

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition No.1068 of 2016

ORDER: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

The challenge in this writ petition at the instance of petitioners, is the order dated 09.09.2014 in O.A.No.9552 of 2011 passed by learned Andhra Pradesh Administrative Tribunal, Hyderabad (for short “the Tribunal”) whereby and whereunder the Tribunal disposed of the O.A. directing the respondents therein to appoint the applicant retrospectively with effect from 1974 on par with co-selectees and count her seniority with effect from the said date and also fix her pay scale notionally without monetary benefit and revise the pension and pass appropriate orders within a period of four months from the date of receipt of a copy of the order.

2) While ordering notice before admission, this Court granted interim suspension of the order in O.A. The 1st respondent appeared and filed stay vacate petition—WVMP No.2225 of 2016.

3a) The 1st respondent herein filed O.A.No.9552 of 2011. Her case is that she completed P.G. Degree (M.A.Telugu) in the year 1971, registered her name in the Employment Exchange and her name was sponsored for appointment to the post of Junior Lecturer in Telugu and accordingly she was interviewed by the Selection Committee at Hyderabad on 20.09.1974. Her further case is that at the relevant point of time, the selection to the

post of Junior Lecturers in Government Colleges was being undertaken by the Selection Committees for the candidates sponsored through Employment Exchange and Andhra Pradesh Public Service Commission had no role to play. Though she was interviewed by a valid selection committee, no appointment order was given to her and during that period Presidential Order and zonal system was not there. Therefore, she made representation to the Department of Higher Education with regard to her appointment as Junior Lecturer in Telugu. The Department informed that she was selected and placed at Sl.No.4 in the list of candidates interviewed and kept in the panel in Zone III and she has to wait for her turn subject to rules. A certificate was also issued to that effect on 11.03.1982, but no action was taken by the respondent—authorities. Having no other go, she filed W.P.No.12574 of 1984. This Court vide orders dated 23.08.2004 disposed of the said writ petition directing the respondents therein to give appointment to the applicant on temporary basis. As per the directions of this Court, the Director of Intermediate Education issued proceedings dated 14.05.1991, to appoint her as Junior Lecturer in Telugu in Zone VI on temporary basis. Pursuant to the said proceedings, the Regional Joint Director of High Education, Warangal issued appointment order dated 20.05.1991. Accordingly, she joined in service on 29.05.1991, her probation was declared through proceedings dated 15.10.1999 with effect from 29.05.1991 she worked as such and retired from service on 31.05.2005.

b) While the matter stood thus, 1st respondent came to know that several of her co-selectees were appointed right from 1974 and continued in service which is evident from zonal seniority of zone III and zone VI and injustice was caused to her. Then, she made several representations to the respondents to appoint her on par with her co-selectees on paper, so that the same can be counted for the purpose of pension, but the authorities rejected her application mechanically through proceedings dated 28.05.2004. Aggrieved, she filed O.A.No.1381 of 2005. The Tribunal vide its interim order dated 12.04.2005 directed the respondents therein to consider the representation dated 31.07.2004 by examining her case in detail and pass orders. The respondents through proceedings dated 21.08.2006 rejected her representation on the ground that there was no information as to whether any of the co-panelists lower in the rank than her were appointed in the same subject and the same zone and she did not cite name of any candidate. In fact, the Commissioner of Intermediate Education through his letter dated 18.04.2006 gave details of those who were appointed between 1974 and 1978 as Junior Lecturers (Telugu) in Zone III and as such, it is not correct to say that she has no information. It is contended that the rejection order was passed without application of mind.

c) Meanwhile, the applicant sought for information under RTI Act and the same was furnished through proceedings dated 25.07.2007 wherein list of candidates who were regularized as Junior Lecturers and who were directly recruited in Zone I to IV was furnished which would show about

43 candidates were appointed between October, 1974 and December, 1974. It is her further case that several persons who are not even qualified as on the date of interview i.e. 20.09.1974 were appointed between 1976 and 1978 while her panel was in force for appointment upto 1978-1982.

d) Respondents filed counter affidavit admitting that applicant's name was sponsored by the Employment Exchange during 1974 for the post of Junior Lecturer in Telugu; she appeared before the selection committee on 20.09.1974 and on her representation, the Director of Higher Education through his proceedings dated 19.03.1980 informed that her name is at Sl.No.4 in the list of candidates interviewed and kept in the panel in Zone III and she has to wait her turn for getting appointment. The Director through proceedings dated 22.04.1982 informed that consequent on recruitment by APPSC on regular basis, the procedure of appointment from the panel prepared by the Director of Higher Education has been stopped and she was advised to apply for the post through APPSC as and when they advertise for the post.

e) The Tribunal considering the facts and circumstances of the case, directed the respondents to appoint the applicant retrospectively from 1974 on par with the co-selectees and count her seniority from the said date and fix her pay notionally without monetary benefit and revise the pension.

