

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION NO.5390 OF 2017

Between :

Sulthan Moinuddin, s/o.Azeemuddin,
Aged 43 years, occu: School Assistant,
ZPHS, Kodair (M), r/o.H.No.10-10,
Sadath Street, Nagarkurnool district
and others.

...Petitioners

and

The State of Telangana,
Rep.by its Principal Secretary,
School Education Department,
Secretariat Buildings and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 07.12.2023

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

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

***HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

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!Counsel for the Petitioners : Sri G.V.Shivaji

Counsel for the Respondents : Govt.Pleader for Services-I
for respondents

<Gist :

>Head Note:

? Cases referred:

(2008) 7 SCC 728; 1998 (5) SCC 246; (2020) 5 SCC 230;

HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

WRIT PETITION NO.5390 of 2017

ORDER:

This writ petition is filed to declare the impugned action of the respondents in not according to the seniority and other benefits from the year 2005 on par with all other candidates selected and appointed in pursuance of DSC-2003 and further action in rejecting the representation of the petitioners dated 18.02.104 vide impugned order dated 13.03.2015 as illegal and arbitrary and consequently, direct the respondents to accord seniority to the petitioners with effect from the date of appointment of all other candidates as per DSC-2003 along with all benefits.

2. The brief facts leading to filing of the present writ petition are that, petitioners applied for selection to the post of School Assistants pursuant to the notification issued in the year 2003. Originally, the recruitment notification for DSC-2003 was issued in the year 2003 for selection of posts of School Assistants. After issuance of notification, 2nd respondent had issued circular granting relaxation in favour of the candidates possessing single subject certificate in English and directed them to be considered for promotions also. In view of the consideration of candidates with single subject certificate holders from

Dr.B.R.Ambedkar Open University, who are otherwise ineligible, the petitioners lost their opportunity of selections, though they are meritorious.

3. Aggrieved thereby, petitioners filed O.A.No.9635 of 2002 and batch, however, the said O.A.No.9635 of 2002 and batch were dismissed. Aggrieved by the same, petitioners filed W.P.No.9073 of 2022 and batch. The Hon'ble High Court vide judgment dated 06.01.2006 held that relaxing the qualifications in favour of single subject certificate holders is illegal and unsustainable

4. In the light of above judgment, the candidates who were appointed on the basis of such single subject certificates are liable to be removed and petitioners ought to have been appointed in their places, however, respondents did not take any action. Therefore, petitioners approached this Hon'ble High Court vide W.P.No.20426 of 2006 and during the course of hearing, this High Court had taken a serious view against the action of respondents. Therefore, the Government has taken a decision to appoint the petitioners, accordingly, petitioners were appointed vide proceedings dated 23.03.2009. The successful candidates in DSC-2003 were appointed vide proceedings dated 28.12.2005. Thus, petitioners are deprived of services and seniority and all other benefits for a period of four years. The delay in appointment of the petitioners is only due to

the illegal action of the respondents and not on account of any reason attributable to the petitioners. Therefore, petitioners are entitled to seniority and other benefits on par with the all other candidates appointed in the year 2005 in pursuance of notification in DSC-2003.

5. Petitioners made representation dated 20.06.2013, however, respondents did not take any action on the said representation. Petitioners filed O.A.No.68 of 2014 seeking for notional seniority and pay fixation to the petitioners on par with all other candidates appointed in the year 2005. The Hon'ble Tribunal vide order dated 03.01.2014 granted interim direction permitting the petitioners to submit fresh representation for seniority and notional increments on par with DSC-2003 candidates and the respondents are directed to consider the representation. Accordingly, petitioners submitted detailed representation on 18.02.2014, but the respondents did not take any action and therefore, the petitioners filed contempt cases. The 3rd respondent issued impugned proceedings 13.03.2015 rejecting the representations of the petitioners on the ground that petitioners were appointed pursuant to the interim orders dated 28.09.2006 passed in WPMP No.25826 of 2006 in W.P.No.20426 of 2006. Therefore, petitioners cannot be given seniority along with DSC-2003 candidates and also for the other reason that if notional seniority is given to the

petitioners, it will adversely affect the seniority of School Assistants. Aggrieved by the same, the present writ petition is filed.

6. Respondents filed counter and contended that petitioners have been appointed as School Assistants (English) in DSC-2003 with the single subject certificate of Dr. B.R.Ambedkar Open University, on 23.03.2009 in view of the interim orders dated 28.09.2006 of the Hon'ble High Court passed in W.P.No.20426 of 2006. The contention of the petitioners to fix seniority on par with other selected candidates of DSC-2003 is not convincing and no ground is made up as selections of the petitioners was hit by litigation of Hon'ble Tribunal and Hon'ble High Court and the respondents have implemented the orders of the Hon'ble Courts from time to time to avoid contempt of court. Moreover, for the recruitment of School Assistant post, district is the unit and the petitioners cannot compare their seniority with the counterparts of the other districts, where there is no such litigation.

