

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION NOS.21701 & 22011 of 2011

W.P.No.21701 of 2011:

Between:

The Government of Andhra Pradesh,
rep.by its Secretary to School Education
Department, Secretariat Buildings,
Hyderabad and others.

.....Petitioners/
Respondents

and

B.Aswathama s/o. Hanumantha Rao,
Aged about 42 years, occu: Secondary
Grade Teacher, PS Kaluvakunta,
Ramayampet Mandal, Medak District
and others.

.....Respondents/
Applicants

JUDGMENT PRONOUNCED ON : 29.07.2022

**HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU**

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

*** HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU**

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!Counsel for the petitioners : Asst.Government Pleader

Counsel for the Respondents: Sri G.Vidya Sagar

<Gist :

>Head Note:

? Cases referred:

SLP No. 30636 of 2009
(2008) 7 SCC 728
(2020) 5 SCC 230
1998 (5) SCC 246
1993 SCC Supp (3) 181

**HONOURABLE SRI JUSTICE P.NAVEEN RAO
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WRIT PETITION NOs.21701 and 22011 of 2011

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

Teachers recruitment notification was issued in the year 1998, popularly called as 'District Selection Committee (DSC) Recruitment Notification', notifying 1431 Secondary Grade Teachers (SGT) vacancies in Medak district.

2. The DSC-1998 Teachers recruitment was governed by Rules notified vide G.O.Ms.No.221 Education Department dated 16.07.1994. The Rules required estimation of vacancies as on 1st April, 1998 and vacancies likely to arise up to the end of September of that year. The candidates who were not included in the select list of DSC-1998 waged long drawn litigation, on wrong computation of actual number of vacancies that ought to have been made available for recruitment. In the O.As., filed in the years 1999 and 2000, first round of litigation, Hon'ble Andhra Pradesh Administrative Tribunal issued directions to compute vacancies that arose up to September, 1998 on account of promotion, retirement, newly sanctioned posts etc. Alleging that the available vacancies were not properly assessed and computed, second

round of litigation was mounted in the Tribunal in O.A.No.2155 of 2000 and batch.

3. On analyzing the rules governing DSC-1998 and the earlier directions, the Tribunal opined that the respondents ought to have made necessary exercise to include all the vacancies that were available as on 15.03.1998 and such of those vacancies that would have been available till the end of September, 1998. The Tribunal directed the respondents to prepare the estimation of vacancies relating to DSC-1998 keeping in mind observations made in the order dated 28.09.2000.

4. Even by these directions, grievance of candidates was not properly answered leading to instituting third round of litigation. O.A.No.7119 of 2000 and batch of O.As., were filed in the Tribunal praying to direct the petitioners to fill the vacancies identified as per Orders of Hon'ble Tribunal in O.A.No.2155 of 2000 and batch by the 1998-DSC selected candidates. The Tribunal disposed of the OAs by issuing series of directions.

5. Aggrieved thereby, State preferred W.P.No.334 of 2002 and batch. Batch of writ petitions were disposed of by common order dated 05.02.2002 modifying the directions issued by the Tribunal.

6. In compliance to the directions of the Division Bench, respondents along with similarly situated persons were appointed as Secondary Grade Teachers between June and July, 2002 in Medak District.

7. The next round of litigation is on seniority claim of candidates selected in DSC-1998, but appointed in 2002. The Secondary Grade Teachers appointed in the said manner in Medak District set up claim to seniority with effect from the date on which their counter parts were appointed in DSC-1998 and above Secondary Grade Teachers appointed in the subsequent recruitment. They filed O.A.Nos.10338 of 2008 and 5515 of 2009 praying to declare that the applicants are entitled to seniority in the cadre of Secondary Grade Teachers with effect from the date on which their counter parts were appointed in DSC-1998 and above the Secondary Grade Teachers appointed in subsequent DSCs.

