

**IN THE HIGH COURT OF ANDHRA PRADESH:
AT AMARAVATI**

Writ Petition No.33608 of 2013

Between:

Smt. Y. Lillibai, W/o.G. Yellaji Rao, Aged 38 years, Senior Assistant, District Police Office, Srikakulam District.

.... Petitioner

And

- 1) The State of Andhra Pradesh, rep. by its Principal Secretary to Government, Home Department, A.P. Secretariat, Hyderabad – 500 022 & **Three** others.

....Respondents.

Date of Order pronounced on : 12.07.2022

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy : Yes/No
of the Judgment?

JUSTICE C. PRAVEEN KUMAR

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! Counsel for the Petitioner(s) : Smt. K. Rajya Lakshmi.

Counsel for the Respondents : 1) G.P. for Services-I
For Respondent Nos.1
and 2.

2) Dr. Majji Suri Babu,
Learned counsel for
Respondent No.3.

<Gist :

>Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

Writ Petition No.33608 of 2013

ORDER:- *(per the Hon'ble Sri Justice C. Praveen Kumar)*

Challenging the order in O.A.No.6167 of 2010, dated 05.12.2012 and the order in Review M.A.No.510 of 2013 in O.A.No.6167 of 2013 dated 08.11.2013 passed by the A.P. Administrative Tribunal, Hyderabad, the present Writ Petition is filed.

2. The facts, which lead to filing of present Writ Petition, are as under:-

(a) The petitioner herein who belongs to Scheduled Caste, was appointed as Junior Assistant on 06.04.1993 on compassionate grounds, with a condition that she should acquire her Intermediate qualification within a period of two years and should also acquire her degree qualification within a period of five years from the date of her appointment on compassionate grounds. The petitioner is said to have passed her degree examination in the month of December, 1997, but the University issued the Provisional Certificate in the month of May, 1998.

(b) While things stood thus, the Government issued G.O.Ms.No.60 G.A.(Ser.A) Department dated 11.02.1997

directing regularization of services from the date of acquiring qualification. A provisional seniority list was drawn in the cadre of Junior Assistants and Typists as on 01.01.2008, wherein, the name of the petitioner herein was shown at Serial No.12, while the name of the respondent no.3 herein was shown as Serial No.10 and the same was confirmed in the Final Seniority list.

I It is said that another seniority list was also drawn as on 01.01.2010 showing the same position. Pursuant thereto, respondent no.3 made an application seeking revision of final seniority list. Objections were called for and thereafter the seniority list was revised, taking the date of appointment as criteria for fixing seniority instead of date of acquiring qualification mainly on the ground that subsequent Government Order i.e. G.O.Ms.No.151 dated 22.06.2004 is prospective in nature. The said revision of seniority came to be challenged before the Tribunal in O.A.No.6167 of 2010 and the same was allowed holding that the seniority of the petitioner could not have been fixed from the date of appointment and instead it should have been done from the date she acquired qualification and accordingly the petitioner was reverted. Challenging the same, the present Writ Petition came to be filed.

3. Smt. K. Rajya Lakshmi, learned counsel for the petitioner mainly submits that when the petitioner has

obtained the required qualification for the post of Junior Assistant (appointed on compassionate grounds) within the time prescribed and when a right is accrued to her in terms of G.O.Ms.No.60 dated 11.02.1997, the Tribunal erred in taking the contents of the subsequent G.O. into consideration. In other words, her argument is that though the Marks Memo and the Graduation Certificate i.e. Bachelor of Arts itself clearly indicate that the petitioner has passed her degree examination in the month of December, 1997, she cannot be found fault with, if the Andhra University issues Provisional Certificate, at a belated stage. Having regard to the above, she would contend that G.O.Ms.No.151 cannot be given a retrospective effect.

4. On the other hand, Dr.Majji Suri Babu, learned counsel for the respondent no.3 opposed the same, contending that initially, the petitioner did not acquire the requisite qualification of Intermediate within three years and she was given further period of two years for acquiring requisite qualification as per G.O.Ms.No.969 dated 27.10.1995. But, she did not acquire her Intermediate or Degree qualification till 02.03.1998.

