respective categories".

11. By virtue of this provision contained in G.O.Ms.No.547, the petitioners have to be treated as having been appointed under these Rules and they are entitled to have their service counted from the date of their initial appointment i.e., 24.11.1991 and 01.12.1991 respectively.

12. The petitioners were denied promotion to the next higher post of Town Project Officer Grade – III and their juniors were promoted.

13. They, therefore, filed O.A.No.7331 of 2013 before the Andhra Pradesh Administrative Tribunal, and on 10.10.2013 the Tribunal admitted the O.A., and directed the respondents to consider promoting petitioners to the said posts on par with their juniors within a period of four (04) weeks.

14. The said order was not implemented.

15. So, petitioners filed C.A.No.1426 of 2014. Counter-affidavit was filed therein on behalf of 1st respondent through the Joint Secretary to Government, Municipal Administration Urban Development Department, referring to the interim order of the Administrative Tribunal on 10.10.2013 in O.A.No.7331 of 2013 and stating that the Commissioner and Director of Municipal Administration, Andhra Pradesh, Hyderabad, who is the 2nd respondent in this Writ Petition also, was already requested to implement the said order through a Government Memo dt.10.08.2016.

16. The petitioners assert that since they are senior-most as per the final seniority list issued on 31.08.2015, they ought to be promoted to the post of Town Project Officers Grade – III and Grade – II as per their entitlement, and in fact, they should have got the said promotion with effect from 03.11.2001, and further promotion as Town Project Officers Grade – II with effect from 23.09.2013 from the date when their junior Y. Karunakar (3rd respondent) was promoted by the 2nd respondent.

17. They contend that in a tentative seniority list communicated by proceedings dt.29.07.2016, the 1st petitioner was shown at serial no.7 and his promotion to the post of Town Project Officer Grade – III was shown as having been given only on 07.09.2015 ignoring the orders passed by the Administrative Tribunal to consider their case for promotion to the said posts on par with respondent nos.3 to 5.

18. They assert that respondent nos.3 to 5 were appointed initially on 13.05.1992 and the 5th respondent was appointed on 18.11.1993, that they were promoted to the category of Town Project Officer Grade – II on 22.10.2016 and since they are juniors to petitioners, the petitioners should be placed above them.

19. Counter-affidavit is filed by 2nd respondent taking a stand that as per G.O.Ms.No.547 dt.13.10.1998, the local unit of the post of Town Project Officer Grade – III and Town Project Officer Grade – II is multi-zone and an employee working in one multi-zone cannot

claim for seniority or promotion on par with an employee working in another multi-zone though the former is junior to the latter at a point of time in their feeder category where their local unit was one and the same.

20. This contention was not raised in WP.No.34411 of 1997 by respondents. So the 2nd respondent cannot now take a stand which was not taken in the said Writ Petition as such plea is barred by the principle of constructive *res judicata*.

21. It is also not open to 2nd respondent to take a stand contrary to the stand taken in the counter-affidavit filed by the Joint Secretary to Government, Municipal Administration Urban Development Department in C.A.No.1426 of 2014 before the Andhra Pradesh Administrative Tribunal wherein the 1st respondent stated that he had instructed the 2nd respondent to implement the order of the Administrative Tribunal in O.A.No.7331 of 2013 through a Government Memo dt.10.08.2016. In fact, the filing of counter-affidavit taking this stand by 2nd respondent amounts to gross insubordination by 2nd respondent of the directions of 1st respondent warranting disciplinary proceedings against 2nd respondent.

22. The further stand of 2nd respondent is that respondent nos.3 to 5 had been appointed as Community Organisers on regular basis while petitioners were appointed on contract basis and not on regular basis on 24.11.1991 and 01.12.1991. This stand taken by respondent is also

contrary to the finding given by a Division Bench of this Court in WP.No.34411 of 1997 wherein this Court has specifically directed that petitioners shall be deemed to have been absorbed as Community Organisers from the date their counter-parts in other Municipalities were absorbed pursuant to G.O.Ms.No.547 dt.13.10.1998, and that they were entitled to all benefits including the scales of pay from the date their counter-parts were absorbed. Therefore, this stand taken by the 2nd respondent being contrary to the decision in WP.No.34411 of 1997, is equally untenable.

23. In the counter-affidavit filed by respondent nos.3 to 5, while not denying that they had been appointed in 1992 and 1993 as Community Organisers after the petitioners had been initially appointed in 1991, a stand is taken that they are entitled to their seniority in view of proviso (2) of Rule 3 of the Rules framed vide G.O.Ms.No.547 dt.13.10.1998.

24. In view of Rule 19 which states that the Rules framed under G.O.Ms.No.547 dt.13.10.1998 would not adversely affect any member of service when he was appointed as a Community Organiser on or before issuance of the Rules, and that all such persons so appointed shall be deemed to be appointed under these rules with effect from the date of appointment in the respective categories, the petitioners who have been absorbed as Community Organisers by virtue of the order dt.24.08.2004 in WP.No.34411 of 1997 would be deemed to have been appointed on their respective dates of

appointment on 24.11.1991 and 01.12.2991, and subsequently, they are entitled to be placed as seniors to respondent nos.3 to 5.

25. Accordingly, the Writ Petition is allowed, and the action of respondent nos.1 and 2 in placing the petitioners as juniors to respondent nos.3 to 5 in the Grade of Community Organisers is declared arbitrary and illegal, and it is declared that petitioners are entitled to be promoted to the posts of Town Project Officer Grade – III and Town Project Officer Grade – II on par with their juniors with all consequential benefits including scales of pay as directed in WP.No.34411 of 1997 by this Court as well as in O.A.No.7331 of 2013 by the Administrative Tribunal; and the respondent nos.1 and 2 are directed to place them as seniors to respondent nos.3 to 5 in both these categories as well. No order as to costs.

26. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 03-01-2017

Ndr/*