8. The applicants urged before the Tribunal that though they were selected and appointed as Secondary Grade Teachers as per their merit in DSC-1998, they were not treated as part of DSC-1998 merit list, treated their selection as separate selection and claimed that they are entitled to reckon their seniority as per the panel prepared for DSC-1998. They also placed reliance on General Rule 33(b) of the State and Subordinate Service Rules, 1996 (Rules, 1996). They claimed notional

date of commencement of probation on par with candidates appointed in DSC-1998 recruitment.

9. *Per contra*, according to petitioners the applicants were appointed to the additional vacancies added later and, therefore, there cannot be a comparison. They have also raised the plea of delay and laches as the O.As., were instituted in the year 2009. Further, it was also urged that if notional seniority is extended to the applicants it would adversely impact others, unsettling the settled issue and possibility of spate of litigation. The petitioners also contended that if notional appointment is extended to applicants they have to be paid regular pay scales from 1998 onwards and arrears of monetary benefits also have to be paid.

10. The Tribunal allowed both O.As. The Tribunal declared that the applicants are entitled to be considered as candidates selected in DSC-1998 and placed as per their merit, eligibility and suitability among the candidates selected as Secondary Grade Teachers in DSC-1998 with all consequential benefits including seniority and promotion to the post of School Assistant. However, the Tribunal denied the monetary benefits. Aggrieved thereby, the State filed these two Writ Petitions.

11. Heard learned Assistant Government Pleader for petitioners and the learned senior counsel Sri G.Vidya Sagar for respondents.

12. Learned Assistant Government Pleader would contend that date of joining in service is much later to the date of joining DSC-1998 candidates and in between one DSC recruitment was made and another was in the process. Therefore, the respondents are not entitled to claim seniority on par with DSC-1998 candidates. According to the learned Assistant Government Pleader, for direct recruits, *inter se* seniority is based on merit secured in the recruitment and date of joining in service. As all these respondents are less meritorious compared to candidates who were appointed to the extent of vacancies notified in DSC-1998, they cannot claim *inter se* seniority with DSC-1998 candidates as they were appointed against additional vacancies added to the vacancies notified initially. He would submit that direct recruit commences his service when he joins in service and that shall be the date of commencement of probation and to assign seniority and no direct recruit can claim a date anterior to the date of appointment for the purpose of computation of service for seniority. Respondents cannot compare themselves to DSC-1998 candidates and also that DSC-2000 candidates were appointed earlier to the respondents.

13. He would submit that in the facts of this case, General Rule 33(b) of the Rules, 1996, has no application. He would further submit that DSC-2000 candidates were appointed in 2001. They are not made parties. However, if the claim of the respondents is accepted, the

respondents have to be placed above DSC-2000 candidates in the seniority list. No such steps can be taken to assess higher seniority affecting right of DSC-2000 candidates. The issue of *inter se* seniority between DSC-2000 candidates and the applicants is settled long ago and settled things cannot be un-settled after long lapse of time. Learned Assistant Government Pleader relied on the decision of the Hon'ble Supreme Court in **Commissioner and Director of Agriculture and Another Vs. P.Sudhakar Rao and another**¹.

14. *Per contra*, learned senior counsel Sri G.Vidya Sagar would submit that due to wrong computation, large number of available vacancies were not shown when DSC-1998 notification was issued. After the direction of the Tribunal in the first round of litigation additional vacancies were added to the vacancies notified initially in DSC-1998 recruitment notification and, therefore, additional form part of the vacancies notified in DSC-1998. As per the merit secured by the respondents in the DSC-1998, they are entitled to be shown in 1998 merit list. That the respondents are not claiming seniority over DSC-1998 candidates, but claim that they should be placed immediately below DSC-1998 candidates.

¹ SLP No. 30636 of 2009

15. Learned senior counsel would submit that as directed by the Hon'ble Tribunal in O.A.No.2155 of 2000 and batch, the respondents herein ought to have been appointed before appointment of DSC-2000 candidates. The delay in taking steps to appoint the respondents cannot deprive the respondents' seniority as per DSC-1998 notification merit.

