The Hon'ble Sri Justice V.RAMASUBRAMANIAN
and
The Hon'ble Sri Justice M. GANGA RAO

+ WRIT PETITION No.36197 OF 2017

Date:28.12.2017

Between:

%The State of Andhra Pradesh,
Rep. by its Chief Secretary to Government,
A.P. Secretariat, Velagapudi, Guntur District and another.
...Petitioners

Vs.

$ K. Sreeram Prasad S/o. Late Sri K.Babu Rao,
Aged about 60 years, Director of State Audit (Retd.)
R/o.Plot No.280, Phase-I, Saket, Kapra,
ECIL Post, Hyderabad and others
... Respondents

! Counsel for Petitioners : G.P. for Services (AP)

^ Counsel for Respondent No.1 : Sri P.B. Vijay Kumar

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> Head Note :

? Cases Referred : Nil

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.36197 OF 2017

ORDER: *(per V. Ramasubramanian, J)*

Aggrieved by the order of the Andhra Pradesh Administrative Tribunal directing the State to post the 1st respondent herein as Director of Audit till the date of his retirement, namely, 30.06.2017, the State of Andhra Pradesh has come up with the above writ petition.

2. Heard learned Government Pleader for Services (AP) and Mr. P.B. Vijay Kumar, learned counsel appearing for the 1st respondent.

3. The 1st respondent herein was appointed as an Assistant Audit Officer in the year 1996 and further promoted as Deputy Director of State Audit in the year 2001.

4. While the 1st respondent was working as Chief Finance Officer of GHMC, he was placed in Full Additional Charge of the post of Director of State Audit, Andhra Pradesh, with effect from 31.08.2013. Later he was promoted as Director of State Audit on regular basis on 30.01.2014. He continued as Director of State Audit up to 01.06.2014, the day prior to the date of bifurcation of the State. It must be recorded at this juncture that the service particulars of the 1st respondent that we have extracted hereinabove, are extracted not from the pleadings of the 1st respondent, but from paragraph-3 of the counter affidavit filed by the State before the Tribunal. Therefore, there can be no controversy about the profile of the 1st respondent.

5. Upon bifurcation of the State on 02.06.2014, the 1st respondent continued as Director of State of Audit subject to final allocation. Thereafter, G.O.Ms.No.167 dated 04.12.2015 was passed

based upon the options exercised as per the bifurcation guidelines. The 1st respondent stood allotted to the State of Andhra Pradesh by office order No.17(1)/2015 dated 12.11.2015 issued by the Department of Personnel and Training, Ministry of Personnel, PG and Pensions of the Government of India.

6. Following the same, the Government of Andhra Pradesh issued G.O.Rt.No.1147, dated 25.04.2016, inducting the 1st respondent into the service with effect from 07.12.2015. Interestingly, paragraph-3 of the G.O.Rt.No.1147 made it clear that the re-induction of the 1st respondent as Director of State Audit was against a clear vacancy. Paragraph-3 of G.O.Rt.No.1147 is extracted as follows:

> "In pursuance of reference 3rd, 4th and 8th read above Sri K. Sree Ram Prasad DSA is hereby re-inducted into the Government Service w.e.f. 07.12.2015. The re-induction is against a clear vacancy. The re-induction is subject to the conditions laid down in the reference 8th read above."

7. After such re-induction, the Government issued another order in G.O.Rt.No.1200 Finance dated 03.05.2016 placing the services of the 1st respondent at the disposal of the Municipal Administration and Urban Development Department for posting the 1st respondent as Additional Commissioner of Projects in the Vijayawada Municipal Corporation. Aggrieved by the said order, the 1st respondent filed an application and the same was allowed by the Tribunal. Challenging the order of the Tribunal, the State is before us.

8. The grievance with which the State has come up with the above writ petition is that there was no post of Director of State Audit for accommodating the 1st respondent upon final allocation and that therefore, the State was compelled to post him in an equivalent post

which carried the same pay scale and other allowances. In other words, the contention of the State is that once the 1st respondent is given a post which carried the same pay and allowances, he could not make out a grievance about the post to which he was appointed.

9. But, the above contention of the Government appears to be contrary to the very stand taken by the Government in their counter affidavit. It is seen from paragraph-6 (d) and (e) of the counter affidavit filed by the State before the A.P. Administrative Tribunal that the reason for not posting the 1st respondent as Director of State Audit was not the non existence of the post of Director, but the absence of the will on the part of the State. The State has taken a specific stand in their counter affidavit before the Tribunal that the 3rd respondent in this writ petition, who was junior to the 1st respondent, was actually holding Full Additional Charge at the time when the 1st respondent got allotted and that the State did not want to disturb the smooth running of the administration by dislocating him.

10. Therefore, on the basis of the stand taken by the State before the Tribunal, the only option available to the Tribunal was to allow the application. The 3rd respondent in this writ petition was admittedly junior to the 1st respondent and was also holding the substantive post of Deputy Director, when he was made full additional charge. Therefore, the incharge arrangement should have been divested and the 1st respondent should have been posted as Director. In fact, G.O.Rt. No.1147, which we have extracted earlier, clearly showed that the re-induction of the 1st respondent was against a clear vacancy. Hence, the Tribunal did what was legal, fair and proper and we see no reason to interfere with the said order.

11. Hence, the Writ Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

December 28, 2017
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