HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.26584 of 2016

Date: 08-03-2017

Between:

Durga Prasad Nimmadi

... Petitioner.

AND

The State of Andhra Pradesh
represented by its Principal Secretary,
Ma & UD Department, Secretariat,
Hyderabad and others.

... Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.26584 of 2016

O R D E R: (Per Hon'ble'ble Sri Justice N. Balayogi)

The writ petitioner, aggrieved by the orders in O.A.No.2528 of 2016, dated 28-07-2016, passed by the A.P. Administrative Tribunal, Hyderabad, filed the present writ petition to issue a direction more particularly one in the nature of Writ of Certiorari calling for the records in O.A.No.2528 of 2016, to quash and set aside the impugned order of the first respondent 24-06-2016 and consequential order dated 25-06-2016, and direct the respondents to continue the petitioner as Chief Engineer at Greater Visakhapatnam Municipal Corporation with all consequential benefits.

2. The case of the petitioner in brief is that he was working as Chief Engineer in Public Health and Municipal Engineering Department and presently as Chief Engineer of Greater Visakhapatnam Municipal Corporation since 14-11-2014. He has been discharging duties to the best of his ability without any blemish.

3. The department, having considered the seniority, experience and expertise, the petitioner was further promoted as Chief Engineer on 18-09-2009 and after a long gap, he was posted as Chief Engineer in the Office of Engineer-in-Chief (Public Health), Hyderabad pursuant to the orders of the Tribunal in O.A.No.9084 of 2011. The third respondent created some disturbances between the petitioner and the second respondent by polishing the second respondent and the second respondent hand in glove with the third respondent addressed a letter dated 15-06-2015 alleging that the

petitioner is not attending meetings and inspections along with the second respondent. After taken up the construction work with the GVMC funds, after obtaining administrative sanction from the second respondent, the second respondent started ill treating and humiliating the petitioner without any reason or valid cause by not intimating him to attend inspections, meetings etc., and the petitioner was subjected to humiliation before his junior officers.

4. Pursuant to the letter addressed by the second respondent, the first respondent vide order dated 24-06-2016 appointed the petitioner as Technical Advisor to the first respondent on deputation basis. Immediately, after knowing the same, the petitioner addressed a letter on 25-06-2016 to all the concerned. To the utter surprise of the petitioner, the first respondent issued another order dated 25-06-2016 merely relying upon on the letter addressed by the second respondent dated 15-6-2015, whereunder the junior most officer Sri V. Chandraiah, the third respondent herein was kept in-charge of the duties of Chief Engineer, GVMC. The first respondent, while appointing the petitioner as Technical Advisor to the first respondent, has not followed the prescribed and well established procedure laid down under law and rule and without giving any opportunity to the petitioner, straightway passed the impugned orders. The acts of the respondents are nothing but abuse of powers and non application of mind, which cause loss to the petitioner.

5. The post of Technical Advisor to the first respondent is a non-sanctioned and non-cadre post in Public Health Municipal Engineering Department though the third respondent is not capable

or eligible to handle the position of Chief Engineer by virtue of his seniority.

6. Further, the posting of the petitioner as Technical Advisor to the first respondent is without his consent as required under Rules F.R 100.

7. The first respondent filed counter contending that the second respondent sent a letter dated 15-6-2016 to the first respondent stating that the petitioner is not taking active part for materializing the projects under various schemes sanctioned by State and Central Governments. The performance of the petitioner is not satisfactory to the present demand and priorities of schemes and projects of Engineering Wing and finally requested the first respondent to transfer the petitioner and post a suitable officer. It is further alleged that the petitioner was not attending in the meetings and inspections, which was caused very much inconvenience to the local administration connected to the delivery of services to the citizens and also execution of the public works. The contentions of the petitioner were considered and rejected by the Tribunal. Finally stated that the first respondent is competent authority and after taking into consideration of all the facts and circumstances of the letter of the second respondent and keeping in view of the importance of the projects sanctioned by the State and Central Governments, appointed the petitioner as Technical Advisor to the first respondent.