16. He would submit that proviso appended to General Rule 33(b)² would come into operation. Order of merit or order of preference indicated in the list of selected candidates prepared by the Selecting authority should not be disturbed at any cost. Since the delay in appointment is not attributable to the respondents, but because of illegalities committed by the petitioners, the respondent are deemed to have been appointed notionally from the date of appointment of DSC-1998 candidates and based on the said notional date they are entitled to seniority over and above subsequent DSC candidates.

17. He would submit that General Rule 33(a)³ has no application to the facts of this case. According to the learned senior counsel, the Division Bench in judgment in W.P.No.334 of 2002 and batch has never

² **Rule 33: Seniority – (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.

³ **Rule 33. 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.

directed the respondents to ignore the claim of seniority, it only observed that the respondents should be appointed and process of appointment should be completed before issuing DSC-2002 notification. It has not dealt with *inter se* seniority claim of the respondents and DSC-2000 candidates, whereas that the issue is settled by the directions of APAT in O.A.No.2155 of 2000 and batch.

18. In support of his contention, learned senior counsel placed reliance on the following decisions:

- (i) **Balwant Singh Narwal and others vs. State of Haryana and others**⁴; and
- (ii) **C.Jayachandran vs. State of Kerala and others**⁵.

19. Issue for consideration is whether petitioners are entitled to claim seniority on par with first batch of DSC-1998 appointee ?

20. Before going into merits of the case, we note hereunder the view taken by the Hon'ble Supreme Court and this Hon'ble Court on claim to seniority by persons though selected pursuant to earlier recruitment notification but appointed later to appointments made as per subsequent recruitment notifications.

21. In **Balwant Singh Narwal**, merit list drawn by Public Service Commission including 30 names was challenged on the ground that

⁴ (2008) 7 SCC 728

⁵ (2020) 5 SCC 230

though the indent was for 18 vacancies only, inclusion of larger number of candidates in the selection list was illegal. Said challenge was upheld by the learned single Judge of Punjab and Haryana High Court and same was affirmed by the Division Bench also. Having regard to the decision of the High Court of Punjab and Haryana, 16 candidates were appointed by order dated 2.6.1994. The order of the Division Bench was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court, at the interlocutory stage, directed not to fill up 12 vacancies. The Appeals were disposed of by order dated 6.12.1999 reversing the decision of the High Court and dismissing the writ petitions filed before the High Court. The Hon'ble Supreme Court held that the Government requisitioned 37 posts, therefore, there was no bar on the power of the Commission to recommend 30 names. Pursuant to the said judgment, by order dated 26.5.2000, 13 persons were appointed as Principals. On their appointment, 13 persons submitted representations for fixing their seniority as per the merit list drawn by the Public Service Commission on 1.10.1993. They contended that but for the litigation, they would have been appointed along with other 16 candidates and as their selection was with regard to the vacancies notified in January, 1992, they should be given seniority above those who were appointed against subsequent vacancies. The State Government accepted their plea and fixed their positions immediately after the 16 candidates appointed from

the same merit list and they were shown above the later appointees. The challenge made by the later appointees was rejected by the High Court.

22. Following the earlier decision in **Surendra Narain Singh Vs State of Bihar**⁶, the Hon'ble Supreme Court held that candidates selected against earlier vacancies but could not be appointed along with others of the same batch due to certain technical difficulties, when appointed subsequently, would have to be placed above those who were appointed against subsequent vacancies.

