

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

WRIT PETITION No.5621 OF 2017

ORDER: *(Oral)*

(Per Hon'ble Sri Justice SURESH KUMAR KAIT)

Vide the present petition, the petitioner has assailed the order dated 15.09.2016 passed in O.A.No.2149 of 2016.

2. As stated in the instant petition, the 1st respondent was initially appointed as Junior Lecturer in Commerce on 14th March 1991. During the year 2011-2012, the Departmental Promotion Committee (D.P.C) met on 31st March 2012 with preparation of adhoc panel of the Junior Lecturers for promotion to the post of Principals of Government Junior Colleges in Zone-VI. Name of the 1st respondent was approved by the D.P.C and he was requested to attend the counselling on 07th April 2012. Accordingly, he was attended the counselling and due to personal problems, he declined promotion.

3. Further stated that the Government in G.O.Ms.No.145, General Administration (Ser.D) Department, dated 15.06.2004 issued orders that, an employee, who does not join the post within the stipulated time or evades joining the post by proceeding on leave, shall lose his promotion right/offer for that panel year and his name will be considered in the next D.P.C during the next panel year

subject to availability of vacancy. Accordingly, the name of the 1st respondent was considered in terms of G.O.Ms. No.145, and placed before D.P.C in the panel for promotion as Principal during the year 2012-2013. The Departmental Promotion Committee met on 31st March 2012, and approved the name of the 1st respondent for promotion as Principal for the panel year 2012-2013. The 1st respondent was requested to attend the counselling on 10th May 2013. Accordingly, he attended the counselling and declined promotion for the second time during the panel year 2012-2013.

4. Learned Government Pleader appearing on behalf of the petitioners submits that, the Government in G.O.Ms.No.227 General Administration (Ser.D) Department, dated 30.05.2014 issued the amendment to G.O.Ms.No.145, dated 15.06.2004, as under :

“provided that the employee, who does not join the post within the stipulated time or evades to join the post by proceeding on leave, second time also, shall lose his promotion right/offer permanently”

5. Learned Government Pleader submits that the 1st respondent had submitted a representation dated 02.05.2016 stating that, he was promoted as Principal in Zone-VI twice during the years 2012 and 2013 and for the said two times, he declined his promotion as Principal on personal reasons and requested to consider his representation for the promotion to the post of Principal in the College mentioned

above. The matter was referred to the Government and the Government in their Memo No.3505/1E/A1/2014, dated 12.12.2014, rejected the request of the 1st respondent in terms of G.O.Ms.No.227, General Administration (Ser.D) Department, dated 30.05.2014. However, the learned Tribunal has ignored this G.O.Ms.No.227 and allowed the O.A. filed by the 1st respondent.

6. We have heard the learned Government Pleader appearing on behalf of the petitioners and the learned counsel appearing on behalf of the 1st respondent. Perused the material available on record.

7. The similar issue came up for consideration before this Court in case of ***G. Boyanna v. High Court of A.P., represented by its Registrar (Administration), Hyderabad and another***¹, wherein this Court expressed its complete agreement with interpretation of the Rule and pointing out the fact that the right to be considered for promotion is a fundamental right under Article 16(1) of the Constitution of India. Accordingly held that Rule 28 of the Rules of 1996 did not disentitle a member of service from being considered for promotion in a future vacancy merely because he/she had relinquished his/her right for promotion earlier.

8. In the present case also, the 1st respondent has declined promotion two times as mentioned above. However,

¹ 2009 (1) ALT 462 (D.B)

in pursuance of G.O.Ms.No.227, he was denied for further promotion which was challenged before the Tribunal.

9. The contention of the learned Government Pleader is that the 1st respondent has relinquished his promotion twice, therefore, it cannot be accepted since 1st respondent had attended the counselling, however, declined promotion.

10. In our considered opinion, keeping in view the ratio laid down in **G.Boyanna's** case, the G.O.Ms.No.227 was issued in the year 2014, without having retrospective effect, whereas, he declined promotion for the panel year 2012-2013. Thus, G.O.Ms.No.227 is not applicable to the 1st respondent.

11. In view of the above, we find no discrepancy in the order passed by the learned Tribunal, therefore we confirmed the same.

12. Finding no merit in the instant petition and the same is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE SURESH KUMAR KAIT.

Dr. JUSTICE SHAMEEM AKTHER.

Date : 07-06-2017
Gvl