

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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WRIT PETITION No.1808 of 2015

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

This Writ Petition is filed against the order passed by the Andhra Pradesh Administrative Tribunal in O.A.No.2027 of 2014 dated 21.03.2014.

The first respondent herein was promoted as Computer Draughtsman Grade-I in the panel years 2006 and 2009 and, in both these years, she relinquished her promotion as Computer Draughtsman Grade-I. She later made a representation to the first petitioner on 25.04.2013 requesting that her case be considered for promotion as Computer Draughtsman Grade-I in the existing vacancies. The first petitioner herein, vide proceedings dated 18.06.2013, rejected her request. Aggrieved thereby, the first respondent herein filed O.A.No.5026 of 2013 before the Tribunal. Interim orders were passed on 03.07.2013 directing the petitioners herein to consider her case for promotion to the post of Computer Draughtsman Grade-I in terms of G.O.Ms.No.145 General Administration (SER.D) Department dated 15.06.2004 in the arising vacancy without reference to her earlier relinquishment. The petitioners herein issued proceedings dated 27.07.2013 rejecting the first respondent's case for promotion to the post of Computer Draughtsman Grade-I on the ground that she had relinquished her promotion twice. Questioning the said order she invoked the jurisdiction of the Tribunal.

By the order under challenge herein, the Tribunal, relying on an earlier judgment of the Division Bench of this Court in **District Education Officer, Kurnool v. Shahnaz Begum** (W.P.No.26654 of 2005 dated 09.08.2006), held that relinquishment to a post is not permanent; the employee had a right to be considered for promotion, and such a right was a fundamental right guaranteed under Article 16 (1) of the Constitution of India; and Rule 28 of the State and Subordinate Service Rules, 1996 (for brevity, 'the Rules') would not disentitle a member of the

service from being considered for promotion in future vacancies, merely because he/she had relinquished the right for promotion earlier. The Tribunal was of the view that the issue in the O.A. was squarely covered by the law declared by the Division Bench in the aforesaid judgment. The O.A. was allowed, and the petitioners herein were directed to promote the first respondent as Computer Draughtsman Grade-I without reference to her earlier relinquishment forthwith in the existing vacancies.

Learned Government Pleader for Services would submit that the first respondent, having relinquished her promotion as Draughtsman Grade-I for both the panel years 2006 and 2009, is not entitled to be considered for promotion in view of the amendment to Rule 11 (b) of the Rules which bars a person, who has relinquished promotion twice, from permanently claiming promotion thereafter; even otherwise, the first respondent is ineligible for being considered for promotion in the years prior to 2013 as she had not only relinquished her promotion for the panel years 2006 and 2009, but had even thereafter, for the subsequent panel years, not made any claim for promotion; and she had approached the Tribunal only after she had made a representation to the first petitioner on 25.04.2013.

Rule 11 (b) of the Rules was amended, and a proviso was inserted thereto, by G.O.Ms.No.227 dated 30.05.2014. The said proviso stipulates that the employee, who does not join the post within the stipulated time or evades to join the post by proceeding on leave second time also, shall lose his right of promotion permanently. The said amendment is prospective and would not bar the first respondent from being considered for promotion on her having relinquished her promotion in the earlier panel years 2006 and 2009. The amended proviso to Rule 11 (b) would apply only if a person has been promoted to the post and does not join thereafter. The first respondent has not been considered for promotion from the panel year 2013 onwards and, as such, the question of her joining the post on promotion does not arise. Reliance placed by the learned Government Pleader on the amended proviso is, therefore, misplaced.

We find force in the submission of the learned Government Pleader that the first respondent, having relinquished her right for promotion in the panel years 2006 and 2009 and having made a claim for promotion only by her letter dated 25.04.2013, cannot claim promotion in the earlier panel years (i.e. the panel years prior to 2013). Sri P.Amarender, learned counsel for the first respondent, would fairly state that the first respondent is only seeking promotion to the post of Computer Draughtsman Grade-I in a vacancy which arose from the panel year 2013 onwards, and not prior thereto. The Tribunal has also erred in straightaway directing the respondents to promote the applicant as Computer Draughtsman Grade-I. The only direction that could have been issued was for the first respondent's case to be considered for promotion as Computer Draughtsman Grade-I in the existing vacancies from 2013 onwards.

The order of the Tribunal is modified, and the petitioners herein shall consider the case of the first respondent for promotion as Computer Draughtsman Grade-I in any existing vacancies from the panel year 2013 onwards. The entire exercise culminating in an order being passed and communicated to the petitioners, shall be completed within two months from the date of receipt of a copy of this order.

The Writ Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

05th February, 2015.

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