
(2022) 11 TEL CK 0065
In the Telangana High Court
Case No : Writ Petition No. 18078 Of 2020

M.Baburao

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 14-11-2022

Acts Referred:

Telangana Ministerial Service Rules, 1998 — Rule 3, 8, 12, 13, 15, 15(2)(i), 16

Citation : (2022) 11 TEL CK 0065

Hon'ble Judges : Surepalli Nanda, J

Bench : Single Bench

Advocate : K.Lakshmi Narsimha

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. This writ petition is filed to issue a writ or order preferably in the nature of Writ of Mandamus and after calling for records pertaining to the impugned order vide Final Seniority list of Supdts/S K Stationery Wing issued vide Circular Memo vide Rc.No.290/E1/2019-20 dated 20.08.2019 and consequential promotion order issued to the 3rd respondent vide proc. No.53/Admn.A1/2019, dated 19.09.2020 passed by the 2nd respondent and consequently declare the action of the 1st and 2nd respondents in not taking the seniority of the petitioner in the Category of Superintendent from the date of promotion of the petitioner to the category of Special Category of Superintendent from the date of promotion of the petitioner to the category of Special Category Stenographer i.e. 01.12.2009 in terms of Rule 15(2)(i) of Telangana Ministerial Service Rules 1998 as illegal, arbitrary, and consequentially set aside the impugned Final Seniority List issued by the 2nd respondent vide Circular Memo RC No.290/E1/2019-20 dated 20.08.2019 and consequential promotion issued to the 3rd respondent vide impugned order proc. No.53/Admn.A1/2019, dated 10.09.2020 as Assistant Director Stationery Wing as illegal, arbitrary and consequently declare that the

petitioner is entitled to count his seniority from the date of his promotion as Special Category Stenographer i.e. 01.12.2009 in the category of Superintendent and consequently direct the 1st and 2nd respondents to place the petitioner at S.No.1 in the said Final Seniority List and consequently, declare that the petitioner is entitled to be promoted as Assistant Director, Stationary Wing on par with the 3rd respondent with all consequential benefits like seniority, arrears of pay etc and consequently direct the 1st and 2nd respondents to promote the petitioner as Assistant Director, Stationary Wing on par with the 3rd respondent with all consequential benefits like seniority, arrears of pay etc.

PERUSED THE RECORD :

3. The main contentions put forth by the counsel for the petitioner are as under:

a) That the Petitioner belongs to S.C. community and the Petitioner was initially appointed as Senior Stenographer on 27.06.1997 and further promoted as Special Category Stenographer on 01.12.2009.

b) That the services of the Petitioner were regularized in that category w.e.f. 01-12-2009 and the probation was also declared w.e.f. 01-12-2009.

c) That in terms of Telangana Ministerial Services Rules, 1998 the Petitioner was appointed as Superintendent by way of conversion vide order dt. 15.03.2019 and since then the Petitioner is working in the said capacity till date.

d) That aggrieved by such conversion the 3rd and 5th Respondents have raised their objections vide representation dt. 18.03.2019 and the same was considered and rejected by the 2nd Respondent vide Order dt. 02.04.2019 and the same has become final.

e) That the petitioner passed all the tests and is fully eligible and entitled to be promoted as Assistant Director, while so, the 2nd Respondent has given a tentative seniority list of Superintendents on 22.07.2019 and in the said list Petitioner is placed at Sl.No.4 whereas the Respondents No.3 to 5 were placed above the Petitioner from Sl.No.1 to 3.

f) That the Petitioner has given his objections on 30.07.2019 pointing out the illegality in that Seniority list and requested that the Petitioner be shown above the Respondents 3 to 5. But however ignoring the same the 2nd Respondent issued a final seniority list impugned in the present Writ Petition dt. 20.08.2019 communicated to the Petitioner on 20.08.2020 and further the Petitioner gave a representation on 02.09.2020 to the 2nd Respondent and also simultaneously filed Appeal vide Petitioner's Appeal dt. 07.09.2020.

