



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
WRIT PETITION NO: 23363 OF 2021

Between:

1. C.Narasimhulu, Son of Narasimhulu,
Aged about 43 years, Occ- Typist,
Office of Executive Engineer,
Somasila Project Division II,
SPSR Nellore District.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh, Represented by its Special Chief
Secretary,
Water Resources Department,
A.P. Secretariat, Velagapudi,
Amaravathi, Guntur District.
2. The Engineer-in-Chief, Water Resources Department,
Currency Nagar, Ramavarappadu Ring, Vijayawada, Krishna District -
520 008.
3. The Superintending Engineer, Somasila Project Circle, Dargamitta, SPSR
Nellore District.
4. The Executive Engineer, Somasila Project Division-II,
SPSR Nellore District.

...RESPONDENTS

Counsel for the Petitioner(s): K RAJYA LAKSHMI

Counsel for the Respondents: GP FOR SERVICES III

The Court made the following: ORDER



***HON'BLE SRI JUSTICE RAVI NATH TILHARI**

+WRIT PETITION No.23363 of 2021

%25.02.2022

C Narasimhulu
Son of Narasimhulu, aged about
43 years Occ: Typist Office of
Executive Engineer Somasila
Project Division II,
SPSR Nellore District

....Petitioner.

And:

1. The State of Andhra Pradesh,
rep. by its Special Chief
Secretary, Water Resources
Department, A.P. Secretariat,
Velagapudi, Amaravathi,
Guntur District.
2. The Engineer-in-Chief, Water
Resources Department,
Currency Nagar,
Ramavarappadu Ring,
Vijayawada, Krishna District.
3. The Superintendent
Engineer, Somasila Project
Circle, Dargamitta, SPSR
Nellore District.
4. The Executive Engineer,
Somasila Project Division-II,
SPSR Nellore District.

....Respondents

! Counsel for the petitioner : Smt K. Rajyalakshmi

^ Counsel for the respondents : Sri Y. Srinivasa Rao,
Assistant Government Pleader for
Service-II

< Gist:

> Head Note:

? Cases referred:

¹ (2014) 1 SCC 329

² (2022) 1 SCC 347,

³ (1996) 9 SCC 309,



HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.23363 of 2021

25.02.2022

Between:

C Narasimhulu
Son of Narasimhulu, aged about
43 years Occ: Typist Office of
Executive Engineer Somasila
Project Division II,
SPSR Nellore District

....Petitioner.

And:

1. The State of Andhra Pradesh,
rep. by its Sepcial Chief
Secretary, Water Resources
Department, A.P. Secretariat,
Velagapudi, Amaravathi,
Guntur District.
2. The Engineer-in-Chief, Water
Resources Department,
Currency Nagar,
Ramavarappadu Ring,
Vijayawada, Krishna District.
3. The Superintendent
Engineer, Somasila Project
Circle, Dargamitta, SPSR
Nellore District.
4. The Executive Engineer,
Somasila Project Division-II,
SPSR Nellore District.

....Respondents

DATE OF JUDGMENT PRONOUNCED: 25.02.2022.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

- | | |
|--|--------|
| 1. Whether Reporters of Local newspapers may
be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
Marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair
Copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

**HON'BLE SRI JUSTICE RAVI NATH TILHARI****WRIT PETITION No.23363 OF 2021****JUDGMENT:**

Heard Smt K. Rajya Lakshmi, learned counsel for petitioner and Sri Y.Srinivasa Rao, learned Assistant Government Pleader for Services-II appearing for the respondents.

2. This writ petition has been filed for the following reliefs:-

“...Hon'ble Court may be pleased to issue a writ or order or direction, more particularly one in the nature of Writ of *Mandamus*, declaring the action of the respondents in neither regularizing the services of the petitioner in the cadre of Typist nor converting the services of the petitioner as Junior Assistant and issuing the present proceedings vide Notice No.P.V/ SPC/ Nellore/ A.B./ E.C.2/418M dated 17.04.2021, as highly illegal, arbitrary, discriminatory and contrary to the Division Bench Judgment of this Hon'ble High Court in W.P.No.11321 of 2019 dated 16.04.2021 and set aside the same with all consequential benefits; and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

3. The grievance of the petitioner is that his services in the cadre of Typist are neither being regularized nor being absorbed on the post of Junior Assistant and his representation to that effect has been rejected by the impugned order dated 16.04.2021.

