

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION Nos.22325 of 2017 & 5080 of 2019

COMMON ORDER:

As the issue raised in both these writ petitions is inter-connected and inter-linked, both these writ petitions are being disposed of by this common order.

2. W.P.No.22325 of 2017 is filed seeking a Writ of Mandamus, declaring the entire action of 1st respondent in issuing the impugned Proceedings dated 30.06.2017, promoting the unofficial respondent who is working in the Tribal Welfare Department, as Junior Assistant and posting him in the MADA & DTG Organization i.e. in the place of the petitioners, whose services are under consideration for regularization, as highly illegal, arbitrary, unjust, improper, colorable exercise of power, and without jurisdiction and set aside the impugned proceedings dated 30.06.2017, and sought a consequential direction directing the respondents to continue the petitioners in their respective places without reference to the impugned proceedings dated 30.06.2017 of the 1st respondent.

3. W.P.No.5080 of 2019 is filed by respondent No.5 in W.P.No.22325 of 2017 seeking a Writ of Mandamus declaring the action of respondent No.4 in not admitting the petitioner into duties as Junior Assistant pursuant to the orders passed by the 3rd respondent vide proceedings dated 30.06.2017, and inspite of the directions of the 3rd respondent vide proceedings dated 20.02.2019, as arbitrary, illegal,

abuse of process of law and violative of principles of natural justice and contrary to the Rules and sought a consequential direction directing the 4th respondent to admit the petitioner into duties as Junior Assistant in the 4th respondent office as per the promotional orders issued by the 3rd respondent vide proceedings dated 30.06.2017 and the further directions issued by the 3rd respondent vide proceedings dated 20.02.2019, with all consequential benefits such as seniority and other monetary benefits.

4. Heard learned counsel for the parties in both the writ petitions.

5. It has been contended by the petitioners in W.P.No.22325 of 2017 that they were initially appointed as Junior Assistant-cum-Typists in the office of 2nd respondent on contract basis during January 2011 and the Commissioner of Tribal Welfare has sought a clarification from the Government based on the recommendations made by the District Tribal Welfare Officer for regularizing the services of petitioners. Admittedly, the official respondents are taking steps to regularize the services of petitioners as Junior Assistants in MADA & DTG and when the proposals are pending with the Government for regularizing the services of petitioners, the 1st respondent had promoted the 5th respondent as Junior Assistant vide proceedings dated 30.06.2017 and posted in the place of the petitioners, thereby, jeopardizing the interests of petitioners for regularization of their services. Challenging the said promotion orders of the 5th respondent, the petitioners have filed

W.P.No.22325 of 2017 and this Court passed interim directions on 07.07.2017, directing the respondents to continue the petitioners in the posts which they are holding. By virtue of said interlocutory orders, petitioners are being continued on contract basis with the 2nd respondent and the 5th respondent did not join in the promoted post. The learned counsel for petitioners submit that the 5th respondent is an employee of Tribal Welfare Department, and hence, the 1st respondent ought not to have posted the 5th respondent in the place of petitioners, who are working on contract basis since 2011, in the 2nd respondent-Organization, which is not a full-fledged Government Department. The 1st respondent, without any jurisdiction, has posted the 5th respondent on promotion to work in the place of the petitioners. Therefore, the counsel for petitioners submits that the impugned proceedings dated 30.06.2017 and the consequential proceedings dated 20.02.2019 posting the 5th respondent in the place of petitioners in the 2nd respondent-Organization, are illegal and arbitrary and sought further directions directing the respondents to continue the petitioners in the 2nd respondent-Organization, more so, when the official respondents are taking steps to regularize the services of petitioners. Therefore, it is prayed that appropriate orders be passed by setting aside the impugned orders.

6. The 5th respondent in W.P.No.22325 of 2017, who is petitioner in W.P.No.5080 of 2019, has contended that since this Court had granted interim direction on 07.07.2017 to continue the petitioners in

W.P.No.22325 of 2017 in the posts which they are holding, the respondents are not giving posting orders to him even though he has been promoted from the category of last grade service. It is contended that the petitioners cannot challenge the promotion orders given to the 5th respondent, and therefore, prayed that appropriate orders be passed in W.P.No.5080 of 2019 directing the respondents to admit the petitioner into promoted post by dismissing writ petition No.22325 of 2017.

7. The learned Government Pleader appearing for respondents has contended that there is a channel of promotion in respect of respondent No.5 in W.P.No.22325 of 2017 and from the last grade service, the 5th respondent was promoted as Junior Assistant and he was rightly given posting in the 2nd respondent-Organization by the 1st respondent. The 2nd respondent-Organization comes within the administrative control of the 1st respondent, and accordingly, the 1st respondent has rightly promoted the 5th respondent and posted the 5th respondent to work in the 2nd respondent-Organization. There are no merits in W.P.No.22325 of 2017 and the same is liable to be dismissed and the interlocutory order granted by this Court on 07.07.2017 is liable to be vacated.

8. Learned counsel appearing for respondent No.5 in W.P.No.22325 of 2017 has submitted that respondent No.5 has every right to get promoted from the last grade service since he is fully eligible and qualified for such promotion. Since the petitioners are

working on contract basis, they have no locus to challenge the promotion orders and posting orders of the 5th respondent in the 2nd respondent-Organization. If they have any legal right for regularization of their services, they must pursue the 2nd respondent seeking regularization, but at no stretch of imagination, a contract employee can object promotion and posting of the 5th respondent, who is a regular employee of the Tribal Welfare Department, in the 2nd respondent-Organization. There are no merits in W.P.No.22325 of 2017 and the same is liable to be dismissed.

9. This Court, having considered the rival submissions of the parties, is of the considered view that if W.P.No.22325 of 2017 is decided, no further orders are necessary in W.P.No.5080 of 2019.

10. As far as the petitioners in W.P.No.22325 of 2017 are concerned, they are working on contract basis and they have no locus to question the promotion and posting of the 5th respondent in the 2nd respondent-Organization. The petitioners are yet to be regularized in the service and if the official respondents have submitted proposals for regularizing the services of petitioners, it is always open for the authorities to pass appropriate orders on the regularization proposals, but pending consideration of proposals for regularization of the services of petitioners, the petitioners cannot challenge the promotion and posting orders of the 5th respondent. The impugned order dated 30.06.2017 nowhere discloses that 5th respondent is replacing the petitioners. As the petitioners are not going to be replaced with the

posting of 5th respondent, the petitioners cannot question the promotion and posting orders of the 5th respondent. Therefore, there are no merits in W.P.No.22325 of 2017 and the same is liable to be dismissed and it is accordingly dismissed.

11. Since W.P.No.22325 of 2017 is dismissed, the official respondents are directed to give posting orders to the petitioner in W.P.No.5080 of 2019 within a period of two weeks from the date of receipt of a copy of this order, in pursuance to the promotion orders dated 30.06.2017.

12. With these observations, W.P.No.5080 of 2019 is disposed of.

Pending miscellaneous applications, if any, shall stand closed.

No order as to costs.

ABHINAND KUMAR SHAVILI, J

23rd July, 2019

ajr