23. In **C.Jayachandran** issue was similar to **Balwant Singh Narwal**. The selection list was challenged with reference to minimum age. Kerala High Court struck down the eligibility with reference to minimum age and affirmed by the Hon'ble Supreme Court. Consequently, four candidates were selected against general merit vacancies and 3 others against reserved vacancy category. The selection was disputed by the non-selected candidates before the Hon'ble Supreme court. The Hon'ble Supreme Court granted liberty to file writ petition. The writ petition was filed before the High Court challenging the grant of moderation/ grace marks to the candidates appointed on 30.3.2009 and sought for appointment as District and Sessions Judge. The writ petition was

⁶ 1998 (5) SCC 246

allowed by the Division Bench. The ground of moderation of marks was found to be unsustainable, therefore, High Court directed to recast the select list. Accordingly select list of 6 names was recast. In accordance with the recasted select list, the appellant was appointed as District Judge on 27.12.2010. The High Court also recommended to continue 3 persons appointed with effect from 30.03.2009. The Appellant submitted representation claiming notional seniority with effect from the appointment of other candidates through the same selection with effect from 30.3.2009. The claim of seniority was not accepted by the High Court holding that appellant slept over his rights and has allowed the appointment by-transfer method appointees to gain seniority. In fact, some of them were even granted selection grade earlier to the appellant and declined to interfere with the assignment of lower seniority to the appellant. In other words, the rejection of the claim was only primarily on the ground of delay in setting up the claim.

24. Accepting the contention of the appellant and reversing the decision of the High Court, the Hon'ble supreme Court held:

“35. The earlier writ petition filed by the appellant was allowed on 13-9-2010. The Division Bench of the High Court has directed to re-cast the seniority amongst the seven shortlisted candidates. The appellant was one of them. The challenge to the said order by three affected candidates remained unsuccessful when SLP was dismissed by this Court on 8-10-2010 [*Sulekha M. v. High Court of Kerala*, 2010 SCC OnLine SC 80]. The SLP was filed by the candidates who were granted benefit of moderation of marks. Once the direction of the Division Bench has attained finality, the appellant was entitled to seniority as per the select list to be revised as per merit of the candidates. In terms of Rule 6(2), the seniority is to be determined by the serial order in which the name appeared in the appointment order. The argument of the learned counsel appearing for Respondent 5 that the appellant was

not appointed by the same appointment order, therefore, the appellant cannot claim seniority is not tenable. The appellant was entitled to be appointed along with other three candidates but because of the action of the High Court in adopting moderation of marks, the appellant was excluded from appointment. The exclusion of appellant from appointment was on account of an illegal act by the High Court which has been so found by the judgment dated 13-9-2010 [*Jayachandran C. v. High Court of Kerala*, 2010 SCC OnLine Ker 4891 : (2010) 3 KLJ 212] . Since the select list has to be revised, the appellant would be deemed to be the part of the appointment along with other candidates in the same select list. As the actual date of appointment was on 24-2-2011, the appellant cannot actually be treated to be appointed on 30-3-2009 but is entitled to notional appointment from that date and consequential seniority.

.....

39. The appellant was wrongfully excluded from the process of appointment on account of an illegal and arbitrary grant of moderation of marks. The Government in its Order dated 22-12-2010 cancelled the appointment of three District and Sessions Judges who were granted benefit of moderation. Badharudeen was earlier assigned general category seat but since the appellant was higher in merit, Badharudeen was pushed down and adjusted against OBC category seat at Sl. No. 42. Badharudeen has not challenged his pushing down at Sl. No. 42 either before the learned Single Bench of the High Court or before the Division Bench of the High Court or even before this Court. Therefore, as respondent, he cannot be permitted to dispute the grant of seniority to the appellant at Sl. No. 41. The judgment referred to by the learned counsel is not helpful to the arguments raised as the appellant therein sought seniority as direct recruit from the time when the vacancies occurred. ***To raise such an argument, reliance was placed upon judgment of this Court reported in Union of India v. N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] , wherein this Court held that a person is disentitled to claim seniority from the date he was not borne in the service. The said finding is in the context of the claim of the appellant to claim seniority from the date of availability of the vacancies; whereas in the present case, the appellant is claiming seniority from the date the other candidates in the same selection process were appointed but the appellant is excluded on account of an illegal act of the High Court of the moderation of marks. Therefore, the said judgment is not of any help to the arguments raised.***

