

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No. 1125 of 2010

Date: 17.09.2016

Between:

K.V.P.S.Reddy, E.405216 Shramik, APSRTC,
Mydukur Depot, Kadapa District, s/o. K.L.V.Subba
Reddy, Aged about 42 years, R/o. Cuddapah,
Cuddapah District.

.....Petitioner

and

The Executive Director (K&N) Zones, APSRTC,
Bus Bhavan, RTC X Roads, Hyderabad and
others.

.....Respondents



The Court made the following:

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ORDER:

Petitioner was working as Shramik at the relevant point of time. On the allegation that petitioner was involved in re-selling of meals coupons, disciplinary proceedings were initiated. He was placed under suspension by proceedings dated 05.05.2009. The disciplinary proceedings resulted in removal from service by order dated 31.08.2009. The appeal preferred by the petitioner was considered by orders dated 14.12.2009. The Appellate Authority while upholding the disciplinary action, modified the punishment of removal to that of withholding of two annual increments with cumulative effect. It is further ordered that period of out of service was treated as not on duty. However, the entire period was treated as continuous service for other benefits. As petitioner's parent unit was Zonal Workshop, the competent authority was directed to maintain seniority in the said workshop. This writ petition is filed praying to direct the respondent-corporation to grant him promotion as Electrician (DC), Grade-I in Zonal Workshop of Kadapa from the date of promotion of his juniors, who are arrayed as respondents 3 to 5 in the writ petition.

2. Heard Sri S.A.K.Mynoddin, learned counsel for petitioner and Sri Aravala Rama Rao, learned standing counsel for APSRTC.

3. Learned counsel for petitioner submits that Appellate Authority while modifying the punishment imposed against him, protected the seniority in the parent unit and admittedly, the respondents 3 to 5, who are juniors to him, were promoted to the

above post when the petitioner was out of service and as a consequence to the restoration of the petitioner to service, he ought to have been granted promotion from the date of promotions of his juniors. He would submit that circular instructions issued by the respondent-Corporation from time to time would support the stand of the petitioner. As a consequence to the conclusion of the disciplinary proceedings and restoration of the petitioner to service, he is entitled for grant of promotion on the date, it was due. By placing reliance on the circular No.PD.116/75-76, dated 09.02.1975, he would submit that it is permissible for the competent authority to grant promotion and implement punishment in the promotion post. By considering all the circulars promotion of the petitioner ought to have been reviewed and he ought to have been granted promotion on par with his juniors. By not granting promotion, illegalities are committed, causing grave prejudice and hardship to the petitioner.

4. Learned standing counsel submits that prior to the removal of the petitioner and while he was under suspension, his claim for promotion was considered and though he was selected along with three other candidates, promotion was not issued to him since he was under suspension. The Departmental Selection Committee, which met on 23.10.2009, reviewed the case of the petitioner in terms of the Circular No.PD-27/2008, dated 16.04.2003 along with three other candidates, arrayed as respondents 3 to 5, and the respondents 3 to 5 were promoted on 28.10.2009. He would submit that by the time the promotions were issued to the respondents 3 to 5, petitioner was not in service and, therefore, the granting promotion to the petitioner on that day would not arise.

5. He would submit that as petitioner was not in service and that the Appellate Authority modified the punishment of removal to that of withholding of two annual increments, petitioner cannot seek retrospective promotion from the date of grant of promotions to his juniors.

6. It is not in dispute that by the time respondents 3 to 5 were promoted as Electrician (DC) Grade-I, petitioner was not in service. Thus, whether petitioner was senior to the respondents 3 to 5 has no relevance, since on the date of promotions granted to them, petitioner was not in service. Admittedly, petitioner was facing disciplinary proceedings, which resulted in imposing punishment of removal, which was subsequently modified by the Appellate Authority and punishment of withholding of two annual increments was imposed. It is pertinent to note that the Appellate Authority while modifying the punishment and imposing punishment of withholding of two annual increments, clearly stated that period of out of service not be treated as on duty. Whatever the benefits to which the petitioner was entitled if he was in service and if there was no disciplinary action cannot be equated to that of granting promotion, when he was facing disciplinary proceedings, which resulted in imposing punishment of removal, subsequently modified with lesser punishment.

7. Learned counsel for petitioner was harping on the orders of appellate authority in directing the competent authority to maintain seniority in Zonal Workshop of Kadapa. This order does not show that seniority is restored as obtaining prior to his removal. It only directs maintaining of seniority in the Zonal

Workshop at Kadapa. This has to be seen in the light of the fact that on reinstatement petitioner was directed to be posted in a Depot instead of workshop. Thus, his parent unit was directed to maintain his seniority.

8. Furthermore, restoration of seniority would not mean that petitioner be granted automatic promotion from retrospective date and maintaining of seniority vis-à-vis respondents 3 to 5. Since respondents 3 to 5 were already moved to the higher cadre by the time the petitioner was re-inducted to service, petitioner cannot compare with the respondents 3 to 5, who did not have any other disciplinary proceedings pending at the time of their promotion and seek benefits on par with them.

9. The decision relied by the learned counsel for petitioner in the case of **J.Mohan Reddy v. Andhra Pragathi Grameena Bank, Kadapa**¹ does not come to his aid. It was a case concerning maintenance of sealed cover. In the said case, since disciplinary proceedings were pending, the eligibility of the petitioner for promotion was kept in a sealed cover. The said disciplinary proceedings subsequently ended in his favour. The Court directed that all the consequential benefits should be granted on his exoneration in the disciplinary proceedings. In the instant case, sealed cover procedure was not observed and on the contrary, as specifically averred in the counter-affidavit, petitioner was considered by the Departmental Promotion Committee, while he was under suspension and was also considered when his juniors were considered though he was not in employment. Since he was

¹ 2012 (1) ALD 420

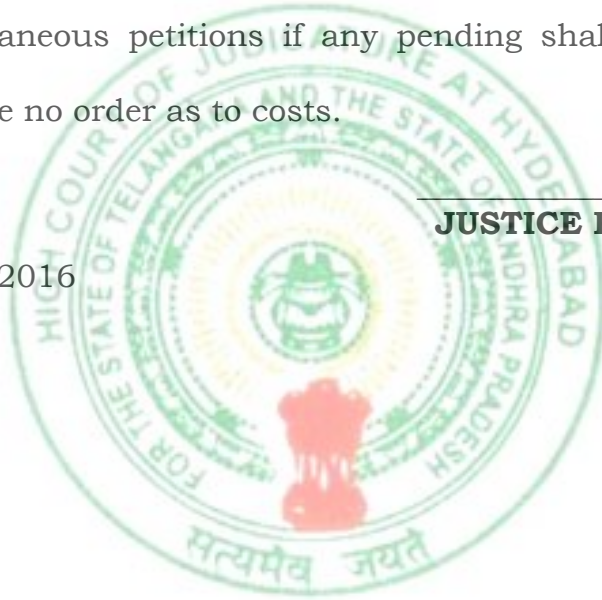
already out of service, his case for promotion was not recommended.

10. Therefore, I see no merit in the claim made by the petitioner. Accordingly, writ petition is dismissed. However, it is made clear that claim in the writ petition was for retrospective promotion on par with promotions granted to respondents 3 to 5. This Court has not expressed any opinion on his eligibility for promotion after his reinstatement and petitioner can independently work out his remedies on that claim.

Miscellaneous petitions if any pending shall stand closed.
There shall be no order as to costs.

Date: 17.09.2016
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JUSTICE P.NAVEEN RAO



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