

**HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

WRIT PETITION No. 39518 of 2015

DATED 8TH December, 2015

BETWEEN

The Superintendent of Police,
Adilabad District at Adilabad and ors.

...Petitioner

And

Rathod Hariram and anr

...Respondents

**HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

WRIT PETITION No. 39518 of 2015

ORDER: (Per Hon'ble Sri Justice G.CHANDRAIAH)

We have heard the learned Government Pleader appearing for the petitioners-State. Perused the material on record.

The first respondent herein was appointed as a Police Constable on 15.03.1983. While working as such, he was shown at Sl.No.155 in the provisional seniority list dt.2.5.2006 and deputed for three months' pre-promotional training vide proceedings dated 13.1.2011. On his completion of the training successfully, his name was included in the 'C' list of Police

Constables fit to act as Head Constables as per seniority. Before he was sent for training, on account of exhibiting gross misconduct and dereliction of duty in not producing the UT Prisoners in time before the District Jail, Asifabad on the night of 30.07.2007, the first respondent and other Police Constables were placed under suspension and later they were reinstated in service pending departmental proceedings vide C.No.16/PR-1/2007. During the course of departmental proceedings, the petitioner authorities promoted the juniors of the first respondent to the post of Head Constable vide proceedings dated 1.3.2011 as per the provisional seniority list prepared earlier while denying the promotion to the first respondent. In the meanwhile, the petitioner authorities concluded the departmental proceedings initiated against the first respondent and awarded penalty of Postponement of increment for two years with effect on future increments and pension besides treating the suspension period not on duty vide proceedings dated 14.03.2011. Aggrieved by the action of the petitioner authorities in not promoting him to the post of Head Constable, the first respondent filed O.A.No.9207 of 2011 before the Andhra Pradesh Administrative Tribunal. Therein he sought for a direction to the petitioner authorities herein to consider his case for promotion to the post of Head Constable without reference to the proceedings dated 15.03.2011. Before the Tribunal, it was the case of the first respondent-employee that since he was not under currency of any penalty as on the date of promotion i.e. on 1.3.2011, the petitioner authorities should not deny him the promotion to the post of Head Constable.

The Tribunal through its order dated 08.07.2014 allowed

the said OA directing the petitioner authorities herein to consider the case of the first respondent/applicant/employee for promotion to the post of Head Constable on par with his juniors without reference to the penalty imposed in proceedings dated 14.3.2011 subject to otherwise his eligibility with all consequential benefits excluding monetary benefit. And further directed that appropriate orders should be passed within a period of eight weeks from the date of receipt of a copy of the said order.

Aggrieved by the same, the petitioner authorities preferred the present Writ Petition.

The learned Government Pleader appearing for the petitioner authorities submits that as per Order No.72 of AP Police Manual (APPM), since the first respondent was facing enquiry, he is not eligible for promotion to the next higher rank of Head Constable. Order 72 of APPM contemplates that the employee should not be facing any departmental enquiry for grave charges or involved in any investigation/enquiry/ trial into a criminal case against him or a regular enquiry or investigation by the Anti Corruption Bureau or Tribunal for Disciplinary Proceedings. He further submits that there is no bar to send an individual who is facing enquiry for pre promotional training. He therefore submits that the Tribunal was in error in directing the petitioners to consider the case of the first respondent for promotion without reference to the disciplinary proceedings.

At the threshold we are of the view that the submission of the learned Government Pleader appearing for the petitioners merits no consideration. It is not in dispute that as on the date

of enquiry proceedings initiated against him are pending, the first respondent was deputed for pre promotional training course vide proceedings dated 13.1.2011. Further as on the date of giving promotions vide proceedings dated 1.3.2011 to the juniors of the first respondent, the first respondent was not under the currency of any penalty. The punishment was imposed against the first respondent on 14.3.2011 which is much later to the proceedings dated 1.3.2011 effecting promotions to the juniors of the first respondent. It is not in dispute that the post of head Constable is not a non selection post and the promotion to the post of non-selection post is based on seniority and fitness and pendency of departmental proceedings is not a ground to deny the promotion. As on the date of effecting promotions, the first respondent was not charge sheeted and even the departmental proceedings are not concluded. Whether the delinquent employee is entitled to be punished on account of grave charges can only be known after the conclusion of the departmental proceedings. As such, treating that the first respondent is facing grave charges, denial of promotion to the first respondent cannot be sustained. In our considered view, the Tribunal rightly allowed the OA preferred by the first respondent herein and we do not see any reason to take a different view than the one taken by the Tribunal in the impugned order.

The Writ Petition is therefore dismissed. Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.

JUSTICE G.CHANDRAIAH

JUSTICE U.DURGA PRASAD RAO

DATED 8TH DECEMBER, 2015. .
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