

**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND**

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION Nos.30671 and 32960 of 2015

COMMON ORDER: *(Per VRS,J)*

The petitioner has come up with the above two writ petitions, challenging the common order passed by the Andhra Pradesh Administrative Tribunal, in one Original Application filed by the petitioner himself and in another Original Application filed by the 4th respondent herein.

2. Heard Mr.N.Ashwani Kumar, learned counsel appearing for the petitioner, the learned Government Pleader for Services-I (Andhra Pradesh) and Mr.K.G.Krishna Murthy, learned senior counsel appearing for the unofficial respondent.

3. The unofficial respondent in these writ petitions was appointed to Group-I Services of the State in the year 1987. The petitioner was appointed to Group-I Services of the State in the year 1990. The unofficial respondent was promoted to the post of Assistant Director in the panel year 1991-1992 w.e.f.01.08.1992. The petitioner was promoted as Assistant Director in the panel year 1994-1995 w.e.f.09.11.1995.

4. Similarly, the unofficial respondent was promoted to the category of Deputy Director in the panel year 1996-1997 w.e.f. 04.03.1997. The petitioner was promoted to the category of Deputy Director in the panel year 1997-1998 w.e.f. 30.12.1998.

5. When the unofficial respondent reached his turn for inclusion in the panel of the year 2000-2001 for promotion to the category of Joint Director, he was overlooked on account of a penalty having been imposed upon him pursuant to the disciplinary proceedings. In the next panel year viz., 2003-2004, the writ petitioner was promoted.

6. Eventually, the petitioner succeeded in having the order of penalty dropped and a Government Order being passed exonerating him and granting him the benefit of promotion to the post of Joint Director with retrospective effect, from the date on which he was eligible viz., the panel year 2000-2001.

7. But, by the time the orders were passed in favour of the unofficial respondent under G.O.Ms.No.35 dated 18.03.2011, the writ petitioner gained next promotion to the post of Additional Director in the panel year 2008-2009. However, as a consequence of G.O.Ms.No.35 dated 18.03.2011, the seniority of the unofficial respondent was restored in the basic category and he was given notional promotions to the posts of Joint Director and Additional Director with effect from the dates on which his juniors got promoted.

8. Not really aggrieved by dropping of the charges and grant of notional promotion to the unofficial respondent, but aggrieved by the grant of seniority, the writ petitioner filed O.A.No.5170 of 2013 before Andhra Pradesh Administrative Tribunal. The unofficial respondent filed a separate application in O.A.No.2267 of 2014 seeking a direction to the government to implement its own

orders. Both the applications were taken up together by the Tribunal and by a common order passed on 04.08.2015, the Tribunal dismissed the application of the writ petitioner, but allowed the application of the unofficial respondent. Aggrieved by the said order, the writ petitioner has come up with the above writ petitions.

9. There is no dispute about two fundamental facts viz., (a) that the unofficial respondent was always a senior to the writ petitioner, right from the time of appointment of both of them to the post of Assistant Treasury Officer upto the time of promotion of both of them to the post of Deputy Director and (b) that by virtue of G.O.Ms.No.35, the disciplinary proceedings got dropped and the unofficial respondent was granted all the consequential benefits including notional promotion with effect from the date on which his juniors were promoted.

10. Once the disciplinary proceedings initiated against a government servant end in his favour, he is entitled to all the benefits that he would have otherwise enjoyed, had there not been any proceedings. In other words, the principle of restitution as found in civil law finds a place in service jurisprudence, by such grant of notional promotion and notional seniority. So long as there is no dispute about the fact (1) that from the time of original appointment in the same category, the unofficial respondent was senior to the writ petitioner and (2) that the charges framed against the unofficial respondent were dropped, leading to restoration of his original entitlement to promotion, the grievance of the petitioner cannot really be redressed.

11. Though the learned counsel for the petitioner contended that a settled seniority cannot be unsettled, the case cannot be seen as a dispute with regard to seniority. A person, who is denied promotion at the appropriate time, either on account of pendency of proceedings or on account of even a penalty imposed upon him, he is entitled to get back his original posts, if the disciplinary proceedings end in his favour. Let's take for instance, the case of a person dismissed from service pursuant to disciplinary proceedings. If the dismissal order is set aside and all the benefits get restored, he goes back to his original position. A person getting back to his original position does not tantamount to alteration of seniority after long period of time. Therefore, the Tribunal was right in passing the order and we see no justification to interfere with the same. Hence, the writ petitions are dismissed.

12. Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

M.GANGA RAO, J

31st October, 2017
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