4. The facts of the case are that the petitioner's lands were submerged under Somasila Project in the year 1987. The Government issued G.O.Ms.No.98 dated 15.04.1986 which provided for employment to the displaced persons. On the petitioner's application, he was appointed as Typist in proceedings No.SE/SPC/NLR/EC(2)/E-9(D)/168 M dated 12.02.2019 by the Superintending Engineer, Somasila Project Circle, Nellore District/3rd respondent. The order of appointment provided that the petitioner shall pass type writing Higher Grade in



both English and Telugu within a period of two years from the date of his joining duty. The petitioner's representation dated 27.07.2020 for conversion/absorption as Junior Assistant from Typist was rejected vide Memo No.SE/SPC/NLR/AB/EC.II/E.33/146 SP2 dated 06.08.2020 against which the petitioner filed W.P.No.3515 of 2021, which was disposed of vide judgment dated 26.02.2021, permitting the petitioner to make a fresh representation to the respondents who were directed to take appropriate decision, in accordance with law.

5. The petitioner's fresh representation was rejected vide Memo No.P.V/SPC/Nellore/A.B./E.C.2/418M, dated 17.04.2021 by the 3rd respondent on the ground that as per the rules and regulations there was no scope for conversion of the post of typist as Junior Assistant. However, on the petitioner's request he was granted extension of two years to pass out type writing Higher Grade both in English and Telugu examination.

6. Challenging the order dated 17.04.2021 the present writ petition has been filed.

7. Smt K. Rajyalakshmi, learned counsel for the petitioner, submits that the petitioner possess diploma in computer applications, Data Entry and Maintenance, DCHE and is eligible to be regularized on the post of Typist and to be absorbed on the post of Junior Assistant, in spite of the fact that he could not pass the requisite qualification of type writing higher grade both in English and Telugu due to various reasons and now there is also no possibility of the petitioner acquiring such qualification. She further submits that earlier the State Government granted relaxation from such qualification vide G.O.Ms.No.116 dated 29.02.2008 and G.O.Ms.No.68 dated 11.03.2010 in different departments.



8. Learned counsel for the petitioner further submits that in similar circumstances, this Court has passed orders in favour of those petitioners, though they did not qualify the type writing Higher Grade both in English and Telugu examination. Reliance has been placed on the judgments dated 03.03.2020 in W.P.No.33661 of 2017, dated 14.08.2019 in W.P.No.11321 of 2019 and in W.P.No.17966 of 2020 dated 16.04.2021.

9. Sri Y. Srinivas Rao, Learned Assistant Government Pleader for Services-II submits that the petitioner's order of appointment dated 12.02.2019 as Typist, under displaced person quota of Somasila Project in terms of G.O.Ms.No.98 dated 15.04.1986, contained condition in the order itself that he shall pass Type Writing Higher Grade both in English and Telugu, within two (2) years from the date of his joining. He joined as Typist on 13.02.2019 subject to such condition and completed two years of service in the cadre of Typist on 12.02.2021 but could not succeed in the examination to acquire that requisite qualification. However, while his representation was being considered, on his request, he was granted two more years of grace period to acquire the required qualification vide proceedings No.SE/SPC/NLR/AB/EC.II/150M, dated 26.02.2021. Learned Assistant Government Pleader further submits that the extended period has not yet expired which would expire on 12.02.2023 and consequently the petitioner should have waited upto 12.02.2023 as per his own request.

10. Learned Assistant Government Pleader further submits that the Government Order dated 29.02.2008 granted relaxation, considering various factors as prevailed at that time prescribed in rule 23 of the A.P. Ministerial Services Rules, 1998 in favour of Junior Stenographers who were appointed between 05.03.1987 to 14.07.1998. The G.O Ms.No.68



dated 11.03.2010 was one time relaxation in respect of Junior Accountants in Andhra Pradesh Treasury (Subordinate) Services Rules, appointed on compassionate ground conditionally who were working as on 27.10.2007. However, there is no relaxation either generally or in the case of the petitioner with respect to the qualification in Rule 6 of the Ministerial Service Rules, 1998 read with Rule 31 of the Andhra Pradesh State & Subordinate Service Rules, 1996.

