

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NOs.27896, 29311 & 43383 OF 2018

COMMON ORDER:

These writ petitions are being disposed of by way of this common order as the issue involved in all these three writ petitions is one and the same.

W.P.No.27896 of 2018 is filed seeking the following relief:

“...to issue a Writ, Order or a Direction, one more in the nature of a Writ of Mandamus:

a. Declaring the inaction of the respondents in conducting a Review/Supplemental Department Promotion Committee for the year 2017-18 during the panel year as illegal, arbitrary and unconstitutional being in violation of Articles 14 and 16 of the Constitution of India; and

b. Consequently direct the Respondents to conduct a Review/ Supplemental DPC and consider the names of the petitioners in accordance with the Andhra Pradesh Works Accounts Service Rules, 1998 for promotions to the cadre of Assistant Pay and Accounts Officers in the existing vacancies before the expiry of 2017-18 panel year i.e, 31.08.2018 pursuant to Memo No.228 dated 23.08.2017; and

c. Pass such other order or orders as may be deemed fit and proper in the circumstances of the case.”

W.P.No.29311 of 2018 is filed seeking the following relief:

“...to issue a writ, order or direction particularly one in the nature of Writ of Mandamus declaring the inaction on the part of the respondents in acting and effecting promotions as Assistant Pay & Accounts Officers in accordance with G.O.Ms.No.85 General Administration (Ser.A) Department dated 18.05.2018 and G.O.Rt.No.1073

General Administration (Ser.A) Department dated 05.06.2018 as arbitrary, vindictive, illegal and violation of Articles 14, 16, 19 and 21 of the Constitution of India and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

W.P.No.43383 of 2018 is filed seeking the following relief:

“...to issue an order, direction or writ more particularly one in the nature of Writ of Mandamus or any other appropriate writ (i) declaring the G.O.Ms.No.140, Finance (Administration II) Department, dated 31.8.2018 in so far as not considering and including the cases of the petitioners for promotion to the post of Assistant Pay and Accounts Officers having put in minimum requisite length of service of two years as on 31.8.2018 as illegal and arbitrary; (ii) declare that the petitioners are eligible to be considered for promotion to the post of Assistant Pay and Accounts Officers/Accounts Officers in terms of G.O.Ms.No.85, General Administration (Ser.A) Department, dated 18.05.2018 R/w. G.O.Rt.No.1073, General Administration (Ser.A) Department, dated 5.6.2018, with all consequential benefits and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

For the sake of convenience, the facts in W.P.No.27896 of 2018 are hereunder discussed:

The petitioners are working as the Divisional Accounts Officers and they are fully eligible and qualified to be promoted to the post of Assistant Pay and Accounts Officers. The petitioners had contended that as per Rule 3 of the Andhra Pradesh Works Accounts Service Rules, 1998 (for short, 'the Special Rules'), the post of Assistant Pay and Accounts Officer is liable to be filled up by four feeder

categories, namely by promotion from the post of Divisional Accounts Officers, by appointment by transfer from the post of Office Superintendents and by appointment by transfer from Section Officers working in Finance and Planning Department of Secretariat and in the common units of Secretariat. The petitioners had further contended that as per note 1 appended to Rule 3 of the Special Rules issued in G.O.Ms.No.86 dated 22.05.1998, in a cycle of 10 vacancies, the second and fifth vacancies are liable to be filled up by the Section Officers of Finance and Planning Department of Secretariat and Section Officers of the Departments of Secretariat in the common unit who have worked for at least two years in Finance and Planning Department with not less than three years service as Section Officer respectively; the third and eighth vacancies are liable to be filled by by appointment by transfer from the category of office Superintendents; and the balance six vacancies i.e., first, fourth, sixth, seventh, ninth and tenth vacancies are liable to be filled up by promotion from the category of Divisional Accounts Officers.

The petitioners further contended that note 1 of Rule 3 of the Special Rules underwent an amendment and note 3 was incorporated by G.O.Ms.No.300 dated 13.10.2008 making a provision to fill up the vacancies to the post of Assistant Pay and Accounts Officer/Accounts Officer in A.P. Works Accounts Service from the next eligible feeder category alternatively, if there are no eligible candidates in one particular cycle. The petitioners have further contended that as per Rule 8 of the Special Rules, the post of Assistant Pay and Accounts

Officer is liable to be filled up on the basis of merit and ability, and seniority being considered only where merit and ability are approximately equal. The petitioners had further contended that there was demand from the Superintendents to alter the ratio of cycle meant for Superintendents from 2 to 3 and some of the Superintendents had filed writ petition being W.P.No.24917 of 2017 to alter the cyclic ratio prescribed in note 1 of Rule 3 of the Special Rules. The said writ petition was disposed of *vide* orders dated 27.07.2017 directing the respondents to consider the representation submitted by the petitioners therein and pass appropriate orders within eight weeks.

