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**(2001) 10 AP CK 0108**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Petition No. 6733 of 2000**

A.R. Chandrika

APPELLANT

Vs

State of A.P., Education Dept. and Others

RESPONDENT

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**Date of Decision :** 08-10-2001

**Acts Referred:**

Andhra Pradesh Ministerial Service Rules, 1966 — Rule 3(1), 3(2), 3(3), 3(4), 3(5)

**Citation :** (2002) 1 ALT 61

**Hon'ble Judges :** S.B. Sinha, C.J.;V.V.S. Rao, J

**Bench :** Division Bench

**Advocate :** Y. Venkat Sastri, for the Appellant; Govt. Pleader for Services-I for Respondent Nos. 1 to 3 and Mirza Imamullah Baig, for the Respondent

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## Judgement

S.B. Sinha, C.J.—A short but interesting question as regards the jurisdiction of the State Administrative Tribunal to consider the judgment rendered by it in a case where the applicant was not a party arises for consideration in this writ petition.

**FACTS:**

2. The writ petitioner herein was appointed as Card Writer in the year 1973 in the State Central Library. She passed B.A., B.L.Sc., examinations besides Accounts Test for Subordinate Officers Part-I and Accounts Test for Executive Officers. She was promoted as Assistant Librarian Grade-II in 1981. She was appointed by transfer as Senior Assistant (Ministerial Service) purported to be under Sub-rule (8) of Rule 3 of Andhra Pradesh Ministerial Service Rules, 1966 (for short "the Rules") in terms of the Proceedings in Rc.No. 134-A2/83-1, dated 17-9-1983 of Director of Public Libraries. However, she was not considered for promotion to the post of Superintendent for want of seniority list, although she was allegedly qualified therefor. One Syed Sabir Hussain claimed himself to be senior to the petitioner sought for promotion to the post of Superintendent over the petitioner. He was initially reverted as Junior Assistant. He was promoted and later retired from service in 1993 as Senior Assistant. A Memo dated 4-5-1990

was issued, which is in the following terms:

"The attention of the Director of Public Libraries is invited to the references cited and he is informed that the appointment of Smt. A.R. Chandrika, Assistant Librarian Grade II as Senior Assistant under Rule 3(8) of the A.P. Ministerial Services is irregular, since, according to that Rule, appointment by recruitment by transfer from any other service may be made to the posts other than those referred to in Sub-rules (1) to (7) of Rule 3 of A.P. Ministerial Service Rules. Appointment to the post of Senior Assistant was already referred to at Sub-rule (2) of Rule 3. Therefore, the recruitment by transfer to the post of Senior Assistant from any other service is not permissible. The Director of Public Libraries is therefore requested to follow the prescribed procedure and cancel the appointment orders issued in his proceedings Rc.No. 159-A2/85-1 dated 17-9-1983 and revert Smt. A.R. Chandrika to her original post."

3. Following the same, the respondent No. 2 herein in by proceedings dated 12-7-1991 reverted the petitioner as Assistant Librarian Grade II stating:

"Smt. A.R. Chandrika, Assistant Librarian Grade II, State Central Library, Hyderabad was appointed as Senior Assistant on recruitment by transfer under Sub-rule (8) of Rule 3 of Andhra Pradesh Ministerial Service Rules in Director of Public Libraries proceedings first cited.

After due consideration of the representation of Sri Syed Sabir Hussain, Senior Assistant, State Central Library, Hyderabad claiming his seniority over Smt. A.R. Chandrika, the Government in their Memo 2nd and 4th cited have felt that the appointment of Sri A.R. Chandrika as Senior Assistant on recruitment by transfer from the category of Assistant Librarian Grade II under Sub-rule (8) of Rule 3 of Andhra Pradesh Ministerial Service Rules is irregular, since appointment to the post of Senior Assistant was already referred to at Sub-rule (2) of Rule 3 thereof and directed the Director of Public Libraries to revert Smt. A.R. Chandrika, Senior Assistant to her original post as Assistant Librarian Grade II duly cancelling her appointment orders issued in the reference first cited.

Accordingly as per the orders issued by Government in their Memos 2nd and 3rd cited, the orders issued in the Director's proceedings 1st cited are hereby cancelled.

Therefore, Smt. A.R. Chandrika, Senior Assistant of State Central Library, Hyderabad is reverted to her original post as Assistant Librarian Grade II with immediate effect.

