

THE HON'BLE SRI JUSTICE SANJAY KUMAR

AND

THE HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.4465 OF 2019

ORDER: (Per Hon'ble Sri Justice K. Lakshman)

This Writ Petition is filed by the petitioner, under Article 226 of the Constitution of India to declare the action of respondent No.6 in preparing the tentative allocation list vide Notification No.604/GAD/SR/2018 dated 28.01.2019 of Junior Stenographers, contrary to Rule 33 (b) of the Andhra Pradesh State and Subordinate Service Rules, and in showing respondent No.7 at serial No.1 in the seniority amongst the four persons and showing the petitioner at serial No.2 as illegal. A consequential direction is sought to respondent Nos.2 and 4 to prepare the seniority list of Junior Stenographers afresh by following Rule 33 (b) and as per settled principles of law enunciated by the Apex Court.

2. Heard Mr. Ch. Ganesh, learned counsel for the petitioner, Ms. Rachana S. Waddepalli, learned Standing Counsel for Vaidya Vidhana Parishad for the State of Telangana, Mr. K. Arvind Kumar, learned counsel representing Mr. G. Sai Narayana Rao learned Standing Counsel appearing on behalf of Vaidya Vidhana Parishad for the State of Andhra Pradesh, learned Government Pleader for Medical, Health and Family Welfare Department and the learned Assistant Solicitor General of India.

3. Mr. Ch. Ganesh, learned counsel, would point out that the petitioner was initially appointed to the post of Junior Stenographer by direct recruitment by the combined Andhra Pradesh State Public Service Commission in the year 2013 and was allotted to work in the office of respondent No.4; and that apart from the petitioner, three others, including respondent No.7 herein, were selected; that in the said recruitment, the petitioner secured 151 marks with 3404 rank, while respondent No.7 secured 138 marks with 4238 rank.

i) It is contended by the learned counsel that on account of bifurcation of the combined State of Andhra Pradesh, pursuant to the option given by the petitioner, she has to be allotted to the State of Telangana. For allocation of employees to both States, respondent Nos.2 and 4 prepared a seniority list of direct recruits for the category of Junior Stenographers based on the roster points instead of marks as well as ranks obtained in their initial selection; that in the tentative allocation list, name of respondent No.7 was placed at serial No.1, while the name of the petitioner was at serial No.2, based on roster points, and accordingly, respondent No.7 was tentatively allocated to the State of Telangana, while the petitioner was allotted to the State of Andhra Pradesh, which leads to loss of the petitioner's privileged right of allocation to the State of Telangana. It is the specific contention of the petitioner that preparation of the tentative allocation list dated 28.01.2019 by respondent No.6 is contrary to Rule 33 (b) of the Andhra Pradesh State and Subordinate Service Rules, 1996 (for

short 'Rules') as well as the principles enunciated by the Apex Court in **Bimlesh Tanwar v. State of Haryana**¹.

ii) It is also the contention of the petitioner that aggrieved by the said tentative allocation list, she had submitted representations to respondent Nos.2 and 4 on 22.10.2018 and 24.10.2018 respectively with a request to prepare the tentative allocation list based on the order of merit indicated in the list of selected candidates prepared and sent by the APPSC without disturbing the *inter se* seniority with reference to the candidates position in such list, and in accordance with Rule 33 (b) of the Rules. The petitioner had also submitted objections to respondent No.3 on 31.01.2019, but no action was taken. Hence, the petitioner approached this Court by way of the present writ petition.

4. Per contra, it is contended by respondent No.4 that the seniority list of Junior Stenographers was prepared by the residuary State of Andhra Pradesh in the capacity of mother State and lead facilitator as per the list communicated by the APPSC and that the said list was prepared as per the roster points furnished by the APPSC which was in adherence to Rule 33 (b) of the Rules. It is further contended by respondent No.4 that the petitioner and respondent No.7 are natives of Andhra Pradesh State and they have opted for the State of Telangana to the existing vacancy for the post of Junior Stenographer as per the A.P. Reorganization Act, 2014 and as per

¹. (2003) 5 SCC 604

G.O.Ms.No.312 dated 30.10.2014. When there was a vacancy for the post of Junior Stenographer in respondent No.2, the 7th respondent herein, on the basis of her superior seniority rank, was allocated to the State of Telangana. As such, there is no illegality in the said process.

i) It is the specific contention of the 4th respondent that APPSC, by its letter No.1946/RS-10/2011 dated 01.03.2013, informed respondent No.4 that the appointments should be made according to the selection list and provisionally selected candidates strictly in accordance with Rule 33 (b) of the Rules. Hence, the roster prepared by the APPSC cannot be interfered with. In view of the said contentions, respondent No.4 prayed for dismissal of the writ petition.

