[3383]

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY ,THE NINTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

WRIT PETITION NO: 18959 OF 2017
AND
CONTEMPT CASE NO: 1946 OF 2017

W.P.NO: 18959 OF 2017

Between:

T.Nagaraju, s/o. Satyanrayana, Aged about 45 years, Occ Senior Assistant, 0/o. Superintendent District Headquarters (TVVP), Karimnagar, Karimnagar District.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary, Health Medical and Family Welfare Department, Secretariat Buildings, Hyderabad.
2. The Commissioner, Telangana Vaidya Vidhana Parishad, Hyderabad.
3. P.Sudheer, Aged about 44 years, Occ Senior Assistant, 0/o. Superintendent District Headquarters (TVVP), Jagityal, Jagityal District.
4. Ahmed Hussain, Aged about 45 years, Occ Senior Assistant, 0/o. Superintendent District Headquarters (TVVP), Karimnagar, Karimnagar District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an order or direction more particularly one in the nature of Writ of MANDAMUS to declare the impugned show cause notice issued by the 2nd respondent in Rc.No.50/ G/2014 dated 20.01.2017 wherein decided to revise the final seniority list issued in Procgs.Rc.No.3699/ G1/2011 dated 08.12.2011 after lapse of more than 6 years contrary to the Circular. Memo. No. 57759 / Ser. -A/ 2004-1, dated 20.05.2004 and also in violation of Rule 23 and 26 of State and Subordinate Service Rules is illegal arbitrary and unconstitutional and set aside the same by declaring the final seniority list issued in Procgs. Rc. No.3699/ G1 / 2011 dated 08.12.2011 become final with a consequential direction to the respondents to consider the claim of the petitioner for promotion to the post of

Superintendent from the date of approving his name by the selection committee with all consequential benefits

I.A. NO: 3 OF 2017(WPMP. NO: 23110 OF 2017)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the show cause notice issued by the 2nd respondent in Rc.No.50/G/2014 dated 20.01.2017 by directing the respondents to consider the claim of the petitioner for promotion to the post of Superintendent in the existing vacancy forthwith

I.A. NO: 1 OF 2017(WVMP. NO: 4067 OF 2017)

Between:

1. P.Sudheer, Aged about 44 years, Occ Senior Assistant, O/o. Superintendent District Headquarters (TVVP), Jagityal, Jagityal District.
2. Ahmed Hussain, Aged about 45 years, Occ Senior Assistant, O/o. Superintendent District Headquarters (TVVP), Karimnagar, Karimnagar District.

..... VACATE STAY PETITIONERS/RESPONDENT No. 3&4

AND

1. The State of Telangana, Rep. by its Principal Secretary, Health Medical and Family Welfare Department, Secretariat Buildings, Hyderabad.
2. The Commissioner, Telangana Vaidya Vidhana Parishad, Hyderabad.

...RESPONDENTS/RESPONDENTS

3. T.Nagaraju, s/o. Satyanrayana, Aged about 45 years, Occ Senior Assistant, O/o. Superintendent District Headquarters (TVVP), Karimnagar, Karimnagar District.

...RESPONDENT/WRIT PETITIONER

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim order granted in W.P.M.P.No. 23110 of 2017 in W.P.No. 18959 of 2017 dt. 13-06-2017 by dismissing the writ petition

I.A. NO: 2 OF 2017(WVMP. NO: 4122 OF 2017)

Between:

The Commissioner, Telangana Vaidya Vidhana Parishad, Hyderabad.

....PETITOINER/RESPONDENT No.2

AND

1. T.Nagaraju, s/o. Satyanrayana, Aged about 45 years, Occ Senior Assistant, 0/o. Superintendent District Headquarters (TVVP), Karimnagar, Karimnagar District.

...RESPONDENT/PETITIONER

2. The State of Telangana, Rep. by its Principal Secretary, Health Medical and Family Welfare Department, Secretariat Buildings, Hyderabad.
3. P. Sudheer Aged about 44 years , Occ: Senior Assisstant O/o. Superintendent District Headquarters (TVVP)
4. Ahmed Hussain Aged about 45 years , Occ: Senior Assistant O/o. Superintendent District Head Quarters (TVVP) Karimnagar, Karimnagar District.