6.1. It is contended that petitioners are the candidates of DSC-2003 and they were appointed in DSC-2003 selections in March, 2009 due to the litigation pending before the Hon'ble Courts and now they submitted representations in 2014 for considering their claim to count seniority from the date on which their counter-parts appointed and working already in 2005 i.e., four years prior to their date of joining in the

present posts. The petitioners are the candidates of DSC-2003 and who are the litigants in both the Hon'ble APAT and this Court in W.P.No.20426/2006 and batch, wherein this Hon'ble Court did not interfere with the orders issued in G.O.Rt.No.556, dated 04.10.2005 and also dismissed the W.P.No.20426 of 2006 and batch and hence, the petitioners have no basis to claim seniority on par with the counterparts of DSC-2003 who were already appointed in 2005.

6.2. It is further contended that the Hon'ble Apex Court in a similar case vide judgment dated 25.10.2013 in Commissioner & Director of Agriculture vs. P.Sudhakar Rao case in SLP (C) No.30636/2009, held that seniority of the selected candidates who would be reckoned from the date of their appointment only. Therefore, in the light of above judgment, extending of notional seniority or monetary benefits to the petitioners in the present writ petition on par with other selected candidates in 2005 does not arise and finally, prayed for dismissal of the writ petition.

7. Heard learned counsel Sri G.V.Shivaji for the petitioners and the learned Government Pleader for Services-I for respondents.

8. The main issue in the present writ petition is with regard to claim of seniority of candidates selected in DSC-2003, but were appointed in

2009. Petitioners filed O.A.No.68 of 2014 before the APAT praying to declare that the petitioners are entitled to seniority in the cadre of School Assistants with effect from the date on which their counter parts were appointed in DSC-2003 i.e., in 2005 and above the School Assistants appointed in subsequent DSCs.

9. The petitioners urged before the Tribunal and this Hon'ble Court that though they were selected and appointed as School Assistants as per their merit in DSC-2003, they were not treated as part of DSC-2003 merit list, treated their selection as separate selection and claimed that they are entitled to reckon their seniority as per the panel or selection list prepared for DSC-2003.

10. In support of his contention, learned counsel for petitioners placed reliance on the following decisions:

(i) **Balwant Singh Narwal and others vs. State of Haryana and others**¹;

(ii) Order of this Hon'ble High Court in W.P.No.15167 of 2021 dated 6.12.2021; and

(iii) Order of this Hon'ble High Court in WP No.15185 of 2021 dated 06.12.2021

11. *Per contra*, according to the respondents, the petitioners were appointed in DSC-2003 selections in March, 2009 of DCS-2003 selection due to litigation pending before the Hon'ble Courts and,

¹ (2008) 7 SCC 728

therefore, they cannot be compared on with the other selected persons appointed in DSC-2003 in the year 2005. Respondents have also raised the plea of delay and laches as petitioner filed litigation before the Hon'ble Courts instituted in the year 2006, which underwent in both courts upto 20.02.2008. Further, it was also urged that if notional seniority is extended to the petitioners, 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 petitioners, they have to be paid regular pay scales from 2003 onwards and arrears and monetary benefits also have to be paid.

12. The Tribunal vide interim orders dated 03.01.2014 passed in O.A.No.68 of 2014 held that petitioners are permitted to submit fresh representations regarding their claim for seniority and notional increments on par with DSC-2003 candidates and the respondents are directed to pass appropriate orders on the said representation within a period of six weeks from the date of receipt of the representation.

13. Learned Government Pleader would contend that date of joining in service is much later to the date of joining DSC-2003 candidates i.e., in the year 2005 and from DSC-2003, there are more than four DSC recruitments were made. Therefore, the petitioners are not entitled to claim seniority on par with DSC-2003 candidates. According to the

Assistant Government Pleader, for direct recruits, *inter se* seniority is based on merit secured in the recruitment and date of joining in service. He would submit that direct recruitee 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 recruitee can claim a date anterior to the date of appointment for the purpose of computation of service for seniority. Therefore, petitioners cannot compare themselves to DSC-2003 candidates.

14. He would submit that that DSC-2003 candidates, who were appointed in the year 2005 are not made parties in this writ petition. However, if the claim of the petitioners is accepted, they have to be placed above DSC-2005 and subsequent DSC selected candidates in the seniority list. No such steps can be taken to assess higher seniority affecting right of DSC-2005 candidates and subsequent DSC candidates. The issue of *inter se* seniority between DSC-2005 and subsequent DSC candidates is settled long ago and settled things cannot be un-settled after long lapse of time.

