

THE HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.347 OF 2006

ORDER:

Heard Mr.M.Rama Rao for petitioner and Mr. R.Vinod Reddy for respondents 1 to 3.

The petitioner challenges Memo No.SC/OP/MDK/PO/Adm/A1/D.No.1598/2005 dated 01.10.2005 as arbitrary, illegal and unconstitutional.

Through memo impugned in the writ petition, the 3<sup>rd</sup> respondent ignoring the claims of writ petitioner promoted respondents 4 and 5 as Store Keeper, Grade-II. Seniority list enclosed to Memo No.SC/O/MDK/PO/Adm/A1/D.No.917/2000 dated 01.06.2000 is admitted and undisputed. According to the memo dated 01.06.2000, the *inter se* seniority between petitioner and respondents 4 and 5 is as follows:

| Sl. No. | Name of the Employee | Date of birth | Educational Qualification | Date of entry into service |
|---------|----------------------|---------------|---------------------------|----------------------------|
| 1.      | G.Pochaiah           | 20.6.49       | B.A                       | 7.6.73                     |
| 2.      | S.Venkatesham        | 23.11.47      | HSC                       | 6.2.70                     |
| 3.      | S.Bandappa           | 2.2.45        | 12 <sup>th</sup> class    | 18.4.70                    |
| 4.      | S.Prabhakar          | 1.7.63        | Inter                     | 1.7.82                     |
| 5.      | Md.Eshan Ahmed       | 20.7.48       | B.Com                     | 16.3.78                    |

The case of petitioner is that the 3<sup>rd</sup> respondent contrary to B.P.Ms.No.347 dated 02.08.1996 had promoted respondents 4 and 5. The same is illegal and arbitrary. According to B.P.Ms.No.347 dated 02.08.1996, Store Keeper, Grade-I comes under Category-I

and has to be filled up by promotion from the category of Store Keeper, Grade-II. The qualifications required are five years of service as Store Keeper, Grade-II, with a degree from recognized university.

The case of respondents is not that the petitioner does not satisfy the qualification criteria and was not promoted. Counsel for petitioner though has made twin submissions viz., that the petitioner should have been promoted w.e.f. 1998 and alternatively that the case of petitioner for promotion as Store Keeper, Grade-II should have been considered on the day on which his juniors were promoted.

Learned senior counsel has confined his submission to the second contention and keeping in mind the above submission, all the circumstances are not referred.

The 3<sup>rd</sup> respondent filed counter-affidavit and for appreciating the reply of 3<sup>rd</sup> respondent, this Court finds it convenient to excerpt paragraphs 9 and 10 of the counter-affidavit.

“It is submitted that the amendment orders were issued vide BP Ms.347 dated 2.3.1996 merging categories of Store Assistants, under O & M construction and constituting the categories of Store Keeper Grade-I, Store Keeper Grade-II and Store Keeper Grade-III to Accounts Service prescribing the mode of promotion and prescribing qualifications only. The promotions are to be affected against the sanctioned posts only. Mere acquisition of qualification and experience automatically does not give right for promotion.

It is submitted that the petitioner had become eligible for promotion in the year 1998 and his case was not considered for promotion in the year 1998 is false and baseless. The upgradation sanction orders were issued to Medak circle for the first time in the year 2005. Consequently cases of unofficial respondents were considered as they were due to retire. The date of birth of Md.Eshad Ahmed is 20.7.1948 and his date of retirement on attaining the age of superannuation on becoming 58 years would be on 31.7.2006 and the date of birth of S.Venkatesham is 23.11.1947 and his date of retirement on attaining the age of superannuation on becoming 58 years would be on 30.11.2005. The petitioner's date of birth is 20.6.1949 and his date of retirement on attaining the age of superannuation on becoming 58 years would be on 30.6.2007. In view of the above facts the case of the petitioner was rightly considered for promotion after promoting unofficial respondents."

From the stand taken in the counter-affidavit, it is clear that the 3<sup>rd</sup> respondent has not followed the criteria of seniority or considered the qualifications of eligible candidates in the feeder category viz., Store Keeper, Grade-II, but by reference to the date of retirement from service, the promotions have been effected. The counter-affidavit merely refers to what was actually done by respondents 1 to 3 in effecting promotions to Store Keeper, Grade-I. The petitioner has given up the challenge against impugned proceedings, but prays for extending the benefit of promotion w.e.f. 01.10.2005. In the considered view, the procedure does not satisfy the requirements. Counsel for respondent does not dispute the infirmity in promoting respondents 4 and 5. This Court is of view that the petitioner is entitled for promotion from the date on which his juniors were promoted. Learned standing counsel submits that since the petitioner had retired from service, it shall be held that the

petitioner is entitled for promotion w.e.f., 01.10.2005 and he may be paid the emoluments etc., attached to the post of Store Keeper, Grade-I for the period 01.10.2005 till 03.06.2007.

No other submission is made by learned counsel appearing for the parties.

The writ petition is ordered by directing the 3<sup>rd</sup> respondent to promote the petitioner from 01.10.2005 and consequently pay monetary benefits for the interregnum period within two months from the date of receipt of a copy of this order. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, stand closed.

Date:01.09.2016  
Lrk



S.V.BHATT, J