

**THE HON'BLE SRI JUSTICE RAMESH
RANGANATHAN**

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTI

WRIT PETITION No.17129 of 2012

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order passed by the A.P. Administrative Tribunal in O.A.No.2552 of 2011 dated 31.10.2011, the Greater Visakhapatnam Municipal Corporation (GVMC) has invoked the jurisdiction of this Court.

The 6th respondent herein filed O.A.No.2552 of 2011 seeking a direction to the petitioner herein to promote him to the post of superintendent as per his seniority and eligibility on par with his juniors in accordance with the law declared by this court in ***G.Boyanna vs. Registrar (Administration), High Court of A.P., Hyderabad and another***^[1] with all attendant benefits. By the order under challenge in this writ petition, the Tribunal set aside the order dated 20.09.2010 and allowed the O.A.

The facts, to the limited extent necessary, are that, while the 6th respondent was working as a Panchayat Secretary, the Government issued G.O.Ms.No.379, dated 21.11.2005 de-notifying 32 surrounding villages as Gram Panchayats for their merger with the GVMC. The 6th respondent, along with 19 others, opted for absorption under the A.P.Municipal Subordinate Service Rules. The 2nd respondent issued G.O.Rt.No.606 dated 05.05.2006 absorbing the services of the 6th respondent and others, who were willing to work under the GVMC, in equivalent posts. On the ground that the post of panchayat secretary was equal to that of a senior assistant in the A.P.Municipal Subordinate Services, proposals were sent to the Government, vide proceedings dated 20.10.2006, for

absorption of the services of the 6th respondent and others in equal categories in the GVMC.

While matters stood thus, the 6th respondent submitted an application to the Chief Executive Officer, Zilla Parishad, Visakhapatnam on 15.07.2007 informing that he was temporarily refusing and declining promotion to the cadre of superintendent in this term, he may be retained in the same post as senior assistant, and continued till re-deployment. Consequently, proceedings dated 06.08.2007 was issued in terms of Rules 11 and 28 of the A.P. State and Subordinate Service Rules, 1996 (for short "the Rules") holding that the 6th respondent had forfeited all his rights, both present and future, for higher promotion as superintendent. His name was ordered to be omitted from the list of approved candidates for promotion as superintendents. Consequent thereto, the 6th respondent was ordered to be retained as senior assistant and continued as panchayat secretary, Makavaram Gram Panchayat. Thereafter, by proceedings dated 22.10.2008, the 6th respondent was absorbed as senior assistant in the GVMC. A seniority list of senior assistants was prepared by the GVMC by its proceedings dated 21.07.2009 wherein the name of the 6th respondent was shown at serial No.17. He submitted a representation requesting that his candidature be considered for promotion as superintendent. By proceedings dated 25.11.2010, several other senior assistants were promoted as superintendents who, the 6th respondent herein claims, were juniors to him. Sri S.Laxminarayana Reddy, learned counsel for the petitioners, would submit that the promotions were effected by the GVMC only after ascertaining that the 6th respondent had relinquished his promotion to the post of superintendent earlier; and the competent authority (Chief Executive Officer of the Zilla Parishad) had, by proceedings dated 06.08.2007, held that the right of the 6th respondent for higher promotion as superintendent, both present and future, had been forfeited.

Aggrieved by the denial of promotion to the post of superintendent, the 6th respondent invoked the jurisdiction of the Tribunal which, by the order under challenge in the present writ petition, followed the judgment of a Division Bench of this Court in **G.Boyanna**¹ wherein it was held that relinquishment of the right, to be considered for promotion, by a member of service did not disentitle him from being considered for promotion in a future vacancy; and, in the light of Rule 28 of the Rules, such relinquishment did not have the effect of extinguishing the right of the employee to be considered for promotion permanently.

In **G.Boyanna**¹ a Division Bench of this Court followed the earlier judgment of a Division Bench of this Court in ***District Educational Officer vs. Shahnaz Begum*** (W.P.No.26654 of 2005 dated 09.08.2006) wherein, after considering the scope of Rules 11 and 28 of the Rules, it was held that relinquishment of the right or privilege of promotion to a particular vacancy would only amount to a permanent relinquishment of the right of privilege for promotion to that particular vacancy; Rule 28 of the Rules could not be read or interpreted to mean that the employee's right to be considered for promotion, to any vacancy arising in future also, is permanently extinguished; such an interpretation would lead to frustration and unrest in the service defeating the object of promoting efficiency and harmonious functioning of administration; the right to be considered for promotion was a fundamental right under Article 16(1) of the Constitution of India; and Rule 28 of the Rules did not disentitle a member of the service from being considered for promotion in a future vacancy merely because he had relinquished his right for promotion earlier. Another Division Bench (judgment in W.P.No.1808 of 2015 dated 05.02.2015), following the earlier judgment in ***Shahnaz Begum***, also took a similar view.

In the light of the authoritative pronouncement of this Court in the aforesaid judgments, the order of the Tribunal cannot be faulted. Suffice it to make it clear that the 6th

respondent shall be considered for promotion to the post of superintendent in any vacancy which arose in the GVMC, after his absorption in the services of the GVMC, in accordance with law.

The writ petition fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

26th March 2015.
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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

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WRIT PETITION No.17129 of 2012

Date: 26.03.2015

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[\[1\]](#) 2009(2) ALD 402 (DB)