

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

Writ Petition No.12516 of 2010

ORDER: (oral)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioner has assailed the order dated 28.08.2009 passed in O.A.No.5863/2005 whereby the O.A filed by the petitioner was dismissed.

2) The brief facts of the case are that the petitioner was appointed as an Attender on 25.10.1986. Though he was fully eligible and qualified to be appointed as Typist, he was appointed only as an Attender. The probation in the category of the Attender was declared on 24.02.1989. As there was a clear vacancy in the category of Typist, the petitioner submitted a representation to the 1st respondent requesting him to promote him as Typist by recruitment by transfer under Rule 10 of the A.P State and Subordinate Service Rules. Accordingly, the 1st respondent issued proceedings dated 19.05.1990 by appointing the petitioner as Typist by direct recruitment by transfer under A.P State and Subordinate Rules. The probation in the category of Typist was also declared on 25.09.1990. At the date of appointment as Typist, he was only 38 years old and later he crossed 45 years of age.

3) Learned counsel appearing on behalf of the petitioner submits that as the petitioner is working as a Typist, he is covered by G.O.Ms.NO.165 and as per the said G.O, he is exempted from passing

the Departmental tests. Hence, the petitioner has to be exempted from passing the Departmental tests for promotion to the next higher post of Senior Assistant. To this effect, the petitioner made a representation to the 1st respondent to promote him as Senior Assistant in the existing vacancy by giving exemption from passing of Departmental tests as he crossed 45 years of age. However, his request was rejected by the 1st respondent vide order dated 06.08.2003 mentioning therein that the petitioner cannot avail second promotion as he has already got such promotion as Typist.

4) It is not in dispute that the petitioner was appointed by transfer as Typist on 19.05.1990 and his probation was declared on 25.06.1990. The G.O.Ms.No.165 General Administration (Ser.C) Department dated 22.04.1997 was further modified vide G.O.Ms.No.225 General Administration (Ser.C) Department dated 18.05.1999 against the adhoc rules as under:

“Notwithstanding anything contained in the Andhra Pradesh State and Subordinate Service Rules or in the Special Rules or in adhoc rules, the Government Employees who have crossed 45 (forty five) years of age shall be exempted from passing the departmental tests prescribed in the Special rules or the adhoc rules for the purpose of promotion to the next higher category i.e, promotion or appointment by transfer involving promotion to a post above the one held; by him or her, if they could not get even one promotion after their initial appointment.

Provided that the persons who already got a promotion once where no tests are prescribed for the higher post, the exemption is not applicable to him or her if he or she is to be

considered for further promotion to next higher category where tests are prescribed. (This adhoc rule is applicable from the panel year 1997-98).

Provided further that the exemption is applicable in case of departmental tests or special tests only, where they are prescribed as a pre-requisite for promotion and this exemption shall not be applicable where like technical or academic qualifications are prescribed for promotion to the next higher category of posts.”

This amendment was carried out due to order passed by this Court in W.P.No.26310 of 1998 whereby this Court observed as under:

“The argument that petitioners were promoted to posts of Superintendents though they did not pass the Accounts Test and are not entitled to promotion to next stage, is also without merit. The promotion to the post of Superintendent was on basis of proceedings dated 27-12-1989, which confined promotion only to one stage. The petitioners are seeking benefit now of G.O.Ms.No.165 dated 22-4-1997. This is independent of proceedings dated 27-12-1989. The G.O does not exclude employee who had received benefit of proceedings of 1989. Hence, the argument cannot be accepted.”

5) The reading of G.O.Ms.No.225 dated 18.05.1999 clearly establishes that the exemption mentioned therein is not applicable on second promotion whereas the petitioner has already got promotion from Attender to Typist.

6) In view of the facts recorded above and the portion as discussed in G.O.Ms.No.165 dated 22.04.1997 and G.O.Ms.No.225 dated

18.05.1999, we find no discrepancy in the order passed by learned Tribunal. Accordingly, we confirm the same.

7) Finding no merit in the instant petition, the same is accordingly dismissed. No costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Date: 04.07.2017
scs/murthy

