

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE T. RAJANI

+ W.P.No.23451 of 2017

% Date: -09-2017

Between:

R. Venkateswarlu, S/o. Sri R. Ganganna
Occ: Stenographer Grade-II,
O/o. Additional Senior Civil Judge's Court, Tirupati,
R/o. Tirupathi, Chittoor District.

... Petitioner

Vs.

1. The High court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, rep. by its Registrar (Administration).
2. The Principal District Judge, Chittoor District, at Chittoor.
3. State of Andhra Pradesh rep. by its Principal Secretary, Law Department, Secretariat, Hyderabad.

... Respondents

! Counsel for the Petitioner : Mr. V. Hari Haran

^ Counsel for the Respondents : Mrs. Bobba Vijayalakshmi

< GIST:

> HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

HON'BLE SMT. JUSTICE T. RAJANI

W.P.No.23451 of 2017

ORDER: (per VRS, J.)

The petitioner has come up with the above writ petition challenging the rejection of his claim for placing him in the post of Stenographer Grade-II.

2. Heard Mr. V. Hari Haran, learned counsel for the petitioner and Mrs. Bobba Vijayalakshmi, learned Standing Counsel appearing for the High Court.

3. The petitioner was selected and appointed as Steno-typist in the Unit of the District Judge, West Godavari District on 11.11.1988. On his own request, the petitioner was transferred to the Unit of Chittoor District, by an order dated 27.08.2003. He joined in the Unit of Chittoor District on 17.09.2003. Since the transfer was on his own request, he was placed as the junior most among Personal Assistants Grade-II in Chittoor District.

4. Pursuant to the directions of the Supreme Court, the Government of Andhra Pradesh issued G.O.Ms.No.50, dated 23.04.2009 accepting the recommendations of Justice Jagannatha Shetty Commission and restructuring the categories of posts in the Judicial Ministerial Services. The post of Steno-typist was trifurcated into Stenographers Grade-I, II & III. By a subsequent order in G.O.Ms.No.83, dated 02.09.2009, the Government clarified that the orders issued in G.O.Ms.No.50 shall be deemed to have come into force from 01.04.2003.

5. Thereafter, G.O.Ms.No.100, dated 08.08.2013 was issued implementing the service conditions as recommended in G.O.Ms.No.50, dated 23.04.2009.

6. In terms of the aforesaid Government Orders, the Principal District Judge, West Godavari District passed an order dated 31.05.2004 re-designating the petitioner as Stenographer Grade-II with effect from 01.04.2003, as he was in service in that Unit as on the said date. But the Principal District Judge, Chittoor issued an order dated 12.03.2014, placing the petitioner in the cadre of Stenographer Grade-III as on 01.04.2003. However, the 2nd respondent promoted the petitioner as Stenographer Grade-II w.e.f. 23.12.2013.

7. Aggrieved by the said proceedings of the 2nd respondent, the petitioner made a representation dated 18.07.2014. But the same was dismissed by the 2nd respondent by an order dated 15.11.2014 on the ground that since the petitioner was re-designated as Stenographer Grade-III w.e.f. 01.04.2003, he cannot claim promotion to Grade-II even before the completion of the period of probation.

8. Thereafter, as per the instructions of the High Court, the District Judge, West Godavari, issued revised orders dated 09.12.2014 placing the petitioner in the cadre of Personal Assistant Grade-II w.e.f. 02.04.2003.

9. The petitioner filed an Administrative Appeal to the 1st respondent on 16.03.2015. But the said appeal was rejected by order dated 11.01.2016, on the ground that he was entitled only to fixation of pay. Therefore the petitioner has come up with the above writ petition.

10. The grievance of the petitioner is that his claim for placing him in the cadre of Stenographer Grade-II w.e.f. 17.09.2003 has been wrongfully rejected. Therefore, the only question that arises for our consideration is, as to whether the petitioner is entitled to be placed in the cadre of Stenographer Grade-II w.e.f. 17.09.2003 or not.

11. In W.P.No.12680 of 2015, filed by S. Venkatesham and another, a Bench of this Court to which one of us (VRS,J) was a party, this Court had an occasion to consider in detail the purport of G.O.Ms.No.100. It will be useful to extract paragraphs 4 to 7 of the order dated 24.03.2017 passed in the said writ petition as follows:

“4. As per the recommendations of the First National Judicial Pay Commission, the Government issued G.O.Ms.No.50, Law Department, dated 23.04.2009. Restructuring the Andhra Pradesh Judicial Ministerial Service and providing (1) constitution, method of recruitment and scales of pay, (2) procedure for recruitment etc. Under the said Government Order, the staff pattern of the subordinate courts was completely revamped and 12 categories of posts were created (or) re-designated. They are:

- (1) Chief Administrative Officer,
- (2) Senior Sheristadars/Senior Superintendents,
- (3) Sheristadars/Superintendents,
- (4) Stenographers (Grade-I),
- (5) Stenographers (Grade-II),
- (6) Stenographers (Grade-III),
- (7) Upper Division Clerks,
- (8) Lower Division Clerks/Typists/Copyists,
- (9) Bailiffs/Amins,
- (10) Examiner/Reader,
- (11) Process Servers and
- (12) Attenders/Jamedars,

5. By another order in G.O.Ms.No.83, Law Department, dated 02.09.2009, the Government clarified that the orders issued in G.O.Ms.No.50, dated 23.04.2009, shall be deemed to have come into force with effect from 01.04.2009, and that the arrears of pay to the judicial employees from 01.04.2003 to 30.04.2009 shall be credited to the General Provident Fund Account of the concerned individuals.

