

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

WRIT PETITION No.19413 of 2015

Date: 03.10.2017

Between:

The District Educational Officer, Ananthapur District,
Ananthapur & others

... Petitioners

And

K. Suguna & others

... Respondents

Counsel for petitioners : Government Pleader for Services (AP)

Counsel for respondents 1 & 2 : Sri S. Srinivas Babu

This court made the following:



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

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

This writ petition is filed assailing the order dated 21.04.2014 passed in OA No.2940 of 2014.

The brief facts, leading to filing of this writ petition are that respondent Nos.1 and 2 applied for the post of Secondary Grade Teachers under DSC-2008. Aggrieved by their non-selection, the said respondents filed O.A.No.5772 of 2011 before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal'). The Tribunal allowed the said O.A. holding that the respondent Nos.1 and 2 have superior merit over the candidates holding B.Sc., qualification and that their non selection is illegal. The Tribunal directed the petitioners to appoint the respondent Nos.1 and 2 as Secondary Grade Teachers with all consequential benefits. Purporting to follow the said order, the petitioners, have issued appointment orders to Respondent Nos.1 and 2 by incorporating as many as nine conditions, which include the condition that their appointments will come into force only from the date of their appointment. In effect, respondent Nos.1 and 2 were denied the notional service and increments for the purpose of fixation of their pay scale from the date the less meritorious candidates were appointed. Feeling aggrieved by the said condition, the respondent Nos.1 and 2 filed O.A.No.2940 of 2014. The Tribunal allowed the said O.A. with the finding that though respondent Nos.1 and 2 were more meritorious, they were not appointed while the candidates with less merit were appointed

by the petitioners. The Tribunal further held that the order dated 16.07.2012 in OA No.5772 of 2011 filed by respondent Nos.1 and 2 whereby a direction was given to the petitioners to appoint respondent Nos.1 and 2 as Secondary Grade Teachers, was unsuccessfully questioned in a writ petition before this Court and that the SLP filed by petitioners before the Supreme Court against the said order was also dismissed. The Tribunal further held that as the order in OA No.9472 of 2010 wherein a specific finding was given that respondent Nos.1 and 2 have superior merit have become final, there is no justification in denying them the past service.

Learned Government Pleader for Services-I (AP) submitted that respondent Nos.1 and 2 have opted to compete with B.Ed candidates without exercising their option under D.Ed category and that as among the B.Ed candidates, respondent Nos.1 and 2 are less meritorious, they could not come up for selection and that in view of the direction issued in O.A.No.5772 of 2011, respondent Nos.1 and 2 were considered in respect of the post reserved for D.Ed candidates, though, they did not opt for the said category. She has further argued that the Tribunal has committed an error in observing that by its order dated 16.07.2012 passed in OA No.5772 of 2011, a direction was issued to appoint respondent Nos.1 and 2 as Secondary Grade Teachers with all consequential benefits, though such a direction for extending all consequential benefits was not given in the said order.

Sri S.Srinivasa Babu, learned counsel for respondent Nos.1 and 2 supported the order of the Tribunal. We have carefully considered the submissions of the learned counsel for the parties.

It is not in dispute that, among the D.Ed., candidates, respondent Nos.1 and 2 hold superior merit over those who were selected under that category. Obviously on the ground that respondent Nos.1 and 2 have not given their option for consideration under D.Ed., category, they were not appointed by the petitioners, though less meritorious candidates under that category were appointed. The Tribunal in OA No.5772 of 2011 held that non-consideration of respondent Nos.1 and 2 under D.Ed., category is arbitrary and a direction was accordingly issued to consider them under the said category. In our opinion, once the petitioners have found respondent Nos.1 and 2 eligible for being appointed under the category ear-marked for D.Ed., on the ground that they hold superior merit over the candidates already appointed in that category, it defies any rationale to deny them the benefit of the past service with effect from the date, the less meritorious candidates were appointed. It would be wholly anomalous, if persons of superior merit are treated as juniors to the persons with inferior merit, merely because of a mistake committed by the candidates while applying for selection. At any rate, having accepted the order of the Tribunal and appointed respondent Nos.1 and 2 under D.Ed., category, even though they opted under B.Ed., category, it lies ill in the mouth of the petitioners to fall back upon the purported mistake committed by respondent Nos.1 and 2 in indicating that their choice for selection under D.Ed., category.

With regard to the submissions of the learned Government Pleader that the Tribunal in O.A No.5772 of 2011, did not direct the extension of consequential benefits, while we find that this submission is correct, the absence of such a direction in the previous O.A. should not deprive respondent Nos.1 and 2 of the benefit of notional seniority with

increments, as such relief is implied, once they are appointed on the basis of their superior merit over those candidates who were already appointed. Denial of this benefit to respondent Nos.1 and 2 is wholly inequitable.

Indeed in a similar situation, this Court has dismissed W.P. No.15936 of 2016 filed by the District Educational Officer, Nalgonda, while confirming the similar order dated 12.03.2014 passed by the Tribunal in O.A.No.2838 of 2013. At the hearing, a copy of the order dated 27.02.2017 in S.L.P (C) No.4194 of 2017 has been placed before us, which shows that the said S.L.P filed against the order in W.P. No.15936 of 2016 was dismissed and we find that the case on hand is similar to W.P. No.15936 of 2016, and for the reasons recorded hereinabove, the writ petition is liable to be dismissed.

For the aforementioned reasons, the writ petition is dismissed. No order as to costs.

As a sequel to dismissal of the writ petition, WP MP No.25098 of 2015 is dismissed as infructuous and WV MP No.2727 of 2015 is disposed of as infructuous.

C. V. NAGARJUNA REDDY, J

KONGARA VIJAYA LAKSHMI, J

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



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