

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

W.P. No.21359 of 2017

ORDER : (ORAL)

(per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioners have assailed the order dated 8.9.2016, passed in O.A.No.7714 of 2013, whereby the application filed under Section 19 of the Administrative Tribunals Act, 1985, was allowed in favour of the respondent No.1 herein.

2. Learned Government Pleader appearing on behalf of petitioners submits that initially the respondent No.1 filed O.A.No.732 of 2012 praying as under :

“Application filed under Section 19 of the Administrative Tribunal Act, 1985 praying this Tribunal to declare that impugned proceedings vide Rc.No.54/D1-4/2012-A dt.18/01/2012, of the 2nd respondent in so far as applying prescribed qualification G.O.Ms.No.4 dt.09.01.2012 to the promotions of School Assistants though it is not and amendment to the G.O.Ms.No.12 dt.23/01/2009 by way of executive instructions and denying the promotion as School Assistant (English) by the 3rd respondent by applying the impugned Proceedings dt:18/01/2012 is illegal, arbitrary, unconstitutional and contrary to special rules under G.O.Ms.No.12 dt.23/01/2009 and consequently declare the applicant is entitled to get the promotion order to the post of School Assistant (English) dt ZPHS Pedda Gopularam, Medak District on par with his juniors with all consequential benefits arise thereon 20/01/2012.”

3. The said O.A. was disposed of vide order dated 7.8.2012, as under :

“16. In view of the above facts and circumstances, the O.A., is allowed by setting aside the impugned proceedings in Rc.No.54/D1-4/2012-A dated 18.1.2012 as far as the applicant is concerned, and the respondents are directed to consider the case of the applicant for promotion to the post of School Assistant (English) without applying the impugned proceedings and taking into consideration the orders issued in G.O.Ms.No.12 dated 23.1.2009 and pass appropriate orders.”

4. The learned counsel submits that the respondent No.1 prayed for promotion to the post of School Assistant (English) dt ZPHS Pedda Gopularam, Medak District) on par with his juniors with all consequential benefits arise w.e.f. 20.1.2012. The learned Tribunal, however, not granted consequential benefit, therefore, petitioners issued promotion order dated 7.8.2013, vide Rc.No.8027/B3/2012 mentioning specifically therein in clauses (f) and (g) as under :

“(f) That the seniority in the present promotion post will be counted with effect from the date of his joining in the post/School as per Rule 22 of A.P. State and Subordinate Service Rules 1996.

(g) That he shall not eligible either for notional seniority or monetary benefits on par with the others and consequential benefits etc. shall not be entertained what ever case may be.”

5. Being aggrieved, the respondent No.1 challenged the same in O.A. No.7714 of 2013, however, the said O.A. was allowed by the Tribunal contrary to the earlier order dated 7.8.2012 passed in O.A.No.732 of 2012.

6. We note, the learned Tribunal while allowing O.A.No.732 of 2012, set aside the impugned proceedings in Rc.No.54/D1-4/2012-A dated 18.1.2012, as far as the respondent No.1 is concerned, and petitioners were directed to consider the case of the respondent No.1 for promotion to the post of Senior Assistant (English) without applying the impugned proceedings and taking into consideration the order issued in G.O.Ms.No.12 dated 23.1.2009 and pass appropriate orders.

7. We further note, the learned Tribunal never said in its order that the respondent No.1 is not entitled for consequential benefits.

8. It is not in dispute that the respondent No.1 is qualified as per the rules issued in G.O. Ms.No.12 dated 23.1.2009. However, by applying the rules meant for direct recruitment issued in G.O.Ms.No.4 in case of promotion of the respondent No.1, the petitioners have deprived him of his legitimate right of being considered for promotion and promoted his juniors on 21.1.2012 by ignoring the case of the respondent No.1.

9. The learned Tribunal had already declared in earlier O.A.No.732 of 2012 filed by the respondent No.1 that the proceedings dated 18.1.2012, issued applying the rules issued in G.O.Ms.No.4 are illegal and arbitrary. Therefore, what follows is that the respondent No.1 had to be given his due promotion at the appropriate time i.e., when his junior was promoted, however, ignored the case of the respondent No.1.

10. Accordingly, the learned Tribunal held that the respondent No.1 is entitled for promotion to the post of Junior Assistant (English) on par

with his junior from 21.1.2012 onwards. On such promotion, the respondent No.1 is entitled to all consequential benefits, including monetary benefits of pay fixation and arrears of pay etc. It was further directed that the petitioner shall pass order accordingly within a period of ten weeks from the date of receipt of a copy of the order.

11. In view of the above, we find no discrepancy or perversity in the order passed by the learned Tribunal. We find no merit in the writ petition and the same is accordingly dismissed. No order as to costs.

12. Consequently, miscellaneous petitions pending, if any, in the matter shall stand closed.

JUSTICE SURESH KUMAR KAIT

DR.JUSTICE SHAMEEM AKTHER

30th June, 2017

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