

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.24475 OF 2005

ORDER:

This writ petition is filed seeking writ of mandamus declaring the action of the respondents in treating the petitioner as junior to respondents 3 and 4 in the cadre of Junior Assistant (A) and Senior Assistant (F) as illegal and arbitrary and consequently to direct the respondents to place the petitioner above the respondent Nos.3 and 4 for the purpose of seniority for higher promotion.

2. It is the case of the petitioner that he joined in APSRTC on 06.03.1986 as casual conductor and while he was working as Conductor, he applied for the post of Junior Clerk in Personnel Department. The Selection Committee had selected him as Junior Clerk (Personnel Department) and appointment order was issued vide office order No.P1/502 (13)/85-RM:KR, dated 22.07.1987 and that his name is at Sl.No.4 in the said proceedings and he reported duty as Junior clerk on 27.07.1987. That in the said office order, the 3rd respondent is at Sl.No.7 and the 4th respondent's name is at Sl.No.5, as such, the respondents are juniors to the petitioner. Subsequently, petitioner's services were regularized vide order of the Regional Manager, Karimnagar dated 14.09.1988 and his name is at Sl.No.7 in the said proceedings, whereas the 3rd respondent is at

Sl.No.12 and 4th respondent is at Sl.No.10 in the said proceedings. That the respondents 3 and 4 made applications for transfer from Personnel Department to Finance Department. The Regional Manager, Karimnagar vide Office Order No.P3/232(21)/86-RM: KRMR, dated 01.10.1988 transferred the petitioner and respondents 3 and 4 as Junior Clerk, Accounts Department. Even in the said proceedings, the name of the petitioner is shown above the name of the respondents 3 and 4. Thereafter, the Regional Manager, Karimnagar, by Notification No.P3/541 (3)/87-RM:KR, dated 20.12.1990 published the provisional seniority list of Junior Assistant (Finance) working in Kakatiya Region appointed after 30.04.1987. In the said seniority list, the name of the petitioner is shown at Sl.No.21 whereas the 3rd respondent is shown at Sl.No.20 and the 4th respondent is shown at Sl.No.40. It is stated that one D.Veeraiah, Sri A.R.Vithal (4th respondent herein) and Sri M.V.N.Mohan Rao filed W.P.No.14131 of 1997 for fixation of seniority in the cadre of Junior Clerk (Accounts) from the date of initial appointment in the cadre of Junior Clerk with consequential and attendant benefits. In the said writ petition, the petitioner was shown as respondent No.4 and the 4th respondent herein is shown as 2nd petitioner in the said writ petition. This Court disposed of the aforesaid writ petition on 06.07.1998 directing the respondents to consider the case of the petitioners therein and provide their rightful place in the

Department; that the petitioner has been officiating as Senior Assistant (Finance) since 1994 and that his services in the cadre of Junior Assistant were confirmed vide order dated 04.06.1994 and his name is at Sl.No.57 in the said proceedings. That the Departmental Selection Committee met on 31.12.1996 and recommended the petitioner for promotion to the post of Senior Assistant (Finance). Based on the recommendations of the Departmental Selection Committee, the respondent-Executive Director issued Office order No.P3/255 (8)/96-Ed: DR dated 31.5.1997 promoting 11 Junior Assistants (F) as Seniority Assistants (F) and that in the said promotion, the name of the petitioner is shown at Sl.No.7 and the 3rd respondent is placed at Sl.No.6, which is illegal. That vide Office Order dated 16.11.1999, the Junior Assistant (F) who were promoted to Senior Assistant (F) have been regularized in the promoted cadre from the dates specified therein and the petitioner's name is shown at Sl.No.14 in the said list and his date of regularization was shown as 21.07.1997, whereas the regularization of the 3rd respondent was shown as 27.06.1997 and the 4th respondent was regularized in the cadre of Senior Assistant with effect from 31.5.1997, which is discriminatory and contrary to the Service Regulations. Though their services are to be regularized from the date of promotion, no reasons were assigned for showing the different dates of regularization. Aggrieved by the proceedings of the official respondents in

giving different dates for promotion and regularization of his cadre, the petitioner made representation dated 09.02.2000 requesting the authorities to restore his promotion to the post of Senior Assistant (Finance) from the date on which the respondents 3 and 4 have been promoted. While his application is pending consideration, the 3rd respondent was promoted as Senior Assistant (A) from the post of Senior Assistant (F) under Regulation of the Recruitment Rules vide proceedings No.E3/255 (27)/2003-KRZ dated 23.01.2004, whereas he was promoted as Senior Assistant (A) on temporary basis under Regulation 30 of Recruitment Rules on 27.1.2005. Aggrieved by the action of the official respondents in showing the petitioner as juniors to the respondents 3 and 4, the present writ petition is filed.

