

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 20117 OF 2017

Between:

L.Ravi

... Petitioner

And

State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 09.02.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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< Gist:

> Head Note:

! Counsel for the Petitioner : Sri S.Gopal Rao

^Counsel for Respondents 1 to 4:G.P. for Services I & II

^ Counsel for respondent No.5 : Sri K.Sarath

? Cases Referred:

HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 20117 OF 2017

ORDER:

**Heard the learned counsel for the Petitioner and
the Learned Government Pleader for Services I and III.**

PRAYER SOUGHT FOR BY THE PETITIONER:

2. This Writ Petition is filed to issue a writ of Mandamus by calling for records relating to the proceedings of the 2nd Respondent bearing No. 3161/A1/2016, dated 08.05.2017 and quash the same by declaring the same as illegal, arbitrary and unconstitutional being violative of Articles 14 & 16 of Constitution of India and consequently, direct the respondents to consider the case of the petitioner for promotion as Junior Assistant and promote him as such with effect from the date of the promotion of the 6th respondent, who is far junior to the petitioner, by conferring all consequential benefits, such as seniority, etc.

3. The case of the petitioner, in brief, is as follows: -

a) Petitioner belongs to S.T. community, whereas the 6th Respondent belongs to B.C. Community. The Petitioner has been appointed as Watchman on 30.07.1999 in the SC& ST backlog vacancies and that the petitioner's services were

regularized from the said date and is declared to have completed his probation satisfactorily.

b) With effect from 01.06.2002, the Petitioner has been converted as Office Subordinate (Attender) and the 6th Respondent herein was appointed as Office subordinate on compassionate grounds on 21.07.2010 by the 3rd Respondent herein and services of the 6th Respondent were regularized on 27.01.2010.

c) The Petitioner has been temporarily promoted as Fieldman by the 4th Respondent on 01.12.2014 and in the promotion order, it has been mentioned that the promotion is purely on temporary basis and will not confer any right whatsoever and the petitioner is having his lien in the post of Office Subordinate.

d) After the petitioner had worked for about 1½ years as fieldman, the petitioner had been reverted as Office Subordinate since, one Sri. Sk. Lateef, Assistant Inspector of Fisheries, Signoor, requested for reversion as Fieldman due to multiple ailments.

e) The 6th Respondent who is far junior to the petitioner in the category of Office Subordinate is working as Junior

Assistant having been promoted by the 4th Respondent on 16.11.2015 vide Procdg.No.956/A/2015 and the Petitioner is entitled to the same, since the seniority is basis for promotion to the post of Junior Assistant as per Rule 5(b) of A.P. State Subordinate Service Rules.

f) The said rule provides that Non-Gazetted post should be treated as selection post and such posts have to be filled up based on seniority, the post of Junior Assistant is a Non-Gazetted post, in as much as the petitioner is fully eligible and qualified for promotion as Junior Assistant and in fact, belongs to S.T. community, to whom rule of reservation is made applicable in promotions also.

g) Therefore, the petitioner made representation on 14.07.2016 to the Deputy Director of Fisheries, Nalgonda, which had been received and acknowledged, for promoting him as Junior Assistant, since the 6th respondent, who is working as Office Subordinate, who is far junior to him had been promoted on 16.11.2015. The 5threspondent herein had sought clarification from the 2nd respondent vide letter Number 162/A/2016, dated 28.02.2017 mentioning the true facts that the petitioner is senior to the 6threspondent.

h) After the re-organisation of districts, no allotments of employees had taken place and the seniority of the employees of erstwhile districts are being taken into account for the purpose of affecting promotions. **The Petitioner is nearly about 11 years senior to the 6th respondent in the category of Office Subordinate (Attender) and is entitled to be promoted as Junior Assistant on par with the 6th respondent with all consequential benefits.**

i) The petitioner submitted all the requisite qualification certificates to the 4th respondent vide his representation dated 09.08.2016 that he had passed intermediate and departmental tests.

