

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION No.33137 of 2018

ORDER:

The writ petition is filed seeking the following relief :

“....to issue a Writ of Mandamus or any other appropriate Writ, Order or Orders, Direction or Directions to declare the proceedings of the 3rd respondent in A2/ 962/ 2016, dated 04.09.2018 whereby he cancelled the Proceedings dated 02.06.2009 converting the petitioner from the post of UD Steno to that of Senior Assistant and also the Memo No A2/ 7008/ 2018-2 dated 27.9.2018 of the 3rd Respondent as arbitrary, illegal and unsustainable and to set aside the same and to direct the 3rd respondent to promote the petitioner to the post of Superintendent from the date of promotion of his immediate junior....”

Heard Mr.Vedula Sinivas, learned counsel for the petitioner and Sri G.Narender Reddy, learned Standing Counsel for the 3rd respondent.

It has been contended by the petitioner that he was appointed as a Attender on 19.06.1996 on compassionate grounds and he was posted at Mandal Praja Parishad, Central Upper Primary School, Badangpet, Saroomagar Mandal, Ranga Reddy District. The petitioner submits that he has acquired S.S.C. qualification and also passed Senior Secondary School Exam conducted by the National Open School, New Delhi, in the year 1997, besides passing Typewriting English and Telugu lower Grade as well as Higher Grade and also shorthand English Higher Grade. While discharging duties as Attender, the petitioner has applied for the post of Typist and his case was considered and he was

appointed as a Typist vide proceedings dated 23.04.2002. Later, the petitioner was promoted as a Senior Steno on 23.05.2005. While discharging his duties as Senior Steno, he has made a representation to the respondents requesting to convert him from the post of Senior Steno to that of Senior Assistant and the said representation was considered and petitioner was converted from the post of Senior Steno to that of Senior Assistant vide proceedings dated 02.06.2009.

Learned counsel for the petitioner submits that as per Rule 15(3) of the Ministerial Service Rules, the petitioner is entitled to reckon the seniority in the cadre of Senior Assistant from the date of his initial appointment as a Senior Steno. Therefore, the respondents have accordingly fixed the seniority of the petitioner in the cadre of Senior Assistant with effect from 23.05.2005 vide proceedings dated 17.12.2015. In the said Seniority list, the petitioner was shown at S.No.6. The petitioner was further promoted to the post of Superintendent vide proceedings dated 31.03.2016. However, the said proceedings of promotion were not given effect to consequent upon certain objections being raised by other Senior Assistants. Some of the Senior Assistants, who were juniors to the petitioners in the cadre of Senior Assistant, have filed W.P.No.44965 of 2016 and the petitioner has filed W.P.No.37321 of 2016 challenging inaction of the respondents in not giving effect to the promotion orders in the cadre of Superintendent. W.P.No.37321 of 2016 filed by the petitioner was disposed of on 01.11.2016 directing the respondents to consider the representation submitted by the petitioner on 13.05.2016 and pass appropriate orders within six

weeks. W.P.No.44965 of 2016 filed by the juniors to the petitioner was disposed of on 23.08.2017 by observing as follows :-

“The 3rd respondent is directed to dispose of the issue of filling up of vacancy of Superintendent, within four weeks from the date of receipt of a copy of this order. Both the parties are given liberty to file additional representation, if any, in support of their respective assertions, within a period of two weeks from today. The 2nd and the 3rd respondents are directed to maintain *status quo* for a period of six weeks from today vis-à-vis the filling up of post of Superintendent. The 3rd respondent, if could dispose of the objections within six weeks, subject to such decision the post can be filled up.”

Pursuant to the above orders passed by this Court, the impugned order was passed on 04.09.2018 and the 3rd respondent has cancelled the conversion of the petitioner from the post of Senior Steno to that of Senior Assistant on the ground that there were no vacancies at the relevant point of time i.e., 02.06.2009 and the consequential promotion order in favour of the petitioner to the post of Superintendent was also cancelled. Challenging the same, the present writ petition is filed.

Learned counsel appearing for the petitioner submits that as per Rule 3 Note-10 of the Ministerial Service Rules, in a cycle of 10 vacancies in the post of Senior Assistant, the 5th vacancy is earmarked for Senior Steno, by way of conversion. The petitioner was promoted as a Senior Steno in the year 2005, 40 vacancies have arisen from the date of his promotion as a Senior Steno and 45th vacancy had fallen vacant in the year 2009. In the year 2009, the petitioner has requested the respondents to convert his post from Senior Steno to that of Senior Assistant and the respondents

have rightly considered the case of the petitioner for conversion from the post of Senior Steno to that of the post of Senior Assistant in the 45th vacancy and as per Rule 15(2) of the Ministerial Service Rules, a person, who gets converted from the post of Senior Steno to that of the post of Senior Assistant is entitled to reckon seniority from the date of his initial promotion in the cadre of Senior Steno.

