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

+ WRIT PETITION No.44323 OF 2017

Date:28.12.2017

Between:

%Smt.S. Bapanamma W/o.Late Sri Pothu Reddy,
Aged about 41years, Occ: Asst.Commercial Tax Officer,
Tuni, East Godavari District, R/o.9-162/6, Adarshnagar,
Kontamuru, Rajahmundry Rural, East Godvari District.

...Petitioner

Vs.

$ The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Commercial Tax Department, Secretariat,
Velagapudi, Tullur Mandal, Guntur District and others

... Respondents

! Counsel for Petitioner : Mr. G. Tuhin Kumar

^ Counsel for Respondents 1 to 3 : Government Pleader for Services-I (AP)

Counsel for Respondent No.4 : M/s.V. Ravichandran

< Gist :

> Head Note :

? Cases Referred : Nil

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.44323 OF 2017

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

Aggrieved by the dismissal of her Original Application by the Andhra Pradesh Administrative Tribunal, the petitioner, who is working as an Assistant Commercial Tax Officer, has come up with the above writ petition.

2. Heard Mr. G.Tuhin Kumar, learned counsel appearing for the petitioner. Mr. V. Ravichandran, learned counsel takes notice for the 4th respondent.

3. The petitioner as well as the 4th respondent were appointed pursuant to a selection made under DSC 1996. While the petitioner was appointed as a Junior Stenographer, the 4th respondent was appointed as a Junior Assistant. Subsequently, both of them gained promotions to the post of Senior Assistant and the Assistant Commercial Tax Officer. After these two promotions, the 4th respondent raised a dispute with respect to seniority on the ground that she secured a higher rank in DSC 1996 than the petitioner. Accepting the same, the Department issued a show cause notice to the petitioner for revising the seniority. Challenging the show cause notice, the petitioner filed an application before the Tribunal. The Tribunal rejected the challenge asking the petitioner to file a reply to the show cause notice. Therefore, the petitioner is before us.

4. The main grievance of the petitioner is that without challenging the settled seniority position, for a period of more than about 15 years and without winking her eyes, when two promotions were

granted, the 4th respondent went before the Government with an inordinate delay to set right the seniority and that therefore, the show cause notice issued at the behest of the Government on a representation made by the 4th respondent ought to have been set aside by the Tribunal.

5. We have carefully considered the above submissions.

6. There can be no dispute about two facts. The first is that if two persons are selected to a post, pursuant to a competitive process of selection, they will have to take seniority with reference to the rank assigned to them, in view of Rule 33(a) of the General Rules. If both these persons selected under the same recruitment, join duty on different dates, but within the period stipulated by the Rules for reporting for duty, their seniority cannot depend upon the date of joining duty, but can depend only upon the ranking assigned by the body vested with the power to make selections.

7. In terms of merit, there is no dispute that the 4th respondent was given a higher rank than the petitioner. Therefore, on merits, the 4th respondent should have been placed higher in the seniority, at the time of recruitment.

8. But the objection of the petitioner is that the 4th respondent kept quiet for a full period of 15 years, during which time, both of them gained promotions to two higher posts and that therefore, by virtue of Rule 24 of the General Rules, the representation to the Government for revising the seniority ought to have been thrown out.

9. But the response of the 4th respondent is that neither the ranking nor the marks secured by the candidates was ever made known immediately after selections and that the 4th respondent came to know about the marks secured by the respective candidates in the selection of

the year 1996 only through a communication dated 11.11.2009 sent by the District Collector to the Additional Commissioner of Commercial Taxes.

10. In the light of the rival contentions, two issues should be considered by the respondents, namely, (1) whether the claim of the 4th respondent, immediately after coming to know of the marks secured, through a communication dated 11.11.2009, was within the period of limitation and (2) whether there was any communication of the seniority list of the year 2010 to all persons to enable them to challenge the same within the period of limitation or not? These two issues could not have been adjudicated by the Tribunal, without the petitioner filing a response to the show cause notice. Therefore, the Tribunal was right in directing the petitioner to file a reply to the show cause notice. Hence, we see no justification to interfere with the order of the Tribunal.

11. Therefore, the writ petition is dismissed. In view of the dismissal, the petitioner is granted time upto 15th January 2018 to submit his reply to the show cause notice raising all the points. Before passing final orders on the show cause notice, the respondents shall take into account (1) the date on which the marks secured in DSC 1996 was made known to the candidates and (2) the date on which the previous seniority list, if any, were communicated to the candidates and thereafter, pass orders in accordance with law.

12. 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
KTL