

HIGH COURT FOR THE STATE OF TELANGANA

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY**

Writ Petition No.10118 of 2014

Date: 04.09.2019

Between :

The Government of Andhra Pradesh
Rep.by its Principal Secretary,
Higher Education Department,
Secretariat, Hyderabad, and others .. Petitioners

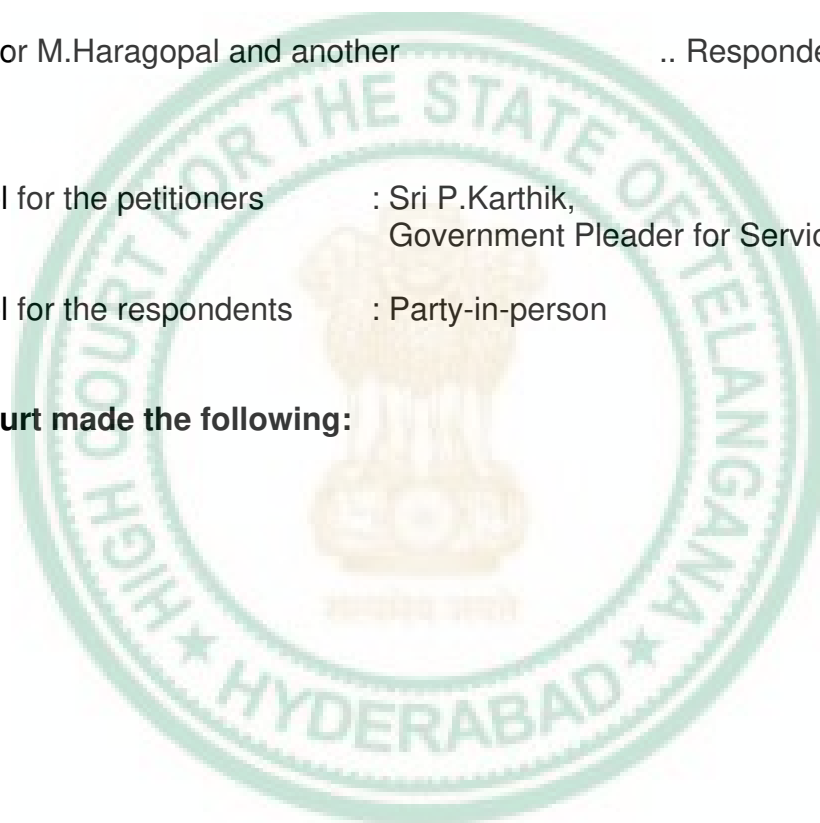
And

Professor M.Haragopal and another .. Respondents

Counsel for the petitioners : Sri P.Karthik,
Government Pleader for Services

Counsel for the respondents : Party-in-person

The Court made the following:



ORDER: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

Aggrieved by the Order dated 11.10.2013 passed by the A.P.Administrative Tribunal, Hyderabad (hereinafter referred to as 'the Tribunal') in O.A.No.2254 of 2010, the Government of Andhra Pradesh and two others have filed the present Writ Petition. The said O.A. was filed before the Tribunal by the applicant-respondent No.2 herein against the present writ petitioners, who are respondent Nos.1 to 3 therein (The parties hereinafter will be referred to as they were arrayed before the Tribunal).

2. The brief facts of the case are that the applicant has filed O.A.No.2254 of 2010 to declare the action of the respondent No.1 in issuing the impugned memo No.15997/IE.I/A1/2007-4, dated 21.03.2009, rejecting the appeal/review of the applicant, and the same was communicated to the applicant through Proceedings Rc.No.Ser.I-3/481/2005, dated 22.04.2009, by the respondent No.2 as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India and consequently to direct the respondent No.1 to pass the orders promoting the applicant to the post of Principal notionally from the date on which his junior Mr. G. Gopal Rao was promoted as Principal vide Proc.Rc.No.5507/ICI-i/84, dated 13.11.1984 with all consequential benefits, and further to direct to promote to the post of District Vocational Education Officer/Joint Director in Intermediate Education Department notionally and fix the pension accordingly.

3. The case of the applicant is that he has retired as Principal of Government Junior College on 31.08.2006. Initially the applicant joined as a Junior Lecturer w.e.f.07.09.1971, and his services were regularized w.e.f. 01.11.1971, and the services of one G.Gopal Rao were regularized

