

A.F.R.

Court No. - 20

Case :- WRIT - A No. - 3935 of 2023

Petitioner :- Hausilal

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Revenue, Lko. And 2 Others

Counsel for Petitioner :- Abhishek Mishra, Subhash Chandra Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard Mr. Abhishek Mishra, learned counsel for petitioner and Mr. Vikas Singh, learned State Counsel for opposite parties.
2. Petition has been filed challenging order dated 07.01.2022 whereby petitioner has been granted promotion on the post of Collection Amin. Also under challenge is order dated 15.12.2022 whereby petitioner's application to forgo aforesaid promotion has been rejected on ground that there is no such provision under law.
3. It has been submitted that earlier petitioner while performing his duties on post of Collection Peon was found eligible for promotion on post of Collection Amin with such promotion being granted vide impugned order dated 07.01.2022. It is submitted that on the basis of said order, petitioner joined and performed his duties without any complaint but since he was facing problems in effective discharge of his duties on the promotional post, he made an application dated 02.05.2022 with prayer that he may be permitted to forgo the said promotion. It is submitted that the aforesaid application has been rejected only on the ground that there is no such provisions under service Regulations applicable upon petitioner.
4. It has been submitted that since petitioner does not have any grievance with his demotion and even otherwise is not claiming

any benefits in pursuance thereof, he would have a right to waive rights vested with regard to such promotions. It is also submitted that there is no bar either for petitioner forgoing his promotion. Learned counsel for petitioner has placed reliance on a Division Bench decision of High Court of Bombay at Goa rendered in **Pradeep D. Signapurkar v. Union of India and others** reported in 2019 SCC OnLine Bom 2608 to buttress his submissions.

5. Learned State Counsel on the basis of counter affidavit filed has refuted the submissions advanced by learned counsel for petitioner with submissions that since petitioner was found eligible and qualified for promotion on the post of Collection Amin, he was granted such promotion with effect from 07.01.2022 and has thereafter performed his duties without any complaint for almost one year now. It is submitted that since there is no provision under Service Regulations for an employee to forgo his promotion, his request was rightly rejected.

6. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is quite evident and admitted that petitioner who was earlier working on post of Collection Peon was granted promotion on post of Collection Amin vide order dated 07.01.2022. It is also submitted that in pursuance thereof, petitioner joined and performed his duties as a Collection Amin for a period of five months whereafter he submitted an application for forgoing promotion on 02.05.2022. His Application has been rejected solely on ground that there is no such provision under the Service Rules for an employee to forgo his promotion.

7. In the considered opinion of this Court, an employee may have a fundamental right to be considered for promotion but at

the same time he would also have an inalienable right to forgo such promotion for which purpose, there is no requirement for any specific stipulation in Service Regulations. Such Service Regulations do provide a provision for reversion of an employee to a lower post on fulfilment of condition required for such reversion. However, in case an employee seeks to forgo his promotion waiving his rights for such promotion, it would definitely come within purview of his right to waive such promotion particularly since Service Regulations are also in the nature of contractual obligations between an employer and an employee. Such rights accrued to an employee can definitely be waived in case they do not adversely affect any public policy. Since right to forgo promotion is in nature of a personal right of an employee, this Court finds substance in submission of learned counsel for petitioner that he would have a right to waive such promotional aspect.

8. This Court is also of the considered opinion that an employee has an inherent right to waive promotion accorded to him. In **Rustom Cavasjee Cooper v. Union of India** (1970) 1 SCC 248, Hon'ble the Supreme Court has clearly held that the enunciation of rights does not follow a uniform pattern but one single thread which runs through all of them is that they seek to protect rights of the individuals against infringement within specific limits and that Part-III of the Constitution weaves a pattern of guarantees on the texture of basic human rights. The relevant portion of the judgment is as follows:-

".....The enunciation of rights either express or by implication does not follow a uniform pattern. But one thread runs through them : they seek to protect the rights of the individual or groups of individuals against infringement of those rights within specific limits. Part III of the Constitution weaves a pattern of guarantees on the texture of basic human rights. The guarantees delimit the protection of those rights in their allotted fields : they do not attempt to enunciate distinct rights."