(a) It is further stated that the petitioner herein filed O.A.No.1788 of 1998 on 02.04.1998, requesting the Court to continue her in the same post till such time she acquires the required educational qualification. While disposing of the

said O.A., the Tribunal directed the petitioner to give a detailed representation to the Government for extension of time to acquire requisite qualification. On her representation, the Government *vide* G.O.Rt.No.1213 Home (Police-A) Dept., dated 20.05.1998 permitted the petitioner to continue her for one more year beyond 05.04.1998 i.e. upto 04.04.1999 as a last chance to acquire educational qualification within the time allowed. Subsequently, the petitioner submitted her B.A. Degree Provisional Certificate dated 18.05.1998 *vide* Regd.No.11170 of Andhra University.

(b) Basing on the above document, she was kept on probation from 18.05.1998 i.e., the date of acquiring the requisite qualification. Having regard to the above, the action of the authorities in placing the petitioner at Serial No.12 in the Seniority List of Junior Assistants and Typists in District Police Office, Srikakulam cannot be found fault with. Later on, the Seniority List of the petitioner came to be changed basing on the representation made and in view of G.O.Ms.No.60 G.A. (Service-A) Dept. dated 11.02.1997, which came to be challenged in O.A. and that the order passed in O.A. which is based on reasons, warrant no interference in this Writ Petition.

5. From the above, it stands established that the petitioner herein was appointed as Junior Assistant on compassionate grounds in the year 1993 with a condition

that she should obtain Intermediate qualification within a period of three years and Degree qualification within a period of five years. Counter filed by the respondent no.3 would clearly indicate that the petitioner herein filed O.A.No.1788 of 1998 before the Tribunal, requesting the Tribunal to continue her in the same post till she acquires educational qualification. The petitioner was given an opportunity to make a representation to the concerned for extension of time to acquire requisite qualification. Pursuant thereto, the petitioner made a representation which lead to issuance of G.O.Rt.No.1213 Home (Police-A) Dept. dated 20.05.1998 permitting the petitioner to continue her for one more year beyond 05.04.1998 and as a last chance to acquire the requisite educational qualifications within the time allowed. Even as per the counter, the petitioner is said to have produced her B.A. Degree Provisional Certificate on 18.05.1998, which is well within the time prescribed in G.O.Rt.No.1213 Home (Police-A) Dept. dated 20.05.1998.

6. Apart from that, it is also to be noticed here that the petitioner herein has placed on record the Marks Sheet issued by Andhra University. Column No.2 of the Marks Sheet, discloses the month and year of passing, which shows that the petitioner herein passed her examination in the month of December, 1997. Therefore, she has completed her degree within a period of five years granted by the authority.

If really, there was some delay in producing the Provisional Certificate, the petitioner cannot be found fault with, as the University issued the Provisional Certificate on 18.05.1998. Therefore, it can be held without any doubt that the petitioner herein has completed her degree in the month of December, 1997 itself. Even otherwise, production of provisional certificate issued by Andhra University on 18.05.1998 is well within the time prescribed in the G.O.

7. The next question would be ***whether G.O.Ms.No.151 dated 22.06.2004 is prospective or retrospective in operation?***

8. In order to appreciate the same, it would be appropriate to refer to G.O.Ms.No.60 dated 11.02.1997, which reads as under:-

“5. The Government after careful examination hereby direct that the candidate appointed conditionally, from 30.10.1991, i.e., from the date of issue of the G.O.Ms.No.612, General Administration (Ser.A) Department dated 30.10.1991, under the scheme of Compassionate appointments to the dependents of deceased Government Employees, with a condition to acquire the minimum Educational/Typewriting qualification, prescribed for the post in which they are appointed within the prescribed periods, shall be temporary to start with and their services shall be regularized duly placing them on probation from the date of their initial appointment, if they acquire the requisite Educational/Typewriting qualification prescribed for the post, to which they are appointed within the prescribed periods specified in the G.Os first to fourth read above.”

