IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF MARCH, 2021

PRESENT

THE HON'BLE MRS.JUSTICE S.SUJATHA

AND

THE HON'BLE MR. JUSTICE P.N.DESAI

W.P.No.6729/2017 (S - KAT)

BETWEEN:

SRI. SATEESHA S/O GOPALGOUDA, AGED 36 YEARS ASST.TEACHER, GOVT.SCHOOL FOR BLIND CHILDREN, TILAKNAGAR, MYSORE-570001.

...PETITIONER

(BY SMT.JAYNA KOTHARI, SENIOR COUNSEL A/W SMT.SHEERENE MOHAMED, ADV.)

AND:

- 1. STATE OF KARNATAKA
 DEPARTMENT OF WOMEN & CHILD DEVELOPMENT,
 KGS, MS BUILDING,
 BANGALORE-560001
 REPTD BY ITS PRINCIPAL SECRETARY
- 2. DEPARTMENT OF EMPOWERMENT
 OF DIFFERENTLY ABLED AND SENIOR CITIZENS,
 PODIUM BLOCK, VV CENTRE,
 BANGALORE-560001
 REPRESENTED BY ITS DIRECTOR
- 3. DIRECTOR
 DEPARTMENT OF WOMEN &
 CHILD DEVELOPMENT,

MS BUILDING, 3RD FLOOR, BANGALORE-560001

- 4. SRI GANGADHAR.P S/O R.PUTTAPPA, AGED ABOUT 54 YEARS ASST.TEACHER, GOVT. SCHOOL OF DEAF CHILDREN TILAKNAGAR, MYSORE-570001
- 5. CHANNESHAIAH.M S/O VEERAIAH, AGED ABOUT 58 YEARS ASST. TEACHER, GOVT. SCHOOL OF DEAF CHILDREN THILAKNAGAR, MYSORE-570001
- 6. ANNAPPA L. KOLI
 S/O LAGAMAPPA B. KOLI,
 AGED ABOUT 45 YEARS
 ASST. TEACHER,
 GOVT SCHOOL FOR BLIND BOYS,
 HUBLI-580024.
- 7. SUBRAMANYA RAJE URS.N S/O NANJARAJE URS.N AGED ABOUT 53 YEARS PROJECT ASST.
 OFFICE OF THE DISTRICT DISABLED WELFARE OFFICER, No.5, 3RD FLOOR, PR PLAZA, VARAL NAGARAJ RAOD, OKALIPURAM, BANGALORE-560021.

...RESPONDENTS

(BY SRI T.P.SREENIVAS, AGA. FOR R-1 – R-3; SRI YOGESH NAIK, ADV. FOR R-6 & R-7; R-4 & R-5 ARE SERVED.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER OF THE HON'BLE KARNATAKA ADMINISTRATIVE TRIBUNAL DATED 24.09.2016 PASSED IN APPLICATION No.45 TO 48/2012 VIDE ANNEXURE-A; DECLARE THE FINAL

SENIORITY LIST DATED 22.02.2012 VIDE ANNEXURE-E AND THE CORRIGENDUM DATED 11.11.2011 AS VALID; AND ETC.,

THIS PETITION COMING ON FOR HEARING, THIS DAY, **S. SUJATHA, J.**, MADE THE FOLLOWING:

ORDER

This Writ Petition is directed against the order dated 24.9.2016 passed by the Karnataka State Administrative Tribunal ('Tribunal' for short), Bangalore Application Nos.45 to 48/2012 whereby the in applications filed by the respondent Nos.4 to7 herein are allowed quashing the corrigendum No.ಮಮಇ.409.ಎಸ್ಜೆಡಿ.2010 dated 11.11.2011 issued by the Respondent No.1 and final seniority list of Assistant Teachers published in order No.ನಿಅಕಇ.ಸಿಬ್ಬಂದಿ/ಜೇಷ್ವತೆ/ಸಾಶಿ/2009-10/11-12 dated 22.2.2012 passed by the 2nd respondent.

2. Succinctly stated the facts are that the petitioner, an Assistant Teacher at the Government School for blind children at Talaknagara, Mysore, is a

person with disability, being blind. He was appointed as a teacher (General) by the 2nd respondent vide Government order dated 18.4.2002. The respondent Nos.4 to 7 were initially working with the respondent No.1 – the Directorate of Women and Child Development Department. The Department was expanded to become the Department of Women and Child Development and Empowerment of Persons with Disability which led to the creation of a new cadre of service called the Karnataka Welfare of Disabled and Senior Citizens Services and the creation of the respondent No.2-the Directorate of Empowerment of Differently Abled and Senior Citizens. The 1st respondent issued Government order bearing No.Ma.Ma.E:422:SJD:2004 dated 1.1.2008 under the Karnataka Welfare of Disabled and Senior Citizens Services (Recruitment) Rules 2004 ('C&R Rules, 2004' for short) and Karnataka Civil Services (General Recruitment) Rules, 1977 ('Rules 1977' for short) wherein it was approved for transfer of persons who were working in the 1st respondent Department to the Department of Empowerment of Differently Abled and Senior Citizens. (EDA&SC' for short). In pursuant to the said order, the respondent Nos.4 to 7 who were working in the Department of Woman and Child Development gave their willingness for transfer to the department of EDA&SC. The 2nd respondent issued a provisional seniority list in which the names of respondent Nos.4 to 7 were found above the petitioner herein. On 11.11.2011 Corrigendum was issued by the 1st respondent by deleting the phrase "in public interest" from the order dated 1.1.2008 and accordingly a revised seniority list was issued by the 2nd respondent by virtue of which, the names of the respondent Nos.4 to 7 were found at the end, counting their date of appointment only from the date of absorption in 2nd respondent Department. The said respondent Nos.4 to 7 challenged the final seniority list and the corrigendum of the Tribunal. The Tribunal has allowed the applications.

