

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 3304 of 2002

-
ORDER :
-

The petitioner was initially appointed as Lower Divisional Clerk in the year 1964 and later he was promoted as Upper Divisional Clerk in the month of January, 1980. Subsequently, he was promoted as Junior Accounts Officer temporarily by virtue of the proceedings vide Memo No.SE/O/ELR/Adm./U1/D.No.1169/96, dated 21.05.1996.

2. On 29.04.1997, the 3rd respondent issued Memo No.SE/O/EIR/Adm/U1/D.No.874/97 stating that consequent on judgment of the Hon'ble Supreme Court in C.A.Nos.180-181/84 on 27.02.1996 and also as per the instructions issued by Board from time to time, the promotion orders issued as Junior Accounts Officer to the petitioner and others, have been cancelled. Aggrieved by the same, the petitioner and others filed W.P.No.7865 of 1997, wherein this Court granted interim stay at the time of admission, in favour of the petitioner and others. However, the petitioner withdrawn the same on 28.07.2000 and filed representation on 28.07.2001 to consider his case for promotion as J.A.O from the date of giving promotion. The petitioner worked as J.A.O, since 21.05.1996 and retired on 31.03.2000. The respondents were not paying dues and other pensionary benefits even after his retirement as J.A.O since 31.03.2000. The 3rd respondent has issued impugned proceedings dated 29.01.2001 stating that the petitioner has withdrawn W.P.No.7865 of 1997, as such, he was not interested to claim relief from this Court and consequently he was reverted as UDC by holding that he is entitled for retirement benefits by fixing his pension under U.D.C. Cadre. Aggrieved by the same, the present writ petition is filed.

3. Counter affidavit is filed by the respondents stating that the

petitioner has not passed requisite departmental tests for getting promotion as Junior Accounts Officer as per Rules of erstwhile A.P.S.E.Board. It is also stated that the Hon'ble Supreme Court, while admitting C.A Nos.180-181 of 1984 on 27.02.1996 filed by the unqualified personnel, made it clear that any promotion will be subject to the outcome of above appeals. That basing on the above directions, the erstwhile APSE Board has issued certain instructions for giving promotions vide B.P.Ms.No.442, dated 27.05.1985 duly incorporating the orders of the Hon'ble Supreme Court dated 27.02.1996 in C.A Nos.180-181 of 1984 i.e., the promotions to be given to the unqualified/qualified will be subject to outcome of result in the above SLPs pending before the Supreme Court. The petitioner was given promotion vide proceedings dated 21.05.1996 by incorporating the said clause. That after receipt of final judgment of the Hon'ble Supreme Court dated 27.02.1996 by the erstwhile APSE Board, it has issued instructions and clarifications on promotions in its B.P.Ms.No.217 dated 18.01.1997 with regard to those who are promoted as UDC/JAO in unqualified quota as per the orders of the Hon'ble Supreme Court dated 27.02.1996 in SLP Nos.180 and 181 of 1984, may be reverted to the lower categories i.e., LDC/UDC from UDC/JAO. Aggrieved by the same, the petitioner and four others, filed W.P.No.7865 of 1997 and obtained stay orders. Then the APSE Board has entered into an agreement with the respective unions and issued orders in B.P Ms.No.258, dated 18.12.1997 and BP Ms.No.263, dated 11.01.1999 duly fixing a ratio 2 : 1 (2 qualified and one unqualified). Basing on the same, the juniors of the petitioner were promoted in unqualified quota since they are not covered under any court orders as in the case of the petitioner, who covered in stay orders and continued till his retirement dated 31.03.2000. Thereafter, the petitioner has withdrawn W.P.No.7865 of 1997. The petitioner has not requested the management to sanction provisional pension as

per A.P. Revised Pension Rules. It is admitted that the erstwhile APSE Board has issued instructions in its Memo No.DS (Estt)/DM (Estt)/317-K2/97, dated 05.08.1997 that the unqualified employees who were promoted on or after 27.02.1996 and expired/retired later such cases need not be reviewed and reverted. Those who are not covered in the stay orders of this Court in W.P.No.7865 of 1997, were reverted. It is stated that basing on the orders dated 31.12.1998 in W.P.Nos.16618 of 1997 and batch, the Board has made the Adhoc arrangement for filling up the vacancies in the cadre of UDC, JAO and JPO from feeder category i.e., LDC/Typist and Assistant on certain guidelines in its B.P.Ms.No.263, dated 11.01.1999 and justified the said action.