g) That the 2nd Respondent had convened a DPC on 07.09.2020 and hurriedly promoted the 3rd Respondent as Assistant Director, Stationary Wing (impugned in this Writ Petition) vide order dated 10.09.2020.

h) That in the said DPC, the Petitioner has reliably learnt that besides the 3rd Respondent the 4th Respondent's name is also included.

i) That the 3rd Respondent is going to retire on 31.10.2020 and based on the said illegal DPC proceedings dated 07.09.2020 the 4th Respondent is going to be promoted.

j) That the 1st Respondent i.e., the Government vide their Memo dated 14.09.2020 directed the 2nd Respondent to submit a report but so far no action has been taken by the 2nd Respondent and the 4th Respondent is also going to be promoted without considering any of the representation of the Appeal of the Petitioner.

k) That the Petitioner after having been appointed as Senior Stenographer on 27.06.1997 through APPSC in the O/o. Commissioner of Printing, Stationery and Stores purchase department and worked as stenographer for 12 years was promoted to the post of Special Category Stenographer on 01-12-2009 i.e., Superintendent rank and worked on the said promotion post w.e.f. 01-12-2009 and completed more than 9½ years of service on the post of Special Category Steno i.e., in the rank of Superintendent to the utmost satisfaction of Petitioner's superiors and HOD.

l) That the Petitioner's services were regularized and probation was already declared on the post of Special Category Stenographer. The Petitioner was converted as Class-A Category-1 Superintendent as per the provisions contained in the Rule 3 and 16 of the Ministerial Service Rules, 1998 and the Petitioner is fulfilling all the eligibility conditions for conversion as per the rules.

m) That in the exercise of the powers conferred under the Rule (12) r/w Rule (13) of the Ministerial Service Rules, 1998 on conversion the Petitioner was posted as Superintendent against the existing vacancy in the Stationery Wing on Administrative grounds and the Petitioner assumed the charge of the post of the Superintendent on 15.03.2019 A.N. in Stationery Wing.

o) That the tentative Seniority List for preparation of final seniority list of Superintendents/Storekeeper was communicated to the Petitioner placing the Petitioner's name at Sl.No.4 and the objections of the Petitioner to the said seniority list are as follows:

(a) that the Petitioner's date of appointment was wrongly mentioned as 15.03.2019 instead of mentioning as 01-12-2009.

(b) that the Petitioner was converted as Class-A Category (1) Superintendent as per the provisions contained in the Rule(3) and (16) of the Ministerial Service Rules vide Proceedings No.782/Admn.B1/2018, dt. 15.03.2019.

(c) that as per Rule 15(2)(i) of the Ministerial Service Rules, 1998 it should be mentioned as 01.12.2009 from the date of promotion to the post of Special Category Stenographer which is equivalent to Superintendent in the scale of Rs.29,760 – 80,930 which is feeder cadre for the next higher post.

(d) that it was wrongly mentioned that the Petitioner's services are not

regularized when the Petitioner's services were regularized to the post of Special Category Steno vide Proc.No.2585/Admn.B1/2010, dt. 01.11.2011.

(e) though the Petitioner's probation was wrongly mentioned as not declared whereas the probation of the Petitioner was declared vide Proceedings dt. 28.01.2011 to the post of Special Category Stenographer.

(f) that the qualification of the Petitioner was wrongly mentioned as Shorthand English when the Petitioner was qualified for Shorthand English Senior Grade Higher.

(g) that in the remarks column it was wrongly mentioned that the Petitioner was transferred to Stationery Wing from Printing Wing and therefore it was not a transfer but conversion as per the orders issued vide Proc.No.782/Admn.B1/2018, dt. 15.03.2019.

(h) that the Departmental test passed was wrongly mentioned as Stores Purchase Volume 1 & 2 whereas it should be mentioned as Stationery Manual Volume 1 & 2.