40..... The fact that some of the officers have been given selection grade will not debar the appellant to claim notional date of appointment as the appellant has asserted his right successfully before the Division Bench in an earlier round and reiterated such right by way of a representation. ***The delay in deciding the representation by the High Court cannot defeat the rights of the appellant to claim seniority from the date the other candidates were selected in pursuance of the same selection process.***

41. Still further, the Division Bench of the High Court has completely erred in law in holding that the appellant has delayed the challenge of his appointment, vide order dated 22-12-2010. The appellant was appointed pursuant to a direction issued earlier by the Division Bench. The Division Bench has directed to re-cast the select list and in such select list, the name of the appellant appears at Sl. No. 3 and that of Badharudeen at Sl. No. 4. The appellant has submitted the representation on 11-4-2012 i.e. within 1 year and 2 months of his joining and submitted reminder on 18-9-2014. It is the High Court which has taken time to take a final call on the representation of the appellant and other direct recruits. ***The appellant was prosecuting his grievances in a legitimate manner of redressal of grievances. Therefore, it cannot be said that the claim of the appellant was delayed as he has not claimed the date of appointment as 30-3-2009. The appellant having been factually***

appointed vide communication dated 22-12-2010, he could not assume or claim to assume charge prior to such offer of appointment. The appellant has to be granted notional seniority from the date the other candidates were appointed in pursuance of the same select list prepared on the basis of the common appointment process.”

(Emphasis supplied)

25. In W.P.No.36266 of 2013 also similar issue has come for consideration before Division Bench of this Court. Pursuant to District Selection Committee 2001 selections, 9 SGTs were appointed on 4.10.2002, whereas others were appointed on 18.1.2002. Those 9 SGTs sought for notional seniority from 18.1.2002 on par with first batch of 2001 candidates. By order dated 28.2.2013, the Tribunal allowed O.A., holding that the applicants were entitled to notional seniority as per their ranking in merit list of 2001 on par with the teachers appointed on 18.1.2002. The Tribunal relied on decision of **Balwant Singh Narwal**. Following the decision of **Balwant Singh Narwal**, the Division Bench of this Court upheld the Tribunal's directions.

26. In substance, it is consistently held by Hon'ble Supreme Court and this Court that from among the persons selected in pursuant to the same recruitment notification, if some persons were appointed earlier and some persons were appointed later and the delay occasioned due to administrative lapses, the persons appointed later are entitled to claim seniority on par with the persons appointed earlier and over and above candidates appointed in the subsequent selections.

27. Rule 33 of General Rules deals with determination of seniority. For direct recruits date of first appointment shall be the criteria to determine seniority. It protects merit secured in a selection to determine *inter se* seniority of direct recruits and goes to the extent of granting notional appointment to a higher meritorious person to protect his seniority, even if he joins later to the date of joining of less meritorious person.

28. Few dateline of events makes these cases stand apart. The candidates who have participated in the DSC-1998 recruitment, having cleared the exam and also found suitable for appointment, but were not included in the merit list. The merit list was drawn to the extent of vacancies notified in the recruitment notification. These candidates contested the wrong computation of vacancies. According to them, if vacancies were correctly computed as per rules they would have been included in the merit list. They were successful in establishing before the Tribunal on availability of more number of vacancies than actually notified. If only those vacancies were added to the vacancies initially notified before drawing up merit list, these candidates also could have found place in the merit list. They were forced to fight several rounds of litigation as the Government was not complying with statutory mandate and reluctant to comply with directions of the Tribunal to identify actual number of vacancies available for recruitment in DSC-1998. By

the time correct assessment of vacancies was made and respondents were appointed three more DSC recruitment notifications were taken out. Thus, delay in appointment was on account of wrong computation of vacancies initially and dragging their feet by the officials in spite of directions issued by the Tribunal.

