

THE HON'BLE Dr.JUSTICE K. MANMADHA RAO

WRIT PETITION Nos.21019 of 2021 and 21139 of 2021

COMMON ORDER:

Writ Petition No.21019 of 2021 is filed under Article 226 of the Constitution of India, claiming the following relief:

“.....Issue an order or direction more particularly one in the nature of Writ of Mandamus,

- a) to declare the entire action of the respondents in issuing the present impugned orders vide letter Rc.No.SOW02-17/49/2021, dated 07.07.2021 of the 1st respondent including consequential regularization/declaration of probation proceedings issued in Rc.No.A1/103/2021, dated 24.07.2021 r/w final seniority list drawn vide proceedings Rc.No.A1/137/2019 dated 07.09.2021 of the 2nd respondent wherein placing the name of the petitioner basing on wrong orders of regularization/declaration of probation is as highly illegal, arbitrary, unjust, improper, contrary to earlier orders passed by the erstwhile APAT in O.A.No.6498 of 2007 and batch dated 28.11.2008 confirmed by Hon'ble High Court in W.P.No.18344/2009 dated 03.09.2009 r/w absorption proceedings issued by the 2nd respondent in Rc.No.A1/309/2007, dated 16.01.2010 and language used therein and set aside or quash the above the impugned proceedings.*
- b) And consequently to direct the respondents to re-regularize the service of the petitioner in the cadre of Grade-II Hostel Welfare Officer w.e.f 05.03.2003 i.e., on the basis of her date of absorption on permanent basis and on that basis declare her probation and also fix her seniority in the cadre of Grade-II Hostel Welfare Officer in view of earlier directions of Hon'ble erstwhile APAT dated 28.11.2008 in O.A.No.6498 of 2007 and batch confirmed by the Hon'ble High Court in W.P.No 18344 of 2009 dated 03.09.2009 r/w absorption proceedings issued vide proceedings Rc.No. A1/309/2007, dated 16.01.2010 of the 2nd respondent in furtherance of above Court orders without taking into consideration of the present impugned orders issued vide letter Rc.No. SOW02-17/49/2021 dated 07.07.2021 of the 1st respondent and consequential proceedings issued in Rc.No.A1/103/2021 dated 24.07.2021 r/w placement shown of the petitioner in the impugned final seniority list drawn vide proceedings Rc.No.A1/137/2019, dated 07.09.2021 of the 2nd respondent.*

- c) *It is also further prayed that this Hon'ble Court may be pleased to direct the respondents to consider the case of the petitioner for promotion to the post of Grade-I Hostel Welfare Officer in the existing vacancies by duly treating that her date of regularization in the cadre of Grade-II Hostel Welfare Officer w.e.f 05.03.2003 and declaration of probation on that basis, in view of earlier directions of Hon'ble erstwhile APAT dated 28.11.2008 in O.A.No. 6498 of 2007 which was confirmed by Hon'ble High Court in W.P.No.18344 of 2009, dated 03.09.2009 r/w absorption proceedings issued in Rc.No.A1/309/2007, dated 16.01.2010 of the 2nd respondent without reference to the present impugned orders issued vide letter Rc.No.SOW02-17/49/2021 dated 07.07.2021 of the 1st respondent including consequential proceedings issued in Rc.No.A1/103/2021, dated 24.07.2021 and proceedings Rc.No.A1/137/2019 dated 07.09.2021 of the 2nd respondent and pass such other orders."*

Writ Petition No.21139 of 2021 is filed under Article 226 of the Constitution of India, claiming the following relief:

".....Issue an order or direction more particularly one in the nature of Writ of Mandamus,

- a) *to declare the entire action of the respondents in issuing the present impugned orders vide letter Rc.No.SOW02-17/49/2021, dated 07.07.2021 of the 1st respondent including consequential regularization/declaration of probation proceedings issued in Rc.No.A1/103/2021, dated 24.07.2021 r/w final seniority list drawn vide proceedings Rc.No.A1/137/2019 dated 07.09.2021 of the 2nd respondent wherein placing the name of the petitioner basing on wrong orders of regularization/declaration of probation is as highly illegal, arbitrary, unjust, improper, contrary to earlier orders passed by the erstwhile APAT in O.A.No.5640 of 2007 and batch dated 28.11.2008 confirmed by Hon'ble High Court in W.P.No.19349 of 2009 dated 15.09.2009 r/w absorption proceedings issued by the 2nd respondent in Rc.No.A1/309/2007, dated 07.09.2011 and language used therein and set aside or quash the above the impugned proceedings.*
- b) *And consequently to direct the respondents to re-regularize the service of the petitioner in the cadre of Grade-II Hostel Welfare Officer w.e.f 03.03.2003 i.e., on the basis of her date of absorption on permanent basis and on that basis declare her probation and also fix her seniority in the cadre of Grade-II Hostel Welfare Officer in view of earlier directions of Hon'ble erstwhile APAT dated 28.11.2008 in O.A.No.5640 of 2007 and batch confirmed by the*

Hon'ble High Court in W.P.No 19349 of 2009 dated 15.09.2009 r/w absorption proceedings issued vide proceedings Rc.No. A1/309/2007, dated 07.09.2011 of the 2nd respondent in furtherance of above Court orders without taking into consideration of the present impugned orders issued vide letter Rc.No. SOW02-17/49/2021 dated 07.07.2021 of the 1st respondent and consequential proceedings issued in Rc.No.A1/103/2021 dated 24.07.2021 r/w placement shown of the petitioner in the impugned final seniority list drawn vide proceedings Rc.No.A1/137/2019, dated 07.09.2021 of the 2nd respondent.

