

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.11109 of 2017

ORDER: *(Per VRS,J)*

The petitioner has come up with the above writ petition seeking a direction to the respondents to implement an order of the Andhra Pradesh Administrative Tribunal.

2. Heard Mr.P.V.Krishnaiah, learned counsel for the petitioner, the learned Government Pleader for Services-I (TG) and the learned Government Pleader for Services-I (AP).

3. The petitioner was originally appointed as an Agricultural Officer in the year 1982. He gained promotions to the posts of Assistant Director and Deputy Director in the years 1999 and 2008 respectively.

4. The name of the petitioner was approved by the DPC for promotion to the post of Joint Director in the panel year 2010-2011 in G.O.Ms.No.217 Agriculture and Cooperation (Hort) Department dated 29.08.2011. His name was placed at serial number 7.

5. However, the petitioner was not promoted either in the panel year 2010-2011 or in the next panel year 2011-2012. Therefore, the petitioner filed an application in O.A.No.6719 of 2012 on the file of the Andhra Pradesh Administrative Tribunal, seeking a direction to the respondents to grant him promotion, without reference to disciplinary proceedings initiated under G.O.Rt.No.749 dated 04.07.2012.

6. It must be pointed out at this stage that the disciplinary proceedings initiated against the petitioner by the Government Order dated 04.07.2012, were eventually dropped by G.O.Rt.No.1305 dated 24.11.2012.

7. The Administrative Tribunal, passed an interim order on 27.08.2012 directing respondents to consider the case of the petitioner for promotion to the post of Joint Director. However, the interim order was not implemented.

8. But, eventually the Original Application was allowed by a final order dated 29.06.2015. Paragraphs 7 and 8 of the order of the Tribunal read as follows:

“ 7. In view of dropping of the charges against the applicant, the applicant is entitled for considering his case for promotion to the post of Joint Director of Horticulture since his name was included in the panel of 2010-2011 and 2011-2012.

8. Having regard to the facts and circumstances obtaining in the case and for the above reasons, the respondents are directed to consider the case of the applicant for promotion notionally to the post of Joint Director of Horticulture for the panel year 2011-2012 as per rules. The O.A. is disposed of accordingly. No order as to costs.”

9. The respondents have not filed any writ petition challenging the order of the Tribunal. Therefore, the petitioner has come up with the above writ petition seeking a direction to the respondents to implement the orders of the Tribunal.

10. It must be recorded at this stage that only the Government of Andhra Pradesh and the Commissioner of Horticulture were parties to the Original Application before the

Tribunal, as the application was filed before Bifurcation. The State was bifurcated w.e.f. 02.06.2014.

11. In view of the bifurcation of the State, the petitioner has impleaded the State of Telangana also as a party to the above writ petition.

12. The third respondent has filed a counter affidavit to the above writ petition primarily taking three points viz., (a) that in the panel year 2010-2011, no person junior to the petitioner was promoted; (b) that during the panel year 2011-2012, DPC was not convened, due to non-availability of vacancies and (c) that though there was one vacancy available during the panel year 2011-2012, the same came to be occupied by one Sri C.Srivenkaeswara Rao, who was repatriated from National Rural Employment Guarantee Scheme (for short 'NREGS') back to the parent department and had to be accommodated as Joint Director.

13. But all the above contentions appear to be an afterthought. This can be understood by the timeline of events that have happened in this case.

14. There is no dispute about the fact that the name of the petitioner was included in the panel year 2010-2011, under G.O.Ms.No.217 dated 29.08.2011. There is also no dispute that no person junior to the petitioner was promoted in the panel year 2010-2011.

15. In the counter affidavit filed before the Tribunal, the third respondent took a specific stand in paragraph 6, which is as follows:

“ 6. In reply to Para-6(E) of Affidavit, it is respectfully submitted that, the department has submitted proposals to Government for consideration of D.P.C. in the panel year 2011-12 for promoting the eligible Deputy Directors of Horticulture as Joint Directors of Horticulture vide Letter No.Estt.(1)/21/2012, Dated 27-1-2012. At that time one Joint Director of Horticulture is vacant in the O/o Commissioner of Horticulture, A.P., Hyderabad.

After submission of D.P.C. proposals, on noticing certain allegations against Applicant departmental proceedings were initiated against the Applicant i.e., Sri S.Radha Krishna Murthy, Deputy Director of Horticulture on the charge of drawal of huge number of advances for conducting trainings, without recorded evidence to show the proposed trainings and also non-adjustment of amount while he was working on deputation as Project Director, A.P. Micro Irrigation Project, Nizamabad, vide G.O.Rt.No.749, Agriculture & Co-operation (Vig.II) Department, Dated 04-7-2012.”

16. The stand taken in paragraph 6 of the counter affidavit filed by the respondents before the Tribunal shows that after submission of DPC proposals (whatever the respondent means by such a statement), the name of the petitioner was not included for promotion, only because of a charge memo being issued on 04.07.2012.

17. After having taken such a stand in paragraph 6 of the reply before the Tribunal that the reason for non-consideration of the claim of the petitioner for promotion was due to issuance of the charge memo dated 04.07.2012, the respondents also took a stand in paragraph 8 that Sri C.Srivenkateswara Rao working in NREGS had to be repatriated and such repatriation was ratified on

18.09.2012. By the time this ratification of the repatriation was ordered, the panel year 2011-2012 had already expired.

18. Therefore, the events that happened post panel year 2011-2012 are sought to be put against the petitioner for denying him the right to promotion. Eventually, the charge memo issued under G.O.Rt.No.749 dated 04.07.2012, ended in favour of the petitioner with the charges getting dropped.

19. If really the repatriation of Sri C.Srivenkatesara Rao in May, 2012, was the reason for non-convening of the DPC and non-consideration of the petitioner's claim for promotion, there is no occasion for the respondents to cite the issuance of charge memo dated 04.07.2012 as the reason for non-considering the case of the petitioner for promotion. The stand taken by the department is nothing but approbation and reprobation. On the one hand, their claim is that no DPC was convened and another person had to be accommodated. On the other hand, they have cited the charge memo as the reason for non-consideration. Such double speak on the part of the respondents, was what was exposed by the Tribunal in passing the order.

20. In any case, the order of the Tribunal has attained finality. The operative portion of the order of the Tribunal reads as follows:

“8. Having regard to the facts and circumstances obtaining in the case and for the above reasons, the respondents are directed to consider the case of the applicant for promotion notionally to the post of Joint Director of Horticulture for the panel year 2011-2012

as per rules. The O.A., is disposed of accordingly. No order as to costs.”

21. Therefore, today the respondents cannot escape their obligation. The learned Government Pleader for Services-I (TG) sought to contend that the State of Telangana has nothing to do with the case and that they were not even party before the Tribunal. Therefore, the learned Government Pleader submitted that no direction can be issued to the State of Telangana, to enforce the order of the Tribunal.

22. It is not an issue which we can be called upon to decide now. The Andhra Pradesh Re-organization Act, 2014, takes care of such contingencies. The provisions of that Act will take care of, who is responsible for the implementation of the order of the Tribunal. Therefore, the Writ Petition is ordered directing the respondents, whoever is responsible as per the Andhra Pradesh Re-Organization Act, 2014, to implement the order of the Tribunal within a period of twelve weeks from the date of receipt of a copy of this order.

23. 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

1st November, 2017
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