

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

I.A. No.1 of 2023

IN

WRIT PETITION No. 23445 of 2020

ORDER:

The present Review Petition is filed by the State on the following grounds.

2. The Memos dated 12.05.2016 and 25.11.2016 are only directorial to consider the cases in terms of G.O.Ms.No.98 and this Court is not considered the ingredients of memos date 12.05.2016 & 25.11.2016 and also order of this Court is in the nature of upsetting the seniority list without notice or reference to the other candidates to their detriment.

3. The aforesaid Writ Petitioners have filed the Writ Petition to separate names of the petitioners from 2nd phase list and include them in the 1st phase list for providing employment who are in list of 25 Nos. of displaced persons though proposals were made by the 4th respondent and as per the instructions of 3rd respondent by placing before the District Selection Committee, Kadapa YSR district by including names of the petitioners in final seniority list and

issuing memo No.1284181/R&R-A2/2018-8 (Camp.No.9 464221) dated 26.10.2019 without considering the memos issued by the 3rd and 4th respondent vide MemoNo.5855/R&R-A2/2015-2 dated 12.05.2016, Memo No.400709/R&R-A2/2016_1 dated 25.11.2016 R/2. MemoNo.672893/R&R-A2/2017-1 dated 21.08.2017 is illegal, arbitrary and unreasonable and violative of Article 14 and 21 of Constitution of India and consequential direction to the respondents to provide employment by placing petitioners in 1st phase list by considering 2nd respondent proceedings dated 12.05.2016 vide Memo No.5855/R&R-A2/2015-2 and prayed to pass such other order or orders.

4. On the aforesaid prayer, this Court has disposed of the Writ Petition after considering the orders in W.P. No.16635 of 2018 and order in W.A. No.698 of 2021, directed the respondents to place the petitioners in the 1st phase list and to consider the case of the 4th petitioner on par with other petitioners.

5. As there is discrepancy with regard to age and father's name of the 4th petitioner, this Court directed the

respondents to consider on establishing that the family members of the 4th petitioner as displaced person.

6. Now, the present Review Petition is filed for the aforesaid grounds raised at para no.2

7. The Principal Secretary to Government has issued a Memo No.5855, dated 12.05.2016 to the Chief Engineer, NTR Telugu Ganga Project, Tirupati, to separate the names of the petitioner herein from the 2nd phase list of 3492 members and to approve their names under Somasila Project for providing employment in terms of G.O.Ms.No.98, Irrigation (P.W.) Department dated 15.04.1986 and to include in the 1st phase list as per their eligibility for provision of employment in terms of G.O.Ms.No.98 and vide Memo No.400709, dated 25.11.2016, the Secretary to the State Government has directed the aforesaid Chief Engineer, NTR Telugu Ganga Project, Tirupati to separate the names of 25 displaced persons of Kadapa District under Somasila Project from the 2nd phase list of 3492 members and to approve their names and include in the 1st phase list.

8. In the similar nature vide memo No.672893/R&R-A2/2017-1, dated 21.08.2017, the Secretary to Government has directed the Chief Engineer, NTR Telugu Ganga Project, Tirupati to take necessary action to separate the names of 25 members from the 2nd phase seniority list and to approve their names in the 1st phase seniority list and if it is genuine as per the orders issued in this regard and as per the rules and as per their eligibility and suitability for provision of employment in terms of G.O.Ms.No.98, Irrigation (P.W.) Department, dated 15.04.1986.

9. Vide Memo No.1284181/R&R-A2/2018-8 (Comp.No. 464221), dated 26.10.2019, the Special Chief Secretary to Government has passed orders, which reads thus: *“keeping in view of the orders of this Court in W.P. No.4331 of 2018, dated 13.07.2018 for providing employment as per the Rules and their eligibility and suitability for provision of employment in terms of G.O.Ms.No.98, Irrigation, dated 15.04.1986 and other G.O.s, Memos issued as per the letter dated 01.06.2019.”*

10. Despite, the memos dated 12.05.2016, 25.11.2016 and 21.08.2017 and Memo dated 26.10.2019, the respondents herein have not placed the petitioners in the 1st phase. Aggrieved, by the same, the present Writ Petition No.23445 of 2020 came to be filed seeking a direction to the respondents to place them in the 1st phase list in view of afore said memos and orders.