- c) *It is also further prayed that this Honble Court may be pleased to direct the respondents to consider the case of the petitioner for promotion to the post of Grade-I Hostel Welfare Officer in the existing vacancies by duly treating that her date of regularization in the cadre of Grade-II Hostel Welfare Officer w.e.f 03.03.2003 and declaration of probation on that basis, in view of earlier directions of Hon'ble erstwhile APAT dated 28.11.2008 in O.A.No. 5640 of 2007 which was confirmed by Hon'ble High Court in W.P.No.19349 of 2009, dated 15.09.2009 r/w absorption proceedings issued in Rc.No.A1/309/2007, dated 07.09.2011 of the 1st respondent by suspending the operation of the present impugned orders issued vide letter Rc.No.SOW02-17/49/2021 dated 07.07.2021 of the 1st respondent including consequential proceedings issued in Rc.No.A1/103/2021, dated 24.07.2021 and proceedings Rc.No.A1/137/2019, dated 07.09.2021 of the 2nd respondent and pass such other orders."*

2. Since the facts and issue involved in both the writ petitions is one and the same, I find it expedient to decide both the matters by common order.

3. For the sake of convenience, W.P.No. 21019 of 2021 is taken as leading case.

4. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for Social Welfare for the respondents.

5. The brief case of the petitioners in W.P.No. 21019 of 2021 is that she was appointed as Secondary Grade Teacher in Education Department in the year 1998. Subsequently her services was

deputed to respondent organization as Grade-II Hostel Welfare Officer in the year 2003, later her services was absorbed as H.W.O Grade-II w.e.f 05.03.2003 on permanent basis as per proceedings dated 16.01.2010 of the 2nd respondent by duly implementing the orders of erstwhile A.P.A.T in O.A.No.6498 of 2007, dated 28.11.2008, which was confirmed by the Hon'ble Division Bench of this Court in W.P.No.18344 of 2009, dated 03.09.2009. The petitioner made representation dated 14.04.2021 to the 2nd respondent requesting to issue orders of regularization and declaration of probation in the cadre of H.W.O Grade-II after taking into consideration of absorption orders issued to her as well as keeping in view of the orders passed by the erstwhile A.P.A.T. However, without considering the same, basing on wrong proposals submitted by the 3rd respondent, the 2nd respondent issued orders of regularization and declaration of probation vide proceedings dated 24.07.2021. Basing on the same, the seniority of the petitioner is fixed in the cadre of H.W.O Grade-II as per Seniority List dated 07.09.2021. Accordingly the petitioner filed objections, but without considering the same, drawn final seniority list dated 07.09.2021, which is illegal and arbitrary. Hence the inaction of the respondents questioned in the writ petition and requested to issue a direction as stated supra.

6. *Per contra*, the respondents filed counter by denying all material averments made in the writ affidavit and mainly contended that the cadre strength of the Grade-II Hostel Welfare Officers in Social Welfare Department, Kurnool District is 94 posts, in which there will be 9.4 or 10 posts are reserved for other department employees. The petitioner was also absorbed in Grade-II Hostel Welfare Officer in Social Welfare Department beyond 10% quota. The

Government in Memo No.56/Ser.I.1/2010-1, dated 22.01.2010 permitted the petitioner as Grade II Hostel Welfare Officer as a special case in relaxation of 10% quota fixed vide G.O.Ms.No.20, Social Welfare (Ser.I) Department, dated 28.02.2004 subject to adjustment of retirement vacancy and as per the clarification issued by the Director of Social Welfare, A.P vide Lr.Rc.No.SOW02-17/49/2021, dated 07.07.2021 that the service of each of such excess absorbed Grade-II Hostel Welfare Officers can be regularized only from the date of arising of subsequent vacancy in that quota for him/her. Accordingly on retirement vacancy of 10% Grade-II Hostel Welfare Officer the individual services are regularized w.e.f 01.06.2017 and probation declared w.e.f 31.05.2018. In view of the vacancy arose on retirement of Ms. B. Padma Kumari, Hostel Welfare Officer of S.W Department, Kurnool District, the name of the petitioner is considered in the said vacancy and her services were absorbed and regularized w.e.f 01.06.2017 and declaration of probation by 31.05.2018 A.M in the cadre of Grade-II Hostel Welfare Officer in S.W.Department in the District vide proceedings in Rc.No.A1/103/2021, dated 24.07.2021 of the District Collector, Kurnool as per 10% quota vacancies subsequently arose due to retirement/ death in terms of Rule 16(c) of A.P.State and Subordinate Service Rules. In the Seniority List, the name of the petitioner is shown as Sl.No.33 and her services was regularized at Column No.13 and probation declared at Column No.14 as per instruction of the Director of Social Welfare, Tadepalli in Grade-II Hostel Welfare Officer cadre in the District. Hence the writ petition is liable to be dismissed.

