

THE HON'BLE SMT JUSTICE P.MADHAVI DEVI

WRIT PETITION No.7911 OF 2017

ORDER:

This Writ Petition is filed by the petitioners seeking issue a Writ Order preferably in the nature of *Mandamus* or the Writ of *Certiorari* and calling for records pertaining to impugned Proceedings Proc.Rc.No.A1/1827/2015-Zone-V, dated 18.02.2017 issued by the 1st Respondent and to declare the same as illegal, arbitrary, wholly without Power, or Jurisdiction and in violation of principles of natural Justice and unconstitutional and consequently, quash the same and accordingly, to quash the consequential Provisional Integrated Tentative Seniority List of Superintendents issued by the 1st Respondent vide Memo No.CTW's RC.No.A1/1827/2015 dated 28.02.2017 and pass such other Order or Orders as this Court may deem fit and proper in the circumstances of the case.

02. Brief facts of the case leading to filing of this Writ Petition are that the petitioners are working as Superintendents with the 1st respondent. They were initially appointed as

Junior Assistants and subsequently promoted as Senior Assistants. When the department denied the petitioners' right of placement in the category of Senior Assistants, the petitioners had filed W.P.No.19345 of 2004 and W.P.No.21751 of 2004 before this Court. This Court *vide* Common Judgment dated 25.06.2014 allowed the Writ Petitions directing the respondents to regularize the services of the petitioners in the categories of Senior Assistants and to take consequent action thereafter.

03. Consequent thereto, the seniority of the petitioners in the category of Senior Assistants was revised and thereafter, the petitioners were promoted as Superintendents. Services of the petitioners in the category of the Superintendents were also regularized and were placed at appropriate places. It is the case of the petitioners that without any notice to the petitioners, the date of regularization in the category of Superintendents was modified *vide* impugned Proceedings Proc.Rc.No. A1/1827/2015-Zone-V dated 18.02.2017.

04. It is submitted that thereafter, the consequential Provisional Integrated Tentative Seniority List of Superintendents was issued by the 1st Respondent vide Memo No.CTW'sRC.No.A1/1827/2015 dated 28.02.2017 and objections of the petitioners, if any against the said Provisional Integrated Tentative Seniority List of Superintendents, were called for. Since the 1st respondent had already issued Proceedings Proc.Rc.No.A1/1827/2015-Zone-V dated 18.02.2017, the petitioners felt that no useful purpose would be served by giving any objections to the consequential Provisional Integrated Tentative Seniority List of Superintendents dated 28.02.2017. Therefore, the petitioners have approached this Court by filing the present Writ Petition challenging the modification of regularization date of the petitioners as Superintendents as well as consequential Provisional Integrated Tentative Seniority List of Superintendents dated 28.02.2017.

05. Learned counsel for the petitioners submitted that the first respondent had already regularized the services of the petitioners in the category of Superintendents earlier and therefore, he cannot revise the regularization orders by proceedings Proc.Rc.No.A1/1827/2015-Zone-V dated 18.02.2017. According to him, this would amount to review of his own order, which power he does not have. He submitted that the first respondent cannot modify his own order after lapse of a decade and also without issuance of notice to the affected parties and therefore, it is without power or jurisdiction and also in clear violation of principles of natural Justice.

06. It is further submitted that under the guise of issuance of Seniority List, the first respondent had revised the dates of regularization of these petitioners in the category of Superintendents and since the issue of seniority is different and distinct from the revision of the dates of regularization, both

cannot be clubbed and on this ground alone, this Writ Petition should be allowed.

07. The learned counsel for the petitioner submitted that the pursuant to the Orders of this Court in W.P.No.19345 of 2004 and W.P.No.21751 of 2004 *vide* Common Judgment dated 25-06-2014, the issue with reference to the seniority of the petitioners in the category of Senior Assistants was finally decided, and therefore, the first respondent had issued Memo dated 17.07.2015 issuing tentative seniority lists in the category of Superintendents belonging to Zone-V and the dates of regularization in the category of Superintendents was clearly mentioned. Thereafter, the proceedings dated 17.12.2015 regularizing and declaring the probation of the petitioners in the category of Superintendents was also given. Therefore, according to the learned counsel for the petitioners, these Orders have become final and the first respondent is preempted from issuing the impugned Proceedings Proc.Rc.No.A1/1827/2015-Zone-V, dated 18.02.2017.

08. Learned counsel for the petitioners also placed reliance upon provisions of Section 23 of the Andhra Pradesh State and Subordinate Service Rules of 1996, wherein it is provided that once an order appointing a member of a service, or class service, or category to a higher post by transfer or by promotion is passed, by the Competent Authority, within a period of six months from the date of such Order, it may be revised by an Authority to which an Appeal would lie, against the order of dismissal passed against a member of a service, class, or category, as the case may be, and that such revision may be made by the Appellate Authority, either on its own motion, or otherwise and for both the provisions, an opportunity of making representation has to be given, against the revision proposed. It is submitted that the authorities have not followed the said procedure and therefore, the impugned proceedings are to be set aside.

