

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos. 4066 OF 2011

Date:22.7.2016

Between :

Podium Balu Dora S/o late Sri Somanna Dora
AP Genco, Civil (O & M) circle,
Upper Sileru, Visakapatnam

... Petitioner

And

The Government of A P
Rep by its Principal Secretary,
Environment and Energy Department,
Secretariat, Hyderabad and others.

... Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos. 4066 OF 2011

ORDER:

Petitioner joined the service in the cadre of semi-skilled worker on 25.9.1993 and by 2.11.1999 he became Highly Skilled Grade II employee. Later, on 24.2.2006 petitioner was converted as Lower Division Clerk (for short LDC). In the seniority list of LDCs of A.P. Power Generation Corporation Limited, petitioner was assigned serial No.6. Grievance of the petitioner necessitating institution of this writ petition is promotion of 6th respondent as Upper Division Clerk by the orders impugned in the writ petition ignoring the petitioner.

2. Heard learned counsel for petitioner and learned counsel for respondent, though notice is served, none appears for 6th respondent.

3. Learned counsel for petitioner contends that in the seniority list drawn up by the respondents after absorption of petitioner and other similarly situated personnel, his name is shown at serial no.6, whereas, the name of 6th respondent is shown against serial no.9. However, contrary to the seniority position and ignoring the petitioner, 6th respondent was promoted as UDC vide orders dated 22.12.2009. Learned counsel for petitioner, therefore, submits that promotion of the 6th respondent ignoring the seniority of petitioner is exfacie illegal and amounts to arbitrary exercise of power. Promotion to the post of UDC is based on seniority, therefore, senior could not have been ignored.

4. Learned standing counsel sought to justify the promotion granted to 6th respondent on the ground that 6th respondent was earlier working as Secondary Grade Teacher and had rendered more than 25 years of service. Taking note of his service as Secondary Grade Teacher for long time, he was considered for promotion in preference to the petitioner. According to learned standing counsel, petitioner had rendered service in the cadre of Highly Skilled Grade only from 2.11.1999, therefore compared to petitioner, the service rendered by 6th respondent was longer and post of Secondary

Grade Teacher was higher than the post of LDC.

5. It is not in dispute that the method of recruitment to the post of UDC is by promotion from among the persons working in the cadre of LDC. Promotion to the post of UDC is based on seniority. Learned standing counsel has not placed before this Court any regulation which enables the competent authority to consider the service rendered in previous post for the purpose of consideration for promotion, ignoring the seniority assigned in the cadre. However, learned standing counsel, sought to justify the action of the respondents on the ground that ample power is vested in the Board of the respondent company to grant relaxation under Regulation 41 of APSEB Service Regulations and having regard to the fact that 25 years of service was rendered by the 6th respondent as Secondary Grade Teacher, which post carried higher scale of pay than that of LDC, promotion was validly granted. However, it is seen from the provision in Regulation 41 that power of relaxation is vested in the Board, whereas, no such power is exercised in the instant case. Thus, whether in exercise of such power, the Board could have granted promotion to 6th respondent ignoring seniority need not be gone into. Suffice to note that order impugned in the writ petition is passed by the Managing Director independently and without regard to the provision contained in Regulation 41.

6. Plain reading of the order would show that 6th respondent represented consideration for promotion on the ground that he has already crossed 45 years of age and that he has rendered longer service as Secondary Grade Teacher, therefore sympathetic consideration be given. Acting on the said request, the order of promotion was made. The assignment of higher seniority to the petitioner is not disputed, nor there was any challenge made by the 6th respondent against grant of such higher seniority to petitioner. The tabulated statement in the proceedings dated 17.7.2010 would show the date of joining of the petitioner as LDC as 2.3.2006, whereas the date of joining of 6th respondent was 2.7.2007. Thus, seniority was assigned in LDC cadre based on entry into the cadre, which is valid. Thus, the promotion granted to

the 6th respondent is ex-facie illegal and it is therefore not sustainable. At this stage, learned standing counsel informs the Court that subsequently petitioner was also promoted as UDC. If that is so, the promotion of the petitioner has to be anti-dated to the date of promotion of the 6th respondent and it is open to the respondents to consider continuation of 6th respondent in any other available vacancy, if they so desire.

7. Accordingly, the writ petition is allowed. No Costs. No costs. Miscellaneous petitions, if any, pending stands dismissed.

P NAVEEN RAO,J

DATE: 22.7.2016
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

WRIT PETITION Nos. 4066 OF 2011
Date:22.7.2016