11. Learned Assistant Government Pleader further submits that the petitioner is not an approved probationer in the cadre of Typist and so he is not eligible for conversion to the cadre of post of Junior Assistant in view of Rule 14 of the Ministerial Service Rules, 1998. It is only after the petitioner possesses the requisite qualification, his case for conversion of Typist to Junior Assistant can be considered, for which the petitioner has sufficient time to acquire the requisite qualification.

12. In reply, learned counsel for the petitioner submits that the petitioner did not make any request for grant of further two years period to acquire the requisite qualification, as mentioned in the impugned order.

13. I have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

14. Rule 14 of the Ministerial Service Rules, 1998, provides for conversion as between Junior Assistant/Typist etc, as under:-

“14. CONVERSION AS BETWEEN JUNIOR ASSISTANTS/ TYPISTS /JUNIOR STENOS/ TELEPHONE OPERATORS, ASSISTANT-CUM-TYPISTS AND TRANSFERS BETWEEN CATEGORIES OF JUNIOR ASSISTANTS AND TYPISTS/JUNIOR STENOGRAPHERS AND TELEPHONE OPERATORS AND ASSISTANT -CUM-TYPISTS:

(a) Any person working in a post in the category in column (1) of the table below, shall be eligible for conversion to the category in column (2) that of if he possesses the qualifications prescribed for appointment by direct recruitment to the latter



post and is **suitable for such appointment and has satisfactorily completed the period of probation in the category in column(1).**

(1)	(2)
Assistant -cum- Typist, Junior Assistant, Typist or Junior Stenographer.	Telephone Operator
Junior Assistant, Typist, Junior Stenographer, Telephone Operator.	Assistant-cum-Typist
Assistant-cum-Typist, Typist, Junior Stenographer, Telephone Operator	Junior Assistant
Assistant-cum-typist, Junior Assistant or Telephone Operator	Typist/Junior Stenographer.

(b) Typist and Junior Stenographers and Telephone Operators in the Offices of Heads of Departments and Directorates shall-not be eligible for conversion as Junior Assistants or Assistant-cum- Typists, unless they hold a degree of a University in India established or incorporated by or under a Central Act, Provincial Act or State Act or of an institution recognized by the University Grants Commission, or possess any other equivalent qualifications:

Provided that those appointed to the aforesaid categories in the Offices specified in this sub-rule prior to the 31 October, 1980 and had passed the two paper test OR General Educational Test of Group-IV standard conducted by the Andhra Pradesh Public Service Commission shall be eligible for promotion to the post of Senior Assistant or for conversion to the post of Junior Assistant:

Provided further that the Non-Graduate Junior Assistants, Typists and Junior Stenographers appointed after the 31st October, 1980 and appeared for the Special General Educational Test of Degree Standard conducted by the Andhra Pradesh Public Service Commission in pursuance of the orders issued by Government from time to time and passed the said test shall also be eligible for appointment as Junior Assistant by conversion, or for promotion to the post of Sr. Assistant.

(c) Typists or Junior Stenographers and Telephone Operators shall not be eligible for conversion as Junior Assistant in the Subordinate Offices i.e., Offices other than the Heads of Departments and Directorates, unless they have



passed the Intermediate Examination conducted by the Andhra Pradesh State Board of Intermediate Education or its equivalent examination:

Provided that those appointed prior to 29.10.1987 to the categories mentioned in this sub-rule are eligible for conversion as Junior Assistants or for promotion as Senior Assistants in the Subordinate Offices if they possess Minimum General Educational Qualification.

(Provided further that those appointed prior to 12.05.2014 to the Categories mentioned in this sub-rule are eligible for conversion as Junior Assistants or for promotion as Senior Assistants in the Subordinate Offices if they possess Intermediate or any equivalent examination)."

15. A bare perusal of Rule 14 (a) of the Rules, 1998, shows that any person working in the post in the category in Column (1) of the table shall be eligible for conversion to the category in column (2) if he possesses the qualifications prescribed for appointment by direct recruitment to the latter post and is suitable for such appointment and has satisfactorily completed the period of probation in the category in column (1). Admittedly, the petitioner has not completed the period of probation in the category of Typist and is not a confirmed probationer.

