
(2022) 12 TEL CK 0010

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 8359 Of 2018

N.Raju

APPELLANT

Vs

Director General Of
Police And Others.

RESPONDENT

Date of Decision: Dec. 6, 2022

Acts Referred:

- Indian Penal Code, 1860 - Section 354

Hon'ble Judges: Surepalli Nanda, J

Bench: Single Bench

Advocate: G.Ravi Mohan

Final Decision: Allowed

Judgement

1. Heard learned counsel for the petitioners and learned Government Pleader for Labour.
2. This writ petition is filed to issue an order, direction or writ more particularly one in the nature of writ of Mandamus declaring the action of the respondents in not implementing the orders of the Tribunal in O.A.No.1344 of 2010, dated 04.10.2012 by treating the petitioner's service on par with the other persons who were appointed in pursuance of the notification issued in the year 2005 and passing the impugned order dated 11.09.2017 and in so far not implementing the order by not fixing the pay of petitioner on par with employees appointed in 2005 in pursuance of notification of 2005 as wholly illegal, arbitrary and consequently direct the respondents to implement the orders of the Tribunal dated 04.10.2012 by fixing the pay of

the petitioner w.e.f. 2006 and to add yearly increments and to pay the difference of such fixation.

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

a) The respondent issued paper notification for appointment to the post of stipendiary Cadet Trainee Police Constable (civil) APSP 2005. The

qualifications required for the post is SSC. The petitioner applied for the same. The written test was conducted on 21.08.2005 and results were

published on 09.10.2005.

b) The petitioner was selected and sent to medical examination at Osmania Hospital on 28.11.2005. But the petitioner was not sent for training as he

was involved in criminal case. The S.C.No.334 of 2005 was referred to Lok Adalath at M.S.J., Cyberabad at L.B.Nagar and the same was settled

amicably and that the petitioner was acquitted. The same was disclosed at the time of filing the application.

c) The total vacant posts are 426, but 358 candidates were sent to training. On 27.01.2006, again 20 candidates were sent for training. Therefore, the

petitioner approached the 2nd respondent vide application dated 28.01.2006. The 2nd respondent was informed that due to involvement in criminal

case, his name was deleted from the selected list.

d) Aggrieved by the same, the petitioner filed O.A.No.616 of 2006 before the Tribunal and the same was disposed of on 06.10.2009 directing the

respondents to examine the case of the applicant and pass appropriate orders. In view of the orders of the Tribunal, the petitioner filed application

before the respondents. The 3rd respondent passed orders on 20.01.2010 cancelling the provisional selection of the petitioner.

e) Against the action of the 3rd respondent, the petitioner filed O.A.No.1344 of 2010 before the Tribunal and the same was allowed on 04.10.2012

directing the respondents to appoint the applicant to the said post as per notification dated 04.04.2005. As per the order dated 04.10.2012, the 3rd

respondent issued orders on 28.10.2013 appointing the petitioner as Police Constable (civil). The petitioner was allowed to complete his probation

period w.e.f. 19.10.2015, but the Tribunal directed the respondents to appoint the petitioner as per notification dated 04.04.2005.

f) Against the orders dated 28.10.2013, the petitioner filed W.P.No.20026 of 2017. During the course of arguments, the 3rd respondent filed counter

stating that he is entitled for notional seniority and promotion on par with his 2005 batchmates and hence, the said writ petition was closed. As the

respondents have not complied with the said order, the present writ petition is filed.

4. The counter affidavit filed by the respondents, in brief, is as follows:

a) On antecedents verification, the petitioner was involved in Crime No.66 of 2005 under Section 354 IPC on the file of Yacharam P.S., Ranga Reddy

District on the complaint given by one Miss Derangula Jyothi, D/o Narayya, aged 19 years R/o Malkijiguda Village, a deaf and dumb girl on

10.08.2005. Subsequently, the said crime was compounded in terms of compromise before the Lok Adalath.

b) The notional seniority of the petitioner was fixed at Sl.No.1262 on par with petitioner's batch mates and no promotions were effected to their

batch mates till date. A letter dated 26.05.2018 was addressed to the 1st respondent for further instructions to give annual grade increment w.e.f.