The petitioners had further contended that the Superintendents had filed another writ petition being W.P.No.28980 of 2017 seeking the relief not to effect promotions till their representation is disposed of, but this Court was not pleased to grant the relief as sought for by the petitioners therein, however *vide* interlocutory orders dated 30.08.2017, this Court made it clear that any promotions made will be subject to further orders in the writ petition, and the said writ petition is still pending.

The petitioners had also contended that in pursuance of the orders passed by this Court in W.P.No.24917 of 2017, the respondents have issued a memo dated 23.08.2017, wherein a decision was taken by the respondents to follow the existing Rules and follow the cycle as prescribed in note 1 of Rule 3 of the Special Rules and it was also decided to constitute a Committee of officers for a detailed examination and recommendations in regard to the amendments and

modifications, if any, required to the existing service rules. Thereafter, *vide* G.O.Rt.No.1251 dated 08.11.2017, the 1st respondent has appointed a Committee to examine the Service Rules and submit recommendations thereon. The petitioners had also contended that though 18 new vacancies were created during April, 2017, the respondents were not taking any steps to convene a DPC and effect promotions to the post of Assistant Pay and Accounts Officers. In those set of circumstances, W.P.No.27896 of 2018 is filed and this Court was pleased to grant the following interim order on 28.08.2018:

“..However, as the panel year is coming to an end by 31.08.2018 and the matter requires consideration after the stand of the Government is expressed with reference to quota to be earmarked to these feeder categories for promotion as Assistant Pay & Accounts Officer, and if no DPC is held before 31.08.2018 grave prejudice would be caused, the following directions are issued:

The respondent-State is directed to constitute the DPC and hold selections for promotion as per the Rules governing the post of Assistant Pay and Accounts officer, by considering the eligible officers from these feeder cadres duly taking note of the Adhoc Rules notified *vide* G.O.Ms.No.85 dated 18.05.2018 and Rule 6 of the Telangana State and Subordinate Service Rules and prepare panel of officers for promotion. However, until further orders, promotions shall not be given effect to.

Post on 11.09.2018 for filing counter by the implead respondents as well as the Government.”

The petitioners had contended that the matter was carried in appeal by filing W.A.No.1295 and 1514 of 2018 and a Division

Bench of this Court was not inclined to interfere with the orders passed by the learned Single Judge and closed the writ appeals *vide* orders dated 03.12.2018.

Counsel for the petitioners contended that when the respondents have created 18 vacancies, there were not enough candidates in the respective feeder categories and that necessitated the respondents to stipulate minimum service of 2 years for promotion in the category, class or grade from which promotion or appointment by transfer is proposed to the next higher category, class or grade. Thereafter, the State Government gave clarification to the adhoc rules framed under G.O.Ms.No.85 dated 18.05.2018, *vide* G.O.Rt.No.1073 dated 05.06.2018, wherein it was clarified that the minimum service of two years for promotion as stipulated in the category, class or grade from which promotion or appointment by transfer is proposed to the next higher category, class or grade will be accounted from the date of assumption of charge till the date of conduct of DPC. Subsequently, some of the Superintendents have filed a writ petition being W.P.No.18871 of 2018 challenging G.O.Rt.No.1073 dated 05.06.2018 and this Court *vide* interim order dated 11.06.2018 was pleased to suspend the operation of G.O.Rt.No.1073 dated 05.06.2018, and later on, the said writ petition was dismissed as withdrawn on 05.07.2018 bringing G.O.Rt.No.1073 dated 05.06.2018 into operation again.

The petitioners had further contended that even without issuance of adhoc rules framed in G.O.Ms.No.85 dated 18.05.2018 and the clarification issued in G.O.Rt.No.1073 dated 05.06.2018, they

are fully eligible and qualified to be promoted to the post of Assistant Pay and Accounts Officer, and by virtue of interlocutory orders passed by this Court on 28.08.2018, the respondents have conducted DPC on 31.08.2018, however promotions are not given, as this Court clearly observed that until further orders, promotions shall not be given effect to. Therefore, counsel for the petitioners in W.P.No.27896 of 2018 had contended that appropriate orders be passed in W.P.No.27896 of 2018 directing the respondents to give effect to the recommendations of the DPC, which met on 31.08.2018, and give promotions to the petitioners.

