

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

WRIT PETITION No.30247 of 2017

Between:

K.Sai Ram

..Petitioner

and

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

..Respondents

JUDGMENT PRONOUNCED ON: 07th September, 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 : Yes/No
to see the Judgments?

2. Whether the copies of
judgment may be marked to : Yes/No
Law Reporters/Journals?

3. Whether their Ladyship/Lordship
wish to see fair copy of the : Yes/No
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.30247 of 2017

% 07.09.2017

K.Sai Ram

..Petitioner

Vs.

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

..Respondents



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

Counsel for the respondents: Government Pleader for Services (A.P.)

< Gist :

> Head Note:

? Cases referred:

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

WRIT PETITION No.30247 of 2017

07.09.2017

Between:

K.Sai Ram

..Petitioner

and

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

..Respondents

Counsel for the petitioner: Mr.R.Rajasekhara Rao

Counsel for the respondents: Government Pleader for Services (A.P.)

The Court made the following:



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

Feeling aggrieved by order, dated 30.06.2017, in O.A.No.1247 of 2017 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal'), the unsuccessful applicant in the said O.A. filed this writ petition.

2. The grievance of the petitioner before the Tribunal was that though a charge memo was issued as far back as 22.10.2014, so far enquiry proceedings have not been commenced as enquiry officer has not been appointed and that despite the direction issued by the Tribunal on 11.01.2017 in O.A.No.57 of 2017 for completion of the disciplinary proceedings within three months, neither the disciplinary proceedings have been completed nor the petitioner's case for promotion to the post of Municipal Commissioner Grade-I is being considered. The Tribunal, by the impugned order, has dismissed O.A.No.1247 of 2017 on a reasoning, which in our opinion, is wholly unsustainable. The Tribunal has observed that since order of the Tribunal (termed as Single Member) in O.A.No.57 of 2017 did not envisage consequences of such non-completion, the said order has to be construed as directory and not mandatory. While we do not find any distinction between a Single Member and a Division Bench of the Tribunal, the Bench which disposed of O.A.No.1247 of 2017 has overlooked one vital aspect. The question before it was not whether the earlier order of the "Single Member" of the Tribunal was mandatory or directory, the real question was as to whether the respondents, who flouted the order of the Tribunal by not disposing of the disciplinary proceedings, can penalize the petitioner by not considering his case for promotion on the purported ground of pendency of the disciplinary proceedings. The Tribunal has failed to apply its mind from the above perspective and dismissed the O.A. ignoring several orders of this Court

directing consideration of the claims for promotion of the delinquents in the disciplinary proceedings, which are kept pending for unduly long periods. In K.Hari Das vs. The State of A.P.¹, this Court held as under:

“Ordinarily, an employee will not be considered for promotion if disciplinary proceedings are initiated against him based on serious allegations. However, an employee cannot be denied promotion by keeping the disciplinary proceedings pending for unduly long periods. From the instructions reported by the learned Government Pleader, it is evident that till now enquiry officer has not been appointed. However, the said P.Mahaboob Khan, who is also facing the charges identical to that framed against the petitioner, has already been promoted.

In these facts and circumstances, we feel that it would be unfair to deny promotion to the petitioner only on the ground of pendency of disciplinary proceedings initiated against him. Therefore, the respondents are directed to consider the case of the petitioner as and when the DPC is constituted without reference to the charges framed against him in the present case.”

3. Unfortunately, the Tribunal has not been following the dicta of this Court in all cases which have been arising before it subsequently. It is needless to emphasize that this Court being the Court of record and conferred with the power of judicial review against the orders of the Tribunal, its judgments have binding force on the Tribunal.

4. Following the judgments of this Court, which have been consistently taking the view that a person cannot be deprived of consideration for promotion while keeping the disciplinary proceedings pending for unduly long periods, the order of the Tribunal is set aside. The Writ Petition is, accordingly, allowed by directing the respondents to consider the case of the petitioner for promotion to the post of Municipal Commissioner Grade-I without reference to the pendency of the disciplinary proceedings. It is made clear that the promotion to the

¹ W.P.No.8690 of 2016, dated 18.03.2016

petitioner, if any, shall be subject to the outcome of the disciplinary proceedings.

5. As a sequel to allowing the writ petition, W.P.M.P.No.37689 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

07th September, 2017

Note: L.R. copies to be marked.

(B/o)

GHN