The Librarian, State Central Library, Hyderabad is requested to relieve Smt. A.R. Chandrika from the post of Senior Assistant and give suitable posting to her in the existing vacancy of Assistant Librarian Grade II/ Classifier in State Central Library, Hyderabad."

4. The petitioner herein filed Original Application, which is marked as O.A. No. 33562 of 1991 challenging the said proceedings. Syed Sabir Hussain was fourth

respondent therein. An order of interim suspension was passed by the Tribunal on 26-7-1991 pending disposal of the said O.A. Before the O.A., came up for final hearing, the Director of Public Libraries issued proceedings No. 159-A2/85, dated 31-10-1994 recommending her case for promotion as Superintendent stating that the petitioner and the fourth respondent are working as Senior Assistants and that the petitioner is senior to the said person and therefore the petitioner may be given temporary promotion as Superintendent, subject to the outcome of the case.

5. Without going into the merit of the matter and although the fourth respondent was not a party therein, the said application was disposed of in the following terms:

"It is not known whether in pursuance of the above recommendations, the case of the applicant was considered for promotion. In the facts and circumstances, the interim orders dt. 26-7-1991 are hereby made absolute with a further direction to the respondents to consider the case of the applicant for promotion as Superintendent in accordance with her seniority in the unit of appointment and if she is otherwise eligible and suitable, keeping in view the recommendations made by the Director of Public Libraries to the Secretary to Government, Education Department in Rc.No. 159-A2/85 dt. 31-10-1994 and pass appropriate orders within a period of three months from the date of receipt of copy of this order."

6. Fourth respondent herein filed a review petition M.A.Sr.No. 14561 of 1998, which was dismissed on the ground that his remedy is to file a fresh O.A. He thereupon filed a writ petition being W.P.No. 29757 of 1998 seeking leave of the Court against the judgment in O.A.No. 33562 of 1991. The said writ petition was disposed of by this Court on 4-8-1999 holding:

"The writ petition is disposed of directing the respondents 1, 2 and 3 to consider the case of Smt. A.R. Chandrika in terms of the order of the Tribunal by giving a sufficient opportunity to all other persons affected. This exercise shall be done within three months from the date of receipt of this order. No costs."

7. Purported to be and in furtherance of the above directions, notices had been issued and upon consideration of the representations made by the parties, the services of the writ petitioner were regularised. A tentative seniority list was also issued on 3-12-1999 inviting objections therefor. Fourth respondent herein filed O.A.Nos. 2113 and 7011 of 1999 to declare that the writ petitioner was not entitled to get promotion as Superintendent having been reverted to the original post of Assistant Librarian Grade-I and impugning proceedings in Rc.No. 159/A2/85 dated 11-11-1999 of the second respondent. The rank juniors of the petitioner filed O.A. No. 7301 of 1999 questioning the orders of regularisation and fixation of seniority of the petitioner.

8. The said O.As. have been allowed. The present writ petition has been filed questioning the said order.

9. In our opinion one writ petition is not maintainable against the orders passed in three different Original Applications, wherein three different reliefs were claimed. However, we do not intend to dismiss the writ petition on that ground alone.

10. Mr. Y. Venkata Sastri, learned Counsel appearing on behalf of the petitioner inter alia submitted that the order of the learned Tribunal dated 9-9-1998 became final. The said order, the learned Counsel would contend, must be read in its entirety and as interim suspension of the order of reversion passed against the petitioner had been made absolute, it must be held that the order of reversion had been set aside and the matter has been disposed of on merit. The learned Counsel would further contend that in the aforementioned situation, the learned Tribunal must be held to have erred in holding that the petitioner was not entitled to continue on ministerial side as Senior Assistant although reversion to the technical side had been suspended. It was further submitted that, in any event, the judgment of the Tribunal in O.A.No. 33562 of 1991 had been confirmed in Writ Petition No. 29757 of 1998 and thus it was beyond the competence of the Tribunal to arrive at a different conclusion in a subsequent proceeding.

11. Mr. Mirza Imamulla Baig, learned Counsel appearing on behalf of respondent No. 4, on the other hand, would submit that the petitioner herein having been appointed on technical side could not have been appointed on the general side and as her appointment on the ministerial side was illegal, direction was issued by the State accordingly. Suspension of order of reversion by the State Administrative Tribunal in O.A., and consequent passing of the order dated 9-9-1998 therein, the learned Counsel would contend, by itself would not mean that the matter had been decided on merit. It has brought to our notice that the O.A., was disposed of only with a direction upon the respondents to consider the case of the petitioner herein pursuant to the recommendations of the Director who, according to the learned Counsel, had all along been favouring the writ petitioner. The merit of the matter, according to the learned Counsel, having never been determined, the Tribunal was competent to decide the same by reason of the impugned order.

