

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

WRIT PETITION No.24122 of 2017

ORDER : (ORAL)

(per Hon'ble Sri Justice Suresh Kumar Kait)

This writ petition is filed by the petitioner, who is respondent No.5 in O.A.No.6035 of 2014, assailing the order dated 22.06.2017 passed therein by the Andhra Pradesh Administrative Tribunal, Hyderabad (for brevity "the Tribunal"), allowing the said O.A.No.6035 of 2014 filed by respondent No.7 herein under Section 19 of the Administrative Tribunals Act, 1985 challenging the final seniority list of School Assistants vide proceedings Rc.No.1229/2012-C2, dated 30.09.2014, issued by the 1st respondent – Commissioner, Parvathipuram Municipality, Vizianagaram District, and the consequential proceedings Rc.No.1229/2012/C2, dated 08.10.2014, as arbitrary and illegal and violative of Articles 14, 16 and 21 of the Constitution of India, apart from the Rules governing the post, with a further direction to continue him as Headmaster based on his promotion vide proceedings Rc.No.1243/2006-C2, dated 15.03.2013, issued by the 1st respondent.

2. The petitioner/respondent No.5 in O.A. and respondent No.7/Applicant were appointed as Language Pandit (Telugu) Grade-I and School Assistant (Maths), respectively, which are

equivalent posts, in Parvathipuram Municipality, in pursuance of DSC-2000 conducted for selection and appointment of Teachers. According to respondent No.7/Applicant, he got First rank among the School Assistants (Maths) and the petitioner/respondent No.5 in O.A. got 3rd rank. In the seniority list of School Assistants and equivalent categories, including Language Pandit, Grade-I, communicated on 03.11.2006, while the name of the writ petitioner was not included, however, the name of respondent No.7 herein/Applicant was shown at Sl.No.10. Subsequently, on 15.12.2010, a provisional seniority list of School Assistants was communicated and later on 24.02.2011 final seniority list was communicated and, in both the seniority lists, the name of respondent No.7 herein/Applicant was shown below the petitioner/respondent No.5 in O.A. Therefore, respondent No.7 herein/Applicant filed O.A.No.1668 of 2011 before the Tribunal and the same was set aside by the Tribunal, by order dated 11.10.2012, directing to follow the seniority list dated 03.11.2006.

3. It is the contention of the petitioner/respondent No.5 in O.A. that he possessed the qualification required for the post of Headmaster, Grade-II, and accordingly promoted to the said post vide proceedings dated 15.03.2013. However, basing on the representation made by the petitioner/respondent No.5 in O.A, a notice dated 29.10.2013 was issued calling for

objections from all the concerned in respect of seniority list dated 03.11.2006. The case of respondent No.7 herein/Applicant before the Tribunal is that without issuing any notice, he was reverted to the post of School Assistant, while promoting the petitioner/respondent No.5 in O.A. as Headmaster, Grade-II, vide proceedings dated 08.10.2014. Being aggrieved, challenging the said proceedings, he filed the aforesaid O.A.No.6035 of 2014.

4. It is submitted that prior to the issuance of the proceedings dated 08.10.2014, the 1st respondent also issued final seniority list dated 30.09.2014 of School Assistants under Parvathipuram Municipality, wherein respondent No.7 herein/Applicant was shown at Sl.No.2 and the petitioner/respondent No.5 in O.A. was shown at Sl.No.1. Therefore, respondent No.7 herein/Applicant has challenged the said proceedings also in the aforesaid O.A.No.6035 of 2014.

5. Before the Tribunal, the 1st respondent – Commissioner, Parvathipuram Municipality, filed its counter affidavit on 15.02.2015 contending that in the recruitment, both respondent No.7 herein/Applicant as well as the petitioner/respondent No.5 in O.A. were appointed, based on the respondent No.7 herein/Applicant got 73.12 marks, the petitioner/respondent No.5 in O.A. got 74.18 marks. It is further contended that while respondent No.7 got First rank

in School Assistants (Maths), petitioner/respondent No.5 in O.A. got First rank among School Assistants (Telugu). Therefore, the petitioner/respondent No.5 was assigned seniority taking his age into consideration. It is further averred that while respondent No.7 joined duty on 11.12.2000, the petitioner joined duty on 13.11.2000 (prior to respondent No.7 herein/Applicant). It is not in dispute, their dates of birth are 01.05.1978 and 01.07.1970, respectively. Therefore, taking the above facts into consideration, respondent No.7 was shown below the petitioner and hence he was reverted. It is further contended that petitioner possessed M.A. Degree in Telugu and also Telugu Pandit Training Certificate, which is equivalent to B.Ed. and, therefore, he is also fully eligible and qualified for promotion to the post of Headmaster.