8. The record clearly goes to show that the petitioner joined in service as Deputy Executive Engineer on 10-04-1987, later promoted as Executive Engineer on 09-03-1994 and subsequently promoted as Superintending Engineer on 02-04-2004. Subsequently, the

department considered his seniority, experience and expertise further promoted the petitioner as Chief Engineer on 18-09-2009 and after a long gap, he was posted as Chief Engineer (PH) in the Office of the Engineer-in-Chief (Public Health), Hyderabad pursuant to the orders of the Tribunal in O.A.No.9084/2011 read with corrigendum dated 18-01-2012 vide G.O.Rt.No.250 dated 27-02-2012. Later the petitioner was posted at Greater Visakhapatnam Municipal Corporation in the cadre of Chief Engineer vide proceedings dated 13-11-2014. Either in the counter or in the proceedings of second respondent, which based on the letter of the second respondent, nowhere it is mentioned that any specific inaction or non cooperation of the petitioner. It is not the case of the first respondent in the counter or placed any piece of paper showing specific date on which the petitioner could not attend the meetings. The respondents also not placed any piece of paper or proceeding issued to the petitioner apprising that he is not taking active part for materializing the projects proposed under various schemes sanctioned by the State and Central Governments. There is no single instant of issuing show cause notice or calling for remarks of the petitioner that his performance is not satisfactory to the present demand and priorities of schemes and projects of Engineering Wing of GVMC. The entire service of the petitioner appears to be unblemished.

9. The proceeding under impugned order does not show any specific inaction or not attending the meetings for materializing the present demand. It is only refers in the circumstances stated by the second respondent in his letter dated 15-06-2015. The first respondent while appointing the petitioner as Technical Advisor to the first respondent and keeping the third respondent, who is junior

most in-charge of the Chief Engineer post without following the prescribed and well established procedure laid down under law and rules thereunder, straightaway passed in the impugned orders. Before posting the petitioner as Technical Advisor to the first respondent, no opportunity was comforted to the petitioner on the allegation in the letter of the second respondent that the petitioner is not taking active part for materializing the projects proposed under various schemes sanctioned by the State and Central Governments. Further, that the performance of the petitioner is not satisfactory to the present demand and priorities of schemes and projects of Engineering Wing of GVMC. The first respondent in gross violation of principles of natural justice to accommodate his men only shifted the petitioner as Technical Advisor to the first respondent on deputation basis under the proceedings dated 24-06-2016.

10. The record further shows that due to the differences between the petitioner and second respondent, the second respondent addressed a letter dated 15-06-2016 stating that the petitioner's performance is not satisfactory to the present demand and priorities of schemes and projects of Engineering Wing of Greater Visakhapatanam Municipal Corporation. Purposefully, the first respondent under the guise of the letter of the second respondent only to accommodate the third respondent herein, posted the petitioner as Technical Advisor to the first respondent and kept third respondent as in-charge of Chief Engineer, who is the junior most and in view of the fact that the Greater Visakhapatnam Municipal Corporation is playing key role of National and International level and Visakhapatnam City attained status of Smart City and ranked Fifth Cleanness City across the India under Swatch Survekshan

Programme. Therefore, in the facts and circumstances of the case, we find that the posting of the petitioner as Technical Advisor to the first respondent on deputation basis is in gross violation of the law and rules and also principles of natural justice and was issued in a punitive manner.

11. Accordingly, while setting aside the order passed by the A.P. Administrative Tribunal in O.A.No.2528 of 2016, dated 28-07-2016, and the impugned order of the first respondent bearing G.O.Rt.No.390 MA & UD (C) Department, dated 24-06-2016 and consequential order bearing G.O.Rt.No.403, MA & UD (C) Department, dated 25-06-2016 held that the same is erroneous irrational, in gross violation of principles of natural justice. Accordingly, we hereby direct the respondents to continue the petitioner-Durga Prasad Nimmadi as Chief Engineer, Greater Visakhapatnam Municipal Corporation with all consequential benefits.

12. The Writ Petition is allowed and miscellaneous petitions, if any, pending in this writ petition, shall stand disposed of. No costs.

SANJAY KUMAR, J

N. BALAYOGI, J

Date:08-03-2017.
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