HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.Nos. 6949 and 7008 of 2018

COMMON ORDER:-
(Per the Hon'ble Sri Justice Suresh Kumar Kait)

Inasmuch as the question of fact and law involved in the two writ petitions is one and the same, these matters are taken up together for disposal by this Common Order.

The writ petitions are filed challenging the order dated 27.09.2012 in O.A.No. 12397 of 2009 passed by the A.P. Administrative Tribunal, Hyderabad whereby the Tribunal, while dismissing the application filed by the petitioners under Section 19 of the Administrative Tribunals Act, 1985, made the following observations:

> "In the result, the O.A. is dismissed as devoid of merits. However, this order does not preclude the applicants to once again request the Government to take a policy decision for their regular appointment either by absorbing them in equivalent posts or to create Data Entry Operator posts on regular basis and it is for the Government to take a policy decision in this regard by keeping in view the interest of large number of Data Entry Operators working not only in Commercial Taxes Department but also in other Department. M.A.No. 2/2011 is dismissed. No order as to costs."

It is the pleaded case of the petitioners that they were appointed as Data Entry Operators during 1989 and 1992 after written test and interview were conducted by the Committee constituted by the Deputy Commissioner of Commercial Taxes concerned. The petitioners have been working as Data Entry Operators initially on a consolidated pay of Rs.900/- per month, which was increased from time to time and now they are getting consolidated pay of Rs.5,000/- per month as on the date of filing the O.A. before the Tribunal. The petitioners have been working in various Divisions of the Commercial Taxes Department in the State. While so, the Government issued orders in G.O.Ms.No.10, Finance & Planning Department, dated 04.02.1991 evolving a policy on computer personnel and directed that the employees who are working in Government Departments as non-technical computer personnel should be converted into equivalent category of post in the Department and no further recruitment should be made through A.P. Technological Services. The Government also issued Circular Memo No. 6513/Plg.PS/94-1, dated 06.05.1994 directing that those who are already appointed as Data Entry Operators are to be fitted into an equivalent category of post identified for the purpose. In pursuance of the above orders issued by the Government, the petitioners ought to have been converted into an equivalent category i.e. the post of Senior Assistant or at least Junior Assistant in Commercial Taxes Department. The petitioners made several representations to the respondents requesting to absorb them as per G.O.Ms.No.10, dated

04.02.1991 in equivalent category of the posts of Data Entry Operators. Since there was no response from the respondents, the petitioners were compelled to file the aforesaid O.A. before the Tribunal.

It is the pleaded case of the respondents that the petitioners were appointed by the Deputy Commissioner of Commercial Taxes concerned as Data Entry Operators on contract and daily wage basis on various dates commencing from 1989 to 1992.

When this Court has put a specific query to the learned counsel for the petitioners as to whether the petitioners were appointed on contract basis, he has replied in the affirmative and reiterated that though the petitioners were appointed on contract basis, now they have completed around 20 years of service, therefore, they have every right for absorption in the respective departments in any post based on their eligibility criteria.

The learned counsel for the petitioners submits that when similar issue came up for adjudication in W.P.No. 3690 of 2017, this Court, by order dated 20.03.2017, while allowing the writ petition, made the following order:

> "The manner in which the Commercial Tax Authorities, and more particularly, the Commissioner, Commercial Taxes, State of Andhra Pradesh, dealt with the petitioner's case pursuant to the order dated 19.06.2012 passed by the Tribunal in O.A.No. 12567 of 2009, leaves this Court with no option but to set aside the

proceedings dated 30.10.2012 of the Commissioner, Commercial Taxes, State of Andhra Pradesh, and remit the matter to him for consideration of the whole issue afresh in terms of the order passed by the Tribunal in O.A.No. 12567 of 2009. Unfortunately, the Tribunal failed to take note of the afore-stated aspects while dismissing O.A.No. 1410 of 2013. In consequence, the order dated 16.12.2016 passed by the Tribunal in O.A.No. 1410 of 2013 is also set aside. The fresh exercise by the Commissioner, Commercial Taxes, State of Andhra Pradesh, shall be completed expeditiously and, in any event, not later than four weeks from the date of receipt of a copy of this order.

The writ petition is allowed to the extent indicated above."

The admitted case of the petitioners is that they are appointed on contract and daily wage basis, therefore, Rule 9(b) of the A.P. State and Subordinate Service Rules comes into play which reads as under:

"A person appointed under sub-rule(a) shall not be recruited as a member of the service, in which the post to which he is appointed, is included and shall not be entitled by reason only of such appointment, to any preferential right to any other appointment in that or in any other service."

The above extracted Rule has not been considered by this Court in its order dated 20.03.2017 in W.P.No. 3690 of 2017, therefore, this order is *per incurum,* and in our view, not applicable to the present case.

For the aforementioned reasons, we do not find any merit in the present writ petitions, and the same are liable to be dismissed. However, considering the fact that the petitioners have completed around 20 years of service as Data

Entry Operators in various Departments and in the light of the judgment rendered by the Apex Court in Nihal Singh v. State of Punjab[1], the respondents are directed to take policy decision for appointment of the petitioners either by absorbing them in equivalent post or by creating posts for Data Entry Operators on regular basis within a period of two months from the date of receipt of a copy of this order.

Accordingly, the writ petitions are disposed of. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

05.03.2018

bcj

[1] (2013) 14 SCC 65