6. The 1st respondent – Commissioner, Parvathipuram Municipality, also filed additional counter affidavit dated 24.04.2017 with regard to certain queries raised during the course of hearing, stating that G.O.Ms.No.1096, dated 17.11.1978, prescribing the Rules for appointment to the post of Headmasters in Municipal Schools, is not in force and that there are no separate Service Rules to the Municipal Teachers, therefore, the Rules governing the posts of School Assistant and Headmaster in the Government Schools are being followed.

7. Learned counsel for the petitioner admitted that the petitioner does not have B.Ed. qualification, which is the qualification prescribed for the post of Headmaster in the Schools under Municipalities.

8. Similar pleas were taken by the petitioner to the effect that in the initial recruitment leading to the selection of respondent No.7, who got 73.12 marks, whereas the petitioner got 74.18 marks. Further, in pursuance of the said selection, while petitioner joined duty on 13.11.2000, however, respondent No.7 joined duty much later i.e., on 11.12.2000.

9. From the above, the issue for consideration before the Tribunal as well as before this Court is –

- (i) Whether the final seniority list dated 30.09.2014 of the School Assistants, insofar as the respondent No.7 herein/Applicant and the petitioner/respondent No.5 in O.A., is in order? and
- (ii) Whether reversion of respondent No.7 herein/Applicant and consequential promotion of the petitioner/respondent No.5 in O.A. is valid or not?

10. We note, though respondent No.7 has challenged the final seniority list dated 30.09.2014, however, he did not seek any relief with reference to the petitioner so far as his grievance of placing him below the petitioner was concerned. As per the averments advanced on behalf of respondent No.7

before the Tribunal, respondent No.7 is more concerned about his reversion vide proceedings dated 08.10.2014. It is to be seen that the respondent No.7 and petitioner were recruited as School Assistants to two different subjects, viz., Mathematics and Telugu. In the process of recruitment, in the written examination conducted for selection to various categories of posts for various subjects, the optional paper meant for the relevant subjects are different from post to post; for Mathematics, the optional paper is different and for Telugu, the optional paper is different. The candidates appear for the written test with different papers regarding their optional subjects. Therefore, the merit of a candidate selected for the post relating to Mathematics cannot be compared with the merit of a candidate selected for other subjects, such as Telugu, English etc.

11. In the case on hand, while respondent No.7 stood at Sl.No.1 among the School Assistants (Mathematics) in the ranking list, the petitioner stood at No.3 among the School Assistants (Telugu) i.e., Language Pandit, Grade-I, but the marks obtained by him are 74.18 as against the marks of 73.12 obtained by respondent No.7.

12. It is relevant to look into Rule 33 of the Andhra Pradesh State and Subordinate Service Rules, 1992 (for brevity "the Rules") with respect to the seniority, wherein Rule 33(b), which is relevant, reads as follows:

“(b) The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason the order of preference among them, and where such order has been fixed, seniority shall be determined in accordance with it:

Provided further that the order of merit or order of preference indicated in a list of selected candidates prepared by the Public Service Commission or other selecting authority, shall not be disturbed inter se with reference to the candidates position in such list or panel while determining the seniority in accordance with this rule and notional dates of commencement of probation to the extent necessary, shall be assigned to the persons concerned, with reference to the order of merit or order of preference assigned to them in the said list.”

13. On a perusal of the aforesaid rule position, it is clear that the question of appointing authority fixing order of preference among respondent No.7 and the petitioner does not arise, because both of them were appointed in two different subjects.

14. With regard to the proviso to the said rule, the preference indicated in the list of selected candidates prepared by the selecting authority is directed to be valid while determining the seniority and notional date of commencement of probation by taking the order of merit or order of preference assigned to the candidates in the said list. Further, as contended by the counsel for respondent No.7 that the list of selected candidates of DSC-2000 sent by the District Collector and Chairman, DSC-2000 is also post-wise and category-wise. The name of respondent No.7 is shown at

Sl.No.1 among School Assistants (Mathematics) and the name of the petitioner is shown at Sl.No.1 as the lone candidate among Telugu Pandits, Grade-I. Even though the list contains several names, it is prepared post-wise and category-wise with separate serial numbers for each category. Therefore, Rule 33(b) of the Rules is no help to determine the seniority between the petitioner and respondent No.7. Moreover, respondent No.7 has not challenged for fixing his seniority above the petitioner. Therefore, the learned Tribunal left open the said issue without giving any opinion.