6. After the issue of the Government Orders as aforesaid, the Registry of the High Court sought certain clarifications. Therefore, the Government issued yet another order in G.O.Ms.No.100, Law Department, dated 08.08.2013, making amendments to the Andhra Pradesh Judicial Ministerial Service Rules, 2003, which had earlier been issued under G.O.Ms.No.129, Law Department, dated 12.11.2003. Under the amendment so inserted under G.O.Ms.No.100, dated 08.08.2013, the Judicial Ministerial Service was formed under Rule 5 to comprise of 12 categories of posts, namely, -

- (1) Chief Administrative Officers,
- (2) Senior Superintendents,
- (3) Superintendents,
- (4) Stenographers (Grade-I)

- (5) Stenographers (Grade-II)
- (6) Stenographers (Grade-III)
- (7) Senior Assistants,
- (8) Junior Assistants,
- (9) Typists,
- (10) Field Assistants,
- (11) Examiners and
- (12) Copyists.

7. In Note 1 under Rule 5 of the Amended Rules, it was stated as follows:

“The re-designation of the posts as above will be implemented with effect from 01.04.2003 and will not affect the gradation or seniority of persons holding posts as on the date of implementation of the G.O.”

12. What happened in the case of the petitioner was that he was transferred on his own request to the Unit of Chittoor, by the proceedings dated 27.08.2003 and he joined the Unit of Chittoor on 17.09.2003. Though G.O.Ms.No.100 had been issued on 08.08.2013, before the date on which the order of transfer was passed and before the date on which the order of transfer was implemented, the implementation of G.O.Ms.No.100 took place in the District of West Godavari (where the petitioner was originally employed), only by the proceedings of the Principal District Judge, dated 31.05.2014. But since the re-designation of the posts under G.O.Ms.No.100 was to be implemented w.e.f. 01.04.2003, the name of the petitioner was included in the proceedings of the Principal District Judge, West Godavari, dated 31.05.2014, despite the fact that the petitioner had already gone out of the Unit.

13. In other words, since G.O.Ms.No.100, dated 08.08.2013 was implemented w.e.f. 01.04.2003, the implementation had to be done by deeming fiction, in the respective Units where persons were employed as on 01.04.2003.

14. The claim of the petitioner for re-designation as Stenographer Grade-III w.e.f. 01.04.2003 and again upgradation to Grade-II w.e.f the same date, was negated by the impugned proceedings on the ground

that he had not completed the period of probation, as on 17.09.2003. In other words, the Principal District Judge thought that a person, who joined duty on 01.04.2003 could not have completed the period of probation by 17.09.2003 so as to enable him to get promoted. But what has been lost sight of, is the fact that upon re-designation w.e.f. 01.04.2003 no one was placed on probation in the re-designated post. A re-designation, by its very nature takes place in the very post that a person is holding. Therefore, the question of placing a person on probation, while re-designating the existing post does not arise.

15. To put it differently, the respondents ought to have seen that since the petitioner was originally appointed as Steno-typist way back on 11.11.1988, he would have certainly completed the period of probation by the year 2003 in that post. Therefore, if the respondents were talk about probation in the post to which the petitioner was originally appointed, viz., steno-typist, it is factually wrong to think that the probation in such a post had not been completed, even after a period of 15 years. If probation is not terminated or extended within six months from the date of expiry of two years from the date of initial appointment, the probation is deemed to have been declared. Therefore, if the respondents were thinking about probation in the original post of Steno-typist, the petitioner had already completed the same. If the respondents were thinking about probation in the re-designated post, that question would not arise since no one can be placed on probation when a post is merely re-designated.

16. The transfer on one's own request will only strip the petitioner of the benefit of the seniority in the parent Unit, in which he was originally appointed. A transfer on own request will not deprive a person of the

benefit that he would have gained in the parent Unit before his transfer was effected.

17. This can be explained with an illustration. If G.O.Ms.No.100 had been implemented w.e.f. 01.04.2003 much before the date of transfer of the petitioner from West Godavari to Chittoor, he would have acquired certain benefits. Along with the benefits that he so acquired, he is entitled to be transferred to another Unit subject to being placed at the bottom of the seniority list.

18. Therefore, there are only two questions that the respondents should ask before deciding the entitlement of the petitioner. They are – (1) if G.O.Ms.No.100 had been implemented before 17.09.2003, what would have been the position of the petitioner in his parent Unit, viz., West Godavari; (2) in case the petitioner had continued in West Godavari itself, what would have been his designation as on 01.04.2003, by virtue of G.O.Ms.No.100. If the answer to any one of the above two questions is to the effect that the petitioner would have been promoted to the post of Stenographer Grade-II before 17.09.2003, in his parent Unit, then it would follow as a corollary that he would have been transferred on 17.09.2003 only in the category of post that he was holding on the date of transfer. But unfortunately, the respondents have lost sight of this fact. Therefore, the matter requires reconsideration.

19. In view of the above, the writ petition is allowed and the impugned order is set aside. The matter is remitted back to the 1st respondent for reconsideration. If the petitioner was entitled to be promoted to the posts of Stenographer Grade-II and Grade-I in his parent Unit before 17.09.2003 and if persons, who were juniors in his parent Unit, viz., West Godavari, had been given Stenographer Grade-II before

17.09.2003, the petitioner will be entitled to the very same benefit. His seniority alone will go down in the unit of Chittoor. The 1st respondent shall consider all these aspects and pass orders afresh within a period of eight weeks.

20. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

T. RAJANI, J

____September, 2017
Js.



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE T. RAJANI

W.P.No.23451 of 2017
(Per VRSJ)



Js.

____September, 2017