12. It is not in dispute that the petitioner was appointed on technical side. Technical side constitutes a separate class of service. The petitioner, thus, could be appointed in the ministerial service in the post of Senior Assistant only in terms of Sub-rule (8) of Rule 3 of the said Rules. Sub-rule (8) of Rule 3 of the Rules reads thus:

"For special reasons, appointment may be made to any category or post other than those referred to in Sub-rules (1) to (7) by recruitment by transfer from any other service."

13. Thus assigning of special reasons was a sine qua non for issuing an order in terms thereof.

14. We do not appreciate the manner in which the Tribunal has dealt with the matter. Only because some recommendations had been made in favour of the petitioner, the same by itself should not have weighed with the Tribunal while disposing of the matter in a casual and cavalier manner when a serious question as regards the propriety or otherwise of the order of reversion of the petitioner had been raised. The Tribunal ought to have realised that a decision on merit would save litigating parties from filing another round of litigation.

15. However, the fourth respondent herein was not a party to the said proceeding. In any event, having regard to the order of this Court in Writ Petition No. 29757 of 1998 disposed of on 4-8-1999, the order of the Tribunal never attained any finality. If the order of the Tribunal never attained any finality and a question as regards seniority between the petitioner and respondent No. 4 was to be determined afresh, it was permissible for the State to consider the objection of the fourth respondent to the effect that the order dated 17-9-1983 passed by the Director of Public Libraries was illegal.

16. Such a question, thus, was required to be considered by the Tribunal also. Unfortunately, the learned Tribunal had not delved into the matter. It merely held:

"Here, it is clearly held that the very transfer of Smt. Chandrika as Senior

Assistant from the post of Assistant Librarian Grade II is not in accordance with the rules. In fact, the Government also made it clear that this transfer is impermissible in law. If that is so, such transfer orders are deemed to be held as void ab initio. Any amount of delay in this regard cannot validate the legal position which is otherwise illegal. An illegal order cannot have sanction of law/authority of law."

17. Before us as also before the learned Tribunal a contention had been raised to the effect that as the petitioner herein had been permitted to work for a long time, the order of the Tribunal could not be sustained.

18. In *M. Bucha Reddy Vs. V. Bhagyamma and others*, wherein one of us was a Member, it has been held:

"In *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, , the Supreme Court while holding that allocation of 33.3 per cent of marks for viva voce test as arbitrary, however, did not interfere with the Appointments made and instead directed the Haryana Public Service Commission to give one more chance to the aggrieved candidates. In *State of U.P. Vs. Rafiquddin and Others*, , the Apex Court declined to quash the appointments made by the UPPSC to the cadre of District Munsifs though a finding was recorded that the recruitment was contrary to the Rules. Likewise, in *Miss Shainda Hasan Vs. State of Uttar Pradesh and others*, , though the age relaxation given to a Principal of a college was held to be illegal, the Hon'ble Supreme Court still declined to strike down the appointment, but, however, directed the Vice-Chancellor of the Lucknow University to grant necessary approval for the appointment of the appellant

therein as the Principal of the Girls College, Lucknow. In all these cases, the fact that the respective parties were working in the post for considerable time weighed with the Hon"ble Supreme Court in not interfering with the appointments."

19. The question raised in the said case does not arise herein. In the instant case, it is not a case of recruitment, which does not affect third party interest. The appointment of the petitioner by way of transfer affected the seniority of fourth respondent and others and prior to him of Syed Sabir Hussain. In that situation, the contentions put forth by them ought to have been examined on merit and upon considering the materials on record. We would, therefore, observe that the matter be considered afresh by directing the State to produce the records so that a final decision can be arrived at.

20. Before parting, we may point out that in the absence of any material, it is not possible for us to arrive at a finding as to whether the Director of Public Libraries is biased in favour of the writ petitioner or not.

21. For the aforementioned reasons, the writ petition is allowed and the matter is remitted back to the learned Tribunal for taking afresh decision in accordance with law. No order as to costs.

After the judgment was pronounced, Mr. Baig, learned Counsel appearing on behalf of the petitioner submitted that a direction should be issued for expeditious disposal of the Original Application by the learned Tribunal. We hope and trust that the learned Tribunal shall consider the desirability of disposing of the matter expeditiously and preferably within a period of four weeks from the date of communication of this order.