15. The case of respondent No.7 is that he is a Post Graduate with B.Ed. qualification and as per the rules prescribed in G.O.Ms.No.1096, dated 17.11.1978, governing the post of Headmaster in Municipal Schools, the qualification required is that the senior-most reverted probationer in the post of Headmaster/Headmistress serving as a B.Ed. Assistant in the same school shall be appointed for the vacancy in the post of Headmaster/Headmistress and the reverted probationer in the post of Headmaster/Headmistress shall be preferred to other B.Ed. Assistants in the school. Apart from that, one must have put in seven years of service as B.Ed. Assistant in order to be considered for promotion to the post of Headmaster and it is specifically mentioned in the rule that even in the case of Language Pandit, Grade-I, only a Graduate with B.Ed. qualification is eligible to be considered

for the post of Headmaster/Headmistress. Further, as contended by respondent No.7, he possesses Post Graduation with B.Ed. In fact, B.Ed. is the basic qualification even for holding the post of School Assistant, which is the feeder category for the post of Headmaster and, therefore, respondent No.7 is fully eligible and qualified to hold the post of Headmaster, Grade-II.

16. The petitioner admittedly does not possess the qualification of B.Ed., though he is a Post Graduate and passed Telugu Pandit Training Course and obtained certificate and the said training is equivalent to B.Ed.

17. We note, nowhere it is specified by the petitioner that the Certificate of Pandit Training Course possessed by him is treated as equivalent to B.Ed., so as to satisfy the rule position. The fact remains that the petitioner does not possess the qualification of B.Ed.

18. We further note that the petitioner has raised a strong ground that even for the post of Teachers and Headmasters in Municipal Schools, the respondents are throughout following the rules governing the posts of Teachers in Government and Zilla Parishad Schools issued in G.O.Ms.Nos.9 and 10, both dated 23.01.2009, and as per the previous rules issued prior to the issuance of the said two G.Os. Accordingly, the contention of the petitioner that all through the respondents

were following a particular set of rules, according to which, B.Ed. is not a necessary qualification for holding the post of Headmaster, Grade-II, and it is sufficient if an incumbent possesses the qualification of Language Pandit Training.

19. We note that the Government have issued rules, specifically governing the post of Headmasters in High School under Municipal Councils, which rules were issued under Section 326 read with proviso to Section 74 of the Andhra Pradesh Municipal Act, 1965. Section 326 enables the Governor to make rules with respect to several services and Section 74 provides for appointment of candidates to various posts in the Municipalities. Therefore, under the above two provisions, rules were issued prescribing qualifications for the post of Headmaster/Headmistress. A perusal of these rules clearly shows that B.Ed. is an essential qualification for the post of Headmaster. Since petitioner does not possess the said qualification, promoting him to the post of Headmaster by reverting respondent No.7 would be contrary to the rules governing the post, as held by the Tribunal.

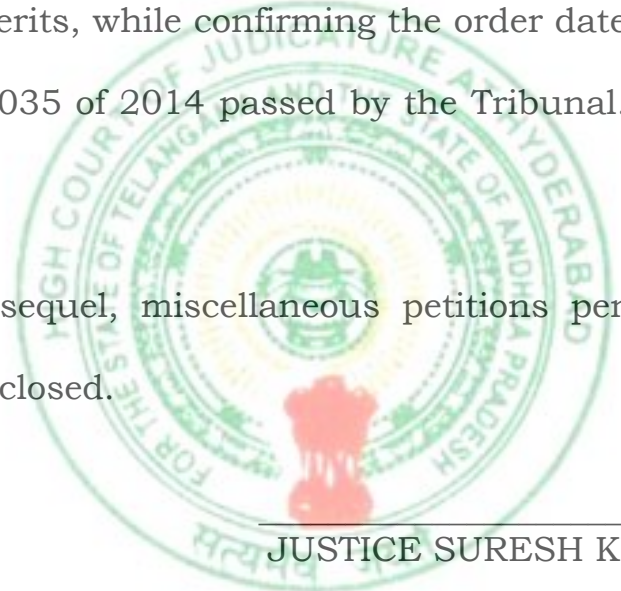
20. It is important to note that respondent No.7 was promoted to the post of Headmaster, Grade-II, vide proceedings dated 18.03.2013, issued by the 1st respondent – Commissioner and continued in the said post till issuance of impugned proceedings on 08.10.2014 i.e., nearly for 1 ½ year, he was reverted, while promoting the petitioner.

Admittedly, said order was passed even without issuing any notice. Had a notice been issued to him, he would have had an opportunity to submit his explanation regarding the eligibility criteria of the petitioner.

21. In view of the facts recorded above, we do not find any illegality or perversity in the impugned order dated 22.06.2017 in O.A.No.6035 of 2014 passed by the Tribunal.

22. Accordingly, the present writ petition is dismissed as devoid of merits, while confirming the order dated 22.06.2017 in O.A.No.6035 of 2014 passed by the Tribunal. No order as to costs.

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



JUSTICE SURESH KUMAR KAIT

Dr. JUSTICE SHAMEEM AKTHER

21.07.2017.
Msr

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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