w.e.f. 18.12.1971 in the category of Junior Lecturer. As per the Seniority List of Junior Lecturers, which was issued on 10.07.1980, the name of the applicant was shown at Sl.No.24, and that of G.Gopal Rao at Sl.No.30. Moreover, the applicant has passed all the requisite departmental tests for promotion to the post of Principal of the Junior College. Further, the post of Junior Lecturer is a feeder category to the post of Principal. While he was working as a Junior Lecturer, he got an opportunity to go to the Republic of Kenya, under Government of India Deputation Programme in February, 1980, for a period of three years and further period of 2 ½ years. After completion of the deputation period, he has reported back to the parental department in January, 1985. The applicant further claims that while he was on deputation, in the year 1984 Mr. G. Gopal Rao, who was shown in the seniority list, dated 10.07.1980, at Sl.No.30, was promoted as Principal of the Junior College by ignoring the case of the applicant on the ground that he was on foreign deputation. Though initially he had given representation to the respondents seeking notional promotion to the post of Principal on par with his junior Mr.G.Gopal Rao, no action was taken. As such, he was constrained to file O.A.No.2247 of 2005 in the Administrative Tribunal. The Tribunal passed Orders on 30.06.2006 directing the respondent No.1 therein to re-examine the case of the applicant afresh and to pass appropriate orders. Pursuant to the order of the Tribunal passed in O.A.No.2247 of 2005, the 1st respondent issued G.O.Rt.No.566, Higher Education (IE.I/A1) Department, dated 24.07.2007, rejecting the request of the applicant for fixation of seniority and promotion to the post of District Vocational Officer/Joint Director in Intermediate Education Department. Thereafter the applicant has made another representation, dated 25.07.2007, no action was taken and as

such, he was constrained to approach the Tribunal again by filing O.A.No.4879 of 2008 and thereafter, during the pendency of the said O.A., the impugned memo No.15997/IE.I/A1/2007-4, dated 21.03.2009, was passed by the 1st respondent rejecting the appeal of the applicant and as such, O.A.No.4879 of 2008 was closed.

4. That challenging the rejection order, the applicant has filed O.A.No.2254 of 2010 in the Tribunal. The 1st respondent-1st petitioner herein filed a counter. It contended that the Government had examined the matter regarding placing of juniors above the applicant in the seniority list as two Principals were promoted as District Vocational Education Officers in the panel year 2005-2006, but so far as the applicant is concerned, a charge memo was issued to him on 04.03.2003. Since disciplinary proceedings were pending against the applicant, he was not considered for promotion during the panel years 2003-04 and 2004-05. Moreover, subsequently on 21.04.2006 he was awarded a punishment of stoppage of two annual grade increments with cumulative effect. Further, as the applicant retired from service on 31.08.2006, he could not be promoted. The respondent No.1 has further submitted that the Government has issued G.O.Rt.No.566, Higher Education (IE-1/A1) Department, dated 24.07.2007, rejecting the request of the applicant for fixation of his seniority, and promotion to the post of District Vocational Education Officer/Joint Director, Intermediate Education Department. However, on the basis of the appeal filed by the applicant before the Government against the punishment order, the same was partly allowed by modifying the punishment of stoppage of one increment without cumulative effect. The said punishment expired on 09.08.2006. As such, the applicant will be eligible for consideration of promotion to the post of

District Vocational Education Officer for the panel year 2006-07 with qualifying date as 01.09.2008. The respondents have also filed an additional counter affidavit contending that the applicant was irregular in his duties, and that he was in the habit of leaving the college without prior permission of the authorities concerned, and also signing the attendance register after his return. In an enquiry conducted, the applicant was awarded punishment. Thus, as such, he was not considered for the post of District Vocational Education Officer during the panel year 2005-06. Aggrieved by the same, the applicant had preferred an appeal before the Government. The Government issued orders on 21.04.2006 reviewing the punishment by withholding only one annual grade increment without cumulative effect. However, aggrieved by the said orders passed by the Government, the applicant approached the Tribunal. The Tribunal was pleased to set aside the same vide order, dated 18.03.2011, and directed that the applicant is entitled to all the pensionary benefits and other consequential benefits. Pending the said O.A., the Government has issued G.O.Rt.No.1003, Higher Education (I.E.-1) Department, dated 24.12.2012, wherein it was mentioned that the Government has decided to accord notional promotion to the applicant as District Vocational Education Officer on par with his junior, P.Lakshma Reddy for the panel year 2004-05 in compliance of the orders of the Tribunal in O.A.No.3596 of 2009. The Tribunal after going through the record was pleased to allow the O.A. filed by the applicant holding that the respondents should extend the notional promotion to the applicant from the date on which his junior by name G.Gopal Rao was promoted as Principal and after extending the notional promotion, the respondents were directed to place the applicant at the appropriate place in the seniority list of Principals and extend the notional

promotion to the post of District Vocational Education Officer modifying the order in G.O.Rt.No.1003, dated 24.12.2002, and consider his case for further notional promotion, and the Tribunal had further directed the respondents to fix the pay of the applicant in promotional post, and extend the revised pay scales as on the date of his retirement, and revise his pension accordingly from the date of his retirement on 31.08.2006 with all consequential benefits.

