

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 953 of 2010

Date :22.1.2018

Between :

M Babu S/o Sambaiah
47 years
PGT Social Studies,
APRS Velair
Warangal district

Petitioner

And

The Secretary,
AP Residential Educational Institutions Society
Gaganvihar
III Floor, Nampally, Hyderabad and another

Respondents

The Court made the following:



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ORAL ORDER:

On 17.5.1995 recruitment notification was issued to fill up 298 vacancies in Post Graduate Teacher posts in the residential schools society. 298 vacancies include 106 backlog vacancies meant to be filled up by SC (67) and ST (39). In the selections conducted there were no eligible candidates to fill up the vacancies meant to be filled up from SC and ST candidates to an extent of 29 (SC) and 34 (ST) respectively i.e., 63 vacancies altogether. In the selections conducted pursuant to the said notification, petitioners also participated. Select list of 235 candidates was prepared after excluding the vacancies reserved for Scheduled Caste and Scheduled Tribe communities, where candidates are not available, as noted above. Appointment orders were issued to all the selected candidates, however, only 191 have joined and 44 remained unfilled as selected candidates did not join. At that stage, petitioners filed W.P. Nos. 29068, 30210 and 32177 of 1997 praying that they should be appointed in the non-joined vacancies. The writ petition was disposed of by order dated 11.10.1999 directing to fill up remaining 44 vacancies by considering petitioners, subject to their merit. Initially, the society contested the directions issued by filing W.A. No. 1390 of 2003, however, the Division Bench dismissed the appeal by judgment dated 1.9.2003. Petitioners were appointed in the year 2002 and thereafter. On 26.3.2006 seniority list was published. In the said seniority list, names of the petitioners are shown below the candidates who were originally selected and appointed and petitioners are assigned date of appointment as date in the seniority list. In this writ petition, petitioners seek declaration that they should be given the same date of seniority as was

assigned to the persons appointed in pursuant to the recruitment notification dated 17.5.1995.

2. Heard learned counsel for petitioners and Sri K Ravi Kumar, appearing for Sri N Bhoopal Reddy, learned standing counsel for respondent society.

3. Learned counsel for petitioners submit that as petitioners were selected in pursuant to the recruitment notification dated 17.5.1995 all of them should be assigned same date for seniority and merely because there is a delay in appointing them, they cannot be given different date of appointment and put them into bottom of the seniority list. Persons recruited pursuant to the same selection process shall be assigned same date for seniority. In support of his contentions, learned counsel placed reliance on decision of Supreme Court in **Balwant Singh Narwal and others Vs State of Haryana and others**¹ and decision of division bench of this Court in **WP No. 13538 of 2004** dated 5.3.2009.

4. Stand of the respondents is, petitioners were appointed in non-joined vacancies, though they were not in the original merit list and therefore they cannot claim seniority on par with the other meritorious candidates who were originally appointed.

5. The only issue for consideration is whether the petitioners can claim to assign the date of seniority as was assigned to the meritorious candidates who were selected and appointed pursuant to recruitment notification dated 17.5.1995.

6. At this stage, it is appropriate to notice that candidates who secured merit and included in the select list were appointed long ago. Petitioners are not contesting the merit assigned to them; no relief is

¹ (2008) 7 SCC 728

sought against the said selected candidates. On the contrary, petitioners now seek assignment of seniority on par with them. It is not in dispute that petitioners were not in the original merit list and they were appointed pursuant to the directions of this Court in the 44 non joined vacancies. In other words, 44 originally selected candidates did not join and those vacancies were directed to be filled up by this Court, by considering petitioners. Admittedly, petitioners are not meritorious candidates. None of the selected candidates or persons who are assigned placement higher than petitioners are made parties to this writ petition. Further, proceedings dated 26.3.2006 whereunder the seniority list is determined is not under challenge.

7. The petitioners are now seeking for declaration that their date of appointment should be anti-dated to the date of appointment of other candidates who were found to have higher merit in the selections conducted in the year 1995.

8. A person can claim seniority from the date of appointment of his junior, if he was ignored for such appointment when it was due and by virtue of directions of the Court or on a review within the department he is appointed. Such person is entitled to claim appointment from the retrospective date for the purpose of granting other service benefits. In the instant case, no person who secured less merit than petitioners was appointed earlier to the petitioners and as noted above petitioners were appointed in the non joined vacancies.

9. Petitioners are not seeking retrospective appointment. Even assuming they are entitled to seniority from the date on which the more meritorious candidate was appointed, the claim for assignment of seniority on par with such candidates cannot be granted without granting appointment. Seniority follows appointment and not vice-versa.

Further, in matters of seniority, no direction can be issued which may have an impact on any other person who was granted seniority above the petitioners without hearing such persons. As none of them are impleaded the relief of retrospective date of assignment of seniority by taking the date of appointment of the batch-mates cannot be granted. In the facts of this case, the two decisions relied by the learned counsel for petitioners do not come to the aid of the petitioners.

10. The writ petition is liable to be dismissed and accordingly the same is dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE:22.1.2018
TVK

P NAVEEN RAO,J



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