

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.24720 of 2016

ORDER:

(Per the **Hon'ble Sri Justice Suresh Kumar Kait**)

Vide the present petition, the petitioner, State of Telangana, has challenged the order dated 21.04.2016 passed in O.A.No.1728 of 2014 by the Andhra Pradesh Administrative Tribunal, Hyderabad, whereby the application filed by the respondents under Section 19 of the Administrative Tribunals Act, 1985 has been allowed.

2. The learned Tribunal after considering the rival contentions of the parties passed the order as under:

“9. It is not in dispute that the applicant, who was originally appointed as Clerk by the Assistant Commissioner of Endowments, in a local temple of Hyderabad, was later on promoted as Senior Assistant on 1.9.1993, though he did not pass the departmental tests. A clarification was issued on 1.2.1993 by the Assistant Commissioner of Endowments that passing of departmental tests is not the criteria for promotion. Hence, the applicant has not passed the tests. Subsequently, the respondents in the revised provisional seniority list have shown him at Sl.No.51, on the ground that, he has not passed the departmental tests within the time, and therefore, he lost his seniority in the cadre of Senior Assistant. Questioning the same, he filed W.P.No.27560/2011 and by interim order dt.30.9.2011 the Hon'ble High Court observed as follows:-

“Learned Counsel for the petitioner has drawn the attention of this Court to the rules contained in G.O.Ms.No.888, dated 08.12.2000. According to those rules, the tests for promotion from the post of Senior Assistant to the post of Executive Officer Grade II are prescribed only in respect of eight temples named in the Rules. For the employees in other temples there is no such requirement.

Hence, there shall be interim direction to the respondents to count the service of the petitioner from the date of promotion to the post of Senior Assistant and similar facility shall be extended to other Senior Assistants, if any working in the same temple. The same shall be subject to the outcome of the writ petition.”

The main W.P. is still pending. Pursuant to the above interim orders, the respondents have issued revised seniority list of Senior Assistants in Zone – VI on 10.7.2013

showing the name of applicant at Sl.No.1. But, they have not considered his case for appointment by transfer as Executive Officer Grade-II, on the ground that, status-quo order is granted in W.A.Nos.1349/2013 and batch on 4.12.2013 in a similar matter. His W.P.No.27560/2011 is still pending. The respondents have implemented the interim orders granted in the W.P. and revised the seniority. Having revised the seniority of the applicant and placed him at Sl.No.1. It is not open to the respondents to contend that his case for appointment by transfer as Executive Officer Grade-II will be considered after disposal of the Writ Appeals. Such a contention cannot be countenanced since the interim order of the Hon'ble High Court is still in force and the applicant is not a party to the Writ Appeals and connected W.Ps. Therefore, the impugned orders now issued by the respondents are not sustainable and are against the directions of Hon'ble High court in W.P.No.27560/2011. Hence, I hold that they are liable to be set-aside and they are accordingly set-aside. These points are answered accordingly.

10. For the reasons stated under Point Nos.(i) and (ii), the O.A is allowed. The impugned proceedings in Rc.No.B1/18299/2014, dated 24.11.2014, issued by the 3rd respondent are set-aside and the respondents are directed to consider the case of applicant for appointment by transfer to the post of Executive Officer Grade-II as per his seniority fixed in the seniority list dt.10.7.2013 of Senior Assistants in Zone-VI on par with his juniors with all consequential notional benefits, within a period of two months from the date of receipt of a copy of this order. M.A. is closed. VMA is dismissed."

3. It is not in dispute that the respondent/applicant was appointed as Junior Assistant on 1.9.1987 and thereafter, the said post was upgraded to Senior Assistant on 1.9.1993 subject to the condition that the respondent/applicant shall qualify the departmental test prescribed to the post within two years from the date of promotion, failing which, he shall be liable for reversion to the lower cadre.

4. Sri M. Ratna Reddy, learned counsel appearing for respondent/applicant would submit that admittedly, the respondent/applicant has not passed the prescribed test within two years and passing of the test at the initial stage is not mandatory. However, the respondent/applicant has passed the prescribed test on 8.5.2010, and as on date he stood at No. 2 position and therefore, his case may be considered for promotion to the post of Executive Officer Grade-II from the date of his eligibility i.e., on 8.5.2010.

5. Government Pleader for Services appearing for petitioners/respondents does not dispute the submission made by the counsel for respondent/applicant.

6. In view of the above, we hereby set aside the order dated 21.4.2016 passed in O.A.No. 1728 of 2014 by the Andhra Pradesh Administrative Tribunal, Hyderabad by directing the petitioners/ respondents to consider the case of the respondent/applicant for promotion to the post of Executive Officer Grade II considering the fact that he passed the prescribed test on 8.5.2010.

7. Accordingly, the Writ Petition is allowed. No order as to costs. As a sequel there to, miscellaneous petitions, if any, pending in this writ petition shall stand closed.



SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

Date: 08th March, 2018

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