16. Rule 31 of the Andhra Pradesh State Subordinate Services Rules 1996 provides for relaxation of the Rules and reads as under:

"31. RELAXATION OF RULES BY THE GOVERNOR:- Notwithstanding anything contained in these rules or in the special rules, the Governor shall have the power to relax any rules contained in these rules or special rules, in favour of any person or class of persons, in relation to their application to any member of a service or to any person to be appointed to the service, class or category or a person or a class of persons, who have served in any civil capacity in the Government of Andhra Pradesh in such manner as may appear to be just and equitable to him, where such relaxation is considered necessary in the public interest or where the application of such rule or rules is likely to cause undue hardship to the person or class of persons concerned."

17. Admittedly no relaxation has been granted either generally or specially in the petitioner's case under Rule 31 of the Rules, 1996,



relating to the qualification of Type Writing test both in English and Telugu Higher Grade under rule 6(1) of the Ministerial Service Rules, 1998.

18. The G.O.Ms.No.116 dated 29.02.2008 Ex.P.12, upon which learned counsel for the petitioner has placed reliance, is in respect of Junior Stenographer appointed between 05.03.1987 and 14.07.1998, which was issued in exercise of power under Rule 31 of the Rules, 1996, relaxing Rule 23 in favour of Junior Stenographers, considering various factors. Similarly, the G.O.Ms.No.68 dated 11.03.2010, was issued in the facts and circumstances as mentioned therein to the Junior Accountants appointed on compassionate ground in Treasury and Accounts Department and working as on 21.10.2007, as one time measure. The petitioner, admittedly, is not covered under G.O.Ms.No.116 dated 29.02.2008 or G.O.Ms.No.68 dated 11.03.2010.

19. The submission of the learned counsel for the petitioner is that in view of the above Government Orders, the petitioner should also be considered without insisting upon the qualification prescribed by rule and the respondent be directed accordingly.

20. The aforesaid submission deserves rejection, in as much as the power to relax is with the Government to be exercised in the manner and on consideration of various factors as under rule 31 of the Rules, 1996, that may appear just and equitable, if such relaxation is considered necessary in the public interest or where the application of such rule is likely to cause undue hardship to the person or classes of persons concerned. The Government orders dated 29.02.2008 and 11.3.2010 granted relaxation considering various factors. Whether those factors, still existing or not and whether it would be in public interest to relax the qualification or not, etc., lies in the realm of policy matter of the Government, at the first instance. Further, this court in



the exercise of writ jurisdiction under Article 226 of the Constitution of India cannot take account of all those factors upon consideration of which the G.Os dated 29.02.2008 and 11.03.2010 were issued and determine if the qualification under rules, requires relaxation in the present also. Power of relaxation of a rule is to be exercised by the Government. Merely because previously relaxation was granted, vide G.O.Ms. mentioned above, this Court will not direct the petitioner's case to be considered *de hors* the service rule.

21. In **A Marx vs. Government of Tamil Nadu and others**¹, marks the point underlined was with respect to relaxation/concessional marks where, the Hon'ble Supreme Court held that it was entirely a matter for the State Government to decide. The court exercising writ jurisdiction cannot grant such relaxation as the same is the decision to be taken by the State taking into consideration a variety of factors. Paragraph 5 of **A Marx** (supra) reads as under:

“5. We find it difficult to accede to the request of the counsel. The question as to whether the cut off marks stipulated for the reserved category candidates have to be reduced or not, is entirely a matter for the State Government to decide. **The Court exercising writ jurisdiction cannot grant such relaxation/concessional marks, as the same is the decision to be taken by the State Government. Taking into consideration a variety of factors, State/Authorities concerned in their wisdom would fix the cut off marks and court cannot substitute its views to that of the experts.** We, in such circumstances, are not inclined to interfere with these special leave petitions and the same are dismissed.”

