

THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

WRIT APPEAL NO.861 OF 2009

JUDGMENT: {Per the Hon'ble Sri Justice V.Ramasubramanian}

This appeal arises out of the dismissal of a Writ Petition filed by the appellant, seeking a direction to grant him upgradation from Grade III Artisan Welder to Grade II Artisan Welder with effect from the date on which his junior was promoted.

2. Heard Smt. G.Jyothi Kiran, learned counsel appearing for the appellant and Sri G.Ramesh Babu, learned counsel appearing for respondent Nos.1 to 4.

3. The appellant came up with a Writ Petition in WP.No.20234 of 2000, contending that he ought to have been upgraded as Artisan Grade II Welder with effect from 25.06.1988 on par with his junior. The learned Single Judge rejected the claim on two grounds namely, (1) that the case is not one of upgradation but of promotion on the basis of merits, and (2) that the appellant refused to accept promotions, when granted to him in the years 1996 and 2000. Aggrieved by the said order, the appellant is before us.

4. It is contended by the learned counsel for the appellant on the basis of performance appraisal reports that the performance of the appellant was always rated higher than that of the candidates to whom upgradation was granted and that it was not a case of promotion but a case of upgradation.

5. *De hors* the fact whether it is a case of upgradation or promotion, the appellant is actually guilty of two things. The first is that even according to him, he was liable to be upgraded or promoted, by whatever name you call it, with effect from 25.06.1988. He originally approached this Court and filed a Writ Petition in WP.No.13647 of 1988. The said Writ Petition was dismissed by an order dated 23.06.1999, with an observation that his case should be considered for promotion, if he is otherwise qualified. Therefore, the same issue cannot be reopened by the appellant by filing a fresh Writ Petition in the year 2000. Fortunately, the learned Judge did not put this point against the appellant and we are constrained to do that.

6. In addition, the appellant was granted promotion twice, first in the year 1996 and next in the year 2000. This is actually in compliance with the order passed by this Court in WP.No.13647 of 1988. But, unfortunately, the appellant made a very curious endorsement on the order of promotion, which when extracted, will be sufficient to throw the claim of the appellant. Therefore, we extract the endorsement made by the appellant in the promotion order as follows.

“This promotion order does not protect my service, seniority, wages and fringe benefits. I condemn this order and will accept it only if it is given with retrospective effect from 25.06.1988”.

7. We do not know as to whether such a person could validly make out any other claim and hence, the dismissal of the Writ Petition is perfectly in order.

8. Therefore, the Writ Appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(V.RAMASUBRAMANIAN, J)

(G.SHYAM PRASAD, J)

20th December 2016
RRB