j) The Petitioner instead of being promoted as Junior Assistant the 2nd respondent had issued impugned proceedings bearing No.3161/A1/2016, dated 08.05.2017 promoting the petitioner to the post of Field-men, which is far inferior compared to the post of Junior Assistant since the post of Field-man carries scale of Rs.15,030 - Rs.46,060 where's the post of Junior Assistant carries the pay scale of Rs.16,400 to Rs. 49,870.

k) The said impugned notice clearly indicates that the appointment of the petitioner to the post of Field-man is based on the seniority list of the erstwhile districts. Thus, it is clear that as per the said seniority, the petitioner is entitled to be promoted as Junior Assistant on par with the 6th respondent, who is nearly about 11 years junior to the petitioner in the category of Office Subordinate. Hence the Writ Petition is filed.

4. The Case of the Respondents, in brief, is as follows:-

a) The Respondents by their counter affidavit denied all the allegations leveled except those that are specifically admitted. As per the proceedings No. 171/A/2013, dated 25.11.2014 of DDF, Nalgonda Sri Shaik Lateef, Fieldman had been appointed, Temporarily as Assistant Inspector of Fishers and posted in the Office of ADF, Medak District and in this existing vacancy the petitioner, who working as Office Subordinate had been promoted and temporarily appointed by transfer as Fieldmen under APCFSS Technical Service Rules 1993 and posted in the Office of Assistant Director Fisheries,

Suryapet District under Sub-rule (a) Rule 10 of A.P. Subordinate Service Rules, 1996 with instructions to the Petitioner to complete Fisheries Departmental Training within a period of probation vide Proc.No.162/A/2014, dated 01.12.2014.

b) The 6th Respondent was appointed by promotion on Temporary as Junior Assistant, as per APS Ministerial Service Rules, 1998 and posted in the office of the Deputy Director of Fisheries, Nalgonda as per Deputy Director of Fisheries, Nalgonda proceedings No. 956/A/2015, dated 16.11.2015 and instructed him to acquire the prescribed qualification and departmental test within the period of probation.

c) Sri Shaikh Lateef, Assistant Inspector of Fisheries, Singoor of Medak District was reverted as Field-man on health grounds for want of vacancies in the field-man category and the last candidate in the field-man category was the petitioner and the petitioner was reverted to the post of Office Subordinate for accommodating Shri Shaik Lateef, Assistant Inspector of Fisheries as Field-man vide Proc No. RC No. 171/A/2013, dated 22.06.2016.

d) The petitioner had submitted applications to the appointing authority i.e., DDF, Nalgonda dated 14.07.2016 and 09.08.2016 requesting that he is senior to the 5th respondent herein, in the cadre of Office Subordinate and requested to revert the 5th respondent and promote him to the post of Junior Assistant.

e) The Deputy Director Fisheries Nalgonda, forwarded the application of the petitioner to the Head Office requesting to clarify individuals representation vide RC No. 162/A/16 dated 02.09.2016 by DDF Nalgonda. A decision has been taken as per the discussions with Commissioner of Fisheries, Hyderabad and on the suggestions of the Joint Secretary, AH, DD and Fisheries Department a decision was taken in the case of promotion of the petitioner to the post of Field-man in the existing vacancy of clear vacant post at Bhongir Yadadri District, even though he doesn't possess the required IFTC qualification as per service rules and as per the Proc.No. 3161/A2/2016, dated 08.05.2017 of CoF,TS, Hyderabad. The petitioner is promoted to the post of Field-man under Rule 10 (a) of APSSS Rules, 1996 (adopted to TS) on *ad hoc* basis in

the existing clear vacancy post under the control of FDO/DFO Yadadri District.

f) In Compliance to the orders of the High Court passed in I.A. No. 1 of 2017 (WPMP No. 24645 of 2017) in WP No. 20117 of 2017, instructions were issued directing the District Fisheries Officer, Nalgonda District vide Memo No. 2641/A3/2017, dated 27.10.2020 to take necessary action and report compliance.