2006 and that the 1st respondent also addressed letter to the Government on 29.05.2018.

c) The Government of Telangana vide Memo No.2406-P/Ser-II/A1/2017, dated 20.08.2017 issued the following instructions:

"The individual Sri N.Raju, PC-6936, Vanasthalipuram Traffic PS, was initially denied appointment due to his involvement in criminal offences, but

based on Tribunal Order, he was appointed duly assigning seniority from the date of his selection. Since he was not Government servant from 2005 to

his date of appointment, he is not entitled for his increments or pay during that period. But since notional seniority is extended from 2005, the individual

is requesting for notional fixation of pay on par with his batch mates. Rules for notional fixation for existing Government Servant when their seniority is

revised, but they are silent about fresh recruitment and they do not apply to new recruitment as the very service itself begins from the date of

appointment joining in service.

d) The representation dated 11.04.2018 of the petitioner was rejected vide memo dated 20.08.2017 and the same was acknowledged by the petitioner

on 24.01.2019. Therefore, the writ petition is liable to be dismissed.

PERUSED THE RECORD :

FACTS NOT IN DISPUTE :

5. The order dated 04.10.2012 in O.A.No.1344/2010 filed by the Petitioner on the file of APAT reads as under :

Para 12 : “ For the reasons stated under Point No.(i), the O.A. is allowed setting aside the proceedings of the 3rd Respondent in

D.O.No.129/2010/Rc.No.36/122/A1 /Cyb/05-2010, dated 20.01.2010. The Respondents are directed to appoint the applicant to the post of Stipendiary

Cadet Trainee Police Constable (Civil), pursuant to his selection to the said post under Notification dt. 04.04.2005, with all consequential benefits, if he

is otherwise eligible, within a period of 3 (three) months from the date of receipt of a copy of this order.

6. In pursuance to the orders dated 04.10.2012 in O.A.No.1344 of 2010 the 3rd Respondent issued Proceedings dated 20.10.2013 appointing the

Petitioner as Police Constable (Civil) w.e.f. 18.10.2013, whereas the Tribunal directed the Respondents to appoint the Petitioner to the said post in

pursuance of the Selection Notification dt. 04.04.2005 with a clear stipulation that the Petitioner is entitled for all consequential benefits if he is

otherwise eligible within a period of 3 months from the date of receipt of the copy of the order. Aggrieved by the inaction of the Respondents in

implementing the said orders, Petitioner filed W.P.No.20026/2017.

7. Contents of the letter dated 11.09.2017 of the 3rd Respondent issued in favour of the Petitioner reads as under :

Ã¢â¬ÅOffice of the Commissioner of Police, Cyberabad at Gachibowli vide D.O.No.1661/2017, Rc.No.36/122/A3(A9)/Cyb/ 2005-17, dt. 11.09.2017.

In pursuance of the Government Memo No. Rc.No.2406-P/Ser.II/A1/2017 of Home (Services-II) Dept., TS, Hyderabad dt. 11.09.2017

Communicated by C.O. Endt. Rc.No.33/E1/2017, dt. 11.09.2017 and in compliance to the HonÃ¢â¬Åble AP Administration Tribunal orders dt.

04.10.2012 in O.A.No.1344/2010, is hereby ordered to release the consequential benefits i.e., assigning notional seniority and promotion in respect of

Sri N.Raju, 6936 of Vanasthalipuram Traffic P.S. Rachakonda i.e., of erstwhile Cyberabd on par with his 2005 batchmates, duly following the

provisions of General Rule-24 of Telangana State and Subordinate Service RulesÃ¢â¬Å.

8. The W.P.No.20026/2017, dated 12.09.2017 was disposed of as infructuous observing as follows :

Ã¢â¬ÅThis writ petition is filed feeling aggrieved by the inaction of the respondents in extending the consequential benefits attached to the Stipendiary

Cadet Trainee Police Constable (Civil) APST -2005 in pursuance of order, dated 04.10.2012, in O.A.No.1344 of 2010 on the file of the Andhra

Pradesh Administrative Tribunal, Hyderabad (for short Ã¢â¬Åthe TribunalÃ¢â¬Å).

2. At the hearing, the learned Government Pleader for Services (T.S.) appearing for the respondents has placed before the Court, (1) memo No.2406-

P/Ser.II/A1/2017, dated 11.09.2017, issued by respondent No.4 Ã¢â¬Å the Principal Secretary to Government, permitting to release the consequential

benefits i.e., assigning notional seniority and promotion to the petitioner on par with his 2005 batchmates; (2) another memo of even date issued by

respondent No.1 - the Director General of Police, requesting respondent No.3 Ã¢â¬Å the Commissioner of Police, to implement the aforementioned

memo; and (3) proceedings in D.O.No.1661/2017 Rc.No.36/122/A3(A9) /Cyb/2005-17, of even date issued by respondent No.3 ordering release of

the consequential benefits in respect of the petitioner.

3. Mr.G.Ravi Mohan, learned counsel for the petitioner, has submitted that with the issue of the aforementioned proceedings, the order of the Tribunal

stood complied with. 4. Hence, the Writ Petition is disposed of as infructuous. 5. As a sequel to disposal of the writ petition, W.P.M.P.Nos.24509 and

37368 of 2017 filed by the petitioner shall stand disposed of as infructuous.

