

HON'BLE SRI JUSTICE NYAPATHY VIJAY

W.P.Nos.10163 and 10676 of 2023

COMMON ORDER:

As the issue in these two writ petitions is common, with the consent of both the learned counsel, the writ petitions are disposed of by a common order.

2. Both the writ petitions are filed by the Petitioners for not relieving them from the Office of the 3rd Respondent as they were appointed as Assistant Section Officers in A.P. Secretariat under 12 ½ % quota by transfer and for consequential direction to relieve them to join as the Assistant Section Officers in the A.P.Secretariat forthwith.

3. W.P.No.10163 of 2023 is taken up as lead case for narration of facts.

4. The Petitioners were appointed in Agricultural Department in different posts on different dates and were promoted as Junior Assistants and Senior Assistants in HoD. While so, on 22.12.2022, the Respondent No.1 issued proceedings No.GAD01-SUOASO(PROM/1/2022-SU-II) calling upon

applications for preparation of panel of Senior Assistants/Senior Inspectors working in HoDs for appointment by transfer as Assistant Section Officer. Pursuant to the memo, the Petitioners submitted their applications and Respondent No.3 approved the applications and forwarded the same to Respondent No.1. The Respondent No.1, after verifying the applications of the Petitioners and considering their length of service, issued Office Order Ms.No.144, 145, 146, 135 and 136 dated 16.03.2023 appointing the Petitioners as Assistant Section Officers in A.P. Secretariat under 12 ½ % quota and the same was communicated to Respondent No.3 as well as to the Petitioners.

5. On receipt of the appointment orders, the Petitioners approached Respondent No.3 and requested to relieve them from the post of Senior Assistant so as to enable them to report as Assistant Section Officer in A.P. Secretariat service. However, no action was taken thereon and the Petitioners are not being relieved by Respondent No.3. As per the appointment order issued vide Office Orders referred above, the Petitioners were called upon to report to duty before General Administration Department within 15 days and on failure, they shall forfeit the

rights of appointment and hence, the Petitioners are requesting for immediate relieving orders.

6. It is stated that there are 36 Senior Assistants in the Office of Respondent No.3 and there is no shortfall of manpower and the Junior Assistants also be appointed by transfer from the District/Unit Headquarters in the Senior Assistant post vacated by the Petitioners. However, as no relieving orders are being passed, the present writ petition is filed.

7. In the counter affidavit filed by the Respondents, it was stated that Respondent No.3 had addressed a letter to Respondent No.1 on 20.04.2023 stating that there is acute shortage of staff in the Office of Respondent No.3 and it would be difficult if the seniors are relieved from the Office of Respondent No.3, as there are no candidates available to fill up the vacancies. Therefore, Respondent No.3 sought for cancellation of the appointment orders of the Petitioners. It is further stated that pursuant to the same, Respondent No.1 passed Office Order Ms.No.186 dated 24.04.2023 cancelling the appointment orders of the Senior Assistants.

8. In the counter affidavit it was further stated that the power of cancellation of appointments is traceable to Rule 10(e) of the A.P.State and Subordinate Service Rules and as the reason given by Respondent No.3 was found to be germane, the appointments of the Petitioners were cancelled.

9. Learned counsel for the Petitioners argued that the applications of the Petitioners were forwarded by Respondent No.3 as mentioned above in January, 2023 and had refused to relieve the Petitioners on account of dearth of Senior Assistants in March, 2023. Learned counsel would contend that the Respondent No.3 having forwarded the names of the Petitioners for appointment as Senior Section Officers in the Secretariat could not have turned around and contend that there is shortage of manpower.

10. Learned Government Pleader would contend that the letter dated 20.04.2023 of Respondent No.3 seeking for cancellation of appointments of the Petitioners is not borne out any *mala fide* intent, but only on account of lack of manpower and it is on the said reasoning, the Respondent No.1 issued impugned proceedings seeking for cancellation of the appointment orders of

the Petitioners and the same have not been interfered with. It is further stated that the Petitioners have further avenues of promotion in the Office of Respondent No.3 and therefore, the Petitioners need not insist for appointment in the Secretariat as Assistant Section Officers.

11. Having heard the respective counsel, the issue that falls for consideration is, whether the reasons given for passing the impugned orders by the Respondents are sustainable?.

12. **Reasoning:** Firstly, the notification calling for willingness to be appointed as Assistant Section Officer in the A.P.Secretariat under A.P. Secretariat Service Rules, 1999 dated 22.12.2022 was brought to the notice of the Petitioners and the Petitioners expressed their willingness to join the said post. The Respondent No.3 had forwarded the same for consideration of the cases of the Petitioners for appointment as Assistant Section Officer. Respondent No.3 having sponsored the names of the Petitioners for appointment as Assistant Section Officers could not have turned around to deny the appointment of the Petitioners on the ground that there is dearth of manpower.