g) The District Fisheries Officer, Nalgonda has informed the petitioner vide Lr.No.15/B/19, dated 22.03.2021, that at present the post of Junior Assistant is not vacant in the erstwhile Nalgonda District and if any vacancy arises in the erstwhile Nalgonda District, his request will be considered. The Petitioner was appointed as watchman and availed the conversion to the post of Office Subordinate during the year 2002 and promoted to the post of Field-man during 2014 by exercising his willingness by opting to enter into executive line which is governed by AP Fisheries Subordinate Service Rules (adopted to the Telangana State 2016). Whereas, the 5th respondent was appointed as subordinate during the year 2010 and was promoted to the Post of Junior Assistant, during

the year 2015 which is governed by AP Ministerial Service Rules (adopted to Telangana State 2016) by opting ministerial line.

h) Shaik Lateef, Medak District, while working as AIF has opted for reversion on health grounds to the then Deputy Director of Fisheries and accordingly, his request was considered and he was reverted to the post of Field-man and whereas the petitioner being junior and last in rank of Field-man was reverted to Office Subordinate due to consequential effect and later on promoted as field-man during the year 08.05.2017 in Yadadri District.

i) As per Service Rules, there is a provision for awarding promotion in the Fisheries Department from Ministerial Service to Executive Service, but not vice versa. Hence, the Writ Petition is devoid of merits and is liable to be dismissed.

PERUSED THE RECORD:

5. The order impugned proceeding No.3161/A2/2016, dated 08.05.2017 of the 2nd respondent reads as under:

"Sri L.Ravi, Office Subordinate has represented this office for considering his case for promotion to the post of Junior Assistant.

After careful examination of the representation of Sri L.Ravi, vide ref., 4th cited and with reference records made available and also recommendation made by the District Fisheries Officer, Nalgonda vide ref., 5th cited. Sri. L.Ravi is hereby promoted to the post of Fieldman under Rule of 10 (a) of APSSS Rules, 1996 (Adopted to TS) on ad hoc basis in the existing clear vacancy post under the control of Fisheries Development Officer / District Fisheries Officer, Yadadri District in the time scale of Rs.15030-46060 revised PRC of 2015 with a condition that he should pass the IFTC., Training within the period of probation.

His appointment by promotion as Fieldman is purely temporary and liable for reversion at any time without assigning any reasons thereon and does not confer any right to claim seniority over others and his appointment is subject to outcome of court cases if any, pending before the Tribunal / Hon'ble High Court etc.,

His appointment to the post of Fieldman is based on the seniority list of erstwhile districts and will be re-examined once specific common orders are issued for all the departments, after final allocation of employees under State Re-organisation."

6. The order dated 13.09.2020 passed in I.A. No. 1 of 2017 (WPMP NO. 24645 of 2017) in W.P. No. 20117 of 2017 reads as under:

"Respondents are directed to consider the case of the petitioner for promotion to the post of Junior Assistant in the existing vacancies, if the petitioner is otherwise eligible for promotion in accordance with rules"

7. Paras 11, 12, and 13 of the counter affidavit filed by the respondents read as under:

11. Accordingly, the District Fisheries Officer, Nalgonda have informed that, Sri L.Ravi, Fieldman petitioner herein in present W.P., was informed that at present the post of Junior Assistant is not vacant in Erstwhile Nalgonda District. If any vacancy arises in erstwhile Nalgonda District his request will be considered vide Lr No.15/B/19, dt: 22.03.2021 duly informing the petitioner.

