



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3526]

**WEDNESDAY, THE SEVENTH DAY OF MAY
TWO THOUSAND AND TWENTY FIVE**

**PRESENT
THE HONOURABLE SRI JUSTICE NINALA JAYASURYA
AND
THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO**

WRIT APPEAL No. 296 of 2023

Between:

The State Of Andhra Pradesh and Others

...APPELLANT(S)

AND

A Kullai Swamy and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1. GP FOR SERVICES IV

Counsel for the Respondent(S):

1. M KESAVA RAO

2. V. VENKATA NAGA RAJU (SC FOR APPSC)

The Court made the following:

JUDGMENT: *(Per Hon'ble Sri Justice Tarlada Rajasekhar Rao)*

In order to avoid confusion and facility purpose the parties in the writ appeal will be referred as arrayed in the writ petition.

2. The 1st petitioner was appointed as Lay Secretary and Treasurer Grade-II/Administrative Officer on 29.06.2012 whose probation was declared on 28.06.2014. The 2nd petitioner was appointed as Lay Secretary and Treasurer Grade-II/Administrative Officer on 05.02.2014 and whose probation was declared on 05.02.2016. The 1st writ petitioner submitted representations dated 10.11.2016 and 19.06.2017 as well the 2nd writ petitioner asking the authorities to reckon their seniority from the date 16.11.2000 instead of 06.02.2014 on par with their batch mates as published in the A.P. Gazette on 16.11.2000. The representations of the petitioners were rejected vide separate orders dated 03.05.2018 and 25.05.2016 respectively on the ground that is not feasible for consideration by the Principal Secretary to Government.

3. The orders dated 03.05.2018 and 25.05.2016 of the petitioners were assailed in W.P.No.23284 of 2020 on the grounds that the 2nd respondent in the writ petition had published Notification No.5/1998 inviting applications for 89 posts from qualified candidates belonging to Group-I for various categories. Nineteen of the 89 positions were notified in the cadre of Deputy Superintendent of Police, of the 19 posts in the aforementioned cadre, 10 were filled; the remaining 9 remained unfilled, aggrieved by the same, the candidates in the cadre of Deputy Superintendent of Police have filed O.A.No.6643 of 2003 before the A.P.Administrative Tribunal (now abolished) and the said original

application was allowed, on appeal it was confirmed by the Hon'ble Apex Court. Subsequently some of the candidates who are selected pursuant to the notification 5/1988 have filed batch of O.A.Nos.889, 1310, 1512 of 2007 before the Administrative Tribunal and these O.A.s were allowed by order dated 15.10.2004, and the second petitioner's O.A.No.4191 of 2012 was allowed by order dated 18.12.2012. The respondents were then instructed to fill all 89 posts that were notified under notification No.5/1998. The Administrative Tribunal's orders were challenged in a batch of writ petitions ranging vide W.P.Nos.17397 to 17400 of 2007, which were dismissed by the erstwhile High Court of Andhra Pradesh in an order dated 08.10.2007, thereby confirming the orders of the Administrative Tribunal. The APPSC took the case to the Apex Court, vide Civil Appeal No.4129 of 2006, which was dismissed by the Apex Court, vide order dated 14.09.2006, and confirmed the orders and observation of the Administrative Tribunal. The Administrative Tribunal while disposing the original applications has observed that it was a mistake on the part of the state and further observed that those who would be appointed in terms thereof would be able to claim any right only with prospective effect, i.e., from the date of their actual joining of service.

4. Now this Writ Petition No.23284 of 2020, was filed in response to the Administrative Tribunal's findings. The Tribunal held that the candidates should not be made to suffer because of mistake on the part of the State, and that the respondents' action was arbitrary and irrational. Because the petitioners would not suffer, they prayed that the respondents be ordered to grant notional seniority, merit-cum-roster,

and other financial benefits equivalent to those received by the selected candidates, as per notification No.5/1998 dated 16.11.2000.

5. The respondents have filed their counter and relevant paragraphs are extracted hereunder:

"Further it is submitted that as per the Hon'ble Supreme Court judgment the Commission have undertaken recast the earlier list of Group-I services 5/1998 recruitment by including nine (9) additional posts of DSP Category-2 duly obtained willingness from the candidates. During the process of selection Sl.Nos. (4) & (8) were selected to the post of DSP Cat-2 by the APPSC, Hyderabad.