...RESPONDENTS

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim order passed in WP No. 18959 of 2017 dated 13.06.2017

Counsel for the Petitioner: SRI. RAVINDER ALKUCHI

Counsel for the Respondent No.1: GP FOR MEDICAL HEALTH & FAMILY WELFARE

Counsel for the Respondent No.2: Smt. RACHANA S. WADDEPALLI, SC FOR TGVVP

Counsel for the Respondent Nos. 3&4: SRI B. SHIVA KUMAR

CONTEMPT CASE NO: 1946 OF 2017

Contempt Case under sections 10 to 12 of Contempt of Courts Act to punish the respondents for will full and deliberate disobedience of the orders dated 13.06.2017 in W.P. M.P.No. 23110 of 2017 in W.P.NO. 18959 of 2017

Between:

T.Nagaraju, S/ o. Satyanrayana, Aged about 45 years, Occ Senior Assistant, 0/o. Superintendent District Headquarters (T V V P), Karimnagar, Karimnagar District.

...PETITIONER

AND

1. Sri. Rajeshwar Tiwari, I.A.S, Principal Secretary, Health Medical and Family Welfare Department, Telangana State, Secretariat Buildings, Hyderabad.

2 Smt.Vakati Karuna, I.A.S, Commissioner, Telangana Vaidya Vidhana Parishad, Koti Hyderabad

...CONTEMNORS

Counsel for the Petitioner: SRI. RAVINDER ALKUCHI

Counsel for the Respondent No.1: GP FOR MEDICAL HEALTH AND FAMILY WELFARE

Counsel for the Respondent No.2: Smt. RACHANA S. WADDEPALLI, SC FOR TGVVP

The Court made the following: COMMON ORDER

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

WRIT PETITION No.18959 of 2017
and
CONTEMPT CASE No.1946 of 2017

COMMON ORDER:

The present writ petition has been filed seeking the following relief:

> ".. to issue an order or direction more particularly one in the nature of Writ of MANDAMUS to declare the impugned show-cause notice issued by the 2nd respondent in Rc.No.50/G/ 2014 dated 20.01.2017, wherein decided to revise the final seniority list issued in Procgs.Rc.No.3699/G1/2011 dated 08.12.2011 after lapse of more than 6 years contrary to the Circular Memo No.57759/Ser.A/2004-1, dated 20.05.2004 and also in violation of Rules 23 and 26 of State and Subordinate Service Rules, is illegal, arbitrary and unconstitutional and set aside the same by declaring the final seniority list issued in Procgs.Rc.No.3699/G1/ 2011 dated 08.12.2011 become final with a consequential direction to the respondents to consider the claim of the petitioner for promotion to the post of Superintendent from the date of approving his name by the selection committee with all consequential benefits and pass...."

2. The brief facts leading to filing of the writ petition are as under:

2.1. Petitioner was initially appointed as Junior Assistant on 09.11.1993 and subsequently, promoted to the post of Senior Assistant on 26.08.2003. Accordingly, his services were

regularized and probation was declared in the cadre of Senior Assistant. Later, his services were absorbed in Telangana Vaidya Vidhana Parishad and he rendered 24 years of service in the department and eligible and qualified for promotion to the post of Superintendent. Respondent no.2 issued provisional seniority list in the cadre of Senior Assistants vide Rc.No.1111/ HR.CELL/APVVP/Ministerial/2011, dated 26.03.2011 and called for objections if any. After considering the objections, 2nd respondent issued final seniority list vide proceedings Rc.No.3699/G1/2011, dated 08.12.2011, as per which, his name was placed at Sl.No.9, whereas, the unofficial respondents 3 and 4 were placed at Sl.Nos.10 and 11 respectively.

2.2. The 2nd respondent issued proceedings vide Rc.No.50/G/ 2014, dated 06.06.2016 calling for his service particulars along with two others for effecting promotion to the post of Superintendent. The selection committee approved the panel for promotion on 31.08.2016 including his name. Accordingly, 2nd respondent effected promotion to the post of Superintendent in Zone-VI, however, though the committee approved his name, he was ignored for promotion. By the said action of the authorities, the petitioner becomes junior in the cadre of Superintendent and he would loose his seniority in multi zone-I to the next

higher promotion. Petitioner contended that individuals promoted as Superintendent in Zone-VI are junior to him nearly 10 years. It is submitted that next promotions for the post of Administrative Officer is multi-zone consisting Zone V & VI.

