

*** HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SMT DR.JUSTICE G.RADHA RANI**

+ WRIT PETITION No.11890 of 2008

% 07.02.2022

The Government of Andhra Pradesh,
Rep., by its Secretary,
School Education,
Secretariat, Hyderabad & others.

..... Petitioners

And

\$ G. Ramakrishna, S/o.Pedda Hussain,
Aged about 36 yrs, working as PET,
ZPHS Undavelly, Manopad Mandal,
Alampur Tq, Mahabubnagar District & others.

..... Respondents

! Counsel for the petitioners : Learned Government Pleader
for Services-I

Counsel for respondents : Sri Pratap Narayan Sanghi,
learned Senior Counsel
appearing for Sri Aadesh
Narayan Sanghi

< Gist :
> Head Note :
? Citations : 1. 2014(3) ALD 430 (DB)
2. (2003) 5 SCC 604
3. 2019 (6) ALD 630 (TS) DB

**HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

WRIT PETITION No.11890 of 2008

Between:

The Government of Andhra Pradesh,
Rep., by its Secretary,
School Education,
Secretariat, Hyderabad & others.

..... Petitioners

And

G. Ramakrishna, S/o.Pedda Hussain,
Aged about 36 yrs, working as PET,
ZPHS Undavelly, Manopad Mandal,
Alampur Tq, Mahabubnagar District & others.

..... Respondents

DATE OF JUDGMENT PRONOUNCED : 07.02.2022

SUBMITTED FOR APPROVAL:

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SMT DR.JUSTICE G.RADHA RANI**

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

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SMT DR.JUSTICE G.RADHA RANI**

WRIT PETITION No.11890 of 2008

ORDER : *(Per Hon'ble Sri Justice P.Naveen Rao)*

This writ petition is filed seeking the following relief :

“... to issue an appropriate writ order or direction more particular one in the nature of “Writ Certiorari” calling for the records relating to and connect the order in O.No.5832/2005 dt.21.06.2007 on the file of Hon'ble Andhra Pradesh Administrative Tribunal at Hyderabad and to quash or set aside the same by holding as erroneous and contrary to law and to pass such other order/orders which are deemed fit and proper in the circumstances of the case.”

2. I.A.No.2 of 2021 is filed to vacate the interim order and I.A.No.1 of 2021 is filed to expedite the hearing. With consent of both parties, we have taken up the writ petition for hearing.

3. O.A.No.5832 of 2005 is instituted before the Andhra Pradesh Administrative Tribunal (for short ‘the Tribunal’) by three Physical Education Teachers complaining that contrary to the merit secured by them in the direct recruitment, they were shown below the less meritorious candidates by drawing up seniority list following the roster system for provision of reservation in recruitment. They prayed the Tribunal to direct the respondents to set aside promotion list issued on 06.08.2005 placing the applicants below the less meritorious candidates in DSC-2001 selections and consequently to direct the respondents to prepare fresh chart of promotion for counselling to the post of P.D Grade II from P.E.Ts on the basis of merit-cum-seniority by including the names of the applicants as per the ranking in DSC-2001.

4. On elaborate consideration of the rival claims and following the precedent decisions, the Tribunal allowed the O.A., setting aside the proceedings dated 06.08.2005, and declared that as held by the Hon'ble Supreme Court, the seniority cannot be fixed in terms of roster points and to be determined based on the merit secured by the candidates and directed to review the promotions in accordance with the judgment of the Hon'ble Supreme Court referred to therein, as well as directions issued by the Tribunal in O.A.No.2754 of 2001. Aggrieved by the said decision of Tribunal, the State is before this Court.

5. When the matter was taken up for consideration, the Court was informed that W.P.No.1684 of 2008 is filed by the State concerning the same issue and the Court granted interim order. In view thereof, interim suspension was also granted in the present writ petition.

6. We have heard learned Assistant Government Pleader for Services-I appearing for the petitioners and Sri Pratap Narayan Sanghi learned Senior Counsel representing Sri Aadesh Narayan Sanghi, learned counsel appearing for the respondents 1 to 3.

7. As the issue agitated in the writ petition is covered by several decisions of the Hon'ble Supreme Court and this Court, it need not detain this Court further.