22. In **State of UP vs. Vikash Kumar Singh**², the Hon'ble Apex Court held that relaxation may be at the discretion of the competent authority. The relaxation cannot be prayed as a matter of right and merely because rule permits relaxation, no writ of Mandamus be issued directing the competent authority to grant relaxation. Paragraphs 7 and 7.1 of **Vikash Kumar** (supra) read as under:

¹ (2014) 1 SCC 329

² (2022) 1 SCC 347,



“7. At the outset, it is required to be noted that the learned Single Judge issued the writ of mandamus commanding the competent authority to grant the relaxation as per Rule 4 of the Relaxation Rules, 2006 in qualifying service and consequently has quashed and set aside the eligibility lists dated 18.03.2019 and 10.05.2019. At the outset, it is required to be noted that as such as per Rule 5(iii) of the Rules, 1990, one of the conditions to be eligible is that the Superintending Engineer must have completed 25 years of service (including at-least three years’ service as Superintending Engineer). It is an admitted position that the original writ petitioners did not fulfill the eligibility criteria as they did not have the qualifying service of having completed 25 years of service. Thus, the eligibility lists were prepared by the department absolutely as per Rule 5(iii) and Rule 8(iii) of the Rules, 1990. The names of the original writ petitioners were excluded from the eligibility list of Superintending Engineer for promotion to the post of Chief Engineer on the ground that they did not fulfil the eligibility criteria as per Rule 5(iii) of the Rules, 1990. Therefore, as such, the High Court ought not to have set aside the said eligibility lists, which as such were prepared absolutely in accordance with the Rules, 1990.

7.1. The learned Single Judge thereafter while quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019 has issued the writ of mandamus commanding or directing the competent authority to grant relaxation in qualifying service, which as such was permissible under Rule 4 of the Relaxation Rules, 2006. The word used in the Rule 4 of Relaxation Rules, 2006 is “MAY”. **Therefore, the relaxation may be at the discretion of the competent authority. The relaxation cannot be prayed as a matter of right. If a conscious decision is taken not to grant the relaxation, merely because Rule permits relaxation, no writ of mandamus can be issued directing the competent authority to grant relaxation in qualifying service. Therefore, the High Court has committed a grave error in issuing the writ of mandamus commanding the competent authority to grant relaxation in the qualifying service.** Consequently, the High Court has also erred in quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019, which as such were prepared absolutely in consonance with the Rules, 1990 and Rules, 2006. The impugned judgments and orders passed by the learned Single Judge as well as the Division Bench of the High Court are not sustainable in law.”

23. In W.P.No.33661 of 2017 decided on 03.03.2020 Ex.P.No.6, the appointment orders of the petitioners therein did not contain any condition to acquire Telugu Type Writing Higher Grade within two



years, which was sought to be imposed, subsequently, vide a memo bearing No.SE/AVR HNSS.3/MPL/AB/EC2/E5/257, dated 13.12.2011. In the present case, the condition to acquire Telugu and English Type Writing Higher Grade within two years from the date of joining is incorporated in the order of appointment itself. The direction given in W.P.No.33661 of 2017 to absorb those petitioners in the vacancies falling in the category of Junior Assistants, providing that their services rendered as Typists shall be counted for notional benefits only, is to be considered in the light of the facts of that case.

24. In W.P.No.11321 of 2019 decided on 14.08.2019 Ex.P.10, the respondent therein (appointees) in spite of the condition to acquire Type Writing Higher Grade both in English and Telugu qualification within two years, being in the appointment order and extension of such period for two more years, did not acquire such qualification. A show cause notice dated 20.05.2017 was issued to submit representation to enable the authorities to proceed against her as per the G.O.Ms.No.969 dated 27.10.1995, against which O.A.No.1856 of 2017 was allowed, setting aside the show cause notice and directing the authorities to consider relaxation of qualification, taking into consideration the qualifications possessed by her. This court did not interfere holding that there was no jurisdictional error or patent perversity. The resultant effect is that the direction to consider relaxation stood affirmed. It has not been laid down therein that the appointee shall be regularized or/and absorbed without possessing the requisite qualification for the post without relaxation. On facts also, the petitioner herein has been granted extension of two years to acquire the qualification on his request which period has yet not expired.

25. In W.P.No.17966 of 2020 Ex.P.11 challenge was to the show cause notice wherein the petitioner therein was directed to give



willingness to take lower post i.e., Office Subordinate as she did not acquire Type writing Higher Grade both in English and Telugu within specified period. This court allowed the writ petition considering W.P.No.11321 of 2019, with which this court has already dealt as above. From perusal of the judgment in W.P.No.17966 of 2020, the direction to regularize in the cadre of typist can best be between parties to the petition.

26. Learned counsel for the petitioner could not show from the aforesaid judgments upon which reliance has been placed, if any law has been laid down to the effect that regularization or absorption can be made without the appointee possessing requisite qualification and without grant of relaxation by the competent authority under the relevant Service Rules.

