

* 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

+ WRIT PETITION No.1659 of 2015
And
+ WRIT PETITION No.41524 of 2016

% Date: 08-08-2017

Between:

Syed Aijazuddin S/o. Syed Hafeezuddin,
Stenographer Grade-I, O/o. Principal District &
Sessions Court, mahabubnagar R/o.2-8-52/3,
Near State Bank of Hyderabad, Main Branch,
Madeen Masjid, Mahabubnagar.

... Petitioner
(in both the writ petitions)

And

1. High Court of Judicature at Hyderabad, for the State of Telangana and State of Andhra Pradesh, High Court Building, Hyderabad, rep. by its Registrar (Administration).
2. The Principal District & Sessions Judge, Mahabubnagar District, Mahabubnagar.

... Respondents
(in both the writ petitions)

! Counsel for the Petitioner : Mrs. K. Udaya Sri

^ Counsel for the Respondents : Mr. J. Anil Kumar

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? Cases referred

HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN

And

HON'BLE SMT JUSTICE T. RAJANI

WRIT PETITION No.1659 of 2015

And

WRIT PETITION No.41524 of 2016

COMMON ORDER: (Per VRS,J)

While the first writ petition challenges an order of repatriation of the petitioner from the post of Stenographer Grade-I to the post of Superintendent, the second writ petition challenges the consequential order of recovery of the excess pay said to have been made to the petitioner.

2. Heard Mrs. K. Udaya Sri, learned counsel for the petitioner. Mr. J. Anil Kumar, learned Standing Counsel appearing in one writ petition and Mrs. B. Vijayalakshmi, learned Standing Counsel appearing in the second writ petition for the Registry of this Court.

3. The petitioner in these writ petitions, originally joined the service as Steno Typist on 04.01.1985. The post of Steno Typist was redesignated as Personal Assistant w.e.f. 12.11.2003. The petitioner was thereafter promoted as Senior Assistant on 05.02.2011 and later promoted as Superintendent on 30.10.2012.

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 for (1) constitution, method of recruitment and scales of pay, (2) procedure of 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) redesignated. 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 01-4-2003 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 12.01.2003. 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 01-4-2003 and will not affect the gradation or seniority of persons holding posts as on the date of implementation of the G.O.”

8. The table under Rule 6 of the Amended Rules (G.O. Ms.No.100, dated 08.08.2013) contained the method of appointment to various categories of posts and also indicated the Appointing Authority. This table, insofar as it relates to the first 8 categories of posts, is reproduced as follows:

Category and name of the post	Method of appointment	Appointing authority
1.Chief Administrative Officers	By promotion of Senior Superintendents (Category-2) and Stenographer Grade-I (Category-4) in the ratio of 5:1	District Judge
2.Senior Superintendents	By promotion of Superintendents (Category-3)	District Judge
3.Superintendents	By promotion of Senior Assistants (Category-7)	District Judge
4.Stenographers Grade-I	By promotion of Stenographers Grade-II (Category-5)	District Judge
5.Stenographers Grade-II	By promotion of Stenographers Grade-III (Category-6)	District Judge
6.Stenographers Grade-III	1. 60% by direct recruitment 2. 40% by promotion of Junior Assistants (Category-8)/Typists (Category-9) from a combined seniority	District Judge
7.Senior Assistants	By promotion of Junior Assistants (Category-8)/Typists (Category-9) and Field Assistants (Category-10) by fixing the ratio of 5:1 in a cycle of six (6) vacancies as prescribed in Note 2	District Judge
8.Junior Assistants	1. 50% by direct recruitment 2. 50% by promotion of Examiners (Category-11)/Copyists (Category-12) from the combined seniority and appointment by transfer from the post of Record Assistants, Drivers and Process Servers by fixing ratio of 8:4:1:3 in a cycle of 16 vacancies as prescribed in Note 2	District Judge

9. Pursuant to the aforesaid Government Orders, the petitioner was redesignated as Stenographer Grade-III by an order dated 11.12.2013, but w.e.f. 01.04.2003. The petitioner was also granted upgradation to the post of Stenographer Grade-II and Grade-I.