Hence, the present writ petition by the respondent No.4 before the Tribunal.

3. Learned counsel for the petitioner argued that the Tribunal has completely ignored the C&R Rules 2004 which were specially meant for the recruitment of employees of the 2nd respondent Department. Rule 4 of the Rules was referred, to contend that the service rendered in the existing identical posts in the Karnataka Women and Child Development Department was required to be taken as qualifying service for the purpose of leave, pay and pension only. Seniority in respect of persons absorbed under the said Rules shall be taken into consideration from the date of absorption under the said Rules and seniority inter se in a cadre shall be determined on the basis of the length of service put in the respective cadres in the respective services, seniority inter se being maintained. It was submitted that the respondent Nos.4 to 7 were transferred to the

respondent No.2 Department on their own request as such, the transfer employee will have to forego his seniority. Thus, it was submitted that the respondents chose to be transferred to the 2nd respondent Department. Referring to Rule 6 of the Karnataka Government Servant's (Seniority) Rules, 1957 and the proviso thereon, it was argued that the Tribunal erred in quashing the Corrigendum dated 11.11.2011 and the final seniority list of the Asst. Teachers published in order dated 22.2.2012 wherein the petitioner was placed above the respondent Nos.4 to 7.

- 4. Learned counsel has placed reliance on the judgment of the Hon'ble Apex Court in K.P.Sudhakaran and another Vs. State of Kerala and others reported in (2006)5 SCC 386.
- 5. Learned counsel appearing for the contesting respondents 4 to 7 justifying the impugned order submitted that as per the Government Order dated

- 1.3.2006, Rule 6 of the Rules 1957 is applicable. In terms of the said Rules 'in the interest of public' would play a significant role. The words 'in the interest of public' is found in the Government Order dated 1.1.2008. Omitting the said words, by corrigendum dated 11.11.2011 retrospectively with effect from 1.1.2008 has caused great hardship and injustice to the respondents who had given their willingness for transfer.
- 6. We have carefully considered the rival submissions of the learned counsel appearing for the parties and perused the original records.
- 7. To address the controversy involved in this petition, it is beneficial to refer to the Government order No.DPAR/101/SRD/98[P], Bangalore dated 01.04.2004 whereby the Karnataka Welfare of Disabled and Senior Citizen Services [Recruitment] Rules, 2004 are notified. Rules 3 and 4 of the said Rules reads thus:

"3. Constitution of Service:- [1] The Directorate of the Karnataka Welfare of disabled and Senior Citizen Services shall of, withstanding consist not contained in Rule 3, in the initial constitution, the categories of posts in the cadre of Group-A, B., C and D persons, appointed from among persons holding, identical posts in the Karnataka Women and Child Development Department Services immediately before the commencement of these rules, on deputation basis:

Provided that no person shall be so appointed unless he has expressed, in writing within the time to be specified by the State Government by a separate notification in this regard, his willingness to be so appointed. If any person has already expressed his willingness before the commencement of these rules it shall not be necessary for him to express his willingness once again. The decision of the Government on the willingness shall be final:

Provided further that until persons are so appointed, persons holding the posts transferred to the Karnataka Welfare of Disabled and Senior Citizens Services from the Karnataka Women and Child Development Department Services shall hold the same as on deputation basis.

4. Service for the purpose of Leave etc.,:-

The service rendered in the existing identical posts in the Karnataka Women and Child Development Department Services shall be taken as qualifying service for the purpose of leave, pay and pension only. Seniority in respect of persons absorbed under these rules shall be taken into consideration from the date of absorption under these rules and seniority interse in a cadre shall be determined on the basis of the length of service put in the respective cadres in the respective services, seniority interse being maintained."