(i) that as per the Rule 15(2)(i) of Ministerial Service Rules, 1998 Petitioner's seniority shall be fixed with reference to the date of his first appointment as Special Category Stenographer i.e., from 01.12.2009 and not from the date of conversion i.e., 15.03.2019 and the Petitioner should be placed at Sl.No.1.

p) That in view of the clear patent illegality committed by the Respondents the Writ Petition should be allowed as prayed for.

4. The main contentions put forth by the counsel for the respondents are as follows:

a) Learned counsel mainly relied on paras 6, 7, 10, 12 and 16 of the counter affidavit, which are as follows:

Para 6: In this regard it is humbly submitted that the petitioner was initially appointed as Senior Stenographer on 27-06-1997 in Printing Wing. He was later promoted as Special Category Stenographer in Printing Wing and having examined the said representations of the petitioner by the then Commissioner and an order was issued on 15.03.2019 converting him to the post of Superintendent in the Stationery Wing on his own request instead of Printing Wing to which he is originally appointed to, as there was no vacancy in the Printing Wing at the time of his representation and one post of Superintendent was lying vacant in Stationery Wing from 23. 08.2017 and no eligible Senior Assistants were available in the said Stationery Wing to be promoted as Superintendent.

Para 7: As the Petitioner was posted in Stationery Wing as Superintendent on his own request he was placed in the tentative seniority list of Superintendents and Storekeeper below that of Respondents 3 to 5, since the Stationery Wing is a separate unit of appointment to that of Printing Wing to which the Petitioner

originally belongs to and the Respondents 3 to 5 were already discharging their services as Superintendents in the Stationery Wing.

Para 10: The Committee in its report concluded that, the petitioner has come up on his own request from his parent unit of Printing wing to another unit of appointment, that is stationery wing, and hence, he may be treated as junior among the existing Superintendents and Storekeeper of the Stationery Wing by treating the conversion of the petitioner from one unit to another unit equally as transfer from one unit to another on his own request. Hence, it may be observed that his request has been considered and converted from the Special Category Stenographer to the category of Superintendent from one printing Wing to another stationery wing despite the three wings being separate units of appointment for promotion, seniority etc. as per the orders laid down in the Government Memo. No.58398/Ptg.A2/95-5, dated: 12.03.1996 for promotion, seniority etc.

Para 12: Thus the Petitioner is not qualified and not eligible for promotion to the post of Assistant Director (Stationery).

Para 16: Further, the Petitioner had filed an appeal with the Government on 07.09.2020 with regard to his seniority position in the Stationery Wing to which a detailed report mentioning the facts and circumstances of the case have already been sent to the Government vide File No.CPSSP-STY/E1/SM/7/2020-STY(E), dt. 08.12.2020 and the orders are awaited from the Government.

b) The counsel for the respondents places reliance on the judgment dated 31.07.2008 in W.P.No.27749/2007 and batch of a Division Bench of this Court and contends that the principle laid down in the said judgment equally applies to the facts of the present case wherein it was observed that seniority is all together different from that of the eligibility criteria laid down for the purpose of promotion and further the Petitioner has not rendered 5 years of service in the Stationery Wing as Superintendent and therefore Petitioner is not qualified and not eligible for promotion to the post of Assistant Director (Stationery).

c) As per Rule 8 and 15 read together of the A.P. Ministerial Service Rules, 1998 the Petitioner for the purpose of Seniority has to be below the unofficial Respondents.

d) The Counsel for the Respondent also places reliance on the judgment dated 12.04.2017 passed in Civil Appeal Nos.6795, 6798 of 2014 and batch and contends that the principle laid down in the said judgment applies to facts of the present case and contends that when certain length of service in a particular cadre can validly be prescribed and if so prescribed unless a person possesses that qualification he cannot be considered eligible for appointment and that seniority by its self does not out weigh experience and in the present case the petitioner did not have the required experience as per rules for promotion to the post of Assistant Director, Stationery Wing.

e) That there is no any patent illegality committed in respect of the final seniority list of Superintendents/SK Stationery Wing issued vide Circular Memo vide Rc.No.290/E1/2019-20, dt. 20.08.2019.