In the A.P. State and Subordinate Services Rules, 1996 in rule (33); the order of merit or order of preference indicated in a list of selected candidates prepared by the Public Service commission or other selecting authority, shall not be disturbed inter-se seniority with reference to the candidates position in such list or panel while determining the seniority in accordance with this rule and notional dates of commencement of probation to the extent necessary, shall be assigned to the persons concerned, with reference to the order of merit or order of preference assigned to them in the said list.

And in rule (37) of AP State and Subordinate Service Rules Seniority of directly recruited candidates, re-allotted in

consultation with APP SC, the candidates re-allotted under sub-rule (C) of rule 4 shall be assigned seniority below the last regular candidate in the concerned class or category in the unit to which such candidate is re-allotted.

Further it is also submitted that the rule (37) of A.P. State and Subordinate service rule will not be applicable to these applicants, as they are not re-allotted candidates to the Medical and Health Department as their selection was afresh consequent on the orders of the Hon'ble Supreme Court. Commission have undertaken to recast the earlier list of Group-I services 5/1998 recruitment and accordingly their seniority will count from the date of their appointment only i.e., from 29.06.2012 & 06.02.2014 respectively.

Further it is also submitted that the petitioners are not re-allotted candidates to the Medical & Health Department as their selection was afresh and accordingly their seniority shall be counted from the date of their appointment only i.e., the 1st petitioner Sri A.Kullai Swamy from 29.06.2012 & the 2nd petitioner Sri T.Krishna Mohan Rao from 06.02.2014."

6. The W.P.No.23284 of 2020 was disposed by the learned single judge vide order dated 01.08.2022 in the following manner which is extracted hereunder:

"In view of the foregoing reasons and in view of the facts and circumstances of the case, this Court, in the interest of

justice, while declaring the action of the respondents in rejecting to consider the appointment of the petitioners notionally to the post of Administrative Officer with retrospective effect i.e., 16.11.2020, on par with A.P.Gazette published by the authority Memo No.6249/B2/2012, dated 03.05.2018 and Memo No.125118/B2/2016, dated 25.5.2016 for the post of Treasurer Gr.II and Lay Secretary respectively provisionally selected for resultant vacancies in accordance with the direction of Hon'ble Supreme Court of India in C.A.No.20432046/2010 dated 25.02.2010, as illegal, directing the respondents to consider the case of the petitioners for notional promotion, as was done in the case of the personnel in Police Department in G.O.Ms.No.13, dated 03.02.2017, and G.O.Ms.No.70 dated 24.05.2018, issued by the Govt. of A.P. to the post of Admn. Officer with retrospective date i.e., 16.11.2000 in the cadre of Administrative Officer and eligible for promotion for the post of Deputy Director with all consequential benefits. The entire exercise shall be completed within eight (08) weeks from the date of receipt of a copy of this order."

7. The said order in the above writ petition is assailed in this intra-court appeal by the State on the grounds that the order of the learned Single Judge is bereft of reasons and the learned Single Judge has disposed of the writ petition on relying of the judgments of the Apex Court, that the same are not applicable to the facts of the case, though the proposition of law is undisputed and further that said direction is

contrary to the observation of the Apex Court in Civil Appeal No.4129 of 2006 dated 14.09.2006 wherein the Apex Court has observed that the remaining nine candidates in the merit order should follow the “Rule of Reservation” and those who would be appointed in terms thereof would be able to claim any right only with prospective effect from the date of their actual joining of service, that the order of the learned Single Judge is contrary to Rule 33 of A.P.Subordinate Service Rules 1996 which reads thus :

Rule 33: - (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 date of his first appointment to such service class, category or grade.

8. Hence, prayed to allow the intra-court appeal and to set aside the order dated 01.08.2022 in W.P.No.23284 of 2020.

9. On the other hand, in opposition to the contentions raised by the learned Government Pleader, the learned designated Senior Counsel Sri P.Veera Reddy, along with the learned counsel on record Sri M.Kesava Rao for the writ petitioners, would support the order of the learned Single Judge and reiterated the facts referred to above regarding the merits of the case. It was argued that due to the irregular procedure adopted by the respondents, the petitioners should not suffer. The Tribunal has found that the mistake committed by the respondents was rectified, and the Tribunal directed that all the posts be filled as notified in Notification No.5/1998. Therefore, the petitioners are entitled to notional seniority as per the A.P.Gazette dated 16.11.2000, in

accordance with the notification. The order of the learned Judge is a reasoned one, and no valid grounds have been raised by the State. Hence, it was prayed that the intra-court appeal be dismissed. The petitioners also relied on the same paragraph No.15 cited by the State in *A.P.Public Service Commission Vs. P. Chandra Mouleesware Reddy* reported in (2006) 8 SCC 330.

