

THE HON'BLE SRI JUSTICE S.V. BHATT

W.P.Nos.3772 & 5572 OF 2009

COMMON ORDER:

Heard Mr.D.Linga Rao for petitioner, Mr.P.Subash for
1st respondent and Government Pleader for Social Welfare.

The parties in these two writ petitions are one and the same. The petitioner in these writ petitions challenge letter Rc.No.2163/A2/2007 dated 18.02.2009 of 1st respondent as illegal, violative of principles of natural justice and unconstitutional. Through the impugned proceedings, the 1st respondent altered the date of commencement of probation of petitioner from 01.03.2005 to 30.11.2007, thereby reducing his rank in the seniority list from serial No.1 to serial No.12.

The circumstances relevant for the disposal of writ petitions are as follows:

On 22.10.1982, the petitioner joined as Typist in the 1st respondent Corporation. On 16.06.1988, the petitioner was promoted as Senior Assistant. On 26.02.2004, the petitioner was promoted as Assistant Executive Officer. The 1st respondent, while promoting the petitioner as Assistant Executive Officer, imposed the following condition:

“Further it is ordered that the employees at S.L.Nos.6, 7, & 8 who are not having graduation qualification shall acquire the same within three consecutive years starting from the next academic year after the individual is given the promotion i.e., with effect from 2004-2005 failing which they will be reverted back. All the employees who have not passed the departmental tests prescribed in the common bye laws, shall also acquire the same within a reasonable period of 2 years”.

On 02.03.2004, the petitioner reported to duty as Assistant Executive Officer. While matters stood thus, the 1st respondent issued Memo Rc.No.300/A/93.Vol.II dated 13.06.2008 calling upon the petitioner and a few other similarly placed employees to show cause why the petitioner shall not be reverted for non-fulfillment of condition imposed through proceedings dated 26.02.2004. On 12.08.2008, the petitioner submitted explanation and the same was forwarded to 1st respondent through the Executive Director, District BC Service Cooperative Society Limited, Karimnagar. For appreciating the explanation offered by the petitioner for not obtaining the requisite qualification within the period stipulated by 1st respondent, the operative portion of explanation is excerpted:

“It may kindly be seen that I would have acquired the degree qualification before June, 2007, but for not passing one paper i.e., political theory mentioned above. Afterwards, I have appeared in the examination held in November, 2007 and passed the subject. But there has been delay from November, 2007 to end of July 2008 for communication of provisional certificate/consolidated memo of marks by the said university. It may also kindly be seen that actually a delay of 5 months from July 2007 to November 2007 has occurred in my case for acquiring the degree qualification, which is due to the reasons beyond my control.

I, therefore, humbly request the VC & Managing Director, APBCCFC Ltd., Hyderabad to kindly condone the delay of 5 months beyond June 2007 occurred in my case for acquiring the degree qualification as per the condition laid down in the proceedings 1st cited and to issue orders of regularization of my services in the cadre of Assistant Executive Officer at an early date”.

The 1st respondent vide proceedings Rc.No.496/A2/2006 dated 25.09.2008 accepted the explanation read above and ordered as follows:

“In the proceeding 1st cited Sri V.Ch.N.Chary, was promoted as Assistant Executive Officer temporarily. He joined as Assistant Executive Officer on 02.03.2004 (FN).

The services of Sri V.Ch.N.Chary, is regularized as Assistant Executive Officer with effect from 02.03.2004 F.N. and the probation of the individual is hereby declared as per Common Bye laws probation Chapter 2, Section II, under Rule (12), (b) ii, as he has completed his probation period by 01.03.2005 which shall be for a total period of one year on duty within a continuous period of two years”,

From the above, it is clear that the objection of 1st respondent that the petitioner did not fulfill the

condition of acquiring qualification within time was condoned and probation was declared w.e.f. 01.03.2005. While matters stood thus, the 1st respondent communicated provisional seniority list Rc.No.1921/A2/2008 dated 23.10.2008 showing petitioner at serial No.1, but through communication Rc.No.2163/A2/2007 dated 18.02.2009 has shown the seniority of petitioner at serial No.12. The admitted and undisputed circumstances are that the 1st respondent while showing the seniority of petitioner at serial No.12 treated the date of completion of probation as 30.11.2007 and placed the petitioner at serial No.12 in the final seniority list. Hence, the writ petition.

Mr.D.Linga Rao for petitioner contends that the unilateral alteration of date of completion of probation by petitioner through communication of final seniority list is violative of principles of natural justice, arbitrary, illegal and unconstitutional. According to him, the 1st respondent issued Memo dated 13.06.2008 calling upon the petitioner to show cause why he shall not be reverted for non-fulfillment of the condition. The petitioner submitted detailed reply stating that the condition was complied within time but due to delay in furnishing provisional degree certificate etc., by college, he could not bring the acquisition of qualification within time to the notice of 1st respondent. However, the 1st respondent regularized the services of petitioner and declared probation as completed by 01.03.2005. The said proceeding cannot be disturbed or recalled by the 1st respondent and treat the date of completion of probation as 2007.

Mr.P.Subhash justifies the seniority list communicated through letter dated 18.02.2009 by contending that *de hors* the reasons stated by the petitioner, the fact remains that the petitioner did not acquire qualification as prescribed in the order of promotion. Therefore, no exception to the final seniority list and treating the petitioner as completing probation by 30.11.2007 can be taken. To the pointed out query of this Court - whether the 1st respondent issued notice before changing the probation period from 01.03.2005 to 30.11.2007 or while issuing proceedings dated 25.09.2008 notice to petitioner was given or not, learned counsel from the material available on record and on instructions submits that the change of completion of probation period is without notice to petitioner.

Having regard to the circumstances viz., that the failure to acquire qualification within the prescribed period was the subject matter of memo dated 13.06.2008, the petitioner submitted explanation and by accepting the reply, the services of petitioner as Assistant Executive Officer were regularized and probation declared as completed by 01.03.2005. The 1st respondent committed illegality by changing the date of completion of probation and also reverting the petitioner in the final seniority list. The action of 1st respondent in treating the petitioner as completing probation by 30.11.2007 is illegal, violative of principles of natural justice and unconstitutional. Consequent to such declaration, the petitioner shall be deemed to have been regularized as Assistant Executive Officer and completed probation by 01.03.2005. The seniority is required to be restored accordingly.

The writ petitions are ordered as indicated above. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

S.V.BHATT, J

Date:16.06.2016
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