2.3. The respondent Nos.3 and 4 submitted a representation to the 2nd respondent to revise their seniority placing their names over and above the petitioner. Respondent No.2 issued proceedings vide Rc.No.50/G/2014, dated 01.07.2016 rejecting the claim of respondents 3 and 4 for revision of their seniority. Surprisingly, the 2nd respondent issued show-cause notice vide Rc.No.50/G/2014, dated 20.01.2017 to the petitioner stating that respondents 3 and 4 submitted representation to rectify their seniority as per the parent department and directed him to submit his explanation by placing his name at Sl.No.3 below the respondents 3 and 4.

2.4. Accordingly, petitioner submitted his detailed explanation on 01.03.2017 stating that once the final seniority was issued long back i.e., on 08.12.2011 by the 2nd respondent that become final for all purpose. He contended that after lapse of more than six years, 2nd respondent deciding to revise the seniority list once again, which is contrary to the Government instructions

issued from time to time and 2nd respondent has no power or authority to review the seniority on his own. Contrary to Rules 23 and 26 of Telangana State and Subordinate Service Rules, 1996 (for short, 'Rules'), final seniority list was issued after calling objections. The Hon'ble Apex Court held that settled seniority cannot be unsettled after lapse of three years. The Hon'ble Apex Court in **B.S.Bajwa and another vs. State of Pubjab and others**[1] held that seniority of the employees cannot be unsettled after reasonable time. Following the law laid down by the Hon'ble Apex Court, the Government issued Circular Memo No.57759/Ser.A/2004-1, dated 20.05.2004. In view of the same, issuing present show cause notice dated 20.01.2017 for revision of seniority by the 2nd respondent is contrary to the Rules 23 & 26 of the Rules and the Circular Memo dated 20.05.2004.

3. Aggrieved by the said show-cause notice dated 20.01.2017, petitioner filed the present writ petition.

4. This Court vide order dated 13.06.2017 in WPMP No.23110 of 2017 granted interim relief suspending the show-cause notice dated 20.01.2017 by directing the respondents to

[1] (1998) 2 SCC 523

consider the claim of petitioner for promotion to the post of Superintendent in the existing vacancy forthwith.

5. Alleging that the orders passed by this Court on 13.06.2017 are not complied with, the petitioner filed C.C.No.1946 of 2017. The respondents 3 & 4 and 2nd respondent filed WVMP Nos.4067 of 2017 and 4122 of 2017, respectively, praying to vacate the interim orders granted on 13.06.2017.

6. The 2nd respondent filed counter and contended that the unofficial 3rd respondent was appointed as Junior Assistant on 30.10.1993 and promoted to the post of Senior Assistant on 29.08.2003. The unofficial respondent no.4 was appointed as Junior Assistant on 06.10.1993 and was promoted to the post of Senior Assistant on 01.09.2003. The petitioner was appointed as Junior Assistant on 09.11.1993 and further promoted to the post of Senior Assistant on 26.08.2003. Subsequently, their services were absorbed into Vaidya Vidhana Parishad, wherein, on exercising their option, their seniority is to be protected as in the parent department. The unofficial respondents 3 and 4 claimed to be senior to the petitioner as per Rule 33(a) of APSSR 1996, i.e., seniority of a person in a service, class, category or

grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade.

6.1. It is contended that 2nd respondent had requested the District Coordinator of Hospital Services, Karimnagar calling for the service particulars of the petitioner vide Rc.No.50/G/2014, dated 05.06.2016, who in turn, submitted the same to the 2nd respondent. The Selection Committee had not approved candidate for promotion to the post of Office Superintendent as the unofficial respondent Nos.3 and 4 raised objections stating that their seniority has to be rectified as per their parent department seniority i.e., Regional Director Medical & Health Services, Warangal, Zone-V. There is no link between the promotion of the Office Superintendent in Zones-V and VI as both are different units of appointments as the post of Office Superintendent is as per zonal cadre and petitioner belongs to zone-V and therefore, the promotion to the next promotion at this stage does not arise.