8. It is not in dispute that respondents herein secured higher merit and therefore, they were selected against open competition vacancies at Sl.Nos.21, 22 and 25 though they belong to BC-D (respondents 1 and 3) and BC-A (respondent No.2) category. While determining the seniority, instead of following the merit secured in

DSC-2001 selections, they were assigned lower placement in the seniority list by drawing up the seniority in accordance with the roster points.

9. Recruitment to public employment is based on merit secured in the recruitment examination, general/over all merit and merit within a social group/reservation category. Certain percentage of posts in public employment are reserved to be filled in favour of various social groups. Percentage of reservation to various social groups varies. To enforce compliance of reservation to various social groups 100 point roster is determined and reservation slots are prescribed. It is a running roster. Irrespective of social status of a person, if he secures higher merit and comes up within the open competition slots, he will be shown against such slots and less meritorious, falling below open competition merit will be shown against reservation slot of his social group. The candidates identified in this manner are fixed into 100 point roster to ensure reservation policy is complied. In any direct recruitment there will be a over all selection list drawn as per merit secured in the recruitment examination and another list to comply 100 point roster. As more meritorious is adjusted against open competition slot, a less meritorious candidate belonging to a particular social group can occupy higher slot in the 100 point roster. Once reservation principle is complied, the recruiting agency/authority should revert back to selection list drawn based on merit and forward to appointing authority.

10. However, often the competent authority treats list drawn as per 100 point roster as merit list and based on the roster position

in that list, assigns seniority. This is skewed understanding of concept of merit and seniority. Fundamental principle in any service is to respect merit. Therefore, more meritorious employee is shown as senior compared to a less meritorious employee. Adopting roster list for seniority would cause great harm to merit. As more meritorious candidate of a social group is adjusted against open competition vacancy, a candidate secured far less merit belonging to same social group gets selected to post reserved for that social group and may occupy higher roster point as compared to a merit candidate. Thus, adopting reservation roster point list as merit list to determine seniority is anti-thesis to merit.

11. Rule 33 of the Telangana State and Subordinate Service Rules (for short 'the Rules'), regulates determination of seniority in the service of State seeks to answer this issue. Rule 33 requires determination of seniority among direct recruits based on merit secured in the selections. Rule 33 reads as under :

“Seniority : (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.

(b) The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason, the order of preference among them; and where such order has been fixed, seniority shall be determined in accordance with it:

Provided that 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 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.

(c) Whenever notional date of promotion is assigned, such date of notional promotion shall be taken into consideration for computing the qualifying length of service in the feeder category for promotion to the next higher category and that the notional

service shall be counted for the purpose of declaration of probation also in the feeder category.

(d) The transfer of a person from one class or category of a service to another class or category of the same service, carrying the same scale of pay shall not be treated as first appointment to the later class or category for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the date of his regular appointment in the class or category from which he was transferred.

(e) Where a Member of a service, class or category is reduced for a specific period, to a lower service, class or category or grade,___

(i) in cases where the reduction does not operate to postpone future increment, the seniority of such member on re-promotion shall, unless the terms of the order of punishment provides otherwise, be fixed in the higher service, class or category at which it would have been fixed but for his reduction;

(ii) in cases where the reduction operates to postpone future increment, the seniority of such member on re-promotion shall, unless the terms of the order of punishment provide otherwise, be fixed by giving credit for the period of service earlier rendered by him in the higher service, class or category.

(f) Seniority of a retrenched and reappointed person :- The Seniority of a member of a service who is re-appointed after having been retrenched, owing to reduction of staff as a measure of economy, shall be determined in accordance with the date of such re-appointment:

Provided that the inter-se-seniority of such members absorbed in the same service, class or category shall be determined,

(i) in any case in which re-appointment of such members was made in consultation with Public Service Commission or the other selecting authority, in accordance with the order of merit or the order of preference indicated by the said Public Service Commission or other selecting authority; and

(ii) in any other case, in accordance with the total length of service, in the same equivalent or higher service, class or category put in by such member prior to retrenchment.

(g) The seniority of an approved candidate, who takes up military service before joining his appointment to any service, class or category shall, on his appointment to such service, class or category, on his return from the said military service, be determined in accordance with the order of preference shown in the authoritative list of candidates approved for appointment to the service, class or category.”