4) Aggrieved, the petitioners filed the instant writ petition contending that Regional Joint Director of Intermediate Education, Warangal in his

proceedings dated 20.05.1991 issued orders appointing her as Junior Lecturer in Telugu and posted to Government Junior College, Shadnagar and she joined on 29.05.1991 without any protest and continued to work in Zone VI and retired from service on 31.05.2005. Therefore, she is not entitled to seek appointment with effect from 1974. They further contended that Government in G.O.Rt.No.854, Higher Education (IE/A1) Department dated 22.10.2007 rejected the request of the 1st respondent on the ground that in view of orders of High Court she was appointed in 1991 in Zone VI where there was a vacancy; having joined in 1991 she will get her seniority from the date of her first appointment as Junior Lecturer from 1991 only as per Rule 33 of A.P. State and Subordinate Service Rules and the applicant has not questioned the GOs. at the time of filing OA and it has become final. Therefore, OA as prayed for is not maintainable and barred by limitation as per Section 21 of Administrative Tribunals Act. They further contended that applicant's appointment as Junior Lecturer in Telugu was purely an act of gratis of the Government keeping in view the observations of High Court. Hence, her claim for seniority with retrospective effect i.e. from 1974 instead of 29.05.1991 is untenable as she was never appointed on the basis of merit in the first place.

5) Heard arguments of learned Government Pleader for Services (Telangana State) and Sri J.Sudheer, learned counsel for 1st respondent.

6) The main plank of argument of learned Government Pleader for Services (TS) is that while dismissing W.P.No.12574 of 1984 filed by the

1st respondent herein, the High Court observed that previously the selection of the lecturers was out of the purview of the Public Service Commission but currently selection was brought under Public Service Commission and therefore, as the law stands the petitioner cannot be appointed except on the basis of the selection made by Public Service Commission. This Court also observed that petitioner's mere selection in the year 1974 should not give her any right, however, in view of the fact that the petitioner was stated to be over aged, it would be appropriate and fair if the authorities can find a way out by providing her with some temporary employment which may not be within the purview of the Public Service Commission. Basing on such observation the petitioner authorities considered her case and since there was no vacancy of Junior Lecturer in the subject of Telugu available in Zone-III at that time, the Regional Joint Director of Intermediate Education, Warangal was requested to issue appointment orders to the 1st respondent in Zone-VI and accordingly the Regional Joint Director, Warangal in his proceedings dated 20.05.1991 issued orders of appointment to 1st respondent as Junior Lecturer in Telugu and posted her to Government Junior College, Shadnagar, she reported to duty on 29.05.1991 without any objection and she continued to work till 31.05.2005. Learned Government Pleader emphasized that her appointment was purely an act of gratis and out of respect to the observation of the Honourable High Court and even in the order of High Court it was made clear that merely because she was selected in the year 1974 she did not get any right thereby. In that view of the matter, learned Government Pleader would submit, the 1st respondent

now cannot claim the restoration of her seniority with effect from 1974 i.e. from the date of her appointment as Junior Lecturer. The Tribunal without considering this aspect in a proper perspective has, erroneously directed the petitioner authorities to appoint her retrospectively with effect from 1974 and fix her seniority accordingly though her claim is barred by limitation. He thus prayed to allow the writ petition by setting aside the impugned order.

7) Severely fulminating the petitioners' claim learned counsel for 1st respondent Sri J.Sudhir would submit, it is true that pursuant to the direction in W.P.No.12574 of 1984 the petitioner authorities appointed her in 1991. At that time she did not ask for her seniority should be fixed with effect from 1974. At that time she was unaware of the fact that some of the co-selectees of 1974 were given appointments between 1974-78 and injustice was done to her. She came to know this fact only subsequently and therefore, she made a representation for fixing her seniority with effect from 1974 but her representation was rejected by department vide proceedings dated 28.05.2004 which was challenged by her in O.A.No.1381 of 2005. Though an interim direction was given on 12.04.2005, the claim of the applicant was again rejected vide proceedings dated 21.08.2006 on the false ground that there is no information with regard to appointment of co-selectees by-passing the petitioner. However, 1st respondent obtained information under RTI Act which was produced before the Tribunal which would show that a number of candidates were appointed from 1974—1978 as Junior Lecturer in