6.2. Further, the provisional seniority list of senior assistants has been prepared in the year 2013 and no further final seniority list has been prepared thereafter. In the year 2016,

after bifurcation of the State of Telangana, the then Commissioner of Telangana Vaidya Vidhana Parishad, Hyderabad has communicated to the petitioner and unofficial respondents the final seniority list of senior assistants prepared in the year 2011 by oversight as the original files are retained by the Commissioner, A.P. Vaidya Vidhana Parishad. Unaware of the provisional seniority list of senior assistants prepared in the year 2013, the list of senior assistants prepared in 2011 was sent to petitioner and the respondent no.s3 and 4, instead of 2013 list.

6.3. The 2nd respondent had issued show-cause notice to the petitioner as per Rule 24(b) of Telangana State and Subordinate Rules i.e., the State Government shall have the power to revise in any manner they consider suitable, any list of eligible candidates for promotion to any category, class or service in respect of subordinate service. The aforesaid power of revision by the Government could be exercised by them in respect of an order passed by the Head of Department or by any other subordinate authority and therefore, petitioner's plea cannot be considered as he is junior to the unofficial respondent nos.3 and 4.

6.4. It is further contended that petitioner and the unofficial respondents have been shown at appropriate positions according to their parent department in the provisional seniority list of senior assistants in the year 2011. As per rule 23 of APSSR, 1996, an order appointing a member of a service or class of service or category, to a higher post by transfer or by promotion may, within a period of six months from the date of such order, be revised by an authority to which appeal would lie against the order of dismissal passed against a member of a service, class or category. Such revision may be made by the appellate authority aforesaid, either on its own motion or on an appeal filed by the aggrieved member of the service, but in the present case, petitioner is not promoted to higher category. Hence, this rule does not apply in the present case.

6.5. The 2nd respondent on careful examination of service particulars, absorption orders and parent department final seniority lists of petitioner and unofficial respondents, had decided to issue show-cause notice by placing the unofficial respondents above the petitioner as per their parent department seniority as per the absorption orders.

7. The unofficial respondents 3 and 4 filed counter and contended that petitioner and unofficial respondents 3 and 4

were promoted as senior assistants in the year 2008 and in the promotion list also, the unofficial respondents were seniors by counting the date of joining as a criteria, whereas, the promotion list, the department given 15 days time for joining in the promotion post.

7.1. The 2nd respondent issued a provisional seniority list of the senior assistants on 23.01.2009 and in the said list, their seniority was rightly figured. In the year 2016 after bifurcation of the State, the final seniority list of Senior Assistant has been communicated on 01.07.2016. After receiving seniority list, respondent Nos.3 and 4 submitted representation stating that petitioner is junior to them and it is brought to the notice of respondents that initially, petitioner worked in the Department of Director of Medical Education and as per the options called by AP Vidya Vidhan Parishad, the petitioner opted for absorption into Vidya Vidhan Parishad and his services were absorbed into said Parishad with immediate effect and seniority will be as per their seniority in their parent department. The absorption proceedings clearly indicates and establishes that respondents 3 and 4 are entitled to the seniority of the parent department i.e., from the date of joining into the post of Junior Assistant.

7.2. It is further contended that petitioner suppressed all the facts and filed the present writ petition stating that final seniority list was issued on 08.12.2011. However, the fact remains that initially the provisional list was issued in the year 2009, later in 2013 and finally on 01.07.2016. For the said seniority list, respondents 3 and 4 submitted written objections stating that their parent department seniority was not taken into consideration. On this ground alone, the 2nd respondent had rightly issued show-cause notice, impugned herein. If petitioner has any objection, it is open to him to file objections. Without doing so, suppressing the real fact that respondents 3 and 4 are senior to him, the petitioner filed the present writ petition and the same is liable to be dismissed.

8. Heard Sri N.Ramesh, learned counsel for petitioner, learned Government Pleader, Health Medical & Family Welfare Department for respondent no.1, Ms. W.Rachana learned counsel for 2nd respondent in W.P.No.18959 of 2017 and C.C.No.1946 of 2017, Sri B.Shiva Kumar learned counsel for respondents 3 and 4 and Sri P.V.Krishnaiah learned counsel for proposed respondents 5 and 6 in W.P.No.18959 of 2017.

