

THE HONOURABLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

W.P.No.5139 of 2002

ORDER

This writ petition is filed seeking a mandamus to declare that the petitioners are entitled to be treated as having been promoted/appointed by transfer to the post of Record Assistant on the basis of seniority in the feeder category of Attenders/Night Watchman/Sweepers with all consequential benefits by holding the action of the respondents in appointing their juniors by selective method under the garb of holding written test, as illegal and arbitrary.

2. The brief facts, which are relevant for the purpose of disposal of the writ petition, are that the first petitioner was appointed as Attender on 21.03.1984 and posted to S.C.P.School, Srirampur; the second petitioner was appointed as Attender on 12.07.1980 and posted to S.C. High School, Ramakrishnapur; the respondent company issued circular dated 08.06.1978 approving the general rules for teaching and non-teaching staff of High Schools; according to the said circular, the Government rules are made applicable to the employees with regard to the scale of pay, retirement age, leave, sick and T.A.; the company follows A.P. Education Rules; the respondents, instead of considering the claim of the petitioners for the post of Record Assistant, have promoted their juniors as Record Assistants, vide orders dated 16.10.2001 by pick and choose method; the post of Record Assistant is required to be filled

according to Andhra Pradesh General Subordinate Service Rules by appointment by transfer of a person; the appointment orders also show that they governed by the Government rules and therefore, the promotion of the juniors as Record Assistants is illegal and arbitrary.

3. A counter affidavit has been filed by the first respondent on behalf of respondents 1 to 3 contending, *inter alia*, that G.O.Ms.No.965 dated 21.10.1995 is applicable to the Last Grade Service employees and not applicable to the Record Assistants; there were about 21 vacancies of Record Assistants and subsequently five more vacancies arose; applications were invited as per the circular dated 25.08.2001 for the post of Record Assistant; the petitioners have applied to the post of Record Assistant in response to the said circular and they attended for written test conducted on 10.10.2001; petitioners 1 and 2 stood at Sl.Nos.36 and 29 respectively; and as there were only 26 posts and as the petitioners were standing at Sl.Nos.36 and 29 respectively, they could not be selected; seniority is not the criterion for filling up the post of Record Assistant; the petitioners did not challenge the Circular dated 25.08.2001; the first petitioner retired from service on 31.10.2012 and the second petitioner retired from service on 31.12.2012; the service conditions applicable to the school staff were circulated vide circular dated 08.06.1978; Andhra Pradesh Education Rules would be followed to the School Staff with regard to the retirement, leave, sick, T.A. etc.,; when all the eligible candidates were allowed to appear in the written test, the question of promoting the juniors does not arise at all.

4. No reply whatsoever has been filed by the petitioners denying the averments in the counter affidavit.

5. The counsel for petitioners contends that the office order dated 21.03.1984, through which the petitioners were appointed, shows 'that the service conditions in respect of confirmation, grant of annual increments, leave, sick leave, traveling allowance and dearness allowance etc., are all governed by the rules and regulations framed from time to time by the Government of Andhra Pradesh for the Peons of recognized High Schools or as stipulated by the Singareni Collieries Company Limited" and as such, the petitioners are governed by the rules framed by the Government of A.P. and that they have to be promoted to the post of Record Assistant without any written examination whatsoever.

6. As seen from the above referred paragraphs, it clearly says that the service conditions of the petitioners are governed by the rules and regulations framed by the Government of Andhra Pradesh or as stipulated by the S.C.Co.,Ltd. The petitioners cannot contend that the rules framed by the Government of Andhra Pradesh are applicable to them. The respondents took a decision vide circular dated 25.08.2001 to fill up the posts of Record Assistant and they also intimated the petitioners vide letter dated 27.09.2001 to appear for written test. But the said circular and the intimation letter issued by the respondents are not challenged in the present writ petition.

7. As seen from the record, the petitioners were appointed as Attenders in the respondent company. The respondents have

issued a circular dated 25.08.2001 calling for applications from the internal candidates working in the schools/colleges; and in response of the said circular, petitioners have applied to the post of Record Assistant and that the respondents, by letter dated 27.09.2001, advised the petitioners to appear for the written test to be held on 10.10.2001. It was also specifically stated in the said letter that only the short listed candidates in the written test will be called for interview. Pursuant to the said letter dated 27.09.2001, the petitioners have attended the written examination. The merit list was prepared from amongst the candidates who appeared for the written examination and the petitioners 1 and 2 stood at Sl.Nos.36 and 29 respectively. As there were 26 vacancies for the post of Record Assistant, the petitioners were not selected.

8. It is relevant to mention here that even though the petitioners alleged that some other persons, who were juniors to them, were promoted to the post of Record Assistant, in the counter affidavit, it is specifically stated that candidates were promoted basing on the performance in the written test, irrespective of their seniority. The counsel for the petitioners relied upon the judgment of the Apex Court in **Food Corporation of India and others v. Parashotam Das Bansal and others**¹ and submits that the promotion is a normal incidence of service and that the petitioners cannot be subjected to written examination. In the said judgment, the Supreme Court held as follows;

“An employee of a State although has no fundamental right of promotion, it has a right to be considered therefor. What is necessary is to

¹ (2008) 2 SCC (L & S) 76

provide an opportunity of advancement; promotion being a normal incidence of service. When employees are denied an opportunity of promotion for long years (in this case 30 years) on the ground that they fall within a category of employees excluded from promotional prospect, the superior court will have jurisdiction to issue necessary direction. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the Court although may not issue any direction as to manner by which a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a superior Court of the country". How the employees would be structured is within the realm of the statutory authority but by reason thereof, it cannot tinker with their essential fundamental right".

9. In the present case, the respondents took a decision and issued circular calling for applications from the eligible persons to promote them to the post of Record Assistant and they also conducted a written test to promote the eligible candidates to the said post and therefore, ratio of the judgment is implemented by the respondents herein.

10. As the petitioners appeared for the written examination conducted by the respondents, secured less marks and stood at Sl.No.36 and 29 respectively, in the merit list, they could not be promoted to the post of Record Assistant.

11. For the reasons explained above, the Writ Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

9th March, 2018
sj

KONGARA VIJAYA LAKSHMI, J