15. Issue for consideration is whether petitioners are entitled to claim seniority on par with all other candidates as per DSC-2003 with all attendant benefits including pay and fixation and arrears thereof ?

Consideration:

16. Before advertng to merits and rival contentions of both the parties, it is appropriate to refer to the view taken by the Hon'ble Supreme Court and this Hon'ble Court on the claim to seniority by persons though selected pursuant to earlier recruitment notification, but appointed later to appointments made as per subsequent recruitment notifications.

17. In **Balwant Singh Narwal** (supra), merit list drawn by Public Service Commission including 30 names was challenged on the ground that though the indent was for 18 vacancies only, inclusion of larger number of candidates in the selection list was illegal before High Court. The learned single Judge of Punjab and Haryana High Court upheld the challenge and same was affirmed by the Division Bench also. Pursuant to the decision of the High Court, 16 candidates were appointed by an order dated 02.06.1994. The order of the Division Bench was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court, at the interlocutory stage, passed orders directing the respondents not to fill up 12 vacancies. Ultimately, the Appeals were disposed of by an order dated 06.12.1999 by the Hon'ble Supreme Court 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, 13 persons were appointed as Principals by order dated 26.05.2000. After appointments, 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.

18. Considering a similar situation in **Surendra Narain Singh Vs State of Bihar**², 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.

² 1998 (5) SCC 246

19. In **C.Jayachandran vs. State of Kerala and others**³, issue was similar to **Balwant Singh Narwal** (supra). The selection list was challenged with reference to minimum age and the Kerala High Court struck down the eligibility with reference to minimum age and the same was 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 non-selected candidates before the Hon'ble Supreme Court and the Hon'ble Supreme Court granted liberty to file writ petition. Consequently, a writ petition was filed before the High Court challenging the grant of moderation/grace marks to the candidates appointed on 30.03.2009 and sought for appointment as District and Sessions Judge. The writ petition was 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.

20. In W.P.No.36266 of 2013 also similar issue has come for consideration before Hon'ble Division Bench of this Court. Pursuant to District Selection Committee 2001 selections, 9 SGTs were appointed on 04.10.2002, whereas others were appointed on 18.01.2002. Nine SGTs filed O.A., before the Tribunal and sought for notional seniority from 18.01.2002 on par with first batch of 2001 candidates. The Tribunal

³ (2020) 5 SCC 230

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 18.01.2002 by relying upon the decision of **Balwant Singh Narwal**. Following the decision of **Balwant Singh Narwal**, the Division Bench of this Court upheld the Tribunal's directions.

21. 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.

22. The learned Division Bench of this Court in **The Government of Andhra Pradesh, rep.by its Secretary to School Education Department, Vs. B.Aswathama and others** (WP Nos.21701 & 22011 of 2011 dated 29.07.2022) following the principles law laid down in **Balwant Singh Narwal** (supra), **Surendra Narain Singh** (supra) and **C.Jayachandran**, held as under:

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

23. It is also appropriate to note that the delay in appointment of petitioners, on the ground of pending litigation, is not attributable to them, but to the employer. The principle of law laid down in **Balwant Singh Narwal** (supra), **Surendra Narain Singh** (supra) **C.Jayachandran** (supra) and **B.Aswathama** (supra), squarely apply to the facts of this case.

24. In the case on hand, issue is to fix the seniority and other benefits from the year 2005 on par with all other candidates selected and appointed in pursuance of DSC-2003 though the petitioners are not responsible for their belated appointments in the year 2009. Though petitioners were successful in establishing their claim, but employer was dragging its feet leading to litigation. Denying seniority to petitioners would amount to perpetrating the illegality committed by the employer. The petitioners cannot be deprived of their seniority merely because of delay in litigation, and for no fault of petitioners. A right has accrued to petitioners by virtue of declaration and directions issued by the Tribunal

and by the High Court to treat them as belonging to DSC-2003 selection process and this right should logically result in according seniority on par with selection candidates in 2003, who were appointed in the year 2005.

25. It is not in dispute that the appointments of the petitioners were delayed owing to the lapse on the part of the respondent-authorities in the same DSC-2003 selections.

Conclusion:

26. On due consideration of the above facts and circumstances and legal position, this Court is of the view that petitioners are entitled to the seniority and other benefits from the year 2005 on par with all other candidates selected and appointed in pursuance of DSC-2003. Accordingly, this Writ Petition is allowed, setting aside the impugned proceedings dated 13.03.2015 of the 3rd respondent. There shall be no order as to costs.

Pending miscellaneous petitions if any shall stand closed.

LAXMI NARAYANA ALISHETTY, J

Date: 07.12.2023
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