3. Counter affidavit is filed by the respondents 1 and 2 denying the averments in the affidavit filed in support of the writ petition admitting that the petitioner was selected as Junior Clerk (Junior Assistant) in Personnel Department under Regulation No.17 vide order No.G1/502 (13)/86-RM:KR dated 22.07.1987 and posted to Asifabad Depot and the petitioner reported to duty as Junior Clerk on 29.07.1987. The services of the petitioner along with respondents 3 and 4 were regularized vide order dated 14.09.1988, wherein the petitioner is at serial No.7, the 3rd respondent is at Sl.No.12 and the 4th respondent is at Sl.No.10. That on the request made by the petitioner and

others, they were transferred on conversion as Junior Clerks (AD) vide order dated 01.10.1998, wherein the petitioner was at Serial No.4 and posted to Dy.CAO/Karimnagar and 3rd respondent is at Sl.No.6 and the 4th respondent is at Sl.No.5. In the order it was specified that they should forfeit their seniority in the cadre of Junior Clerks (PD) in the personnel department. That their seniority in the cadre of Junior Clerks (AD) in the Accounts Department shall be maintained according to the seniority mentioned in the order. It is stated that as per the orders of this Court in W.P.No.14131 of 1997, the seniority of 4th respondent was fixed. That basing on the orders dated 06.07.1998 in the aforesaid writ petition, the seniority of the petitioners therein were fixed vide proceedings dated 29.09.1998 by taking into consideration the seniority in Personnel Department before conversion to the Accounts Department and on the seniority list Junior Assistant (Finance) was published on 20.12.1990 and 12.09.1995. That the petitioner was promoted as Senior Assistant (F) under Regulation 30 vide order dated 31.05.1997 and his services were confirmed as Junior Assistant (F) vide order dated 04.06.1994 and regularized vide order dated 16.11.1999, wherein the name of the petitioner was shown at Serial No.14 and the date of regularization was 21.07.1997. The name of the 3rd respondent was at serial No.13 and the date of regularization was 27.06.1997 and the 4th respondent was at serial No.12 and

the date of his regularization was 31.5.1997. It is stated that in the seniority list published vide order dated 29.01.2000, the petitioner was shown at Sl.No.113, 3rd respondent is at 112 and the 4th respondent is at 111 and that the regularization was made based on the seniority of promotion as Senior Assistant (F) and the same was published vide notification dated 29.1.2000 and thereafter, the petitioner was promoted as Senior Assistant (F) from Junior Assistant (F) based on the seniority and regularization of service in the post of Senior Assistant (F) was done according to the promotion seniority. That on conversion as Junior Assistant (F), the seniority as Junior Assistant (F) was counted from the date of reporting as Junior Assistant (F). It is stated that the respondents 3 and 4 are seniors to the petitioner as Junior Assistant (F), hence, the 3rd respondent was considered for promotion to the post of Senior Assistant (Audit) before the petitioner and that the writ petition is devoid of merits and sought for dismissal of the writ petition.

4. Though notices were served on the 3rd respondent, none appeared on behalf of the 3rd respondent. When the petitioner failed to take out notice on the 4th respondent on the directions of this Court dated 17.11.2014 and failed to file proof of service, writ petition is dismissed for default against the 4th respondent vide office notice dated 31.12.2014.

5. Heard learned counsel for the petitioner and Sri B.Mayur Reddy, learned Standing Counsel for the respondent Corporation.

6. Learned counsel for the petitioner submits that in the proceedings dated 01.10.1988, wherein the petitioner and the respondents 3 and 4 were transferred on conversion as Junior Clerk (AD), the petitioner was shown as Serial No.4 and whereas the 4th and 3rd respondents are shown at Serial No.5 and 6. In the said proceedings, the 1st condition stipulates that they should forfeit the seniority in the cadre of Junior Clerks (PD) in the Personnel Department/Junior Statistician in MIS WING and that their seniority in the cadre of Junior Clerks (Accounts) in the Accounts department shall be maintained as mentioned in the said proceedings. He submits that in the seniority list, the official respondents have shown the petitioner as junior and he was granted promotion as Senior Assistant and date of promotion as Senior Assistant was also by same proceedings. But in the seniority list, the petitioner was shown as junior to respondents 3 and 4, which is illegal. He also submits that as per Regulation 3 (c) of the Andhra Pradesh Road Transport Employees (Service) Regulations 1964 (for short 'the Regulations of 1964'), the transfer of person from one cadre to other shall not be treated and that even a person is transferred, his seniority shall be from the date of appointment to the category

from which he was transferred. But the respondents have acted contrary to Regulation 3 of the Regulations of 1964.