12. Further, it is submitted that Shri L. Ravi was appointed as Watchmen and availed the conversion to the post of Office Sub-ordinate during the year 2002 **and promoted to the post of Fieldmen during 2014 by exercising his willingness by opting to enter into executive line which is governed by AP Fisheries Subordinate Service Rules (adopted to Telangana State 2016) and whereas, Shri P. Saibaba was appointed as Sub-ordinate during the year 2010 and he was promoted to the post of Junior Assistant during the year 2015 which is governed by the AP Ministerial Service Rules (adopted to the Telangana State 2016) by opting Ministerial line.**

13. It is humbly submitted that, due to reversion of Shaik Lateef AIF, Medak District (Retired), while working as AIF has opted for reversion on health grounds to the then Deputy Director of Fisheries. Accordingly, request was considered and he was reverted to the post of Fieldmen and whereas, Shri. L.. Ravi being junior and last in the rank of the cadre of fieldmen was reverted to Office Subordinate due to consequential effect and later on Shri. L. Ravi was promoted as Fieldmen during the year 2017 i.e. on 8.5.2017 and he is now rendering service as fieldmen in Yadadri District.

As per Service Rules, there is a provision for awarding promotion in the Fisheries Department from Ministerial service to Executive Service, but not possible vice versa.

DISCUSSION AND CONCLUSION

8. A bare perusal of the material documents filed in support of the present writ petition by the petitioner clearly indicates that vide proceedings No.162/A/2014, dated 01.12.2014 the petitioner was promoted as fieldman and subsequently, the petitioner was reverted to the post of Office Subordinate and posted in the office of Fisheries Development Officer, Bhongir, Nangolda District in an existing vacancy from the post

of Fieldman, office of Assistant Director, Fisheries, Suryapet, Nalgonda District.

9. A bare perusal of the contents of the letter dated 02.01.2017 in Rc.No.162/A/2016 at para 6 and 7 clearly indicates that in pursuance to the representation of the petitioner dated 14.07.2016 and 09.08.2016 to promote the petitioner as Junior Assistant since the petitioner was reverted from the post of Fieldman to Office Subordinate and in response to the said representation of the petitioner, the then Deputy Director of Fisheries, Nalgonda had addressed letter vide Lr.No.162/A/2016, dated 02.09.2016 requesting the Commissioner for Fisheries, TS, Hyderabad to kindly clarify whether the request of the individual can be considered as the individual had reverted from the channel of Fieldman. A perusal of the contents of the letter dated 02.01.2017 clearly indicates the fact as brought on record that after re-organisation of the District, the petitioner herein i.e. L.Ravi, Office Subordinate of the Office of the Fisheries Development Officer, Bhongir comes into Yadadri-

Bhongir District and P.Saibaba, Junior Assistant, Office of the District Fisheries Officer, Nalgonda comes to Nalgonda District.

10. A bare perusal of the contents of the letter No.162/A/2016, dated 28.02.2017 of the District Fisheries Officer, Nalgonda District addressed to the Commissioner of Fisheries, Telangana State, Hyderabad clearly indicates that the promotion of P.Saibabu, Office Subordinate to the post of Junior Assistant was made under Rule 22(j) of A.P Subordinate Service Rules, 1996. A bare perusal of the present impugned proceedings dated 08.05.2017 issued vide proceedings No.3161/A1/2016, in response to the request of the petitioner for consideration of his case for promotion to the post of Junior Assistant, duly considering the recommendation made by the District Fisheries Officer, Nalgonda vide letter No.162/A/2016, dated 28.02.2017, promoted the petitioner to the post of Fieldman under Rule 10(a) of APSSS Rules, 1996 and not to the post of Junior Assistant as requested by the petitioner.

