

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 44366 of 2018

ORDER:

This writ petition is filed seeking to issue a writ of mandamus declaring the action of the respondents in not effecting promotions to the category of Divisional Accounts Officer Grade-II on the pretext of pendency of W.P.Nos.10205 and 10280 of 2017, as illegal and arbitrary. A consequential direction is also sought to the respondents to consider the cases of the petitioners for promotion to the said post as per G.O.M.S.No.86, Finance and Planning (FW.WA.I) Department, dated 22.05.1998 with all consequential benefits.

Heard Sri M. Kesava Rao, learned counsel for the petitioner and learned Government Pleader for Services (AP) appearing on behalf of the respondents.

It has been contended by the petitioners that they were appointed as Junior Assistants and later promoted as Senior Assistants and they are fully eligible and qualified to be appointed as Divisional Accounts Officer Grade-II as per the rules issued under G.O.Ms.No.86, dated 22.05.1998 called as Andhra Pradesh Works Accounts Service Rules, 1998. As per the said rules, 50% of the posts of Divisional Accounts Officer Grade-II has to be filled up by direct recruitment and the remaining 50% has to be filled up by promotion from the category of Superintendents. If no Superintendents are available, then it is liable to be filled up by Senior Assistants. While so, the 1st respondent issued Memo dated 21.08.2014 clarifying that the date of passing of Divisional Test is not criteria for fixing seniority among the

Superintendents/Senior Assistants for appointment to the post of DAO(W) Grade-II in A.P. Works Accounts Service. Questioning the same, some Superintendents working in Group-A have filed O.A.No.7020 of 2014 and batch before the A.P. Administrative Tribunal and those O.As were allowed on 28.04.2015 setting aside the said memo. Challenging the same, two Superintendents working in Group-A filed W.P.Nos.10205 and 10280 of 2017 and this Court while admitting the writ petitions directed the authorities to consider the cases of Senior Assistants only if there are no suitable Superintendents available for appointment by transfer as Division Accounts Officers (W) (Grade-II), vide orders dated 22.03.2017 and 23.03.2017 respectively. It has also been contended that the respondents, instead of effecting promotions to the post of Divisional Accounts Officer Grade-II, they have issued a Memo dated 31.08.2018 to the effect that in view of the interim orders passed by this Court and as the matter is sub judice, the department is not in a position to take up the promotions to the cadre of DAO(W) Grade-II from the Superintendents/Senior Assistants by appointment by transfer in the promotee quota, till the final orders are passed in the writ petitions. Aggrieved thereby, they filed the present writ petition.

Learned counsel for the petitioners has contended that the interim orders passed by this Court in the aforesaid writ petitions are in accordance with G.O.Ms.No.86 dated 22.05.1998 and as seen from the interim orders, if there are no suitable Superintendents are available for appointment by transfer as Divisional Accounts Officer Grade-II, then only the cases of Senior Assistants shall be considered for promotion. The interim orders will not effect any of the Superintendents or Senior Assistants and in order

words, there is no ambiguity in the interim orders. Therefore, instead of issuing the impugned memo, the respondents ought to have effected promotions and appropriate orders may be issued in the writ petition directing the respondents to consider the cases of the petitioners, who are working as Senior Assistants, for promotion, in accordance with the rules.

On the other hand, learned Government Pleader for Services appearing on behalf of the respondents has contended that the petitioners are employed with the State of Andhra Pradesh and they are seeking relief against the State of Andhra Pradesh and, hence, at the first instance, they have to approach the A.P. Administrative Tribunal for adjudication of their rights and they cannot approach this Court under Article 226 of the Constitution of India, in view of the law laid down by the Apex Court in *L. Chandra Kumar Vs. Union of India*¹ and the writ petition is liable to be dismissed on this ground alone.

In response, learned counsel for the petitioners has contended that the Andhra Pradesh Administrative Tribunal, which is inferior to the High Court, cannot give clarification to the interim orders passed by this Court in W.P.Nos.10205 and 10280 of 2017 dated 22.03.2017 and 23.03.2017 respectively and that made the petitioners to approach this Court under Article 226 of the Constitution of India.

I have considered the rival submissions made by the learned counsel on either side and perused the record. I am of the considered view that since the petitioners are employees of the State of Andhra Pradesh, first they must

¹ 1997 (2) SCR 1186

exhaust their remedy by approaching the Andhra Pradesh Administrative Tribunal and they cannot approach this Court. The writ petition is devoid of merits and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed. No order as to costs.

ABHINAND KUMAR SHAVILI, J

6th December, 2018
cbs



HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI



Writ Petition No. 44366 of 2018
(dismissed)

6th December, 2018

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