

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

WRIT APPEAL NOs.566 AND 587 OF 2018

COMMON JUDGMENT
(per Hon'ble Sri Justice Sanjay Kumar)

These two appeals arise out of the order dated 19.02.2018 passed by a learned Judge of this Court allowing W.P.No.36273 of 2017. W.A.No.566 of 2018 was filed by respondents 3 to 5 in W.P.No.36273 of 2017 while W.A.No.587 of 2018 was filed by two Deputy Executive Officers in the service of the Tirumala Tirupati Devasthanams, Tirupati, who were not parties to the writ petition, after obtaining leave. The prayer in W.P.No.36273 of 2017 was as under:

“Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, or order preferably in the nature of Writ Mandamus/Declare the action of the 1st Respondent in applying/extending/giving consequential seniority to employees promoted under Rule of Reservation as illegal, arbitrary, contrary to law and unconstitutional and consequently declare that the employees promoted under the reserved category cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates later promoted are entitled to regain their seniority and consequently direct the Respondents to revise the seniority lists in all the categories of posts in the TTD and consequently apply the “Catch up Rule” and consequently restore/the seniority of general candidates over and above the employees promoted under the Reserved category with all consequential benefits like seniority promotion etc.”

By the order under appeal, the learned Judge opined that there was no provision for consequential seniority benefit being given to the Scheduled Caste and Schedule Tribe employees who were promoted on the basis of reservation and therefore, the catch-up rule would have to be

applied. It is on this basis that the learned Judge held that the consequential seniority given to the roster point promotees, respondents 3 to 5 in the writ petition, the appellants in W.A.No.566 of 2018, could not be sustained. Thereupon, the learned Judge allowed the writ petition observing as under:

“Accordingly, the Writ Petition is allowed and the action of the 1st respondent in granting consequential seniority to employees promoted under Rule of Reservation like respondent Nos.3 to 5 without there being any such policy decision by the State Government, as adopted by the 7th respondent, is clearly illegal, arbitrary and contrary to law. It is declared that respondent Nos.3 to 5 and other persons similarly promoted like them under the reservation category are not entitled to grant of consequential seniority in the promoted category from the date of their promotion. The senior general candidates, later promoted, like the petitioners, are entitled to regain their seniority; and a direction is issued to the 1st respondent to revise the seniority list in all categories of the posts of 1st respondent by applying the “catch-up” rule and restore seniority to general category persons over and above employees promoted under reserved category with all consequential benefits like seniority etc. This exercise shall be completed within six months from the date of receipt of a copy of this order. No costs.”

It appears that the office of the Executive Officer, Tirumala Tirupati Devasthanams, issued a Note to the Assistant Executive Officer (Services & Technical), TTD, Tirupati, stating as under:

“The Superintendents & case workers of Services Wing (General & Technical Establishment), TTD, Tirupati are hereby instructed to complete the process of revision of Seniority Lists wherever ROR in promotion are applicable, as per Catch Up Rule immediately.

This work shall be taken up on top priority basis.”

When the aforestated Note was brought to the notice of this Court, the same was stayed by order dated 06.08.2018. I.A.No.3 of 2018 in W.A.No.566 of 2018 and I.A.No.4 of 2018 in W.A.No.587 of 2018 were filed by the respondents-writ petitioners to vacate the said order.

Heard Sri G.Vidya Sagar, learned senior counsel, and Sri J.Sudheer, learned counsel, appearing for the appellants in W.A.Nos.566 and 587 of 2018 respectively; Dr.K.Lakshmi Narasimha, learned counsel for the respondents-writ petitioners; and Smt.K.Lalitha, learned standing counsel for the Tirumala Tirupati Devasthanams.

Rule 4 of the Tirumala Tirupati Devasthanams Employees Service Rules, 1989, promulgated in G.O.Ms.No.1060, Revenue (Endowments-I) Department, dated 24.10.1989, provides that the employees of the Tirumala Tirupati Devasthanams are to be governed by various rules issued by the Government of Andhra Pradesh in respect of State Government employees apart from any other executive instructions and Government Orders that are issued from time to time by the Government in respect of their employees which are not inconsistent with the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, the Act of 1987'), and the Rules made thereunder. This being the position, the executive instructions issued by the State of Andhra Pradesh with regard to giving effect to the rule of reservation in matters of promotion with consequential seniority under Article 16(4A) of the Constitution would have application to the employees of the Tirumala Tirupati Devasthanams also. This Rule position was completely lost sight of by the learned Judge.

However, the modalities of giving effect to such reservation was the subject matter of M.NAGARAJ V/ s. UNION OF INDIA¹, and a

¹ (2006) 8 SCC 212

progression of cases thereafter. The latest in this progression is the recent judgment of the Supreme Court in JARNAIL SINGH V/ s. LACHHMI NARAIN GUPTA². Therefore, notwithstanding the executive instructions of the State of Andhra Pradesh which automatically apply to the Tirumala Tirupati Devasthanams employees as long as the same are not in conflict with the Act of 1987 or the Rules framed thereunder, the Tirumala Tirupati Devasthanams authorities are bound to give effect to the law laid down by the Supreme Court in this regard, the latest being the principles laid down in JARNAIL SINGH².

As the prayer in the writ petition is couched in general terms and as the order under appeal proceeded on a misconception in so far as the rule position is concerned, the writ appeals are allowed setting aside the order dated 19.02.2018 passed in W.P.No.36273 of 2017. We may however hasten to add that in the event the Tirumala Tirupati Devasthanams wish to give effect to the aforestated executive instructions in the context of Article 16(4A) of the Constitution, they would necessarily have to abide by the legal principles set out by the Supreme Court in a long line of judgments, the last, as on date, being the one in JARNAIL SINGH².

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:01.10.2018
PGS

² 2018 SCC OnLine SC 1641