29. It is appropriate to notice that in the O.As filed in the years 1999 and 2000, in the first round of litigation, the Tribunal directed computation of vacancies for recruitment in DSC-1998. In the second round of litigation in O.A.No.2155 of 2000 and batch, the Tribunal directed computation of vacancies in accordance with Rules governing the DSC-1998 and also directed to make process of selection and recruitment in pursuant to DSC-2000 after completion of filling up DSC-1998 vacancies. Tribunal recorded its opinion on wrong computation of vacancies as under:

“..... But this first part of Rule 15 is to be read along with Rules 4 and 5 of the rules. If we make a harmonious construction of Rules 4 and 5 and the first part of Rule 15, we are sure to hold that not only the vacancies that are available as on the date of notification 15.3.1998, but also the vacancies that are likely to arise on account of retirements, promotions, and posts which are already in the final stages for sanction only are to be taken into consideration.

..... But at the cost of repetition, we do say that the respondents ought to have made necessary exercise to include all the vacancies that were there as on 15.03.1998 and such of those vacancies that are likely

to arise till the end of September, 1998 as aforesaid in the impugned notification dated 15.03.1998.

..... Thus a duty is cast upon the respondents to take into consideration all such vacancies that had arisen in each and every district in between 15.03.1998 and 30.09.1998. This exercise is also to be made scrupulously. To our dismay, the vacancies were not correctly estimated as on the date of the notification.

.... No doubt Rule 15 of the Rules says that number of candidates selected shall be equal to the number of vacancies notified. '5% or 40 whichever is less' prescribed in the same Rule is applicable when there is a notification including all such vacancies that were there not only on the date of notification i.e., 15.03.1998 but also the vacancies that had arisen under the various categories which we have indicated supra from 15.03.1998 to 30.09.1998. When once there is a correct notification as per the first part of Rule 15 of the Rules, when the later part has got application. This later part only contemplates to fill up such of those vacancies where selected candidates failed to join in the posts within the prescribed time. It thus follows that it has got application when there is notification in accordance with Rules 4 and 5 of the Rules. Herein it is not the case we are satisfied that the respondents did not workout the vacancies in accordance with Rules 4 and 5 of the Rules.

..... To be more clear, what Rule 15 mandates is that all the vacancies that were there on 15.03.1998 and the vacancies that had arisen between 15.03.1998 and 30.09.1998 ought to have been taken into consideration as observed by us. What the respondents did herein is only a pretence and in order to justify their actions, they came forward with all lame excuses. ***With deep anguish this Tribunal is constrained to observe that the respondents brazenly and wantonly disregarded and violated the orders of this Tribunal by not working out the vacancies diligently and they exhibited deliberate carelessness, callousness and casualness and wasted public exchequer by indulging in such actions which led to litigations and ultimately, leading to deprivation of employment to the rightful, entitled, successful and eligible candidates of DSC 1998.*** Their action had also affected the recruitment

process of DSC 2000 as could be observed from the cases of Anantapur and Warangal districts.” (emphasis supplied)

30. Having said so, the Tribunal issued following directions:

“1) The estimation of vacancies of DSC 1998 must be made keeping in view of the observations made by us in the preceding paragraphs of this judgment.

2) All the vacancies arrived at on such estimation shall be filled up with the candidates out of the merit list of DSC 1998 only.

3) All the vacancies relating to DSC 1998 in Anantapur and Warangal districts shall be estimated keeping in view the observations made by us in preceding paragraphs of this judgment. The vacancies arrived at on such estimation shall be filled with the candidates out of DSC 1998 merit list only, based on the merit ranking by obtaining necessary instructions from the High Court of Andhra Pradesh, if needed.