9. In **K. S. Puttaswamy and another v. Union of India and others**, (2017) 10 SCC 1, Hon'ble the Supreme Court has considered the right of an individual to be 'let alone' in the

following manner:-

"35. The right "to be let alone" thus represented a manifestation of "an inviolate personality", a core of freedom and liberty from which the human being had to be free from intrusion. The technology which provided a justification for the need to preserve the privacy of the individual was the development of photography. The right to be let alone was not so much an incident of property as a reflection of the inviolable nature of the human personality.

In paragraph 38 of the aforesaid judgment, it has been held that the right to be let alone is a part of the right to enjoy life, which in turn is a part of the fundamental right to life of an individual. Thus, there is a distinct connection drawn by Hon'ble the Supreme Court with the right of an individual to be let alone with right to life enunciated under Article 21 of the Constitution of India.

10. It is also the considered opinion of this Court that right of an individual as an employee to forego promotion would come within sphere of his right to privacy, which in **K. S. Puttaswamy** (supra) has already been held to be a concomitant of the right of an individual to exercise control over his or her personality since there are certain rights which are natural to or inherent in a human being. The relevant portion of the judgment is as follows:-

"42. Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality. The human element in life is impossible to conceive without the existence of natural rights. In 1690, John Locke had in his Second Treatise of Government observed that the lives, liberties and estates of individuals are as a matter of fundamental natural law, a private preserve. The idea of a private preserve was to create barriers from outside interference. In 1765, William Blackstone in his Commentaries on the Laws of England spoke of a "natural liberty". There were, in his view, absolute rights which were vested in the individual by the immutable laws of nature. These absolute rights were divided into rights of personal security, personal liberty and property. The right of personal security involved a legal and uninterrupted enjoyment of life, limbs, body, health and reputation by an individual."

11. The aspect that the right to forego promotion would be linked to personal autonomy of an employee is thus evident from the aforesaid discussions. The right to personal autonomy in turn being protected under Article 21 of the Constitution of India has also been dealt with by Hon'ble the Supreme Court in

National Legal Services Authority v. Union of India
(NALSA), (2014) 5 SCC 438 in the following manner:-

“73. ... Article 21 is the heart and soul of the Indian Constitution, which speaks of the rights to life and personal liberty. Right to life is one of the basic fundamental rights and not even the State has the authority to violate or take away that right. Article 21 takes all those aspects of life which go to make a person's life meaningful. Article 21 protects the dignity of human life, one's personal autonomy, one's right to privacy, etc. Right to dignity has been recognised to be an essential part of the right to life and accrues to all persons on account of being humans. In Francis Coralie Mullin v. UT of Delhi [Francis Coralie Mullin v. UT of Delhi, (1981) 1 SCC 608 : 1981 SCC (Cri) 212] (SCC pp. 618-19, paras 7 and 8), this Court held that the right to dignity forms an essential part of our constitutional culture which seeks to ensure the full development and evolution of persons and includes “expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings

75. Article 21, as already indicated, guarantees the protection of “personal autonomy” of an individual. In Anuj Garg v. Hotel Assn. of India [Anuj Garg v. Hotel Assn. of India, (2008) 3 SCC 1] (SCC p. 15, paras 34-35), this Court held that personal autonomy includes both the negative right of not to be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in. Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India.”

12. It has been held and reiterated by Hon'ble the Supreme Court that to live is to live with dignity which is the core which unites fundamental rights which seek to achieve for each individual, the dignity of existence.

13. The right to forego promotion being concomitant to right to be let alone would thus be a natural and a right inherent in each individual and would thus constitute a natural right.