7. On the other hand, Sri B. Mayur Reddy, learned Standing Counsel for the respondent Corporation submits that petitioner was willing to relinquish the right of seniority in which case, the date of joining of transferred post should be reckoned as per Regulation 3 (c) of the Regulations, 1964. He also referred to condition No.1 in the proceedings dated 01.10.1988 and states that as per first condition itself they should forfeit their seniority in the cadre of junior clerks in the transferred department, as such, the seniority of the petitioner was fixed in tune with Regulation 3 (c) of the Regulations, 1964.

8. Both the learned counsel relied on Regulation 3 (c) of the Regulations, 1964, which reads as follows:

“3. Seniority:

(a).....

(b).....

(c) The transfer of a person from one category or grade of a service to another category or grade carrying the same pay or scale of pay shall not be treated as a first appointment to the latter for purpose of seniority. The seniority of a person so transferred shall be determined with reference to the date of his first appointment to the category or grade from which he was transferred. If any employee is willing to relinquish the right of his seniority in the post held by him in the seniority Unit in which he is working and is willing to join on transfer in another seniority unit at his request, it shall be treated as a first appointment for transferred employee for the purpose of seniority and he will become junior most in the seniority unit to which transferred on request. His seniority shall be reckoned from the date of his joining on transfer in the later seniority unit. Where any difficulty/doubt arises in applying this regulation, seniority shall be determined by the appointing authority.

In this case, there is no dispute about the appointment of the petitioner and also he is senior to the respondents 3 and 4.

In the said proceedings dated 01.10.1988, it is categorically

stated in the 1st condition that they should forfeit their seniority in the cadre of junior clerks (F) of the Personal Department. That the seniority in the Accounts Department shall be treated as mentioned in the said proceedings. Learned counsel for the petitioner while pleading with regard to 1st condition in the said proceedings, submits that when once the respondents 3 and 4 are shown as juniors to petitioner in the conversion proceedings, the same should be maintained in the promotion of petitioner along with respondents 3 and 4. But the fact remains that when once they opted to transfer from one department to another department, they should forfeit their seniority as they consented for the same. In the second limb of Clause (c) of Regulation 3 of the Regulations of 1964, wherein it is stated that the seniority shall be reckoned from the date of joining on transfer in the later seniority unit and that where any difficulty/doubt arises in applying this regulation, Seniority shall be determined by the appointing authority.

9. Learned Standing Counsel for the respondent Corporation by relying on Clause (c) of Regulation 3 of the Regulations of 1964, justified his contention about fixing of seniority among the petitioner and respondents 3 and 4 stating that the date of joining of the petitioner as well as respondents 3 and 4 was taken into account.

10. There is no dispute that the petitioner's application for conversion was on 29.01.1988, whereas the application of the

respondents 3 and 4 on 18.09.1987 and 02.09.1987, respectively. The date of joining of the petitioner is also subsequent to the date of joining of respondents 3 and 4. When once the Petitioner was willing to forego his seniority when he was transferred from Junior Clerk (PD) in the Personal Department to Junior Clerk (Accounts) Department and the appointing authority fixed the seniority basing on the second limb of Regulation 3 (c) of the Regulations, taking into account the date of joining in finance department, the same cannot be faulted and more so the said regulation is not challenged.

11. Subsequently, by virtue of proceedings dated 16.11.1999, the petitioner and the respondents 3 and 4 were promoted in the year 1997 by virtue of the proceedings No.255(21)/99-ED:KR issued by the Executive Director, Karimnagar Zone, wherein the petitioner was shown as junior to the respondents 3 and 4. According to writ petitioner, in those proceedings also, he was shown as junior to respondents 3 and 4 and that he has not complained about the same, but only filed objection to provisional seniority list on 09.02.2000 and subsequently filed the present writ petition in the year 2005. Moreover, the petitioner has not challenged the promotion order dated 31.05.1997.

12. Though the learned counsel for the petitioner relied on the judgment of this Court in W.P.No.14131 of 1997, dated 06.07.1998, the same will not come to the rescue of the

petitioner for the reason that Regulation 3 (c) of the Regulations of 1964 was not considered in the said judgment. Since the writ petition is dismissed against 4th respondent, no relief can be granted against 4th respondent.

In view of above facts and circumstances, I do not see any merit in the writ petition and same is liable to be dismissed.

Accordingly, the writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

20-07-2017
kvs



A.RAJASHEKER REDDY,J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.24475 OF 2005



kvs