27. Further, the present petitioner earlier filed W.P.No.3515 of 2021 for the following reliefs:

“.... to issue a writ of Mandamus, declaring the action of the 3rd respondent in rejecting the case of the petitioner vide Memo No.SE/SPC/NLR/AB/EC.A/E.33/146 SP2, dated 06.08.2020 for conversion as Junior Assistant from the post of Typist, as illegal, arbitrary, violative of principles of natural justice and set aside the same, consequently direct the 3rd respondent to consider the case of the petitioner for conversion/fresh appointment as Junior Assistant as was done to the similarly situated person vide proceedings No.SE/HNSS C3/MPL/AB/EC.2/E.5/244M, dated 26.06.2020.”

28. The above relief was claimed on the same set of facts and the grounds, challenging the rejection of his earlier representation on the same subject, on the strength of the same judgment dated 03.03.2020 in W.P.No.33661 of 2017. This court, in the petitioner's case recorded that the order of rejection impugned therein was as per the rules in force. However, at the request of the petitioner's counsel, at the end of the argument, the petitioner was permitted to make fresh representation with direction to the authorities to pass appropriate



orders in accordance with law. Pursuant to the said direction the order now impugned in this writ petition was passed.

29. It is apt to reproduce paragraphs 7 to 10 of the W.P.No.3515 of 2021 by the same petitioner, which reads as under:

“7. Admittedly, the petitioner was appointed on displaced persons quota on 12.02.2019 and reported to duty on the same day, but it is a conditional appointment. According to the condition imposed in the appointment order of the petitioner, the petitioner shall complete Telugu Higher Grade and English Higher Grade Typewriting Examinations within two (02) years from the date of joining into service. But, the petitioner did not complete both the examinations, because of his age or otherwise. **Therefore, the order impugned in this writ petition was passed by the 3rd respondent, rejecting the request of the petitioner, as the petitioner was not an approved probationer in the cadre of ‘Typist’, so he is not eligible for conversion of his post from ‘Typist’ to ‘Junior Assistant’, as per the rules in force.**

8. Again, the petitioner made another representation to the 3rd respondent in the month of October, 2020, a part of which was extracted in the earlier para. Taking advantage of the request, the learned counsel for the petitioner would interpret that the conversion is nothing but fresh appointment, since the petitioner agreed to forego the seniority in the cadre of Typist, but no law is brought to the notice of this Court by the learned counsel for the petitioner in support of said interpretation. **I am totally in agreement that the conversion is totally different from fresh appointment, merely because the petitioner agreed to forego the seniority in the cadre of Typist, the same cannot be treated as fresh appointment. Therefore, the contention of the learned counsel for the petitioner is misplaced.**

9. In any view, **at the end of the argument, the learned counsel for the petitioner requested to permit the petitioner to** make appropriate representation, in accordance with law, so as to enable the 3rd respondent to pass appropriate order for fresh appointment, while permitting the petitioner to continue in the cadre of ‘Junior Assistant’ to forego the seniority in the cadre of ‘Typist’.

10. Therefore, considering the request of the learned counsel for the petitioner, the petitioner is permitted to make a fresh representation to the respondent authorities, within four (04) weeks from today and on submitting such representation, the 3rd respondent is directed to pass appropriate order, in accordance with law.”



30. This Court finds from reading of the above judgment in the petitioner's case, that reliance was placed on the judgment dated 03.03.2020 in W.P.No.33661 of 2017, but the contention was not accepted by this Court.

31. At present, the petitioner has no legal right for regularization on the post of typist or for absorption on the post of Junior Assistant. The impugned order which does not grant such relief to the petitioner to that extent cannot be legally faulted. Any direction to absorb the petitioner contrary to Rule 14 of the Rules, 1998 cannot be issued.