In the instant case, the petitioner got converted from the post of Senior Steno to that of the post of Senior Assistant in the year 2009. However, as per Rule 15(2) of the Ministerial Service Rules, the petitioner is entitled to reckon his seniority from the date of his initial promotion as a Senior Steno i.e., on 23.05.2005. Therefore, the respondents have rightly converted the petitioner from the post of Senior Steno to that of the post of Senior Assistant during 2009 and rightly prepared the seniority list in terms of Rule 15(2) of the Ministerial Service Rules vide proceedings dated 17.12.2015. Therefore, the impugned cancellation order dated 04.09.2018 is liable to be set aside, as the said order was passed with a bald statement stating that there are no vacancies. Therefore, the learned counsel submits that the impugned order is liable to be set aside and the petitioner is entitled to be converted from the post of Senior Steno to that of the post of Senior Assistant in the 45th vacancy during the year 2009 and he is also entitled to reckon his seniority from the date of his promotion as a Senior Steno in the cadre of Senior Assistant.

The learned Standing Counsel appearing for the 3rd respondent has drawn the attention of this Court to the counter affidavit filed by the 3rd respondent, wherein it was stated that since

there were no vacancies in the cadre of Senior Assistant during the year 2009, the conversion of the petitioner was considered erroneously. He also drawn attention of this Court to the proceedings dated 02.06.2009 and contended that the petitioner was only asked to discharge his duties as a Senior Assistant in addition to his duties of Senior Steno. Therefore, there is no conversion order and the petitioner was only asked to discharge the duties of Senior Assistant in addition to the duties of Senior Steno and the said proceedings cannot be said to be conversion proceedings at all. He also drawn the attention of this Court to the pay slip of the petitioner at page No.111 of the counter affidavit and contended that the petitioner is still being extended the pay scale attached to the post of Senior Steno/UD steno and contends that the petitioner was never converted from the post of Senior Steno to that of the post of Senior Assistant. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

Learned counsel for the petitioner has contended that the proceedings, which are pointed out by the learned Standing Counsel at page No.111 of the counter affidavit is a pay slip pertaining to the month of September, 2018 and the said pay slip was issued after issuance of impugned proceedings dated 04.09.2018. When the conversion of the petitioner from the post of Senior Steno to that of the post of Senior Assistant was cancelled, obviously the respondents have issued the pay scale in the cadre of Senior Steno, therefore, the said pay slip, as pointed out by the learned Standing Counsel, can never be taken into account as the said pay slip was issued after issuance of impugned order.

Therefore, the learned counsel for the petitioner contends that the writ petition is liable to be allowed by setting aside the impugned order dated 04.09.2018, wherein the conversion of the petitioner from the post of UD Steno/Senior Steno to that of the post of Senior Assistant was cancelled and the promotion to the post of Superintendent is also cancelled with all consequential benefits.

This Court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered view that during the course of arguments, the learned Standing Counsel was directed to produce the relevant record and accordingly, he has produced relevant record before this Court to prove that Senior Assistants were promoted from 2005 onwards. A perusal of the record would disclose that 83 Senior Assistants were promoted right from 1999 to 2014. During the year 2009, two vacancies were filled up and from 2009 onwards, 43rd vacancy started and it continued upto S.No.50, that would mean that seven vacancies had arisen during the year 2009 starting from S.No.43 to 50. If Rule 3 Note-10 of the Ministerial Service Rules are to be applied, the 5th vacancy in a cycle of ten vacancies has to be filled up by way of conversion from the post of Senior Steno to that of the post of Senior Assistant, which would mean that 45th vacancy is liable to be earmarked for conversion from the post of Senior Steno to that of the post of Senior Assistant. Admittedly, for 45th vacancy, the petitioner is entitled for conversion from the post of Senior Steno to that of the post of Senior Assistant and the petitioner is entitled for such conversion in the year 2009 itself. In terms of Rule 15(2) of the Ministerial Service Rules, the petitioner is entitled to

reckon seniority from the date of his initial promotion as a Senior Steno i.e., from 23.05.2005. Therefore, the respondents have rightly converted the petitioner from the post of Senior Steno to that of the post of Senior Assistant vide proceedings dated 02.06.2009 and also given seniority with effect from 23.05.2005 and placed him at S.No.6 in the seniority list dated 17.12.2015. Therefore, the impugned order passed by the respondents cancelling the conversion of the petitioner from the post of Senior Steno to that of the post of Senior Assistant vide proceedings dated 04.09.2018 is liable to be set aside and it is accordingly set aside. In respect of entitlement of the petitioner to the post of Superintendent is concerned, as the petitioner is entitled for promotion to the said post based on the seniority list dated 17.12.2015, the respondents have rightly promoted the petitioner as Superintendent vide proceedings dated 31.03.2016. Therefore, the petitioner is entitled for promotion to the post of Superintendent with effect from the date on which he was promoted i.e., 31.03.2016 with all consequential benefits.

The writ petition is accordingly allowed. There shall be no order as to costs.

Pending miscellaneous petitions shall stand closed.

ABHINAND KUMAR SHAVIL, J

Date: 07.08.2019
Prv