

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.27721 of 2017

Between:

K.Nagaraju

..Petitioner

and

..Respondents

The State of Andhra Pradesh,
represented by its Principal Secretary,
Municipal Administration and Urban Development Department,
Secretariat, Velagapudi, Guntur District and another

JUDGMENT PRONOUNCED ON: 21st August, 2017

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

1. Whether Reporters of local
Newspapers may be allowed : No
to see the Judgments?

2. Whether the copies of
judgment may be marked to : Yes
Law Reporters/Journals?

3. Whether their Ladyship/Lordship
wish to see fair copy of the : Yes
Judgment?

C.V.NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

*THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

+ WRIT PETITION No.27721 of 2017

% 21.08.2017

K.Nagaraju

..Petitioner

Vs.

\$ The State of Andhra Pradesh,
represented by its Principal Secretary,
Municipal Administration and Urban Development Department,
Secretariat, Velagapudi, Guntur District and another

..Respondents



! Counsel for the petitioner: Mr.R.Rajasekhara Rao

Counsel for the respondents: Government Pleader for Services (AP)

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> Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

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The State of Andhra Pradesh,
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Counsel for the petitioner: Mr.R.Rajasekhara Rao

Counsel for the respondents: Government Pleader for Services (AP)

The Court made the following:



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

Feeling aggrieved by order, dated 03.07.2017, in O.A.No.1359 of 2017, whereby the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') dismissed the said O.A. filed by the petitioner, this writ petition is filed.

2. The petitioner is working as the Town Planning Officer. By G.O.Rt.No.43, Municipal Administration & Urban Development (Vig.II-2 Department, dated 20.01.2015, the Government framed six charges against him. The enquiry officer, after holding a detailed enquiry, submitted his enquiry report, dated 03.12.2016, exonerating the petitioner of all the charges. The Government, however, not satisfied with the enquiry report, issued G.O.Rt.No.96, Municipal Administration & Urban Development (Vig.II-2 Department, dated 16.02.2017, appointing another enquiry officer for conducting further enquiry. On the ground that the disciplinary proceedings are pending, the petitioner has not been promoted to the post of the Assistant City Planner and therefore, he approached the Tribunal. The Tribunal has dismissed the aforementioned O.A. mainly on the ground that it is for the Departmental Promotion Committee (D.P.C.) to consider or not to consider a candidate for promotion and that the Tribunal cannot interfere with the promotion process before the D.P.C. takes a decision. The Tribunal has also rendered a finding that the Government has got the power and privilege to order *de novo* enquiry into the allegations against the petitioner.

3. Inasmuch as G.O.Rt.No.96, dated 16.02.2017, is not in question before us, we do not intend to express our conclusive opinion on the findings of the Tribunal that the Government has got the power and privilege to order fresh enquiry. However, we feel the necessity of observing that the view of the Tribunal that the employer has an unfettered right to order a fresh enquiry if he is not satisfied with the enquiry report is based on a thorough misconception of

law. Under Rule 21(1) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short 'the Rules'), if the disciplinary authority is not satisfied with the enquiry, it may, for the reasons to be recorded in writing, remit the case to the inquiring authority for further enquiry and report. Under Sub-Rule (2) thereof, if the disciplinary authority does not agree with the findings of the inquiring authority, it can record its own tentative reasons for disagreement on any article of charge, requiring the Government servant to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant. This being the position in law, the State Government is not vested with the power to appoint a fresh enquiry officer. Be that as it may, the right to consideration for promotion is recognized as a fundamental right. Therefore, the Court or the Tribunal cannot ignore the arbitrary action of the employer in denying such right to any employee. As noted hereinbefore, when the enquiry officer exonerated the petitioner of all the charges, denial of consideration of promotion to the petitioner affects his fundamental right. For the aforementioned reasons, we are of the opinion that the Tribunal has committed a serious error in rejecting the relief to the petitioner.

4. Accordingly, the respondents are directed to consider the case of the petitioner for promotion to the post of the Assistant City Planner without reference to the pendency of the disciplinary proceedings. It is, however, made clear that the promotion, if any, given to the petitioner shall be subject to the result of the disciplinary proceedings.

5. Subject to the above directions, the Writ Petition is allowed.

6. As a sequel to allowing the writ petition, W.P.M.P.No.34434 of 2017 filed by the petitioner for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

21st August, 2017

Note: L.R. copies to be marked.

(B/o)
GHN