7. During hearing learned counsel for the petitioner reiterated the contentions urged in the writ affidavit and mainly contended that

basing on the pressure from the union, the 1st respondent making hectic efforts to fill up the existing vacancies by duly taking into consideration of the impugned Seniority List dated 07.09.2021, which is illegal and arbitrary. If such list is effected the petitioner among others will be suffer in the matter of promotion as and also Seniority. Hence requested to re-regularize the service of the petitioner in the cadre of Grade-II Hostel Welfare Officer w.e.f 05.03.2003 as per directions of the erstwhile APAT dated 28.11.2008 in O.A.No.6498 of 2007 and batch, which was confirmed by the Hon'ble Division Bench of this Court in W.P.No.18344 of 2009, dated 03.09.2009.

8. Learned Assistant Government Pleader for respondents placed on record the proceedings of the District Collector, Kurnool, dated 16.01.2010 showing that the petitioner was absorbed in Social Welfare Department, Kurnool as Grade-II Hostel Welfare Officer w.e.f 05.03.2003 on permanent basis and her name will be included in the seniority list at appropriate place as per orders in O.A.No.6498 of 2007, dated 28.11.2008. Subsequently the Writ Petition No.18344 of 2009 filed by the respondents, which was dismissed by its order dated 03.09.2009.

9. As could be seen from the proceedings of the Collector and District Magistrate, Kurnool, dated 24.07.2021, wherein it was mentioned that the services of the petitioner is regularized with effect from 01.06.2017 and probation period is declared by 31.05.2018 AN in the cadre of Hostel Welfare Officer Grade-II as per 10% Quota vacancies subsequently aroused due to retirement/ death in terms of Rule 16(c) of A.P.State and Sub-ordinate Service Rules. In the Seniority List, the name of the petitioner is shown as Sl.No.33 and her services was regularized at Column No.13 and probation declared at

Column No.14 as per instruction of the Director of Social Welfare, Tadepalli in Grade-II Hostel Welfare Officer cadre in the District.

10. Further, as could be seen from the order in O.A.Nos. 5640 and 6498 of 2007, the learned Tribunal observed that one G. Ramudu, who is shown at 42 was shown at Sl.No.8 in the list of absorption though he was awarded a punishment of stoppage of one annual grade increment without cumulative effect. One B. Padma Kumari, who is shown at Sl.No.44 in the statement of recoveries was shown at Sl.No.1 in the list of absorption and she was awarded a punishment of censure. Therefore the above said persons who have drawn excess amounts, suffered punishments like censure, stoppage of annual grade increments without cumulative effect were considered by the selection committee for absorption and the case of the petitioner was not considered and no reasons is given for considering the similarly situated persons and not considering the case of the petitioner. Therefore it is very clear that the action of the respondents in not absorbing the petitioner is illegal and arbitrary as rightly held by the learned Tribunal.

11. Having regard to the facts and circumstances of the case, upon perusal of the material on record and considering the submissions of learned counsel for the petitioner, this Court opines that it is a fit case to issue a direction as claimed in the writ petition.

12. Accordingly the Writ Petition is allowed, while declaring the action of the respondents in issuing the impugned order dated 07.07.2021 of the 1st respondent and consequential proceedings dated 24.07.2021 r/w final seniority list drawn vide proceedings dated 07.09.2021 issued by the 2nd respondent as illegal and

arbitrary and directing the respondents to re-regularize the service of the petitioner in the cadre of Grade-II Hostel Welfare Officer w.e.f 05.03.2003 i.e on the basis of her date of absorption on permanent basis and fix seniority of the petitioner in cadre of Grade-II Hostel Welfare Officer as per directions in O.A.No.6498 of 2007 and batch, on the file of erstwhile APAT, dated 28.11.2008, which was confirmed by this Court in W.P.No.18344 of 2009, dated 03.09.2009 and further directing the respondents to consider the case of the petitioner for promotion to the post of Grade-I Hostel Welfare Officer in the existing vacancies by duly treating that her date of regularization in the cadre of Grade-II Hostel Welfare Officer w.e.f 05.03.2003 and declare the probation by implementing the orders of this Court in W.P.No.18344 of 2009, dated 03.09.2009, within a period of six (06) weeks from the date of receipt of a copy of this order. No costs.

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

DR.JUSTICE K. MANMADHA RAO

Date: 04.07.2022.

KK

THE HON'BLE Dr.JUSTICE K. MANMADHA RAO

WRIT PETITION Nos.21019 of 2021 and 21139 of 2021

Date: 04.07.2022.

KK