9. Learned counsel for petitioner submitted that initially, petitioner was appointed as Junior Assistant on 09.11.1993 and promoted to the post of Senior Assistant on 26.08.2003. On 26.03.2011, 2nd respondent issued provisional seniority list in the cadre of Senior Assistant calling for objections and after considering the objections, the 2nd respondent issued final seniority list vide proceedings dated 08.12.2011, as per which, petitioner was placed at Sl.No.9, whereas, unofficial respondents were placed at Sl.No.10 and 11. He further submitted the show-cause notice, impugned herein, was issued by the 2nd respondent to revise the final seniority list dated 08.12.2011 after lapse of more than six years, contrary to the Circular dated 20.05.2004 and also in violation of Rules 23 and 26 of the State and Subordinate Rules and hence, impugned show-cause notice is liable to be set aside.

10. *Per contra,* the Government Pleader for 2nd respondent submitted that final seniority list of senior assistants was prepared in the year 2013 and no further seniority list has been prepared after that; that after bifurcation of State of Telangana, the then Commissioner of Telangana Vaidya Vidhana Parishad, Hyderabad (TVVP) by oversight communicated the final seniority

list of senior assistants prepared in the year 2011 to the petitioner and unofficial respondents as the original files were retained by the Commissioner. Unaware of the provisional list of senior assistants prepared in the year 2013, the 2011 list was sent instead of 2013 list.

11. The learned Govt.Pleader for 2nd respondent would submit that the Selection Committee had not approved any candidate for promotion to the post of Officer Superintendent as objections were raised by the respondents 3 and 4 on 20.07.2016 and 26.09.2016 stating that their seniority has to be rectified as per their parent department seniority.

12. He further submitted that 2nd respondent had called for the original service register of the petitioner as well as respondents 3 and 4 for verification of seniority vide letter dated 01.10.2016 and after careful examination of their service particulars, absorption orders and parent department, it was decided to issue show-cause notice to them and accordingly, issued the impugned show-cause notice. Learned counsel for 2nd respondent finally submitted that 2nd respondent had rightly issued the show-cause notice to revise the seniority list issued on 08.12.2011.

13. Learned counsel for respondents 3 and 4 submitted that as per the service particulars and seniority in the cadre of Junior Assistant, 4th respondent was placed at sl.no.185, 3rd respondent was placed at sl.no.187/a and the petitioner was at sl.no.187/b and based on the above seniority, they were promoted as senior assistants duly mentioning their above seniority number in their promotion orders of senior assistants vide Proceedings Rc.No.A1/2388/2002-39, dated 25.08.2003. As per the proceedings dated 25.08.2003, petitioner and respondent Nos.3 and 4 were directed to join as Senior Assistants within the prescribed time limit of 15 days and accordingly, they have joined as senior assistants within the prescribed period.

14. He further submitted that during the year 2008, petitioner and respondent Nos.3 and 4 were absorbed into APVVP (now, TVVP) and it is clearly mentioned in their absorption orders that their parent department seniority will be protected. Accordingly, the provisional seniority list of Senior Assistants in Zone-V was prepared by the then Commissioner, APVVP, Hyderabad and communicated to all vide Rc.No.3699/G1/2011, dated 27.09.2011 and in the provisional list, the

petitioner and the respondent Nos.3 and 4 were kept properly in accordance with their seniority list as per their parent department. Before completion of three years of final seniority list, again the provisional seniority list of Office Superintendent in Zone-V was prepared in the year 2013.

15. He further submitted that unless the provisional seniority list of 2011 is revised as per the seniority of parent department, the respondents would not get the promotion as per their parent department seniority. He finally submitted that 2nd respondent had rightly issued the show-cause notice, impugned herein, to revise the final seniority list issued on 08.12.2011.

Consideration:

16. This Court considered the detailed submissions made by the respective counsels and perused the material placed on record.

17. It is not in dispute that the petitioner and unofficial respondent Nos.3 and 4 were appointed as Junior Assistants on

09.11.1993, 30.10.1993 and 06.10.1993 respectively and further, they were promoted as senior assistants. The seniority of respondents 3 and 4 and petitioner was fixed as per the initial date of appointment in the parent department and petitioner was placed at Sl.No.187/b, 3rd respondent at Sl.No.187/a and 4th respondent at Sl.No.185. Later, they got promotion as senior assistants vide proceedings dated 25.08.2003, as per which, they were given 15 days time to join in the promotional post in the panel year 2002-03. Accordingly, the petitioner and the respondent Nos.3 and 4 have joined as Senior Assistant on 26.08.2003, 29.08.2003 and 01.09.2003 respectively within the prescribed time limit of 15 days.

