

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

%06.07.2017

W.P.NO.13195 OF 2016

THE STATE OF ANDHRA PRADESH, REPRESENTED BY ITS
PRINCIPAL SECRETARY, PANCHAYAT RAJ AND RURAL
DEVELOPMENT DEPARTMENT, SECRETARIAT, HYDERABAD AND
ANOTHER

PETITIONERS

AND

V.PRASANNA RANI AND ANOTHER.

RESPONDENTS

Counsel for the petitioners: Government Pleader for Services (Andhra Pradesh)

Counsel for the respondent No.1: Sri J.Sudhir.

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- Head Note.
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?Cases Referred:

1. 2005(6) ALD 785
2. 2003(5) ALD 697
3. (1999)8 SCC 449

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W.P.NO.13195 OF 2016

ORAL ORDER (Per the Hon'ble Sri Justice Suresh Kumar Kait)

This writ petition is filed for the following relief:

“For a writ of certiorari calling for the records relating to and connected with the orders dated 12.10.2015 in O.A.No.2669 of 2012 on the file of Hon'ble Andhra Pradesh Administrative Tribunal, Hyderabad and to quash or set aside the same and to pass such other order or orders as this court may deem fit and proper in the circumstances of the case.”

The applicant before the Andhra Pradesh Administrative Tribunal, Hyderabad, is 1st respondent herein. As per her claim, she belongs to S.T. category. Through Andhra Pradesh Public Service Commission, under limited recruitment, she was appointed as Junior Assistant on 16.6.2001, in the office of the 2nd respondent - Engineer-in-Chief (PR) Hyderabad. Her probation was declared on 15.4.2004.

By virtue of policy of the Government to provide reservations in promotions vide G.O.Ms.No.5 Social Welfare (ROR1) Department dated 14.02.2003 and G.O.Ms.No.2 social Welfare (SW.ROR1) Department dated 9.1.2004, in an 100 point roster, 8th point in the said roster, has been earmarked for S.T.(W).

Vacancy in the cadre of Senior Assistant in the office of the 2nd petitioner for S.T.(W), in 8th slot, arose during the panel year 2005-06. For promoting a candidate from the cadre of Junior Assistant to Senior Assistant, one has to put in three years of services, besides passing in departmental test i.e., Accounts

Test for PWD Officers and Subordinates. Though the 1st respondent has put in three years of service by the time of arising of vacancy, has not passed the required departmental test. As no eligible candidate under S.T.(W) category was available to fill up the 8th slot by promotion, the vacancy could not be filled up for the panel year 2005-06 and it was carried forward to panel year of 2006-07. The 1st respondent appeared for Accounts Test for PWD Officers and Subordinates on 17.6.2007 and the results were published on 18.09.2007, in which she was declared to have passed the said test.

Accordingly, she made representation dated 5.11.2007, to the 2nd petitioner herein, for considering her case for promotion to the cadre of Senior Assistant with effect from 17.6.2007. Her request was not considered. However, she was later considered for promotion to the post of Senior Assistant in the leave vacancy on 10.02.2009 and subsequently owing to sanction of additional posts of Senior Assistants and also in view of promotion of one of the Senior Assistants as Superintendent on 1.1.2010, her case was considered and regularized in the cadre of Senior Assistant, with effect from 1.01.2010, on which date the vacancy arose.

The 1st respondent again made representations on 30.04.2011, 16.7.2011 and 8.9.2011 renewing her request to consider her case for promotion to the cadre of Senior Assistant from 17.6.2007. Aggrieved by the action of the Government in not considering her request, approached the Tribunal. By the impugned order dated 12.10.2015, the Tribunal allowed her claim and directed the Government to promote her as Senior Assistant with effect from 17.6.2007

against the roster point No.8 meant for ST(W) with all consequential benefits such as fixation of pay, arrears of salary and also to consider for promotion to the post of Superintendent against the said slot, within a period of five months from the date of receipt of the copy of the order. Challenging the said order, the present writ petition came to be filed by the Government.

The learned counsel for the petitioners, while not disputing the facts with regard to arising of vacancy for the post of Senior Assistant in the category of S.T.(W) in 8th slot in 100 point roster, in the office of the 2nd petitioner during the panel year of 2005-06 and that it was carried forward up to panel year of 2006-07 for want of eligible candidate and that 1st respondent being the only women candidate in S.T. category, and she appearing for the Accounts Test for PWD Officers and Subordinates on 17.6.2007 and qualifying on 18.09.2007; sought to justify the impugned action of the Government, by stating that Government issued orders in G.O.Ms.No.508, GAD, dated 18.7.2002 bifurcating the 2nd respondent into Panchayat Raj and Rural Water Supply and Sanitation Departments. By G.O.Ms.No.526 PR & RD (Estt.III) Department dated 21.11.2007, the existing ministerial staff including the cadre of Senior Assistants were allotted in both the new departments in the ratio of 24:18. As excess number of Senior Assistants opted to Panchayat Raj Department, based on Government orders, the surplus candidates were allotted to Rural Water Supply and Sanitation Department on deputation basis, with a direction to accommodate the surplus candidates to Panchayat Raj Department as per occurrence of vacancies and as per seniority. As such, no vacancies were available as on the date of bifurcation in the panel year 2007-08. All the surplus candidates were

adjusted as per occurrence of vacancies and as per their seniority. The process was completed by 2008-09 panel year. After completion of adjustment of surplus candidates, the 1st respondent was considered for promotion to the post of Senior Assistant as per her turn against leave vacancy during the year 2009 and adjusted and regularized on 1.1.2010 against a clear vacancy. The learned counsel for the petitioners would contend that the Tribunal has not taken into consideration the aspect of bifurcation of the department, and erred in allowing the claim of the 1st respondent and hence the same is liable to be set aside.