5. Aggrieved by the above direction of the Tribunal, the petitioners have filed the present Writ Petition and the same is assailed mainly on three grounds, which are as follows:

- 1) That there is inordinate delay in filing the representation before the authorities by the applicant;
- 2) That the deputation of the applicant to the Government of Kenya was purely on a contract basis, based on his application and that the Government of Andhra Pradesh had nothing to do with the said deputation, and that the applicant had gone in his personal capacity, and was not officially deputed by the Government of Andhra Pradesh; and
- 3) That the Tribunal has granted the prayer not asked by the applicant, and had gone beyond its jurisdiction.

6. Heard Sri P.Karthik, learned Government Pleader for Services for the writ petitioners, and Prof.M.Haragopal Rao, party-in-person, and after hearing the contentions raised by both the parties, and perusing the record, this Court is unable to agree with the contentions raised by the writ petitioners for the following reasons:-

7. A perusal of the record shows that the applicant was pursuing his legal remedies available to him immediately after returning from Kenya

and coming to know that his junior was promoted as Principal. The applicant was pursuing his legal remedies before the authorities concerned by filing representations and also O.As., before the Tribunal against the orders. Thus, there is no delay on the part of the applicant in filing O.A.No.2254 of 2010 which assailed the memo bearing No.15997/IE.A/2007-4, dated 21.03.2009, and the proceedings Rc.No.Ser.1-3/481/2005, dated 22.04.2009 of the respondent No.2 therein. The impugned orders were passed in the month of March and April, 2009 and the O.A. was filed in the year 2010 and as such, it cannot be said that there is an inordinate delay in filing O.A.No.2254 of 2010 by the applicant. Hence, the ground of delay raised by the writ petitioners has to fail.

8. Insofar as the second contention raised by the writ petitioners is concerned, that the deputation of the applicant was not by the Government of Andhra Pradesh, and it was purely on a contractual basis and that the Government of Andhra Pradesh had nothing to do with the assignment in Kenya, a perusal of G.O.Ms.No.6 Education (V2) Department, dated 03.01.1980, issued by the then Government of Andhra Pradesh wherein permission was given to the applicant to go abroad to take up the assignment in Kenya clearly shows that the deputation of the applicant was approved by the Government. It is only after obtaining the necessary orders from the Government of Andhra Pradesh that the applicant had proceeded to his foreign assignment for a period of three years. Moreover, as per the terms and conditions, mentioned in G.O.Ms.No.6, Education (V2) Department, dated 03.01.1980, more particularly clause (d), it is clearly stated that the lien of the officer shall be maintained in the Andhra Pradesh Education Subordinate Services for a

period of 03 years. Therefore, the contention of the Government Pleader that the applicant proceeded to a foreign country on purely contractual basis and that the same was not an official deputation is incorrect. Thus, the same is rejected.

9. Insofar as the third plea is concerned, that the Tribunal acted beyond its jurisdiction and granted the relief which was not sought by the applicant therein, it is seen that the applicant prayed as follows:

“to declare the action of the respondent No.1 in issuing the impugned memo No.15997/IE.I/A1/2007-4, dated 21.03.2009, rejecting the appeal/review of the applicant and the same was communicated to the applicant through Proceedings Rc.No.Ser.I-3/481/2005, dated 22.04.2009, by the respondent No.2 as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India and consequently direct the respondent No.1 to pass the orders promoting the applicant to the post of Principal notionally from the date on which his junior Mr.G.Gopal Rao was promoted as Principal vide Proc.Rc.No.5507/IGI-i/84, dated 13.11.1984 with all consequential benefits and further direct to promote to the post of District Vocational Education Officer and Joint Director in Intermediate Education Department notionally and fix the pension accordingly...”

While passing the Order, the Tribunal had merely stated that the applicant may be placed at “an appropriate place in the seniority list of Principals and extend the notional promotion to the post of District Vocational Education Officer, modifying the order in G.O.Rt.No.1003, dated 24.12.2012 (emphasis added) and consider his case for further notional promotion,”; that by mere usage of the words “modifying the order

in G.O.Rt.No.1003, dated 24.12.2012” cannot be considered as the Tribunal exceeding its jurisdiction. In order to give effect to the order passed by the Tribunal, it is but natural that the G.O.Rt.No.1003, dated 24.12.2012 has to be necessarily modified, and it is only a passing observation made by the Tribunal only to give effect to the consequential benefit and it cannot be said that the Tribunal has exceeded its jurisdiction.

10. For the reasons mentioned above, the Writ Petition filed by the Government has to fail. This Court is of the opinion that the order passed by the Tribunal is perfectly legal, and justified. Thus, there are no grounds to interfere with the same. Accordingly, the Writ Petition is dismissed. No order as to costs.

The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed.

RAGHAVENDRA SINGH CHAUHAN, HCJ

A. ABHISHEK REDDY, J

04th September, 2019
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THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Petition No.10118 of 2014

(Per AAR,J)



4th September, 2019

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