09. Learned Government Pleader, on the other hand, relied on the averments made in the counter affidavit and

submitted that there was an error in the order of regularization of services of the petitioners earlier, as such regularization was made without there being sanctioned posts/vacant posts of the Superintendents and therefore, the Order was rectified by the Competent Authority i.e., first respondent herein vide impugned Proceedings Proc.Rc.No.A1/1827/2015-Zone-V, dated 18.02.2017.

10. Learned Government Pleader placed reliance upon Rule 16-C of the Andhra Pradesh State and Subordinate Rules, which provides for regularization of the services of the employees only against the sanctioned posts. It is further submitted that Seniority List of employees in a cadre is prepared based on the date of appointment, date of declaration of probation period and passing of Departmental tests of the respective employees and accordingly, the revised dates of regularization of Superintendents is taken into consideration with reference to the sanctioned / vacant posts of a particular category.

11. With regard to the contention of the petitioners that no prior notice had been issued to the petitioners for revising the dates of regularization in the posts Superintendents, it is submitted that *vide* Memo No.A1/1827/2015 Zone-V dated 23.07.2016, the first respondent had called for objections from all the Superintendents including the petitioners to file their objections, if any, to the proposed tentative seniority list within ten days thereafter, but the petitioners have not filed any objections to the said proposals. Therefore, according to him, there is no violation of the principles of natural Justice.

12. Subsequent to the filing of this Writ Petition and also the counter affidavit by the respondents, the respondents have passed another order dated 08-01-2021 altering the regularization and declaration of probation period of the petitioners and also issued consequential final Seniority List of Superintendents of Zone-V *vide* proceedings dated 12-02-2021 and further issued final integrated seniority list of Superintendents *vide* proceedings dated 01-03-2021. In view

thereof, the petitioner filed I.A.No.1 of 2021 with a prayer to amend the prayer, so that the above orders are also challenged in this Writ Petition. However, at the time of hearing, the learned counsel for the petitioner has submitted that Interlocutory Application is filed challenging the subsequent orders passed by the respondent No.1 and that if the prayer in the original Writ Petition is allowed then the petitioner would not press this Interlocutory Application subject to liberty being given to him to challenge the subsequent orders in a separate Writ Petition.

13. Having regard to the rival contentions and the material on record, this Court finds that there are two orders which has been impugned in this Writ Petition, one is Proceedings Proc.Rc.No.A1/1827/2015-Zone-V, dated 18.02.2017 issued by the 1st Respondent and the second is the consequential Provisional Integrated Tentative Seniority List of Superintendents issued by the 1st Respondent vide Memo No.CTW's RC.No.A1/1827/2015 dated 28.02.2017.

14. This Court finds that the respondents had called for objections of the petitioners in respect of the Provisional Integrated Tentative Seniority List of Superintendents but no notice was given to the petitioners before modifying or rectifying the alleged errors that occurred while regularizing the services of the petitioners as Superintendents.

15. It is the case of the respondents that though the petitioners were regularized as Superintendents vide earlier orders, certain errors had occurred since the regularization was not against sanctioned vacancies and accordingly, the same have been rectified by the first respondent by impugned order dated 18-02-2017.

16. It is seen that as per Rule 17 of the Andhra Pradesh State and Subordinate Rules, 1998, an order can be reviewed or revised by the Authority to which an appeal would lie against an order of dismissal passed against a full member of the service, within a period of six months from the date of such order. Further, the Government as the Appellate authority

may revise such an order after the expiry of the period of six months after recording sufficient reasons for the same in writing and it is further provided that no order of revision shall be passed unless the persons affected adversely thereby are given an opportunity of making their representations against the revision proposed. The date of regularization would be relevant for deciding the seniority of the superintendents in the first respondent organization. Therefore, before rectifying or modifying the date of regularization, all the affected parties i.e., petitioners herein ought to have been given a notice. Non-issuance of a notice and unilateral modification of date of regularisation of the petitioners in the post of Superintendents by the first respondent is in clear violation of the principles of natural justice and Rule 17 of the Andhra Pradesh State and Subordinate Rules, 1998.

17. In view of the above, this Court deems it fit and proper to set aside the impugned Proceedings Proc.Rc.No. A1/1827/2015-Zone-V, Dated 18.02.2017 issued by the 1st

Respondent and the consequential Provisional Integrated Tentative Seniority List of Superintendents issued by the 1st Respondent vide Memo No.CTW's RC.No.A1/1827/2015 dated 28.02.2017. However, liberty is given to the respondents to follow the due process of law for rectifying or modifying the date of regularisation by issuing notice to the affected parties and to consider their objections, if any, before passing any orders of modification.

18. Accordingly, this Writ Petition is allowed. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed.

P.MADHAVI DEVI, J

Date: 23-08-2022
KHRM

THE HON'BLE SMT JUSTICE P.MADHAVI DEVI

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