32. It is settled in law that the Writ of Mandamus cannot be issued directing the authorities to act contrary to law. In **State of Uttar Pradesh and others vs. Harish Chandra and others**³, the Hon'ble Apex Court held as under:

“10. Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. **Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provision of law or to do something which is contrary to law.** This being the position and in view of the Statutory Rules contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist. In the course of hearing the learned counsel for the respondents, no doubt have pointed out some materials which

³ (1996) 9 SCC 309,



indicate that the Administrative Authorities have made the appointments from a list beyond the period of one year from its preparation. The learned counsel appearing for the appellants submitted that in some cases pursuant to the direction of the Court some appointments have been made but in some other cases it might have been done by the Appointing Authority. Even though we are persuaded to accept the submission of the learned counsel for the respondents that **on some occasion appointments have been made by the Appointing Authority from a select list even after the expiry of one year from the date of selection but such illegal action of the Appointing Authority does not confer a right on an applicant to be enforced by a Court under Article 226 of the Constitution.** We have no hesitation in coming to the conclusion that such appointments by the Appointing Authority have been made contrary to the provisions of the Statutory Rules for some unknown reason and we deprecate the practice adopted by the Appointing Authority in making such appointments contrary to the Statutory Rules. But at the same time it is difficult for us to sustain the direction given by the High Court since, admittedly, the life of the select list prepared on 4.4.87 had expired long since and the respondents who claim their rights to be appointed on the basis of such list did not have a subsisting right on the date they approached the High Court. We may not be understood to imply that the High Court must issue such direction, if the writ Petition was filed before the expiry of the period of one year and the same was disposed of after the expiry of the statutory period. In view of the aforesaid conclusion of ours it is not necessary to deal with the question whether the stand of the State Government that there existed one vacancy in the year 1987 is correct or not.”

33. The petitioner has been granted two years further period by the 3rd respondent to pass the Type Writing High Grade both in English and Telugu, on his own request. This is so mentioned in the impugned order dated 17.04.2021, specifically. At the time of arguments, the learned counsel for the petitioner denied this fact, but could not show any averment to the contrary, in the writ petition. Even it has not been stated that, what is written in the impugned order, is incorrect. Further, in the counter affidavit in paragraph 13(b), it has been specifically pleaded as under:

“(b) **The petitioner has requested on 25.01.2021 duly stating** that he was appointed as Typist subject to condition that



he should pass type writing higher grade examination in both English and Telugu from the date of joining duty and also stated that he appeared for above said examinations two times but he **could not able to pass them. So that he has requested for granting of another two years of grace period for acquiring the required qualifications.**

Based on his representation according to G.O.Ms.No.969 dated 27.10.1995 he has been granted another two more years of grace period to acquire the above said requisite qualifications vide proceedings No.150 M dated 26.02.2021. The grace period of two years is not completed so far and which will be expired by 12.02.2023 AN. The petitioner has chances to appear for the above said examination in the grace period of two years and to acquire requisite qualifications.

But the petitioner is intentionally approached this Hon'ble Court and filed this writ petition without appearing the said examination in the granted grace period.”

34. The petitioner has not denied the contents of para 13 (b) of the counter affidavit by filing any reply/rejoinder affidavit. Therefore, it is on the petitioner's request that two years further time upto 12.02.2023 was granted to the petitioner, to acquire the required type qualification. The petitioner as such should have waited for that period, to acquire the requisite qualification.

35. However, the court is of the view that once the time was granted to the petitioner, the following clause should not have been inserted in the impugned order, which reads as under:-

“As per reference 5th cited, following the government orders in G.O.Ms.No.969 dated 27.10.1995 provisions, you are granted with additional period of further two years and within such time you shall pass out the English and Telugu higher grade examination, failing which you shall be selected to the lower post for which the typewriting is not required or you shall be removed from the day without assigning any reasons thereof.”



It is only after the expiry of the time granted and consequent upon the petitioner's acquiring requisite qualification or otherwise, the decision ought to have been taken by the competent authority.

36. The insertion of the above quoted clause should have not been there in the impugned order and is not justified at this stage. On completion of the two years extended period, the respondents may take appropriate decision with respect to the petitioner's regularization on the post of Typist or/ and absorption on the post of Junior Assistant, in accordance with law, without being influenced by the offending clause in the impugned order as mentioned above.

37. For all the aforesaid reasons, the writ petition lacks merit and is accordingly dismissed, but with the observations made herein above.

No order as to costs.

Consequently, Miscellaneous Petitions, if any, pending shall stand closed.

RAVI NATH TILHARI, J

Date:25.02.2022

Note:

LR copy to be marked.

B/o.

Gk



HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.23363 OF 2021

25.02.2022

Gk