

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.9304 OF 2018

ORDER: (per SK,J)

The State of Telangana and its officials in the Horticulture Department filed this writ petition aggrieved by the order dated 30.06.2015 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.No.4109 of 2014. The said O.A. was filed by the first respondent herein assailing the proceedings dated 26.06.2014 issued by the Deputy Director (Technical), Government Garden (Wing), Hyderabad, informing her that as she had failed to acquire the required higher qualification within the stipulated time, she may express her willingness to be appointed as an Office Subordinate, a post for which such a qualification was not prescribed. She sought a consequential direction to the authorities to regularise her services in the cadre of Typist with consequential benefits.

By the order under challenge, the Tribunal applied Rule 6 of the Ministerial Service Rules, 1998 (*hereinafter*, 'the Rules of 1998'), to the respondent-applicant and relying upon the order dated 30.08.2013 passed by this Court in W.P.No.22015 of 2003 interpreting the said rule, the Tribunal held the respondent-applicant entitled to be continued as a Typist, notwithstanding her failure to acquire the higher qualification. The impugned proceedings dated 26.06.2018 were accordingly set aside with a further direction to the authorities to continue the respondent-applicant as a Typist and regularise her services as per rules by duly releasing her annual increments.

The respondent-applicant was provided compassionate appointment upon her mother's death in harness on 11.04.2007. While appointing her as a Typist under proceedings dated 07.07.2009, she was informed that she would have to pass Intermediate examination within three years and also pass Government Technical examination in Typewriting Higher Grade in Telugu within two years from the date of her appointment. Though she passed Intermediate on 29.05.2013 and Typewriting Higher Grade in English and Lower Grade in Telugu on 10.06.2011, she failed to acquire Typewriting Higher Grade in Telugu. Though she was allowed time till 09.07.2014 to acquire Typewriting Higher Grade in Telugu, she failed to do so.

It may be noticed that Rule 6 of the Rules of 1998 prescribes that no person shall be eligible for appointment to the categories specified in Column (I) of Annexure-I to the Rules, unless he/she possesses the qualifications specified in the corresponding entry in Column (3) thereof. The post of Assistant-cum-Typist in sub-offices other than offices of Heads of Departments and Directorates finds mention at Clause 4 in Column (I) of Annexure-I.

Ms.Ch.Sujatha, learned counsel appearing for the respondent-applicant, would point out that in terms of Clause 4(iii) in Column (I) of Annexure-I of the Rules of 1998, in the event persons with qualifications prescribed were not available, candidates who have passed the examination in typewriting by Lower Grade may be appointed, if otherwise qualified.

It is this clause which fell for consideration before this Court in W.P.No.22015 of 2003. *Ex facie*, the aforestated exemption clause would apply only when direct recruitment is undertaken and qualified candidates

are not available. It would not be applicable to a compassionate appointment which is provided to the dependent of an employee who died in harness and who does not possess the requisite qualifications but is given sufficient time to acquire them. The judgment relied upon and the rule in question therefore have no application to the respondent-applicant.

Given the admitted fact that the respondent-applicant failed to acquire the requisite qualification despite ample time being given to her, she is not entitled to retain the post of Typist. We are informed that the post of Junior Assistant which is over and above the post of Office Subordinate does not require the qualification of Typewriting Higher Grade in Telugu. We are further informed by the learned Government Pleader that a vacancy is available in the post of Junior Assistant in the same office where the respondent-applicant is working. That being so, it would not be proper on the part of the authorities to offer the respondent-applicant the lower post of Office Subordinate.

It is not in dispute that the compassionate appointments scheme would also cover the post of Junior Assistant in the event the dependent has the qualification to occupy such a post. We are also informed that in terms of the Memo dated 19.08.1975 issued by the erstwhile Government of Andhra Pradesh, an appointee under the scheme of compassionate appointments may be adjusted against the applicable roster point in the vacancy available instead of waiting for the applicable roster point to come up by rotation.

In that view of the matter, the writ petition is allowed setting aside the order dated 30.06.2015 passed by the Tribunal in O.A.No.4109 of 2014. The petitioners shall however offer to the respondent-applicant the lower post of Junior Assistant available in the same office where she is

presently working by adjusting the said vacancy against the reserved category to which the respondent-applicant belongs instead of waiting for the said roster point to come up by way of rotation.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

Date:24.04.2018

GJ