5. Adopting the contentions advanced by respondent No.4, respondent No.7 would submit that the petitioner did not possess qualification in Shorthand Telugu at the time of applying for the post/interview and written exam/joining in the office within the probation period for two years or at the time of promotion. She had passed the required qualification of Telugu Shorthand lower grade after six years from the joining into service, but no action was initiated by the authorities regarding her regularization of service. The probation of the petitioner was declared in the category of Junior Stenographer without passing the required qualification of Shorthand Telugu, subject to the condition of the appointment order, and without passing the test, the petitioner got promotion as Senior Assistant in the same seniority which is irregular. The petitioner was junior to

respondent No.7 as per the list sent by the APPSC and the same seniority was taken into consideration for promotion and again she is requesting for change of seniority so as to avail one more benefit of allotment to Telangana State, which leads to loss of her privileged right of allocation to the State of Telangana.

i) It is also contended by respondent No.7 that the petitioner was ordered to serve in the State of Telangana on provisional basis, vide Circular Memo No.13257/SR/A1/2014 dated 20.05.2014, which states that, while issuing orders to serve provisionally, priority has to be given to those recorded as local to the State of Telangana in the service register in order of seniority in each cadre and the remaining posts, if any, will be filled by the employees who are in excess of posts provisionally allocated to the State of Andhra Pradesh after deducting the vacancies pro-rata, in the reverse order of seniority in each category. Citing the said circular, respondent No.7 claims that her name was shown at serial No.1 whereas the name of petitioner was shown at serial No.2 in the provisionally selected list prepared and sent by the APPSC, which cannot be disturbed. It is also the contention of respondent No.7 that the Government Andhra Pradesh, vide G.O.Ms.No.312 dated 30.10.2014, approved the guidelines issued by the Union of India for allocation of State Cadre Employees. According to her, no request for revision of seniority for the period which is more than three years shall be considered as per the Memo No.57759/Ser.A/2004-1 of G.A. (Ser.A) Department dated

20.05.2004 and, therefore, the petitioner's request for revision of seniority cannot be considered. It is also contended by respondent No.7 that as per Rule 26 of the Rules, the petitioner is having an alternative remedy of filing of an appeal which the petitioner has not availed and, therefore, the writ petition should be dismissed on this ground alone. Thus, respondent No.7 prayed for dismissal of the writ petition.

6. Pursuant to the direction of this Court, the seniority list of Junior Stenographers working in Head Office of Andhra Pradesh Vaidya Vidhana Parishad as on 01.04.2014, G.O.Ms.No.312 dated 30.10.2014, Seniority Clarification Circular No.57759/Ser.A/2004-1 of GA (Ser.A) Department dated 20.05.2004, Rules relating to seniority and *inter se* seniority and guidelines under the A.P. Reorganization Act, 2014 were produced and we have perused the same.

7. We have given our thoughtful consideration to the contentions raised by the respective parties.

8. First of all, it would be apt to refer to Rule 33 (b) of the Andhra Pradesh State and Subordinate Service Rules, 1996, which is as under:

“33. Seniority:-

(a) x x x x

(b) The appointing authority may, at the time of passing an order appointing two or more persons

simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason the order of preference among them; and where such order has been fixed, seniority shall be determined in accordance with it. Provided further that the order of merit or order of preference indicated in a list of selected candidates prepared by the Public Service Commission or other selecting authority, shall not be disturbed *inter se* with reference to the candidates position in such list or panel while determining the seniority in accordance with this rule and notional dates of commencement of probation to the extent necessary, shall be assigned to the persons concerned, with reference to the order of merit or order of preference assigned to them in the said list.”

i) As per the above said Rule, the order of merit or order of preference indicated in a list of selected candidates prepared by the Public Service Commission or the Appointing Authority shall not be disturbed *inter se* with reference to the candidates’ position in such list etc.

9. On perusal of the record, the admitted facts are that the petitioner and respondent No.7 were appointed as Junior Stenographers through direct recruitment examination conducted by the APPSC in the year 2013, wherein the petitioner secured 151 marks with 3404 rank, while respondent No.7 secured 138 marks with 4238 rank, and the provisionally selected candidates list, prepared and sent

by the APPSC, discloses the said fact. It is the specific contention of the petitioner that though she got more marks and higher rank than respondent No.7, her name was shown at serial No.2 and the name of respondent No.7 was shown at serial No.1 in the seniority list dated 28.01.2019 prepared by respondent No.6, fixing the seniority based on roster points in the category of Junior Stenographer which is illegal and contrary to Rule 33 (b) of the Rules and the ratio laid down by the Apex Court as well as this Court. According to the petitioner, the roster point cannot constitute the basis for fixation of seniority and it is the merit in the examination which constitutes the basis for fixation of seniority. It is also the specific contention of the petitioner that aggrieved by the irregularities committed while preparing the list of tentative allocation, the petitioner submitted representations to respondent Nos.2 and 4 and also objections to respondent No.3, requesting them to prepare a list afresh in accordance with the aforesaid Rule and the principles laid down by the Apex Court. Despite receiving and acknowledging the said representations and objections, the respondents did not consider the same. According to her, if the irregularities committed in the list of tentative allocation are not rectified, the same leads to loss of her privileged right of allocation to the State of Telangana and, therefore, she sought a direction to the official respondents to prepare the seniority list as per Rule 33 (b) of the Rules and the ratio laid down by the Apex Court and this Court in the judgments cited supra.