4) The estimation of vacancies relating to DSC 1998 shall be made under the personal supervision of the Secretary to Government, Education Department, Government of Andhra Pradesh incharge of School Education.

5) The process of selection and recruitment of DSC 2000 shall be made only after completion of filling up DSC 1998 vacancies.

6) The cases of candidates who participated in the selection process of DSC 1996 and who already filed O.As. before this Tribunal should be considered and orders issued as per the directions given in this batch of O.As.”

31. These findings and directions did not persuade the authorities to toe the line compelling the candidates to mount third round of litigation, O.A.Nos.7119 of 2000 and batch of O.As., were disposed of on

27.09.2001 emphasising the need to compute correct number of vacancies available for recruitment in the DSC-1998 and to fill them.

Relevant portion of the Order reads as under:

“In the light of the foregoing discussion and for the various reasons detailed supra, we hold that in Medak District 98 vacancies of Secondary Grade Teacher are available under O.C. (General) category, 31 vacancies under B.C.-D (General) category.

The aforesaid vacancies of Secondary Grade Teacher are directed to be filled from out of the eligible and qualified applicants who approached this Tribunal in time i.e., within one year from 28.09.2000, the date on which this Tribunal rendered judgment in O.A.No.2155/2000 and batch. It is for the reason that on the plea that the respondents did not correctly estimate the vacancies that were available for being filled in DSC 1998 Teachers’ recruitment as per the direction issued by this Tribunal in O.A.No.2155/2000 and batch, the aggrieved applicants approached this Tribunal for redressal of their grievances.

Thus, we direct the respondents to fill up the aforesaid vacancies of Secondary Grade Teacher viz., 98 vacancies under O.C. (General) category, 31 vacancies under B.C.-B (General) category and 8 (eight) vacancies under B.C.-D (General) category from out of the eligible and qualified candidates of DSC 1998 in their respective categories, who approached this Tribunal within one year from 28.09.2000 including the applicants herein in accordance with Rules with reference to rule of reservation strictly as per merit.”

32. In W.P.No.334 of 2002 and batch filed by the State Government against decision of the Tribunal dated 27.09.2001, the High Court modified the directions issued by the Tribunal. The directions issued by this Court read as under:

“The Writ Petitions are accordingly disposed of directing the petitioners herein:

- a) that 111 vacancies of Secondary Grade Teachers that are available for being filled in DSC-1998 Teachers’ recruitment shall be filled in and the process in this regard shall be completed before issuing notification of DSC-2002. We however, hasten to clarify that the petitioners need not wait till the actual notification for DSC-2002 is issued and if the vacancies are available, they can continue and go ahead with the process of selection and appointment.
- b) Such consideration for filling up the vacancies is not confined to only amongst the respondents/applicants but extend to such of those eligible candidates who did not approach the Tribunal invoking its jurisdiction. It is clarified that the consideration to fill up the said vacancies shall be made in

accordance with law. All the meritorious candidates eligible and qualified for such consideration.

The directions issued by the Tribunal are accordingly modified and the Writ Petitions are accordingly disposed of.”

33. The modified directions of the High Court were with reference to actual number of additional vacancies and also the direction of the Tribunal on consideration of appointment only to applicants who filed O.As., within one year. High Court directed adding only 111 vacancies of SGT in Medak district instead of 129 and further directed to consider all candidates based on merit secured by them even if some of them have not filed cases. The High Court also directed to go ahead with process of selection and appointment without waiting for DSC-2002 recruitment notification.

