The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and
The Hon'ble Sri Justice M.S.K.Jaiswal

Writ Petition No.10862 of 2016

Date: 07.04.2016

Between:

V.Rajesh

.. Petitioner

and

The State of A.P.
Rep. by its Prl.Secretary
Revenue (CT) Dept.,
Hyderabad and 3 others

.. Respondents

Counsel for the petitioner : Mr.V.Maheswar Reddy

Counsel for respondent Nos.1 to 3: GP for Services (AP)

The Court made the following:

Order : (Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Writ Petition is filed for a Certiorari to quash Order, dated 05-02-2016, in OA.No.4010/2012 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad.

While the petitioner was working as Junior Assistant, he was promoted to the cadre of Senior Assistant (Marwadi and Gujarati) *vide* proceeding in Rc.No.A2/528/2004, dated 19.05.2005, of respondent No.3. In the said proceeding, it was clearly stipulated that since the post of Senior Assistant (M & G) is not a feeder post for promotion to the post of Assistant Commercial Tax Officer, he shall be made to take promotion as Senior Assistant and Assistant Commercial Tax Officer in regular turn. It was also stipulated therein that the promotion is purely temporary and the petitioner is liable for reversion at any time without any notice and that it does not confer any right of seniority in the cadre of Senior Assistant. As the petitioner was not considered for promotion to the post of Assistant Commercial Tax Officer, he has filed the above mentioned OA.

Respondent No.3 filed a counter-affidavit wherein it was *inter alia* stated that the post of Senior

Assistant (M & G) is not a feeder post for promotion to the post of the Assistant Commercial Tax Officer and that therefore, it was stipulated in the promotion order, issued under Rules 10 (a) and 10 (i) of the Andhra Pradesh State and Subordinate Service Rules, 1996 (for short 'the Rules') that the temporary service rendered by the petitioner as Senior Assistant (M & G) cannot be taken into consideration in order to determine his seniority in the said cadre. It was further averred that no person, who is junior to the category of Junior Assistant, was promoted to the post of Assistant Commercial Tax Officer. The Tribunal has accepted the aforementioned stand taken by the respondents and dismissed the OA.

It is not the pleaded case of the petitioner that he was promoted as Senior Assistant (M & G) considering his seniority in the post of Junior Assistant. On the contrary, he was promoted purely temporarily under sub-Rules (a) and (i) of Rule 10 of the Rules, which read as under:

> "10.Temporary appointment including appointments by Direct Recruitment, Recruitment/Appointment by Transfer or by Promotion:-
>
> (a) Where it is necessary in the public interest to fill emergently a vacancy in a

post borne on the cadre of a service, class or category and if the filling of such vacancy in accordance with the rules is likely to result in undue delay, the appointing authority may appoint a person temporarily, otherwise than in accordance with the said rules, either by direct recruitment or by promotion or by appointment by transfer, as may be specified as the method of appointment in respect of that post, in the special rules.

……….

(i) Temporary posts requiring special qualifications

Notwithstanding anything contained in these rules or special rules, if and when, a temporary post is created as an addition to the cadre of any service, class or category and the holder thereof is required by the State Government to possess any special qualifications, knowledge or experience and who is considered to be the most suitable person to discharge the duties of such post may, irrespective of other consideration be appointed temporarily to that post by the appointing authority; but the person so appointed shall not, by reason only of such appointment, be regarded as a probationer in such service, class or category nor shall be acquire thereby any preferential right to future appointment to such service, class or category.”

Since the petitioner possesses knowledge in two languages *viz*., Marwari and Gujarathi, he was given temporary promotion to the post of Senior Assistant (M & G) in addition to the regular service, class or category of Senior Assistant. This is the obvious reason why the above-mentioned two conditions were stipulated *viz*., that the promotion was purely temporary and that as the promoted post is not a feeder post to the post of Assistant Commercial Tax Officer, the petitioner shall be made to wait for his turn for promotion as Senior Assistant and also as Assistant Commercial Tax Officer. The petitioner has accepted this order with his eyes wide open and joined as the Senior Assistant (M & G) without any demur. Therefore, as rightly observed by the Tribunal, the petitioner cannot turn round and try to take undue advantage of his temporary promotion for claiming further promotion by stealing a march over his seniors.

For the above mentioned reasons, we do not find any merit in the Writ Petition and the same is, accordingly, dismissed.

As a sequel to dismissal of the Writ Petition, WPMP.13685 of 2016, filed by the petitioner for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

Dt: 7th April, 2016
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