

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

WRIT PETITION No.25224 of 2017

01.08.2017

Between:

M.Siva Sankar

..Petitioner

and

The State of Telangana,
represented by the Principal Secretary,
Higher Education (T.E.) Department,
Telangana Secretariat,
Hyderabad and another

..Respondents

Counsel for the petitioner: Mr.P.Venkatesh

Counsel for the respondents: Government Pleader for Services-I (TS)

The Court made the following:



ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for a *certiorari* to quash order, dated 27.06.2016, in O.A.No.2326 of 2016 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad, (for short 'the Tribunal') and also memo bearing No.G/3320/2014, dated 30.10.2014, of respondent No.2. The petitioner also sought to declare F.R.No.22(a)(iv) of the Andhra Pradesh Fundamental Rules (for short 'the Rules') as discriminatory and unconstitutional.

2. The petitioner initially joined as an Apprentice Section Engineer in South East Central Railway, Raipur, Chattisgarh State on 01.06.2005 and continued in the said service till 06.11.2013. He was subsequently selected as a Lecturer in Civil Engineering by the Andhra Pradesh Public Service Commission and has joined as such in the Government Polytechnic, Vikarabad on 08.11.2013. As his request for pay protection taking into consideration of his service in Railways was rejected, he filed the aforementioned O.A. In the said O.A., he sought for declaration that the rejection of his request for pay protection by respondent No.2, *vide* memo/proceedings, dated 30.10.2014, is unconstitutional being violative of Article 14 of the Constitution of India and also contrary to the principles of equity. This O.A. having been dismissed by the Tribunal by the impugned order, the applicant therein has filed this writ petition.

3. At the hearing, Mr.P.Venkatesh, learned counsel for the petitioner, has submitted that second proviso to F.R.22(a)(iv) of the Rules is unconstitutional as it has rendered the employees, who worked in Central Government, Universities, Aided Institutions etc., and subsequently appointed to the State Government service on selection, ineligible for the benefit of pay protection. He has further submitted that though his client has not specifically challenged the *vires* of the aforementioned provision,

the Tribunal has purportedly upheld its validity. In our opinion, the Tribunal ought not to have gone into this aspect unless specifically raised. The learned counsel for the petitioner has submitted that such a relief is claimed in this writ petition as one of the prayers.

4. Consequent on the abolition of the Tribunal, the pending matters have been transferred to this Court and as regards the fresh matters, the aggrieved parties are entitled to approach this Court under Article 226 of the Constitution of India. As per the roster, such cases are being dealt with by the learned Single Judges and the cases filed challenging the *vires* of the provisions, they will be heard by the Division Bench concerned as per the roster. Therefore, in our opinion, it could be appropriate if the petitioner files a fresh writ petition by challenging the *vires* of the aforementioned provision. In these circumstances, the petitioner is permitted to withdraw the aforementioned O.A. as well as this writ petition to enable him to file a fresh writ petition in order to challenge the *vires* of second proviso to F.R.22 (a)(iv) of the Rules.

5. O.A.No.2326 of 2016 as well as this writ petition are, accordingly, dismissed as withdrawn, with liberty to the petitioner to file a fresh writ petition in terms of the above observations.

6. As a sequel to dismissal of the writ petition, W.P.M.P.No.31271 of 2017 filed by the petitioner for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

01st August, 2017
GHN