12. The scope of Rule 33 (b) was considered by the Division Bench of this Court in **S.S.L. Narayana Vs Ch.Madhu Mohan Rao and Others**¹. In the said case also, seniority was determined by following the roster points as indicated in Rule 22 of the Rules,

¹ 2014 (3) ALD430 (DB)

instead of determining the seniority based on the merit secured in the selections.

13. On considering the scope of Rule 33 (b) and the law laid down by the Hon'ble Supreme Court in **Bimlesh Tanwar Vs State of Haryana and others**², the Division Bench of this Court held as under :

“13. Rule 33 (b) directs tat if the appointing authority has fixed any order of preference among the various candidates, appointed simultaneously, at the time of issuing orders of appointment, the seniority shall be determined in accordance with that. The proviso takes care of the situation, where the appointment is made by the appointing authority on the basis of any selection undertaken by a different agency. That agency can be a Selection Committee within the department, a committee of the officials of the same department, or an independent agency, like the APPSC.

14. It is fairly well settled that whenever an appointment or for that matter, promotion, is effected on the basis of selection, the ranking assigned by the Selection Committee shall govern the order or priority among the selected candidates. In a given case, the appointing authority may not accept the recommendation of the Selection Committee, in its entirety, or in part. However, the appointing authority is precluded from meddling with the ranking assigned by the selecting agency. For example, if the Selection Committee has prepared a list of 10 candidates, in the order of merit, and has forwarded it to the appointing authority, the latter has every right to refuse to accept the list in its entirety or to disapprove the selection of some of the candidates. If the appointing authority is of the view that it is not desirable, for reasons which are recognized in law; to appoint candidates at Sl.Nos.4 and 7, it can refuse to appoint them, even while appointing the remaining 8 candidates. However, it cannot place candidate at Sl.No.5 at Sl.No.1, or undertake such exercise vis-à-vis the other candidates. The principle underlying this is that when the very basis for selection is merit, which, in turn, is manifested in the ranking and thereby the seniority must also depend on the relative merit among the selected candidates.”

14. Following the said decision and the decision of the Hon'ble Supreme Court in **Bimlesh Tanwar**, same view was expressed by another Division Bench of this Court in **L.Rani Vs State of Telangana and others**³.

15. In **V.Senthur and Others Vs M.Vijayakumar and others**⁴, the Hon'ble Supreme Court reiterated the principle and held that seniority in a cadre has to be determined based on the merit

² (2003) 5 SCC 604

³ 2019 (6) ALD 630 (TS) DB

⁴ MANU/SC/0759/2021

secured in the selections and cannot be drawn up based on a list prepared in accordance with the roster points. The Hon'ble Supreme Court held as under :

"23. This Court, while dismissing the SLPs against the first judgment, has clearly held that after the emergence of the judgment in Bimlesh Tanwar (supra), the fundamental principle governing the determination of seniority was that, it should be based on merit list of selection and that the list made on the basis of roster point, would not be permissible in law. It could thus be seen that while dismissing the SLPs this Court has reiterated the legal position as laid down in the case of Bimlesh Tanwar (supra) to the effect that while determining seniority, what is relevant is the inter se merit in the selection list and not the roster point.

24. It is pertinent to note that though, the then learned Attorney General had raised an issue with regard to a contrary view taken by the Madurai Bench of the same High Court, this Court clearly held that since the issue was now covered by the decision of this Court in Bimlesh Tanwar (supra), the pendency of the SLPs challenging the judgment of Madurai Bench, would be of no consequence inasmuch as the said SLPs would be governed by the judgment of this Court in Bimlesh Tanwar (supra)."

16. It is also relevant to note that following the decision in W.P.No.13483 of 2013 on the same aspect, W.P.No.1684 of 2018 was dismissed by judgment dated 01.07.2014.

17. Having regard to the law laid down by the Hon'ble Supreme Court and this Court we do not see any error in the decision of the Tribunal in directing determination of inter se seniority of the Physical Education Teachers strictly in accordance with the merit secured by them in DSC-2001 selections.

18. Writ Petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO,J

Dr. G.RADHA RANI, J

7th February, 2022

Note : L.R.copy to be marked
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