The petitioners in W.P.Nos.43383 and 29311 of 2018 had contended that their cases could not be considered on the ground that in W.P.No.18871 of 2018, this Court *vide* interim orders dated 11.06.2018 suspended the operation of G.O.Rt.No.1073 dated 05.06.2018 pending disposal of the writ petition, and ultimately W.P.No.18871 of 2018 was dismissed as withdrawn *vide* orders dated 05.07.2018. The petitioners in these two writ petitions further contended that when W.P.No.18871 of 2018 was dismissed as withdrawn, G.O.Rt.No.1073 dated 05.06.2018 would come into operation and their cases have to be considered in terms of adhoc rules framed in G.O.Ms.No.85 dated 18.05.2018 and the clarificatory orders in G.O.Rt.No.1073 dated 05.06.2018. The petitioners further contended that appropriate orders be passed directing the respondents to consider their cases for promotion to the post of Assistant Pay and Accounts Officers by duly taking into account the adhoc rules framed

in G.O.Ms.No.85 dated 18.05.2018 and clarificatory orders issued in G.O.Rt.No.1073 dated 05.06.2018.

Counsel appearing for the impleaded respondents in W.P.No.27896 of 2018 had contended that the petitioners are not entitled for consideration of their cases and since the State Government is examining the service conditions of Works Accounts Service Rules and a Committee has been constituted to examine and recommend the required modifications and amendments to the cyclic order prescribed in note 1 of Rule 3 of the Special Rules, until and unless the State Government takes a decision, the cases of the petitioners cannot be considered for promotion to the post of Assistant Pay and Accounts Officer.

Government Pleader appearing for respondent Nos.1 and 2 in W.P.No.27896 of 2018 had filed counter affidavit reiterating the facts set out by the petitioners. The Government Pleader has drawn attention to para 14 of the counter affidavit, wherein it is stated that in pursuance of the interlocutory orders passed by this Court on 28.08.2018, DPC was convened on 31.08.2018 and panel has been prepared for effecting promotions, however as per the interlocutory orders to the effect that promotions shall not be given effect to until further orders, the respondents are not in a position to give effect to promotions in pursuance of the panel prepared by the DPC which met on 31.08.2018. Therefore, appropriate orders be passed in the writ petitions directing the respondents to give effect to promotions to the

panel of individuals who are empanelled pursuant to the DPC which met on 31.08.2018.

This Court, having considered the rival submissions of learned counsel on either side, is of the considered view that though the respondents 3 to 11 are impleaded in W.P.No.27896 of 2018, no counter has been filed on their behalf except reiterating that their case is under active consideration by the Government and a Committee was constituted to examine and submits its recommendations regarding the modifications and amendments to the service Rules. Except stating that the matter is seized by the State Government by way of constituting a Committee, no other averments have been raised by the impleaded respondents. The State Government has issued a memo dated 23.08.2017, wherein a policy decision was taken to follow the existing cyclic order as prescribed in note 1 of Rule 3 of the Special Rules. Thus, the contentions of the impleaded respondents cannot be accepted. The cases of the petitioners in W.P.No.27896 of 2018 have been considered in the DPC which was conducted on 31.08.2018 and the panel was also prepared.

For the aforesaid reasons, all the writ petitions are disposed of directing the official respondents to give effect to the panel which was prepared pursuant to the DPC convened on 31.08.2018, as admittedly the individuals shown in Sl.Nos.1 to 15 in the said panel are fully eligible and qualified to be promoted to the post of Assistant Pay and Accounts Officers without relaxation. As far as to the issue in respect

of vacancies from Sl.Nos.16 to 23 is concerned, the cases of the petitioners in the other two writ petitions i.e., W.P.Nos.29311 & 43383 of 2018 shall be re-considered by duly extending the relaxation given in adhoc rule i.e., G.O.Ms.No.85 dated 18.05.2018 and G.O.Rt.No.1073 dated 05.06.2018. The entire exercise as directed above shall be completed within a reasonable period of time, preferably within eight weeks from the date of receipt of a copy of this order. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

29th January, 2020
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