18. It is relevant to note that during the year 2008, petitioner and unofficial respondent Nos.3 and 4 were absorbed into APVVP and in their absorption orders, it is clearly mentioned that their parent department seniority will be protected. Accordingly, provisional seniority list of senior assistants in Zone-V was prepared and the same was communicated to all of them vide Rc.No.3699/G1/2011, dated 27.09.2011 and in the provision seniority list, petitioner and respondent Nos.3 and 4

were placed at sl.no.287, 286 and 284, respectively, as per their parent department seniority.

19. On perusal of record, it appears that petitioner and unofficial respondent Nos.3 and 4 have joined in the promotional post of senior assistant on 26.08.2003, 29.08.2003 and 01.09.2003 respectively. The 2nd respondent issued provisional seniority list in the cadre of senior assistants on 26.03.2011 calling for objections if any. After considering the objections, 2nd respondent issued final seniority list vide proceedings dated 08.12.2011, as per which, petitioner and respondent Nos.3 and 4 were shown at sl.nos.9, 10 and 11, respectively. The proceedings dated 08.12.2011 *prima facie* indicates that the seniority was fixed, basing on the joining date of petitioner and unofficial respondent Nos.3 and 4 in the promotional post of senior assistant, which is *per se* contrary to the rules of fixing the seniority, as per which, the date of first appointment has to be taken into consideration.

20. When there is no dispute with regard to date of initial appointment as junior assistant, petitioner cannot take advantage of fortuitous circumstance of joining date in promotional posts, which is erroneously/mistakenly taken in

fixing the seniority in the said cadre by the competent authority. While absorbing the petitioner as well as respondent Nos.3 and 4 into APVVP (TVVP) during the year 2008, it was mentioned in their absorption orders that their parent department seniority will be protected.

21. Admittedly, petitioner as well as respondent Nos.3 and 4 were appointed as Junior Assistant on 09.11.1993, 03.10.1993 and 06.10.1993 respectively and thus, the petitioner is junior to respondent Nos.3 and 4. Rule 33 of Telangana State & Subordinate Service Rules deals with determination of seniority. According to proviso (a) to Rule 33 of the Rules, seniority is to be determined with reference to the date of first appointment to a service, class or category or grade.

22. It is also not in dispute that petitioner and respondent Nos.3 and 4 were promoted as Senior Assistants as per the proceedings dated 25.08.2003 and as per which, they were given 15 days time to join in the promotional post in the panel year 2002-03. The petitioner and respondent Nos.3 and 4 have joined the promotional post on 26.08.2003, 29.08.2003 and 01.09.2003 respectively. It is relevant to note that the respondent Nos.3 and 4 joined in promotional post on

29.08.2003 and 01.09.2003 respectively, which is subsequent to joining date of petitioner i.e., 26.08.2003. However, as per Rule 33(a) only, the date of first appointment has to be considered for seniority and, therefore, the date of joining in promotion post would not alter their seniority.

23. A perusal of seniority list dated 08.12.2011, it appears that the date of joining in promotional post by the petitioner and the respondent Nos.3 and 4 was considered for finalizing the seniority list for the post of Office Superintendent (which is evident from column no.6, at Sl.Nos.9 to 11), which is contrary to Rule 33(a), as per which, the first date of appointment has to be considered for determination of seniority. In fact, in column no.5 of seniority list dated 08.12.2011, date of first appointment of petitioner, respondent Nos.3 and 4 is also mentioned, as per which, respondent Nos.4 and 3 and petitioner have been placed at Sl.Nos.9, 10 and 11, respectively.

24. It is contended by the petitioner that final seniority list was issued on 08.12.2011, which has become final, however, the same is now sought to be revised by way of impugned show cause notice dated 20.01.2017 and it is further case of the petitioner that respondent authorities intend to revise the

seniority list after lapse of six years in contravention of Rules 23[2] and 26[3] and also settled principle of law that settled seniority cannot be unsettled after lapse of three years.