The learned counsel for the 1st respondent – applicant, supporting the impugned order, sought to dismiss the writ petition.

In view of the above rival contentions, the only issue that arises for our consideration is whether the impugned order of the Tribunal warrants any interference?

From the facts noted above, there is no dispute that 1st respondent belongs to S.T. (W), appointed in limited recruitment and joined in the office of the 2nd respondent on 16.6.2001 and her probation was declared on 15.5.2004. As per the policy of the Government to provide reservations in promotions, 8th slot in the 100 point roster, in the cadre of Senior Assistants, fell to S.T.(W) and the vacancy under the said category arose during the panel year 2005-06. Due to non-availability of eligible candidate, who passed the departmental test i.e., Accounts Test for PWD officers and Subordinates, the said vacancy was carried forward to the panel year of 2006-07. The petitioner appeared for the said

departmental test on 17.06.2007 and in the results declared on 18.09.2007, she was qualified.

Now the question for consideration is what would be the appropriate date to be taken into consideration for the purpose of holding a candidate to be eligible for the next higher cadre?

This question is no longer *res integra*. A Division Bench of this court in ***JVSP PURNANDA RAO AND OTHERS vs. COMMISSIONER AND DIRECTOR OF SCHOOL EDUCATION, HYDERABAD***¹ while considering the aspect of delay on the part of A. P. Public Service Commission in declaring the results and thereafter also not printing the results in official gazette, held that for the lapses on the part of the A. P. Public Service Commission, the employee cannot be penalized and denied promotion and that the result of the examination, shall date back to the date of writing the examination. Further, referring to the instructions of the Government of Andhra Pradesh in Memo No.2745/T.E2/98.4 dated 16.9.1998, the Division Bench held that in case the candidates appeared for the examination for the departmental tests prior to 1st September of panel year, their names should be considered for that panel year only, though the results were announced late, as per the second proviso contained in Rule 6 of A. P. State and Subordinate Rules. The relevant portion of the judgment is extracted as under for better appreciation:

“12. . . . In the instant case, the third respondent appeared for the departmental test in November 1987 itself, and the results ought to have published before the end of July 1988 and for no fault of third respondent, the results were not published by A. P. Public Service Commission and the results were published

¹ 2005(6) ALD 785

subsequently, on 6.10.1988 and even after that those results could not be printed in Official Gazette till December, 1988. For such latch on the part of the A.P. Public Service Commission, the third respondent cannot be penalized. In fact, in the grounds of writ petition, the petitioners themselves in para 4 at page 10 stated that the official respondents alone to be blamed or found fault for exclusion of the unofficial respondents names in the Senior Assistants panel for the year 1987-88. The writ petitioners also did not find fault on the part of the third respondent for non-inclusion of her name in the panel prepared for the year 1987-88. ***The Government of Andhra Pradesh in Memo No.2745/T.E.2/98-4, dated 16.9.1998, drew the attention of the Commissioner of Technical Education that in case the candidates appeared for the examinations for the departmental tests prior to 1st September of panel year, their names should be considered for that panel year though the results were announced lately, as per the second proviso contained in Rule 6 of A.P. State and Subordinate Rules*** that their original place on par with their juniors shall be restored in the higher category also. It is also the common practice to restore to the original places in the higher category in case the promotion of the candidate could not be considered earlier for no fault of that particular candidate. For example, if a departmental enquiry is pending against an employee, his name will not be considered for promotion for that reason and in case the employee is absolved of all the charges after due enquiry, he shall not only be promoted but also be given his original place on the principle that for no fault of his own, he cannot be deprived of his promotion with original seniority. The same principle applies here also because in November, 1987 itself the third respondent appeared for departmental test and the results ought to have been published before July, 1987 as per the rules of the A.P. Public Service Commission. ***However, when the third respondent passed the test appeared in November, 1987, the result of the examination shall date back to the date of writing the examination. . .***

(Emphasis added)

In the present case, the 1st respondent appeared for the departmental test on 17.06.2007 and the results were published on 18.09.2007, wherein she was declared to have passed in the said test. Therefore, as per the analogy of the law laid down in the above judgment of the Division Bench of this court, the 1st respondent has to be held to have acquired the eligibility for being considered for promotion to the post of Senior Assistant from the cadre of Junior Assistant, on 17.06.2007 only i.e., the date on which she has appeared for the departmental test. Apart from that, the vacancy meant for S.T.(W) arose in 8th slot of 100 point roster, during the panel year 2005-06 and due to non-availability of eligible

candidate, it was carried forward to panel year 2006-07. The 1st respondent appeared for the test in the month of June, 2006 and qualified. Since, she has appeared prior to 1st September of panel year, as held by the Division Bench, her case for promotion has to be considered for that panel year i.e., 2006-07. But in the present case, petitioners have considered her case for promotion in the year 2010, which cannot be sustained.