13. Secondly, at paragraph 13 of the Counter affidavit, it is stated that the impugned orders of cancellation were passed in exercise of power under Rule 10(e) of the A.P. State and Subordinate Service Rules, 1996. It is to be noted that the power of cancellation of appointment available under Rule 10(e) of the Rules is with regard to the appointments made under Rule 10(a) of the Rules. For better clarity, the Rule 10 (a) and (e) of the A.P.State and Subordinate Service Rules, 1996 are extracted below:

“(10) Temporary Appointment Including Appointments by Direct recruitment Including appointments by Direct Recruitment ,Recruitment/appointment by Transfer or by Promotion:

(a) Where it is necessary in the public interest to fill emergently a vacancy in a post borne on the cadre of a service, class or category and if the filling of such vacancy in accordance with the rules is likely to result in undue delay the appointing authority may appointing a person temporarily, otherwise than in accordance with the said rules, either by direct recruitment or by promotion or by appointment by transfer, as may be specified as the method of appointment in respect of the post, in the special rules.

(b)

(c)

(d)

(e) The appointing authority shall have the right to terminate the service of a person who has been appointed under sub-rule (a), at any time, without assigning any reason and without any notice if appointed by direct recruitment revert to a lower category or grade, if promoted, or revert to the post from which such appointment by transfer was made, if appointed by transfer.

(f)

(g)

(h)

(i)

14. The Rule 10 heading suggests with regard to temporary appointments and modalities thereto. The Rule 10(a) states that appointments can be made on temporary basis where it is necessary in the public interest to fill emergently a vacancy. The temporary appointment could be on direct recruitment/promotion or by appointment by transfer. The Rule 10 (e) states that those individuals appointed on temporary basis either on direct recruitment/promotion or by appointment by transfer under Rule 10(a) can be reverted or terminated without assigning any reason under Rule 10(e) of the Rules.

15. In the present case, the Rule 10 (a) or (e) have no application to the facts of the case as the notification dated

22.12.2022 is for appointment on regular basis as per the statutory channel of appointment by transfer provided under A.P. Secretariat Subordinate Service Rules,1997. The notification dated 22.12.2022 refers to the above channel of appointment by transfer under Rule 4 Class-B(4) of the A.P. Secretariat Subordinate Service Rules,1997. For clarity, the Rule 4 Class-B(4) of the A.P. Secretariat Subordinate Service Rules,1997 is extracted below;

4. Assistant Section Officer. (i).....

(ii).....

(iii)By appointment by transfer of

Senior Assistants from the Offices of Head of Departments Governed by the Andhra Pradesh Ministerial Service or the Andhra Pradesh Judicial Ministerial Service or the Andhra Pradesh High Court Service or the Andhra Pradesh Public Service Commission.

(iv).....

(v).....

(vi).....

(vii).....

16. The above Rule makes it explicit that the appointment by transfer to the post of Assistant Section Officer is through a legalised mode only and not out of any benevolent act of the Respondents. As the appointment of the Petitioners is through a statutorily recognised channel of appointment by transfer, the Rule 10(a) or (e) of the Rules has no application to the facts of the case.

17. Thirdly, it is to be noted that the notification was issued as there was deficit man-power in the cadre of Assistant Section Officer in the Secretariat and the impact of the impugned order is that the deficient man power in the cadre of Assistant Section Officer in Secretariat remains. The cancellation of the appointment orders should be the last resort and denying employment to the Petitioners in a way amounts to a compulsory service as Senior Assistant.

18. Every employee has a right of career planning and their career progress cannot be curtailed except in cases of duties involving emergent nature. In the present case, the Respondent No.3 could have exercised power under Rule 10(a) of the Rules

and appointed individuals in the vacancies of the Petitioners and sought time for the said purpose from Respondent No.1 to relieve the Petitioners rather than cancelling their appointments in entirety.

19. For the aforesaid reasons, the writ petitions are allowed with following directions:

- (a) The impugned Office Order Ms.No.186 dated 24.04.2023 issued by Respondent No.1 is set-aside.
- (b) The Petitioners shall be relieved from their respective posts in the Office of Respondent No.3 within a period of four (04) weeks from today in terms of their appointment orders as Assistant Section Officers in A.P. Secretariat.
- (c) On being relieved from the Office of Respondent No.3, the Petitioners shall be permitted to be joined as Assistant Section Officer in A.P. Secretariat without any further hurdles.
- (d) No orders as to costs.

As a sequel, pending applications, if any, shall stand closed.

Date: 03.09.2025
KLP

NYAPATHY VIJAY, J