25. On the other hand, the 2nd respondent contended that seniority list dated 08.12.2011 is neither finalized nor approved and subsequently, provisional seniority list was prepared in the year 2013 and in the light of contention raised by the respondents 3 and 4, seniority list was not finalized. There is considerable force in the contention of the petitioner that final seniority list cannot be unsettled as is held by Hon'ble Apex Court in **B.S.Bajwa** (supra). However, this Court cannot ignore the mistake committed by the respondents in finalizing the seniority list on the basis of date of joining in promotional post of the petitioner as well as respondent Nos.3 and 4, in clear

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[2] **Rule 23: Appeal, Revision and Review of orders of appointment (including promotion) to Higher Posts:** Order can be revised within six months by the appellate authority on its own motion or on appeal filed by the aggrieved employee. Revision can be made within three months on the appellate authority order.

[3] **Rule 26: Appeal against seniority or other conditions of service:-**
The appellate authority for submitting appeals against an order fixing seniority of a person or affecting any conditions of service passed by the appointing authority shall be the HoD or the State Government.
In other words, the authority to whom an appeal would lie against an order of dismissal passed against the member of the service.
No Appeal against seniority or assignment of notional seniority on par with junior shall be entertained by the appellate authority after a period of 90 days from the date on which junior was promoted.
Revision petition against the order of appellate authority may be submitted to the Government, within 3 months.

contravention of Rule 33(a)[4] of the Rules. As per which, the date of first appointment has to be considered for determination of the seniority.

26. In **B.S.Bajwa** (supra), the Hon'ble Apex Court held as under:

> "7. .... It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

27. In the above decision referred to by the learned counsel for petitioner, the petitioners approached the Hon'ble High Court after more than a decade. Petitioners were treated all along as junior to others, who were promoted at every stage, and the rights *inter se* had crystallized and therefore, the Court had come to conclusion that crystallized position ought not to have been reopened after lapse of such a long period. In the present case, it is represented that no promotions have been affected pursuant to alleged seniority finalized and therefore, the facts of the case do not apply to the present case.

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[4] **Rule 33. Seniority:-** **(a)** The seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the dte of his first appointment to such service, class, category or grade.

28. It is pertinent to observe that as per provisional seniority list prepared vide proceedings Rc.No.3699/G1/2011, dated 27.09.2011, the petitioner, the respondent Nos.3 & 4 were placed at Sl.Nos.12, 11 and 10, respectively. However, in the final seniority list, the respondent nos.4, 3 and the petitioner were placed at Sl.Nos.9, 10 and 11, respectively, which is *per se* improper and contrary to Rule 33(a) of the Rules.

29. Apparently, there is a mistake, error on the part of the official respondents in considering the date of joining of promotion post as basis for finalizing the seniority list and therefore, for the mistake, error on the part of the official respondents, the unofficial respondents/employees cannot be made to suffer.

Conclusion:

30. In peculiar facts and circumstances of the case, Writ Petition is disposed of directing the official respondents to finalize the seniority list in accordance with Rule 33(a) of the Rules i.e., date of first appointment, by duly issuing notices to the petitioner, respondent Nos.3 and 4 and the affected parties, if any. The official respondents are directed to complete the

above exercise within a period of three months from the date of receipt of copy of this order. Interim order granted on 13.06.2017 stands vacated.

31. In view of the disposal of the Writ Petition, the Contempt Case No.1946 of 2017 is closed.

Miscellaneous petitions, if any, pending in the writ petition and contempt case shall stand closed.

SD/-T. SRINIVAS
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1 The Principal Secretary, Health Medical and Family Welfare Department, Secretariat Buildings, T.S., Hyderabad.
2 The Commissioner, Telangana Vaidya Vidhana Parishad, Hyderabad.
3 Two CCs to GP FOR MEDICAL HEALTH & FAMILY WELFARE ,High Court for the State of Telangana, at Hyderabad [OUT]
4 One CC to SRI. RAVINDER ALKUCHI, Advocate [OPUC]
5 One CC to SRI. B. SHIVA KUMAR, Advocate [OPUC]
6 One CC to Smt.RACHANA S. WADDEPALLI, SC FOR TGVVP [OPUC]
7 One CC to SRI.P.V. KRISHNAIAH, Advocate [OPUC]
8 Two CD Copies

B M
LS

HIGH COURT

DATED:09/01/2024



COMMON ORDER

WP.No.18959 of 2017& C.C. No. 1946 OF 2017

DISPOSING OF THE WRIT PETITION AND CLOSING THE CONTEMPT CASE WITHOUTCOSTS

(11)

MP
19/2/24.