11. After considering the aforesaid memos and the orders of this Court in W.P. No.4331 of 2018 and W.P. No.25765 of 2020 and Order in W.A.No. 698 of 2021 which arises from the order in W.P. No.16635 of 2018, this Court has directed the respondents herein to place the petitioners 1, 2 and 3 in the 1st phase list on their eligibility and suitability.

12. The similar issue is in the instant case has been come into consideration in W.P. No.16635 of 2018, in the said Writ Petition, the petitioners therein has sought a direction to include the names of the petitioners therein along with others in the 1st phase list and forward proposals to provide benefit as per G.O.Ms.No.98, dated 15.04.1986. This Court after considering the judgments of the Hon'ble Apex Court

in *Commissioner of Police Bombay v. Gordhandas Bhanji*¹ and in *Mohinder Singhvi and another v. Chief Election Commissioner, New Delhi, 1978*² directed the respondents to include the names of the petitioner therein after separation from the 2nd phase seniority list and to place the petitioner therein in the 1st phase seniority list at the appropriate place subject to the fulfillment of eligibility conditions by the petitioner including the conditions laid down in the G.O.Ms.No.98, dated 15.04.1986.

13. The petitioners herein along with others have filed the Writ Petition No.4331 of 2018 to direct the respondents to include the names of the petitioners along with others in the 1st phase list and forward the proposals to provide benefit as per G.O.Ms.No.98, dated 15.04.1986. This Court has disposed of the Writ Petition directing the Principal Secretary, Water Resources [R.R. department] to consider the list submitted by the 2nd respondent i.e. Superintendent Engineer, Somasila Project, vide letter dated 01.06.2019 for providing employment as per the letter of the 2nd respondent

¹ AIR 1952 SC 16

² 1978 (1) SCC 405

dated 01.06.2019 by giving preference to the petitioners therein, in the light of G.O.Ms.No.98, dated 15.04.1986.

14. Against the order dated 22.01.2021 in W.P. No.16635 of 2018, an intra court appeal was filed under clause 15 of the Letters Patent Act. The Writ Appeal was dismissed with the following observations:

Rejecting the contention of the State that the memos were issued inadvertently and the same cannot be relied upon and also the contention raised by the State if such implementation is allowed everyone would approach this Court, and held that the contention was not substantiated by any material and when a direction was issued by the Secretary to the Government or the Joint Secretary of the Government, they are intended to implement and not to violate. Therefore, it is the duty of the appellants to implement those memos and place the Writ Petitioner at an appropriate place in a separate list, separating from the 2nd phasing seniority list.

15. It is the finding in the Writ Appeal that when a direction was issued by the Secretary level to the Government they are intended to implement and not to violate.

16. As per the Judgment of the Hon'ble Apex Court in *Commissioner of Police Bombay v. Gordhandas Bhanji* (referred supra) which is extracted and reads thus:

“9..... We are clear that public orders publicly made, in exercise of statutory authority cannot be constructed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself”

(Emphasis supplied)

17. In order to review the order there should be specific grounds namely:

- (i) Discovery of new and important matter of evidence which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time when the Decree was passed.
- (ii) Mistake or error apparent on the face of the record and
- (iii) For any other sufficient reason.

18. In *Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors.*, 2013 (8) SCC 337, in para no 16 (B) held when a review will not be maintainable:-

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.

- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."

19. If tested in the light of the principles summarised as above, it will be clear that the review petitioner has not made out a clear case for review of the Judgment.

20. This Court directed the respondents to place the petitioner in 1st phase list as per the Memos issued by the Government and the Memos issued in the present case are prior to the memo issued in other cases i.e. W.P. No.16635 of 2018 and the State has not satisfied the aforesaid three

grounds to review the order. The grounds raised in the review petition were answered by this Court in the aforementioned Writ Petitions.

21. As held by the Division Bench of this Court in Writ Appeal No.698 of 2021 dated 29.12.2021, the directions were issued at the Secretary level to the Government or the Joint Secretary to the Government, they are intended to be implemented not to violate.

22. In view of the reasons foresaid, this Court found no grounds to review the order dated 02.05.2023 in W.P. No.23445 of 2020.

23. Accordingly, the I.A. No.1 of 2023 in W.P. No.23445 of 2020 filed for review of the order is hereby dismissed. There shall be no order as to costs.

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

JUSTICE TARLADA RAJASEKHAR RAO

Date: 28.12.2023
Harin

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHARA RAO

I.A. No.1 of 2023

IN

W.P No. 23445 OF 2020

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