DISCUSSION & CONCLUSION :

5. A bare perusal of the proceedings No.782/Admn.B1/2018, dated 15.03.2019 of the 2nd respondent herein clearly indicate that the petitioner, a special category stenographer is considered and converted as Class-A Category(1) Superintendent as per the provisions contained in Rule (3) and (16) of the Ministerial Service Rules, 1998 and is posted as Superintendent against the existing vacancy in the Stationery Wing on administrative grounds in exercise of the powers conferred under the Rule (12) r/w Rule (13) of the Ministerial Service Rules, 1998.

6. Rule 15(2)(i) of the Telangana Ministerial Service Rules, 1998 deals with seniority and the same is extracted below :

"Seniority 15(2)(i) The seniority of a member of the service who is appointed by conversion from the post of Special Category Stenographer to the post of Superintendent or from the post of Senior Stenographer or U.D. Typist to the post of Senior Assistant shall be fixed with reference to the date of his first appointment as Special Category Stenographer or Senior Stenographer or UD, Typist as the case may be".

7. It is clear from the above Rule that the petitioner who is confirmed member of the service in the category of Special Category Stenographer is entitled to count his seniority in the category of Superintendent from the date of his appointment as Special Category Stenographer which is 01.12.2009 but however, the Petitioner's seniority in the category of Superintendent is reckoned only from 15.03.2019 i.e., the date of appointment to that post of Superintendent by way of conversion.

8. It is, however, specifically contended by the Petitioner at para 4.4 of the affidavit filed in support of the present writ petition that the 2nd Respondent has given a tentative seniority list of Superintendents on 22.07.2019. In the said list the Petitioner was placed at Sl.No.4 whereas the Respondents No.3 to 5 were placed above the Petitioner i.e., from Sl.No.1 to 3 and aggrieved by the same the Petitioner has given his objections on 30.07.2019 pointing out the illegality in that Seniority list and requested that the Petitioner be shown above the Respondents 3 to 5. But however ignoring the same the 2nd Respondent issued a final seniority list impugned in the present Writ Petition dated 20.08.2019 communicated to the Petitioner on 20.08.2020 and further the Petitioner gave a representation on 02.09.2020 to the 2nd Respondent and also simultaneously filed Appeal vide Petitioner's Appeal dated 07.09.2020.

9. A bare perusal of para 16 of the counter affidavit filed by the Respondent and the material documents filed along with the said counter affidavit very clearly

indicates that the Petitioner had filed an Appeal with the Government on 07.09.2020 with regard to Petitioner's seniority position in the Stationery Wing to which a detailed report vide Memo No.6640/Ser.IV/ A2/2020, dt. 14.09.2020 was called for from the 2nd Respondent and the detailed report mentioning the facts and circumstances of the case have already been sent to the Government vide File No.CPSSP-STY/E1/SM/7/2020-STY(E), dt. 08.12.2020 and orders are awaited from the Government. A bare perusal of the material papers filed by the Petitioner in support of the present writ petition also indicate that in pursuance to the impugned final seniority list dated 20.08.2019 the Petitioner submitted detailed representations dated 02.09.2020 and 07.09.2020 to the 2nd and 1st respondents respectively, but however, no decision duly considering the representations dated 02.09.2020, 07.09.2020 and communicating the said decision to the petitioner has taken place till as on date.

10. The Petitioner's challenge in the present writ petition is three fold, firstly Firstly, Challenging the impugned final seniority list dt. 20.08.2019, Secondly, challenging the consequential promotion order issued to the 3rd Respondent vide Proceedings dt. 10.09.2020 passed by the 2nd Respondent, Thirdly, Challenging the action of the 1st and 2nd Respondents in not taking the seniority of the Petitioner in the category of Superintendent from the date of promotion of the Petitioner to the category of Special Category Stenographer i.e., 01.12.2009 in terms of Rule 15(2)(i) of Telangana Ministerial Service Rules, 1999 as illegal and to set aside the impugned final seniority list dt. 20.08.2019 and also the consequential promotion order issued to the 3rd Respondent dt. 10.09.2020 passed by the 2nd Respondent.

