

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.6386 OF 2019

ORDER:

This writ petition is being disposed of at the admission stage with the consent of learned counsel for both parties.

This writ petition is filed seeking a writ of Mandamus declaring the action of the 3rd respondent, in particular, in not considering the petitioner's case for the post of Record Assistant as illegal and arbitrary; and direct the respondents to consider and appoint the petitioner in the post of Record Assistant with continuity of service with effect from 09.07.2009, if required by giving necessary relaxation, and consequently release the petitioner's pay, allowance and all other service benefits.

Heard Ms. Ch. Sujatha, learned counsel for the petitioner, and the learned Government Pleader for Services-III appearing for the respondents.

It has been contended by the petitioner that she was initially appointed as Typist on compassionate grounds on 07.07.2009. Since the petitioner was not having requisite higher qualifications, she was granted time to acquire the said qualifications. However, as the petitioner could not acquire the requisite higher qualifications within the stipulated time, the respondents have issued proceedings dated 26.06.2014 to the petitioner informing her that as she had failed to acquire the required higher qualification within the stipulated time, she may express her willingness to be appointed as an Office Subordinate, a post for which such a qualification was not prescribed. Challenging the said action, the petitioner has filed O.A.No.4109 of 2014 before the Andhra Pradesh Administrative Tribunal, Hyderabad. Vide orders dated 30.06.2015, the Tribunal was pleased to allow the O.A setting aside the proceedings dated 26.06.2014

and the respondents were directed to continue the petitioner as a Typist and regularize her services as per rules. Thereafter, the respondents have challenged the orders of the Tribunal before this Court by filing W.P.No.9304 of 2018. By orders dated 24.04.2018, this Court was pleased to allow the writ petition setting aside the order dated 30.06.2015 passed by the Tribunal. Subsequently, the respondents have considered the case of the petitioner and the Government vide memo dated 05.01.2019 had taken a decision to continue the petitioner in the lower post as Record Assistant. Thereafter, the respondents have issued a notice to the petitioner with directions to submit her willingness to be appointed in the lower post. The petitioner has submitted representation to the respondents to continue her as Typist, but the said request of the petitioner was rejected by the Government vide memo dated 28.02.2019. Thereafter, the respondents have issued impugned orders on 13.03.2019 appointing the petitioner as Malan.

The grievance of the petitioner is that though the State Government has issued a memo directing the respondents 2 and 3 to consider her case as Record Assistant, the respondents have appointed her as a Malan, which is contrary to the memo issued by the State Government.

Learned counsel for the petitioner, therefore, contends that the impugned order dated 13.03.2019 is liable to be set aside only to the extent of appointing the petitioner as Malan instead of Record Assistant. Learned counsel further submits that appropriate orders be passed in the writ petition directing the respondents 2 and 3 to appoint the petitioner as Record Assistant in terms of the memo dated 05.01.2019 in the interests of justice.

Learned Government Pleader appearing for the respondents had submitted that the respondents 2 and 3 have issued a notice to the petitioner asking her willingness to be appointed in the lower post, but the petitioner has not submitted any willingness in pursuance of the notice. Therefore, left with no other option, the respondents have issued impugned appointment orders dated 13.03.2019. Learned Government Pleader further contends that if the petitioner submits her willingness to work as Record Assistant in pursuance of the memo dated 05.01.2019, the case of the petitioner would be considered and appropriate orders will be passed.

This Court, having considered the submissions of learned counsel for respective parties, is of the considered view that this writ petition can be disposed of directing the petitioner to submit a representation to the respondents within one week from the date of receipt of a copy of this order expressing her willingness to work as Record Assistant and, upon such representation being submitted, the respondents 2 and 3 shall consider the case of the petitioner by duly taking into account the memo issued by the State Government on 05.01.2019 and pass appropriate orders within four weeks thereafter.

With the above observations, the writ petition is disposed of. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Dated: 18th April, 2019
v v