10. Heard Sri G.Raju, learned Government Pleader for Services-I and learned designated Senior Counsel Sri P.Veera Reddy for Sri M.Kesava Rao for writ petitioners.

11. The learned Single Judge has decided the writ petition relying on the following judgments of the Apex Court, which are referred to hereunder:

(i) Ms. Neelima Shangla vs. State of Haryana, reported in (1986) 4 SCC 268; Virender S. Hooda & Others vs. State of Haryana and Another, reported in (1999) 3 SCC 69; and Lakshmana Rao Yadavalli and Another vs. State of Andhra Pradesh, reported in (2014) 13 SCC 393. In the aforementioned judgments, the Apex Court directed the respondents (State) to issue appointments with retrospective effect, i.e., from the date on which the incumbent ought to have been appointed.

12. There is no doubt about the proposition of law as adverted to by the learned Single Judge. However, whether the said proposition is applicable to the present facts of the case needs to be examined.

13. While dismissing the Civil Appeal 4129 of 2006 filed by the A.P. Public Service Commission, the apex court in the case of *A.P.Public*

Service Commission Vs. P. Chandra Mouleesware Reddy reported in (2006) 8 SCC 330 extracted the administrative tribunal's findings from the ruling, which are reproduced here for convenience:

The candidates, therefore, in our opinion, should not suffer owing to a mistake on the part of the State. The Tribunal, we have noticed hereinbefore, directed the Commission to notify the remaining nine candidates in the merit order following the 'Rule of Reservation'. It was categorically stated that those who would be appointed in terms thereof would be able to claim any right only with prospective effect, i.e., from the date of their actual joining of service. It, therefore, cannot be said that the order of the Tribunal was in any manner unjustified, arbitrary or unreasonable. The High Court, thus, in our opinion, rightly refused to exercise its jurisdiction under Article 226 of the Constitution of India.

14. As seen from the finding of the Administrative Tribunal, any right with prospective effect could be claimed by the incumbents there, according to the Administrative Tribunal's findings. Because of this, the writ petitioners in this case are no longer able to claim retrospective effect.

15. When relying on the government orders, namely G.O.Ms.No.13, dated 03.02.2017, and G.O.Ms.No.70, dated 24.05.2018, the learned single judge in the impugned judgment has not addressed their legitimacy or offered any justifications for their relevance to the facts of case.

16. In addition to the above said finding, under Rule 33 of A.P.Subordinate Service Rules, 1996, the seniority of a person in a service, class, category or grade shall, be determined by the date of his first appointment to such service class, category or grade unless he has been reduced to a lower rank as a punishment. Under the rule, under no circumstances, the seniority cannot be reckoned beyond the date of appointment and the writ petitioners have been appointed on 29.06.2012 and 05.02.2014 respectively.

17. The petitioners have not sought the same relief at initial stage to secure their seniority comparable to that of the selected candidates, in accordance with the A.P. Gazette dated 16.11.2000, in their original applications (O.As) submitted to the A.P.Administrative Tribunal. At pertinent moment the writ petitioners thought was that, they would be able to make ends meet if they would able to find job, now the writ petitioners are seeking for notional seniority at belated stage. In the counter filed by the state in the writ petition have raised several contentions including the application of Rule 37 of A.P.Subordinate Services Rules, 1996, the learned Single Judge has not examined or addressed the said issue either by accepting or rejecting the contention.

18. The order of the learned Single Judge is therefore unsustainable, as it is bereft of reasons. Hence, we are inclined to set aside the order dated 01.08.2022 in W.P. No.23284 of 2020 and remand the Writ Petition to the learned Single Judge to reconsider the matter afresh, in accordance with law.

19. Accordingly, the Writ Appeal is allowed with the above observations. There shall be no order as to costs.

As a sequel, interlocutory applications pending, if any, in this case shall stand closed.

JUSTICE NINALA JAYASURYA

JUSTICE TARLADA RAJASEKHAR RAO

Date: 07.05.2025

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**THE HON'BLE SRI JUSTICE NINALA JAYASURYA
AND
THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO**

WRIT APPEAL No.296 OF 2023

Date: 07.05.2025

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