11. The Apex Court in judgment reported in (2010) 12 SCC 471 in Shiba Shankar Mohapatra & Others v. State of Orissa & Others observed at para 17 as follows :

Para 17 : One must not lose sight that seniority and eligibility for promotion are two different concepts altogether. Explaining the difference between the Two, this Court in R. Prabha Devi v. Govt. of India held as under. (SCC) pp. 241-42. para 15)

"15. The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the

matter of promotion to the next higher post.....

When certain length of service in a particular cadre can validly be prescribed and is so prescribed, unless a person possesses that qualification, he cannot be considered eligible for appointment. There is no law which lays down that a senior in service would automatically be eligible for promotion. Seniority by itself does not outweigh experience.

12. This Court opines that until and unless the first limb of the prayer of the petitioner as sought for by the petitioner is examined by respondent Nos.1 & 2 herein duly considering the petitioner's representations dated 07.09.2020 addressed to the 1st Respondent and 02.09.2020 addressed to the 2nd Respondent and a decision taken by the concerned Respondents, the other consequential prayers sought for by the petitioner in the present Writ Petition cannot be granted at this stage. Taking into consideration the specific averments pleaded by the Petitioner at para 4.4 of the affidavit filed in support of the present writ petition (referred to and extracted above) and also the specific averments made by the Respondent at paras, 6, 7, 10, 12 and 16 of the counter affidavit filed in the present writ petition (referred to and extracted above) and also the law laid down by our High Court and Apex Court referred to and relied upon by the learned Counsel for the Respondent i.e., (1) the judgment dt.31.07.2008 in W.P.No.27749/2007 i.e., E.Shankar Reddy v. State of A.P. & Others and batch of a Division Bench of this Court on the point "that seniority is all together different from that of the eligibility criteria laid down for the purpose of promotion" and (2) the judgment dt. 12.04.2017 passed in Civil Appeal Nos.6795, 6798 of 2014 i.e., Palure Bhaskar Rao v. P. Ramaseshaiah & Others and batch in so far as the principle is concerned "that seniority is all together different from that of the eligibility criteria laid down for the purpose of promotion" and further that seniority by itself does not outweigh experience and further taking into consideration the law laid down by the Apex Court (2010) 12 SCC 471 in Shiba Shankar Mohapatra & Others v. State of Orissa & Others on the point that there is no law which lays down that a senior in service would automatically be eligible for promotion, this Court opines that the first limb of the prayer sought by the Writ Petitioner should be addressed first to enable the Petitioner to pursue the consequential prayers sought for in the present Writ Petition.

13. Taking into consideration all the above referred facts and circumstances the writ petition is disposed of directing respondent Nos.1 and 2 to take a decision on the detailed report forwarded to respondent No.1 i.e., Government vide File No.CPSSP-STY/E1/SM/7/2020-STY(E), dated 08.12.2020 by the 2nd Respondent duly examining and considering the petitioner's representations dated 02.09.2020 addressed to the 2nd Respondent and 07.09.2020 addressed to the 1st Respondent within a period of 3 weeks from the date of receipt of the copy of the order duly following the principles of natural justice and communicate the said decision to the Petitioner. Based on the said decision, as communicated to

the petitioner, the petitioner is at liberty to pursue the other consequential reliefs sought for in the present Writ Petition as per the remedies available to the petitioner under law.

14. Here, it is pertinent to mention that in view of the fact that the facts stated in the counter affidavit relate to a situation as on 22.12.2020 as per the deponents signature. In the event the respondents have already considered the petitioner's representations dated 02.09.2020 and 07.09.2020, on the basis of the report vide file No.CPSSP/STY/E1/ SM/7/2020 -,STY(E), dated 08.12.2020, and passed orders against the interest of the petitioner, the petitioner is at liberty to pursue the remedies as available to the petitioner under law. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.