The next question is, what would be the effect of not considering the eligible candidate in spite of availability of vacancy at the relevant time. A Division Bench of this court in **STATE OF ANDHRA PRADESH v. C.SRINIVASLU REDDY**², placing reliance on the judgment of the Apex Court in **SANDHY JAIN v. SUBHASH GARG**³, held that where a person's claim for promotion was not considered at the appropriate time, he would be entitled to notional promotion and the benefits of notional promotion. The relevant portion of the judgment of the Division Bench (2 supra) is thus:

“7. . . But as we pointed out earlier that the Government has passed a G.O. being G.O.Ms.No.354 dated 11.05.1990 itself stating therein that where a person's claim for promotion was not considered at the appropriate time, he would be entitled to notional promotion. Therefore, in our view, the Tribunal was not wrong in coming to the conclusion that the benefit of notional promotion in terms of the G.O.Ms.No.354, dated 11.5.1990 could not be denied to the respondent on the ground that no junior to him had been promoted. Whether a junior was promoted or not is not a consideration at all in terms of the G.O.Ms.No.354, dated 11.5.1990. The only consideration under this G.O. is that whether a person was not considered at the time he should have been considered for any reason whatsoever. We are fortified in our view by the judgment of the Supreme Court reported in Sandhya Jain v. Subhash Garg. In this case also a lecturer was not considered for promotion at the relevant point of time, but during the pendency of the litigation he was promoted. The Supreme Court considered the import of the rules applicable in that case and found that the order of promotion during the litigation would not wipe out the right of consideration from an earlier point of time. Since the respondent herein was not

² 2003(5) ALD 697

³ (1999)8 SCC 449

considered at the right point of time, which had been held in RP No.323 of 1986 which has become final, therefore, in our view, in terms of G.O.Ms.No.354, dated 11.5.1990 the respondent was entitled to the benefit of notional promotion.”

In view of the above legal position, it is clear that the case of the 1st respondent has to be considered with effect from 17.06.2007, the date on which she appeared for the departmental test i.e., the Accounts Test for PWD Officers and Subordinates and qualified. Admittedly, vacancy meant for S.T.(W) was available in 8th slot in 100 point roster, during the panel year of 2006-07 and as per the judgment of this Court (1 supra), she has to be considered for promotion for that panel year only.

Coming to the issue of bifurcation of department into two i.e., Panchayat Raj and Rural Water Supply and Sanitation Departments, it is to be noticed that G.O.Ms.No.508 was issued on 18.7.2007, by which time, the 1st respondent had already attain eligibility on 17.06.2007 and she also made a representation on 5.11.2007. Therefore, despite the availability of vacancy earmarked for S.T.(W) at the relevant time i.e., for the panel year 2006-07 and the 1st respondent being the only women candidate to be considered in that category, non-consideration of her case, amounts to infringement of her right mandated under the Constitution of India.

Further, the contention of the counsel for the petitioners is that after the bifurcation of the department in terms of G.O.Ms.No.508 dated 18.7.2007, excess number of Senior Assistants opted for Panchayat Raj Department and, therefore, after adjusting them in the said department, the excess were allotted to

Rural Water Supply and Sanitation Department on deputation and after adjustment of surplus candidates in Panchayat Raj Department as per their seniority and occurrence of vacancy, as no vacancy was available after bifurcation in the panel year 2007-08, the case of the 1st respondent was considered with effect from 1.1.2010, when a regular vacancy arose.

The above contention cannot be countenanced. At the cost of repetition, even before the date of issuance of G.O.Ms.No. 508 dated 18.07.2007, the 1st respondent attained eligibility on 17.06.2007 and a clear vacancy in S.T.(W) in the 8th slot of 100 point roster, was available in the cadre of Senior Assistant during the panel year of 2006-07. Therefore, bifurcation of department, cannot take away the right already accrued to the 1st respondent.

Apart from that, this court has put a specific query to the learned Government Pleader for Services that how many Senior Assistants in ST (Women) category were posted in Panchayat Raj Department. The learned counsel has fairly conceded that in ST (women) category, none were posted.

In view of the above facts and circumstances, non-consideration of the case of the 1st respondent for promotion to the cadre of Senior Assistant with effect from 17.06.2007, is illegal and arbitrary and the same requires to be set aside. The Tribunal, considering the facts and circumstances and the law laid down by this court and Apex Court, rightly allowed the claim of the 1st respondent.

For the foregoing reasons, we find no illegality or perversity in the impugned order of the Tribunal, and confirming the same, the writ petition is dismissed. No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

SURESH KUMAR KAIT,J

U.DURGA PRASAD RAO,J

DATE:06—07—2017
AVS

Note:

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