

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO. 34590 OF 2018

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the impugned memo dated 25.08.2018, rejecting the claim of the petitioner for promotion to the post of Senior Assistant at Roster point No.56 meant for PH (Locomotor disability) as per G.O.Ms.No.42 dated 19.10.2011, as illegal and arbitrary, and to further direct the respondents to consider the case of the petitioner for promotion to the post of Senior Assistant at Roster point No.56 meant for PH (Locomotor disability) as per G.O.Ms.No.42 dated 19.10.2011, with all consequential benefits.

Heard Sri B. Krishna, learned counsel for the petitioner, and the learned Government Pleader for Services-II appearing for the respondents.

It has been contended by the petitioner that he is working as Junior Assistant with the respondents and he is a Physically Handicapped person (Locomotor disability). The petitioner further submits that the State Government has issued G.O.Ms.No.42 dated 19.10.2011, wherein the State has taken a policy decision to extend reservation in promotions to the disabled employees, and as per the said G.O., he is fully eligible and qualified for promotion to the post of Senior Assistant in the quota meant for PH (Locomotor disability) at roster point No.56. The petitioner also submits that the State Government has extended reservation in promotions to the Physically Handicapped persons vide G.O.Ms.No.42 dated 19.10.2011 and ever since then, the respondents have not given promotions to the post of Senior Assistant to any Physically Handicapped persons. It is stated by the petitioner that he is the only candidate who is fully eligible and qualified to be promoted to the post of Senior Assistant under the

quota meant for PH (Locomotor disability) at roster point No.56, but the respondents, instead of considering his case, have rejected his case vide proceedings dated 25.08.2018 on the ground that one Sri A.Siva Kumar, who is a physically handicapped person, is working as Senior Assistant and he was appointed under Physically Handicapped quota and hence the required percentage of 3% in respect of disabled persons has already achieved.

Learned counsel for the petitioner has drawn attention to the letter dated 22.05.2018, wherein it is stated that Sri A. Siva Kumar was initially recruited as Typist under Physically Handicapped Quota and later during 2010 he was promoted as Senior Assistant under General Quota. Learned counsel further submits that as per the said letter, the said Siva Kumar was promoted during 2010, but the State Government has come up with the policy of providing reservation in promotions to the differently abled employees, during the year 2011, therefore, continuation of services of the said A. Siva Kumar as Senior Assistant at no stretch of imagination can be termed as extension of reservation in promotions to the disabled employee. Since the State Government has taken policy decision to extend reservation in promotions to the disabled employees vide G.O.Ms.No.42 dated 19.10.2011, the respondents are bound to consider the case of the petitioner for promotion to the post of Senior Assistant in terms of the said G.O.

Learned Government Pleader appearing for the respondents had contended that since A. Siva Kumar is already working as Senior Assistant and incidentally he happens to be a Physically Handicapped person, the case of the petitioner could not be considered for promotion to the post of Senior Assistant under Physically Handicapped quota. Learned

Government Pleader also submits that since the required percentage of 3% in respect of disabled persons has already achieved in the cadre of Senior Assistant, the question of extending promotion to the petitioner under Physically Handicapped quota would not arise and hence, there are no merits in the writ petition and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions made by the parties, is of the considered view that since A. Siva Kumar, who is a physically handicapped person, was promoted as Senior Assistant under General Quota, at no stretch of imagination it can be said that the quota meant for Physically Handicapped candidates had achieved adequacy. The policy of providing reservation in promotions to the Physically Handicapped candidates was taken by the State Government vide G.O.Ms.No.42 dated 19.10.2011 and, since then, the respondents have not extended promotions to the post of Senior Assistant in favour of Physically Handicapped persons. Thus, the stand taken by the respondents appears to be totally incorrect and the respondents are bound to consider the case of the petitioner for promotion under Physically Handicapped quota in terms of G.O.Ms.No.42 dated 19.10.2011. The case of the petitioner for promotion cannot be rejected on the ground that adequacy has been achieved with the promotion of A. Siva Kumar, since A. Siva Kumar was promoted under General Quota, but not under Physically Handicapped Quota. Further, since reservation in promotions under the Physically Handicapped Quota meant for Physically Handicapped persons has not been operated by the respondents and since the petitioner is a member belonging to Physically Handicapped quota, the respondents are directed to consider the case of the petitioner for promotion to the post of Senior Assistant under Physically Handicapped Quota strictly in terms of

G.O.Ms.No.42 dated 19.10.2011 and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. It is needless to say that the impugned memo rejecting the petitioner's case is liable to be set aside and the same is accordingly set aside.

With the above observations and directions, the writ petition is allowed. No order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

8th April, 2019
v v

ABHINAND KUMAR SHAVILI, J