4. Heard learned counsel for the petitioner.

5. In this case, it has to be seen that the basis on which the petitioner was reverted as UDC is consequent upon his withdrawal of W.P.No.7865 of 1997, which was filed by the petitioner against the show-cause notice dated 29.04.1997, which was issued asking him as to why he should not be reverted to the post of U.D.C from J.A.O.

6. It is an admitted fact that the erstwhile APSE Board has issued instructions in its Memo No.DS (Estt)/DM (Estt)/317-K2/97, dated 05.08.1997 stating that the unqualified employees who were promoted on or after 27.02.1996 and expired/retired later such cases need not be reviewed and reverted. The name of the petitioner is not deleted in view of the interim orders granted in W.P.No.7865 of 1997. Though the petitioner had withdrawn W.P.No.7865 of 1997, it does not mean that he has given up his claim. The petitioner was promoted by virtue of proceedings dated 21.05.1996, wherein it is clearly informed to the petitioner that the promotion orders are subject to final decision in C.A.Nos.180-181 of 1984 pending before the Hon'ble Supreme Court of India, New Delhi. But the subject matter before the Hon'ble Supreme Court in SLP is not pertaining to that of the petitioner.

Having aggrieved by the proceedings of APSEB in B.P.Ms.No.664, 05.08.1981, wherein certain exemptions were granted to the unqualified employees, the qualified employees filed writ petition and the same was dismissed on 30.10.1981, against which a batch of Writ Appeal Nos.675, 679 & 695 of 1981 were filed and the same were allowed on 07.10.1983 by the Division Bench by quashing B.P.Ms.No.664, dated 05.08.1981. Questioning the judgment in the above writ appeals, the unqualified employees filed SLP Nos.180-181 of 1984 and the same were allowed by orders of the Hon'ble Supreme Court on 27.02.1996. It is the case of the petitioner that he was promoted pursuant to proceedings in B.P.(P&G.Per) Ms.326, dated 13.09.1993, wherein it is stated the Upper Divisional Clerks who have good record of service and who crossed 50 years of age shall be exempted from passing the tests, which is not the subject matter of challenge before any Courts. It is also the case of the petitioner that by virtue of Memo No.DS (Estt)/DM (Estt)/317-K2/97, dated 05.08.1997, wherein it is clarified that the un-qualified employees who were promoted on or after 27.02.1996 and expired/retired later such cases need not be reviewed and reverted. The paragraphs 2 and 3 of the above proceedings are extracted hereunder:

“2. Some of the field officers have issued notices to the employees who have been promoted in un-qualified quota on or after 27.2.96 in respect of retired/expired persons, thereafter for reviewing their promotions from the date of retirement/expiry.

3. After careful examination of the issue, it is clarified that the un-qualified employees who were promoted on or after 27.2.96 and expired/retired later such cases need not be reviewed and reverted.”

Even according to the above proceedings dated 05.08.1997, the case of the petitioner cannot be reviewed. Therefore, the respondents cannot revert the petitioner to UDC and that too, after his retirement. The litigation pending before the Hon'ble Supreme Court in SLP Nos.180-181 of 1984 does not pertaining to the exemption granted to the petitioner and that the petitioner was promoted subsequent to the

exemptions granted in B.P.(P&G.Per) Ms.326, dated 13.09.1993. Moreover, the proceedings in Memo dated 05.08.1997 shows that the unqualified employees who were promoted on or after 27.02.1996 and expired/retired later such cases need not be reviewed and reverted, as such, the impugned order is without any application of mind and the same is liable to be set aside.

Accordingly, the writ petition is allowed setting aside the impugned proceedings dated 29.01.2001. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any pending in this Writ Petition, shall stand closed.

A.RAJASHEKER REDDY, J

09.07.2015.
KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

[illegible]

W.P. No.3304 OF 2002

[illegible]

Date: 09-07-2015

KVS