11. The specific case of the petitioner as per the averments made in the affidavit filed in support of the petition is that the petitioner is far more senior to the 6th respondent, who is working as Junior Assistant, whereas the petitioner is working as office Subordinate. This Court opines that there is no justification by the respondents in denying relief as prayed for by the petitioner herein contending that Sri P.Saibaba had been promoted to the post of Junior Assistant from the post of Office Subordinate under Sub Rule (j) of Rule 22 of A.P. Subordinate Service Rules, 1996. **In respect of the petitioner however, curiously the request of the petitioner for promoting to the post of Junior Assistant from the post of Office Subordinate is denied invoking Rule 10(a) of A.P. Subordinate Service Rules, 1996 adopted to Telangana State, without any reasonable justification.**

12. A bare perusal of the contents of the letter dated 22.03.2021 bearing Lr.No.15/B/2019 of the DFO, Nalgonda District addressed to the DFO, Yadadri-Bhongir District in reference to the request of the petitioner for promotion to the post of Junior Assistant

further informs the DFO Yadadri-Bhongir District that if any vacancy arises in erstwhile Nalgonda District, the request of the petitioner will be considered. The same is reiterated in the counter affidavit filed by the respondent in August, 2022.

13. The impugned proceedings dated 08.05.2017 of the Commissioner of Fisheries vide No. 3161/A1/2016, challenged in the present writ petition, specifies that appointment of the petitioner to the post of fieldman is based on the seniority list of erstwhile districts and will be re-examined once specific common orders are issued for all the departments after final allocation of employees under state re-organisaton. The counter affidavit filed by the respondents on 17.08.2022 at para 11 specifically states that at present the post of Junior Assistant is not vacant in erstwhile Nalgonda District and if any vacancy arises for erstwhile Nalgonda District the request of the petitioner will be considered duly informing the petitioner. The last paragraph of the counter affidavit, however, takes the plea that as per service Rules, there is a provision for awarding

promotion in the Fisheries Department from Ministerial Service to Executive Service, but not possible *vice versa*. The material documents filed by the petitioner i.e. letters dated 02.01.2017 and 28.02.2017 of the District Fisheries Officer, Nalgonda however, very clearly brings on record that after re-organisation of District, the petitioner herein falls in Yadadri-Bhongir District and therefore, the plea taken in the counter affidavit filed in August, 2022 (Para 11 extracted above) is not tenable and totally contrary to the clear admission in the letters dated 02.01.2017 and 28.02.2017 of the District Fisheries Officer, Nalgonda, which clearly declare that after re-organisation of district, the petitioner falls under Yadadri-Bhongir District and not in Nalgonda District.

14. Under these circumstances, this Court opines that there is no justification in denying relief to the petitioner as prayed for in the present writ petition and hence, the writ petition is allowed, more so, when admittedly the fact as borne on record is that, the petitioner, who was working as Fieldman at the office

of the Director of Fisheries, Suryapet District since 01.12.2014 had been reverted to the post of office Subordinate and posted in the office of Fisheries Development Officer, Bhongir, Nalgonda District vide proceedings dated 22.06.2016 of the 4th respondent, therefore, this Court opines that the order impugned dated 08.05.2017 is an order passed mechanically without application of mind, without taking into consideration the true spirit of the orders of this Court dated 30.09.2020 passed in I.A.No.1 of 2017 in W.P.No.20117 of 2017 and the order impugned vide proceedings No.3161/A2/2016, dated 08.05.2017 of the 2nd respondent is accordingly set aside. The respondents are directed to re-examine and re-consider the case of the petitioner for promotion as Junior Assistant, in accordance to law, giving credence to the fact as borne on record that the petitioner had been reverted vide proceedings No.171/A/2013, dated 22.06.2016 of the Deputy Director of Fisheries, Nalgonda from the post of Fieldman to the post of Office Subordinate and also the fact as stated in the

letters dated 28.02.2017 and 02.01.2017 of the District Fisheries Officer, Nalgonda District that the petitioner belongs to Yadadri-Bhongir District and not to Nalgonda District after the re-organisation of the Districts, within a period of three weeks from the date of receipt of a copy of this order duly communicating the decision to the petitioner. However, there shall be no order as costs.

Miscellaneous petitions, if any, pending shall stands closed.

SUREPALLI NANDA, J

Date: 09.02.2023

Note: L.R. copy to be marked

b/o

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