9. Counter affidavit in the present Writ Petition at paras 20 to 24 read as under :

Para 20 : I further respectfully submit that the implementation orders were issued vide D.O.No.1661/2017, dt. 11.09.2017 of the Commissioner of

Police, Cyberabad and communicated to the Respondent with proper acknowledge on 12.09.2017.

Para 21 : I further respectfully submit that the notional seniority was fixed at Sl.No.1262 on par with his batch J(2005) mates and communicated to the

respondent with proper acknowledge on the seniority list and no promotions were given as promotions were not effected to their batch mates till date.

Para 22 : Further it is respectfully submitted that a letter was also addressed to Director General of Police, Telangana, Hyderabad for further

instructions to give Annual Grade Increments w.e.f. 2006 vide this Office letter Rc.No.E3/36/122/Cyb/2005- 18, dt. 26.05.2018. Para 23 : Further it is

respectfully submitted that the Director General of Police, Telangana, Hyderabad also addressed to the letter to the Govt. of Telangana for further

orders vide letter Rc.No.333/E1/2017, dt. 29.05.2018. Further orders are awaited from the Govt. of Telangana.

Para 24 : It is respectfully submitted that the Govt. of Telangana vide Memo No.2406-P/Ser-II/A1/2017, dt. 20.08.2017 have issued the following

instructions :

“the individual Sri N.Raju, PC-6936, Vanasthalipuram Traffic PS, was initially denied appointment due to his involvement in criminal offences, but

based on Tribunal order, he was appointed duly assigning seniority from the date of his selection. Since he was not Govt. servant from 2005 to his date

of appointment, he is not entitled for his increments or pay during that period. But since notional seniority is extended from 2005, the individual is

requesting for notional fixation of pay on par with his batch mates. Rules for notional fixation for existing Government servant when their seniority is

revised, but they are silent about fresh recruitment and they do not apply to new recruitment as the very service itself begins from the date of

appointment joining in service.

DISCUSSION & CONCLUSION :

10. The counsel for the Petitioner specifically contends that the petitioner's pay has not been fixed till as on date on par with other employees

appointed in 2005 in pursuance of notification of 2005 and the yearly increments also had not been released to the petitioner nor the difference of

amounts due consequent to fixation of pay on par with other employees appointed in 2005 had been released to the Petitioner and therefore the order

of the A.P.A.T., dated 04.10.2012 passed in OA No.1344 of 2012 has not been implemented in its entirety still as on date and the relief prayed for by

the Petitioner in the present Writ Petition cannot be denied on technical grounds in view of the fact that the Petitioner bonafidely believed that the

contents of the letter dated 11.09.2017 would eventually lead to implementation of the orders dt. 04.10.2012 passed in OA No.1344 of 2010 by the

Respondents herein in its entirety and therefore the Petitioner through his counsel submitted to the Court that with the issuance of the proceedings dt.

11.09.2017 of the 4th Respondent, the order of the Tribunal stood complied with and accordingly the W.P.No.20026 of 2017 dated 12.09.2017 was

dismissed as infructuous. The Counsel for the Respondent on the other hand contends that the filing of the present Writ Petition by the Petitioner

amounts to resjudicata and therefore, the Writ Petition has to be dismissed.

11. A bare perusal of the contents of the Memo dated 11.09.2017 and para 2 of the order dated 12.09.2017 passed in WP No.20026 of 2017 and also

paras 22 and 23 of the counter affidavit filed by the Respondents (extracted above) clearly indicate that instructions are awaited in the matter from the

Government of Telangana for release of Annual Grade Increments w.e.f. 2006 to the Petitioner herein and therefore this Court opines that in view of

the fact as borne on record that the order dated 04.10.2012 passed in OA No.1344 of 2010 has not been implemented till as on date by the

Respondents in its true spirit, in its entirety, in spite of the proceedings dated 11.09.2017 issued by the 4th Respondent, therefore, the plea of the

respondent that resjudicata applies in the present case is not sustainable and the Writ Petition is therefore, allowed as prayed for. The Respondents

are directed to take a decision in pursuance to Office Letter Rc.No. E3/36/122/Cyb/2005-18, dated 26.05.2018 and Rc.No.333/E1/ 2017, dated

29.05.2018 (referred to in paras 22 and 23 of the counter affidavit filed by the Respondents and extracted above) duly implementing the orders dated

04.10.2012 passed in OA No.1344 of 2012 in its true spirit and pass appropriate orders, within a period of four weeks from the date of receipt of the

copy of the order and duly communicate the said decision to the Petitioner. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.