10. However, the High Court issued a clarification on 23.04.2014 followed by another clarification dated 29.11.2014. On the basis of these clarifications, the District Judge passed an order dated 20.12.2014 repatriating the petitioner from

the post of Stenographer Grade-I to the post of Superintendent. Challenging the said order, the petitioner filed the first writ petition W.P.No.1659 of 2015.

11. Since no stay was granted in the first writ petition, the respondents passed a consequential order for recovery of the excess pay made, on account of the redesignation from the post of Stenographer to the post of Superintendent and the upgradation granted thereafter. Challenging this consequential order, the petitioner has come up with the second writ petition W.P.No.41524 of 2016.

12. The case of the petitioner is exactly identical to the case of the petitioner in W.P.No.12680 of 2015, which was allowed by a Bench of this Court by an order dated 24.03.2017. It was pointed out in the said order that the redesignation of persons like the petitioner from the post of Stenographer to the post of Senior Assistant, happened at a time when there was no separate channel of promotion for them. But once the recommendation made by the First National Judicial Pay Commission was implemented with retrospective effect, the Stenographers had the option to choose the channel, through which they can gain promotion. In paragraphs 17 to 21 of the judgment in W.P.No.12680 of 2015 it was observed as follows:

“17. But we do not think that the stand taken by the Registry is fair and justified. The First National Judicial Pay Commission was constituted pursuant to the order of the Supreme Court dated 07-01-1998 in All India Judges' Association case. The Commission made several recommendations which were accepted by the High Court. Therefore, by orders dated 26-3-2008 and 15-7-2008, the Hon'ble Supreme Court directed the implementation of the recommendations of the Shetty Commission with effect from 01-4-2003.

18. But it took 6 years for the Government to issue G.O.Ms.No.50, Law Department, dated 23-4-2009. It took another period of 4 years for the Government to issue G.O.Ms.No.100, amending the A.P. Judicial Ministerial Service Rules. But nevertheless, G.O.Ms.No.50 as well as the amendment to the Service Rules under G.O.Ms.No.100, dated 08-8-2013, came into effect from 01-4-2003. This is why a Note was incorporated in Note 1 under Rule 5 which provided that the redesignation of the posts will be implemented with effect from 01-4-2003 and will not affect the gradation or seniority of persons holding the posts as on the date of implementation of the G.O.

19. If the recommendations of the Shetty Commission had been accepted at the appropriate point of time, the petitioners would not have accepted the promotion as Senior Assistants and Superintendents. As a matter of fact, many persons retired before

G.O.Ms.No.100 was issued. The only benefit they reaped was to have promotions to the posts of Senior Assistants and Superintendents.

20. This is not a case where the petitioners had two different options to choose from two different channels of promotion, at the time when they accepted promotion as Senior Assistants and Superintendents. At the time when the petitioners accepted the promotion to the posts of Senior Assistant and Superintendent, they had only one channel and the recommendations of the Shetty Commission remained only a distant dream. Therefore, as and when G.O.Ms.No.100 was issued in the year 2013, with retrospective effect from 01-4-2003, the petitioners are entitled to get back to their original posts and seek upgradation to Grade-II and Grade-I respectively.

21. The contentions of the respondents could hold good only if the petitioners had exercised an option to choose a particular line or particular channel of promotion. If they have secured promotion in the only line of promotion or channel of promotion available at that point of time, they should be given the option of coming back to their original line or channel. This is what the District Judge had done on 11-4-2014 when the District Judge allowed the petitioners to get back to the stream of Stenographers from the post of Superintendents. This was not only fair and proper but also legally valid, since all persons who are entitled to the benefit of an amendment of the Rules with retrospective effect, would always have an option to avail the benefit. It cannot be found fault with and hence the impugned orders are illegal and unjustified."

13. The case of the petitioner is squarely covered by the aforesaid decision and the reasons given therein. Therefore, these writ petitions are allowed. The order of repatriation passed on 20.12.2014 is set aside. Consequently, the order of recovery passed on 09.11.2016 is also set aside. 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.

Js.
8th August, 2017.

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

WRIT PETITION No.1659 of 2015
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