10. As discussed above, as per the provisionally selected candidates list for appointment to the posts of Junior Stenographers furnished by the APPSC, the petitioner secured 151 marks with 3404 rank, while respondent No.7 secured 138 marks with 4238 rank. But, in the tentative allocation list prepared by respondent No.6, vide Notification No.604/GAD/SR/2013 dated 28.01.2019, the name of respondent No.7 is shown at serial No.1, while the name of the petitioner is at serial No.2, by relying upon the provisionally selected list prepared and furnished by the APPSC which is irregular and against Rule 33 (b) of the Rules. As discussed supra, as per Rule 33 (b) of the Rules, it is clear that while preparing the seniority list, the order of merit or order of preference indicated in list of selected candidates prepared by the Public Service Commission or other selecting authority, shall not be disturbed *inter se* with reference to the candidates position. In fact, the APPSC which is the selecting authority had prepared and sent the provisionally selected candidates list for appointment to the posts of Junior Stenographers and it is not the merit list. As per the said list, the petitioner got 151 marks with 3404 rank, whereas respondent No.7 got only 138 with 4238 rank. The contention of the 4th respondent, which was adopted by respondent No.7, that the said list was prepared as per the roster points furnished by the APPSC which is in adherence to Rule 33 (b) of the Rules and the same cannot be disturbed is unsustainable. The Apex Court, in the case of **Bimlesh Tanwar**¹, categorically held that roster points cannot constitute the basis for fixing of seniority. Following

the said ratio, a Division Bench of this Court in **S.S.L. Narayana v. Ch. Madhu Mohan Rao**², also held that roster points cannot constitute the basis for fixation of seniority.

11. In view of the above stated facts and the ratio laid down by the Apex Court that roster points cannot be the basis for fixation of seniority, the contention of respondent No.7 that the seniority fixed by the APPSC cannot be disturbed/altered is unsustainable. The further contention of respondent No.7 that as per Circular No.57759 /Ser.A/2004-1 of GA (Ser.A) Department dated 20.05.2004, no request for revision of seniority for a period which is more than three years old shall be considered is also unsustainable, since the petitioner is not seeking revision of seniority and the petitioner is aggrieved by the Notification dated 28.01.2019 issued by respondent No.6 preparing tentative allocation list of Junior Stenographers. As discussed above, the tentative allocation list dated 28.01.2019 prepared by respondent No.6 is contrary to Rule 33 (b) of the Rules and the ratio laid down by the Apex Court and this Court in the judgments cited supra. On perusal of the record and also as per the contentions of the parties, the seniority list either provisional or final in respect of Junior Stenographers was not drawn. Though the petitioner filed a copy of seniority list of Junior Stenographers working in Head Office, Vaidya Vidhana Parishad for the State of Andhra Pradesh as on 01.04.2014, there is no mention about

². Judgment, dated 24.01.2014 in W.P. No.13052 of 2010 & batch

preparation of the said list, calling objections on the same and final seniority list after following the due procedure laid down under the Rules, by the authorities concerned. There is no mention about the said preparation of the seniority list after following due procedure in the counter filed by 4th Respondent. Therefore, the contention of respondent No.7 that the petitioner is having alternative remedy of appeal against seniority or other conditions of service as per Rule 26 of the Rules is also untenable.

12. Thus, the tentative allocation list prepared by respondent No.6 vide Notification No.604/GAD/SR/2018 dated 28.01.2019 is not in accordance with the Rules and the ratio laid down by the Apex Court and this Court in the judgments cited supra and, therefore, the same is liable to be set aside and accordingly set aside. However, official respondents are directed to prepare seniority list of Junior Stenographers basing on the merit but not on the roster points and by following Rule 33 (b) of the Rules and the ratio laid down by the Apex Court and this Court in the judgments cited supra, and the allocation shall be made in the said order of seniority as available on 01.06.2014. Further, the entire exercise shall be completed as expeditiously as possible, preferably within a period of two (02) months from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. Pending miscellaneous petitions, if any, shall also stand closed in the light of this order. There shall be no order as to costs.

SANJAY KUMAR, J

K. LAKSHMAN, J

September 9th, 2019

Mgr

Note: Issue C.C. on 11.09.2019
(B/O) SVV/Mgr.