8. Government Order dated 01.03.2006 issued by the Government of Karnataka contemplates that the seniority of the officer; employee appointed in a cadre through transfer could be considered in terms of Rule 6 of the Karnataka Government Employees [Seniority] Rules, 1957 and the Women and Children Development Department related cadre. Government Order dated 01.01.2008 provides that vide notification 01.03.2006 willingness from the officers/officials of the Women and Child Development Department and from the officers/officials who are already working with the Department of Welfare of Disabled and Senior Citizens on deputation basis was invited, in the equivalent cadres. In view of the application Nos.2099-2101/2006 and 2163-2164/2006 filed before the Karnataka State Administrative Tribunal by one Smt. Yogini C. Shyanbag and others challenging the said Government Order dated 01.03.2006, the list of willingness have been received from the officers/officials, for taking necessary action. As per Rule 3 of the Karnataka Welfare of Disabled and Senior Citizens [Recruitment] Rules, 2004 read with Rule 16[A] [11] of the Karnataka Civil Services [General Recruitments] Rules, 1977, the officer/officials of the Women and Child Development Department having experience and got training and who have submitted their willingness are appointed along with the officer/officials already working in the Department of Welfare of Disabled and Senior Citizens [as mentioned in Annexure], in their equivalent posts "in the interest of public".

9. Pursuant to the said order, on transfer from Women and Child Development Department to the Welfare of Disabled and Senior Citizens Department, provisional seniority list was prepared wherein the respondent Nos.4, 5 and 6 were placed at Sl.No.2 to 4 and the petitioner herein was placed at Sl.No.11.

Accordingly, final seniority list was published on 23.05.2011.

10. Subsequently, corrigendum dated 11.11.2011 was issued whereby the word 'in public interest' was removed with retrospective effect from 1.1.2008. As per the Karnataka Government Servants' [Seniority] Rules, 1957, ['Rules, 1957' for short] the transfer of a person in public interest from one class or grade of a service to another class or grade carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purpose of seniority and the seniority of a person so transferred shall be determined with reference to his first appointment to the class or grade from which he was transferred. Proviso thereof would indicate that where the transfer is made at the request of the officer, he shall be placed in the seniority list of the class or grade of service to which he is transferred below all the officers borne on that

class of grade of service on or before the date of the transfer. Thus, the words 'in the interest of public' would be relevant for determining the seniority in terms of Rules 1957 vis-a-vis Rules 2004. The action of the State Government in issuing a corrigendum to the Government Order dated 1.1.2008 by way of an amendment dated 11.11.2011 removing the words in the interest of general public' with effect from 1.1.2008 after preparing the final seniority list as per the Government Order dated 01.01.2008 is without any basis and against the fundamental principles of law. Any right if accrued to the respondents herein, has been certainly disturbed by issuing the Corrigendum by way of an amendment to the Government Order dated 1.1.2008. If such rights accrued to the parties is disturbed without providing any opportunity of hearing to them, the same would be in breach of the principles of natural justice. Moreover, any such Corrigendum issued after nearly three years cannot be construed as a reasonable time to make any amendment to the Government Order dated 1.1.2008. It is significant to note that the said Corrigendum issued is not merely an arithmetical or calculation or typographical mistake. The same goes to the root of the matter in view of the relevant rules applicable to the facts and circumstances of the present case.

11. Corrigendum dated 11.11.2011 is vague and does not depict any reasons for amending the Government Order dated 1.1.2008. It is trite that any order passed without assigning reasons is a nullity in the eye of law and the same is unsustainable. The challenge made by the private respondents to the said Corrigendum Notification dated 11.11.2011 has been rightly quashed by the Tribunal. Consequently, the seniority list notified on the basis of the Corrigendum Notification necessarily calls for an interference.

12. In **K.P.Sudhakaran** supra, it has been held that in service jurisprudence, the general rule is that if a government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a Government servant is so own request, the transferred transferred on his employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the junior most employee in the category in the new cadre or department. Government servant getting transferred another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his service in the

department from which he has been transferred, should be taken into account. It is further categorically held that the matter is however governed by the relevant service rules. In the present scenario, we are of the considered view that the willingness sought by the officers/officials could not be construed as an individual request of transfer to forego the seniority.

13. The Tribunal has referred to the judgment of the Hon'ble Apex Court in the case of **Wing Commander J. Kumar Vs. Union of India and others** (1982 SCC (L & S) 177) wherein their Lordships have held that when persons from one department to another department are shifted or absorbed from different sources are drafted to serve in a new service, their preexisting length of service in the parent department should be respected and preserved by taking the same into account in determining their ranking in the new service cadre.

As observed by the Tribunal in context of a 14. new department, bifurcation of the states etc., restructuring of several cadres including that of senior IAS officers often takes place. As per the established law and practices, though the willingness is asked the individuals do not loose seniority in the process. In the present case, transfer made in the public interest place a significant role and the same cannot be effaced in a casual manner. Though the learned Senior counsel appearing for the petitioner strongly argued that Rules 2004 should be given primacy and the Tribunal ignoring the same has passed the impugned order, we are afraid to accept the same since the Rules 2004 as well as Rules 1957 has to be read together and a conjoint reading of these Rules would clearly demonstrate that the seniority list impugned published by the respondent No.2 runs counter to these Rules.

15. For the reasons aforesaid, no exception can be found with the order of the Tribunal impugned herein.

Writ Petition is bereft of merits and accordingly stands dismissed.

Sd/-JUDGE

Sd/-JUDGE

Dvr:/NC.