14. Once it has been held that right to forego would be a natural and fundamental right of an employee and would come within purview of Article 21 of the Constitution of India, the aspect of its infringement is also to be seen in that light. In **State of Madras v. V.G. Row**, AIR 1952 SC 196, it has been held that in order to perceive the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of evil sought to be remedied thereby, and proportion of imposition of condition upon such right is also required to be considered. The relevant portion of the judgment is as follows:-

".....The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be

remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict....."

15. Again reverting to judgment rendered in **K. S. Puttaswamy** (supra), the three conditions required to be considered in order to examine validity of restraints on fundamental right have been enunciated in the following manner:-

"310. While it intervenes to protect legitimate State interests, the State must nevertheless put into place a robust regime that ensures the fulfilment of a threefold requirement. These three requirements apply to all restraints on privacy (not just informational privacy). They emanate from the procedural and content-based mandate of Article 21. The first requirement that there must be a law in existence to justify an encroachment on privacy is an express requirement of Article 21. For, no person can be deprived of his life or personal liberty except in accordance with the procedure established by law. The existence of law is an essential requirement. Second, the requirement of a need, in terms of a legitimate State aim, ensures that the nature and content of the law which imposes the restriction falls within the zone of reasonableness mandated by Article 14, which is a guarantee against arbitrary State action. The pursuit of a legitimate State aim ensures that the law does not suffer from manifest arbitrariness. Legitimacy, as a postulate, involves a value judgment. Judicial review does not reappreciate or second guess the value judgment of the legislature but is for deciding whether the aim which is sought to be pursued suffers from palpable or manifest arbitrariness. The third requirement ensures that the means which are adopted by the legislature are proportional to the object and needs sought to be fulfilled by the law. Proportionality is an essential facet of the guarantee against arbitrary State action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law. Hence, the threefold requirement for a valid law arises out of the mutual interdependence between the fundamental guarantees against arbitrariness on the one hand and the protection of life and personal liberty, on the other. The right to privacy, which is an intrinsic part of the right to life and liberty, and the freedoms embodied in Part III is subject to the same restraints which apply to those freedoms."

16. Upon applicability of aforesaid judgments in the present facts and circumstances of the case, a conclusion thus is inevitable that the right to forego promotion by an employee falls within the realm of an inherent natural right of such a person and any restriction imposed thereupon has to comply with the conditions indicated in the judgments referred to herein above, particularly in **K. S. Puttaswamy** (supra). In the present facts and circumstances of the case, it is evident that the opposite parties have not been able to indicate any law whereby the fundamental right of an employee to forego promotion has been restrained. Even otherwise, no such restrictions as indicated would fall within the zone of reasonableness.

17. Aforesaid concept has also been dealt with by the High Court of Bombay at Goa in **Pradeep D. Signapurkar**(supra) in the following manner:-

"Suffice it to state an employee can forgo promotion and thus a promotion cannot be forced on an employee. The order dated 21st September, 2019 does not deal with the request of the Petitioner to be retained in Goa as Upper Division Clerk. Whilst it may be true that forgoing a promotion does not confer an absolute right on an individual not to be transferred, but exigencies of service have to be humanized keeping in view the problems faced by an individual."

18. This Court is in respectful agreement with the ratio enunciated in aforesaid judgment and therefore has no hesitation in holding that an employee has a right to forgo his promotion. It is also not case of the opposite parties that petitioner on his initial or his promotional post was inefficient in working or caused any pecuniary loss to Government or that there were disciplinary proceedings pending against him.

19. In view of aforesaid discussion, the impugned orders dated 07.01.2022 and 15.12.2022 are hereby quashed by issuance of a writ in the nature of Certiorari so far as it relates to petitioner. Further, a writ in the nature of Mandamus is issued commanding the opposite parties to permit petitioner to continue on the post of Collection Peon with all concomitant rights of that post.

20. Resultantly, the petition succeeds and is allowed. The parties to bear their own costs.

Order Date :- 6.11.2023

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