9. It would also be appropriate to refer to G.O.Ms.No.151 dated 22.06.2004, which is as under:-

“2. According to Rule 12 of A.P. State and Subordinate Services Rules, the person to be appointed to the Public Service by direct recruitment shall possess the requisite qualification for the post to which he or she is appointed. The Compassionate appointment is by direct recruitment. The orders issued in the G.O. fourth read above are contrary to the above rule position. In several cases, the inter-se-seniority could not be finalized as the persons appointed on compassionate grounds subject to acquiring such qualification, are acquiring the qualification at a much later date. Whereas the persons appointed as per Rules by other methods of appointment namely; by direct recruitment and by promotion / by transfer are fully qualified. Keeping this in view, the orders issued in the G.O. fourth read above have been reviewed and it is decided to consider the regularization of services of the persons appointed on compassionate grounds and subject to acquiring qualification, only from the date of acquiring the qualification fully for the post to which they have been appointed.”

A reading of the above two G.Os., would show that in Para.5 of G.O.Ms.No.60, for the words *“from the date of initial appointment”*, the following words came to be substituted:-

“from the date of acquiring such qualification fully”.

10. G.O.Ms.No.151 only amends G.O.Ms.No.60 dated 11.02.1997. It does not say that the acts done under G.O.Ms.No.60 gets superseded or *set aside* or abrogated in view of G.O.Ms.No.151. The fact that G.O.Ms.No.60 dated 11.02.1997 was in force at the time when the petitioner completed her degree [extended time approved by the authority] is not in dispute. Applying G.O.Ms.No.60, the

Superintendent of Police, (basing on the representation made by the petitioner herein) fixed the seniority of the petitioner above respondent no.3, which came to be *set aside* by the Tribunal, though G.O.Ms.No.60 was in force at the time when the petitioner obtained the requisite qualification for the post of Junior Assistant. It is to be noted that a vested right is acquired by the petitioner which cannot get altered by issuance of a subsequent G.O. amending the earlier G.O., more so, when it does not say that the acts done under the said G.O. get wiped out or superseded. Infact, G.O.Ms.No.60 issued fixing the seniority from the date of appointment, was never challenged before any forum and it remained in force till it was amended by G.O.Ms.No.151. Merely because, the subsequent G.O. which was issued six years later, tried to correct the difficulties faced in fixing the seniority from the date of acquiring the qualification, in our view, does not wipe out the earlier acts done in fixing the seniority from the date of appointment, more so, when the qualifications for the said post were obtained within the permitted time. It may be true that final seniority list was prepared much later by the authorities, but that cannot be a ground to alter the seniority by applying G.O.Ms.No.151 issued in the year 2004.

11. One other ground, on which, the Tribunal found fault with fixing of the seniority is that the petitioner did not question the correctness of the seniority within a period of six

months as per the Government Circulars. But it is to be noted here that even as per the contents of the judgment, the seniority list was issued on 01.01.2008 and 01.01.2010 and a representation came to be made in the month of June, 2010. It is also to be noted that the petitioner gave a representation on 18.06.2010 to the Superintendent of Police indicating that she has acquired qualifications in the month of December, 1997 itself and that she is entitled for regularization from the date of her initial appointment i.e., from 04.04.1993, which was acted up and on 13.08.2010, the Superintendent of Police issued instructions to the concerned, to fix the seniority by taking into consideration the date of joining into service. Therefore, it cannot be said that the petitioner failed to make any representation within a period of six months from the date of publication of seniority list.

12. Viewed from any angle, we do not find any merit in the order passed by the Tribunal and the same is liable to be *set aside*.

13. In the result, the Writ Petition is **allowed**, setting aside the Order in O.A.No.6167 of 2013 dated 05.12.2012 and order in Review M.A.No.510 of 2013 in O.A.No.6167 of 2013 dated 08.11.2013, passed by the A.P. Administrative Tribunal, Hyderabad. Consequently, the authorities

concerned are directed to take steps in fixing the seniority of the petitioner as early as possible preferably within a period of eight (8) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE VENKATESWARLU NIMMAGADDA

Date: 12.07.2022

Note: LR copy to be marked
B/o.MS

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AND
THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

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Writ Petition No.33608 of 2013
(per the Hon'ble Sri Justice C. Praveen Kumar)

Date:12.07.2022

MS