Zone III and VI, but curiously, this respondent who was placed at Sl.No.4 was unjustifiably denied appointment at that time. Basing on the said unimpeachable material only, the learned counsel argued, the Tribunal made a categorical observation that the contention of the petitioners herein cannot be accepted, since the applicant produced the material secured under RTI Act in 2005. In the teeth of said observation, the contention of the petitioners that WP No.12574 of 1984 was dismissed and only a recommendation was made to appoint her temporarily due to her over age and out of respect, the petitioner authorities appointed her in 1991 which is an act of gratis cannot be accepted. He thus argued that the manifest injustice was done to 1st respondent and Tribunal having rightly noticed the same, directed the authorities to fix her seniority with effect from 1974. Learned counsel would finally submit that the order of the Tribunal would entail her to get a revision in the pension but without any monetary benefit for the service period as the fixation of seniority was a notional one and in those circumstances, the authorities ought to have gracefully accepted the order of the Tribunal. He thus prayed to dismiss the writ petition.

8) The point for determination is:

“Whether there are merits in this writ petition to allow”

9) **POINT:** The facts would show 1st respondent passed MA Telugu in 1971 and she was selected as Junior Lecturer in Telugu on being sponsored by the employment exchange. She was interviewed by the

selection committee at Hyderabad on 20.09.1974 as during that period selection of candidates was being undertaken through the employment exchange and Andhra Pradesh Public Service Commission had no role to play by then. The Presidential Order which came into force in 1975 was not in vogue by then. Consequently there was no zonal system either. In response to the representation of the applicant the department of Higher Education through proceedings dated 19.03.1980 informed that she was selected and placed at Sl.No.4 in the list of candidates interviewed and kept in the panel in Zone III. Be that as it may, undisputed facts are that she was placed at Sl.No.4 in zone III. Thereafter, till she filed W.P.No.12574 of 1984 there was no further progress in her case. Learned single Judge having observed that by the time of consideration of her writ petition appointments to the post of Junior Lecturers were made on the basis of selection of candidates by APPSC, held the petitioner could not be appointed except on the basis of selection made by Public Service Commission. Unfortunately, in the said writ petition there was no discussion as to why the authorities having placed her in Sl.No.4 did not give her appointment till 1984 when she knocked the doors of the High Court. It was an admitted fact that during the time of her selection APPSC had no role to play. In those circumstances, considering that the petitioner was over aged, while dismissing the writ petition, learned single Judge directed the authorities to find out a way to provide her temporary appointment which may not be within the purview of Public Service Commission. However, it is manifest from the order of Tribunal, the petitioner authorities have appointed some of the co-selectees of the 1st

respondent during the period 1974—78 as is evident from the information secured by her under RTI Act furnished by the Commissioner of Information. This fact is not disputed or denied in the present writ petition by the petitioner authorities. When some of the co-selectees were appointed during 1974—78, there was no reason why 1st respondent who was placed in Sl.No.4, was denied appointment. It is a clear case of injustice perpetrated against her. Apart from denying the appointment to the 1st respondent, petitioners have not even given reasons for not giving appointment to her in the writ petition. It is needless to emphasize that had the information relating to granting appointment to some of her co-selectees could be traced and submitted by the 1st respondent in W.P.No.12574 of 1984 itself, the result would have been different. Therefore, the Tribunal basing on the material produced by the applicant obtained under RTI Act showing a number of candidates were appointed from 1974—78 as Junior Lecturer in Telugu in zone III and IV, rightly observed the applicant who stood at Sl.No.4 should have been appointed along with other candidates appointed between 1974—78 and would be entitled to count her seniority with effect from the said date.

10) In the backdrop of these facts, the petitioners cannot harp that since the W.P.No.12574 of 1984 was dismissed and the authorities provided her job in 1991 out of gratis only due to observation made in the said writ petition, she does not deserve seniority from 1974. They also cannot take any recourse on the plea of limitation contending that 1st respondent

having accepted the appointment in 1991 now cannot challenge the fixation of her seniority.

11) We see no illegality or perversity in the order impugned. There are no merits in the writ petition and the same is accordingly dismissed confirming the orders passed in O.A.No.9552 of 2011. No costs.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J

U.DURGA PRASAD RAO, J

Dt: 21.11.2017
Murthy