34. In the light of findings recorded by the Tribunal and availability of 111 additional vacancies in the cadre of Secondary Grade Teacher in Medak district, requiring to be filled up pursuant to DSC-1998 recruitment notification, which are earmarked to various social groups, there was imminent need to recast the original merit list and publish revised merit list. For the reasons best known, Government did not undertake that exercise but went ahead to draw a fresh merit list from the leftover selected candidates. In other words, two merit lists were drawn in DSC-1998 recruitment. As this exercise was not challenged and candidates were reconciled to appointment against additional

vacancies, at this stage that issue need not be reopened. However, it has significance to hold that the respondents herein are also part of DSC-1998 selection list and are entitled to claim seniority on par with DSC-1998 first batch appointees. Only difference is there is no need for interspersing them. Learned senior counsel also fairly stated that the respondents are not claiming to intersperse but are only seeking to place them en-bloc below first batch of DSC-1998 appointees and above persons appointed in pursuant to subsequent DSCs for the purpose of seniority.

35. It is also significant to notice at this stage that seniority list of Secondary Grade Teachers appointed in DSC-1998 and later DSCs is not drawn and finalized. A provisional tentative arrangement was made to affect promotions. Thus, it is not a case of upsetting settled seniority issue.

36. The peculiar situation as obtaining in these cases was not envisaged by the rule making authority. Therefore, Rule 33 is silent on how to determine inter se seniority of persons appointed later but pursuant to earlier selection process. It is also appropriate to note that the delay in appointment of respondents is not attributable to them, but to the employer. The principle of law laid down in **Balwant Singh Narwal**

(supra), **Surendra Narain Singh** (supra) and **C.Jayachandran** apply in all fours to these cases.

37. In **P.Sudhakar Rao** (supra), based on the indent placed to the Employment Exchange, selections were made from among the candidates recommended by the Employment Exchange and names of respondents were included in the list of selected candidates. However, they were put in the waiting list to be appointed as and when vacancies arise. In the meanwhile, ban was imposed by the Government on direct recruitment through Employment Exchange for the same post and direction was issued that the future vacancies be filled through Public Service Commission. On challenge made before the Tribunal, the Tribunal allowed claim of the respondents and directed consideration of their case for appointment as Agricultural Officers. Accordingly, they were appointed as Agricultural Officers in the year 1990. They claimed seniority on par with the Agricultural Officers appointed in the year 1982. High Court allowed the writ petition taking similar view as taken by the Hon'ble Supreme Court in two decisions referred above. Negating the said view taken by the High Court, Hon'ble Supreme Court held that on mere selection, no right would accrue and selection is different from appointment. The term recruitment cannot tantamount to appointment as held in **Prafulla Kuman Swain Vs Prakash Chandra**

Misra⁷ and went on to hold '*merely being selected without obtaining the letter of appointment would mean that the selected candidates were still not born into the service and therefore the period would not be counted as service for the purpose of seniority under the Government*'. Therefore, that case stands on its peculiar facts.

38. In the case on hand, issue is not about *inter se* seniority of DSC1998 batch. The respondents are seeking to place them en-masse below the first batch. Though by the time they were appointed the candidates selected in pursuant to subsequent DSCs were already appointed such appointments were contrary to the directions issued by the Tribunal. As noticed above, Tribunal clearly directed to draw merit list and appoint respondents before appointing DSC-2000 candidates. Though respondents were successful in establishing their claim, but employer was dragging its feet leading to three rounds of litigation. Denying seniority to respondents would amount to perpetrating the illegality committed by the employer. It is unjust to deprive the fruits of success in the litigation merely because of the lapses of employer and for no fault of respondents. A right has accrued to respondents by virtue of declaration and directions issued by the Tribunal and affirmed by the High Court to treat them as belonging to DSC-1998 selection

⁷ 1993 SCC Supp (3) 181

process and this right should logically result in according seniority on par with first batch of DSC-1998.

39. We are therefore of the opinion that the Tribunal directions are legal and valid and do not call for interference. The Writ Petitions are accordingly dismissed. Pending miscellaneous petitions if any shall stand closed.

P.NAVEEN RAO, J

SAMBASIVA RAO NAIDU, J

Date: 29.07.2022
Kkm

**HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU**

WRIT PETITION NOs.21701 and 22011 of 2011

Date: 29.07.2022

Kkm