

**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**WRIT PETITON No.27499 OF 2017**

**ORDER:**

The case of the petitioner is that he joined in the Warehousing Corporation in the year 1985 as Junior Assistant and subsequently he was promoted as Assistant Manager, Warehousing Manager Grade-III, Warehousing Manager Grade-II, Warehousing Manager Grade-I and in the year 2015 he was posted as Regional Manager in-charge and subsequently he was promoted as Regional Manager and while he was working as Regional Manager on 16-11-2015, petitioner was given and posted as for full additional charge to the post of Secretary, General Manager (P&A), General Manager (F&A) at the head office of Telangana State Warehousing Corporation. As per regulation, the Secretary, General Manager (P&A), General Manager (F&A) post is next promotion to the Regional Manager. Since the petitioner is having all qualifications to hold the post and being Senior most in the Regional Manager cadre, the petitioner was posted as full Additional Charge to the post of Secretary, General Manager (P&A), General Manager (F&A). The 2<sup>nd</sup> respondent instead of continuing the petitioner, transferred the petitioner and posted as Regional Manager, Karimnagar on 08-08-2017 by posting the 3<sup>rd</sup> respondent in place of petitioner as Secretary and General Manager (P&A), though the 3<sup>rd</sup> respondent is working as Manager Grade-I, which is nothing but revering the petitioner and transferring the petitioner also as measure of punishment and posting of 3<sup>rd</sup> respondent as

Secretary-incharge and General Manager, (P&A) in the office of Managing Director, TSWC, Hyderabad. Aggrieved by the same, present writ petition is filed.

Counter affidavit is filed by the 2<sup>nd</sup> respondent stating that the petitioner was Warehousing Manager, Grade-I before becoming Regional Manager In-charge was kept in additional charge of Secretary/General Manager (P&A).(F&A) at Head Office. Similarly one K.Santhosh Reddy, Regional Manager in-charge of Nalgonda Regional office was kept in additional charge of G.M.(B&L)/G.M.(M&QC) as stop gap arrangements in view of the bifurcation of APSWC into two entities i.e. Telangana State Warehousing Corporation and Andhra Pradesh State Warehousing Corporation with the formation of new Telangana State with effect from 16-11-2015. At relevant point of time, the petitioner was working as Warehouse Manager Grade-I and was kept in-charge of Regional Manager, Hyderabad, Regional Office. That the petitioner has concealed the fact that he was relieved of the post of the General Manager (Finance & Accounts) on 04-10-2016 due to lack of ability. As per the Telangana State Warehousing Corporation Employees Regulations, the post of Secretary, General Manager is selection cadre post. Promotion to a selection cadre/category points shall be made on the grounds of merit and ability. That promotion to the post of Secretary is from feeder category of Managers working at Head Office now General Managers as per the amendment published in official gazette in the year 2007. The petitioner who was

promoted as Regional Manager on 07-10-2016 is under probation period but in the seniority list submitted before this Court, it is showing as 22-06-2016, which is not correct. That Regulation shown in para No.3 of writ petition is nothing but misleading the Court. That the Corporation has not given promotion to the 3<sup>rd</sup> respondent but kept in-charge for the post of Secretary/G.M.(P&A), which the petitioner presently holding as In-charge as FAC. The petitioner without receiving the transfer orders without making any representation to the respondents directly approached this Court. The attitude of the petitioner who is holding Full Additional charge of Secretary/GM(P&A) indulging in the nefarious activities especially harassing the woman employee working in the Corporation. Based on the specific complaint, the respondent-Corporation immediately ordered to conduct enquiry by appointing an Enquiry Officer. Accordingly, a Senior Officer one Sri M.Sudhakar Reddy, Executive Engineer of the Corporation was appointed to conduct enquiry and he has obtained the signed deposition of woman employee based on the report and the petitioner was called to explain vide memo No.SWC/P&A/Enquiry/Medak/2017-18, dated 16-08-2017 and the petitioner has to submit reply for it.

Counter affidavit is filed by the 3<sup>rd</sup> respondent almost in similar lines as that of the 2<sup>nd</sup> respondent. It is averred that even according to the Regulation relied on by the writ petitioner, he does not satisfy the conditions i.e. completion of three years

of experience in the post held. The age prescribed to be considered is that one should be above 30 years and not above 40 years in respect of direct recruitment and in respect of promotions from the department, one should have three years experience in the post of Regional Manager. The question of writ petitioner eligible to be considered as secretary is not tenable. As the writ petitioner was never appointed as Secretary, the question of reversion does not arise. In between Regional Manager and Secretary, there is one more category of Manager as per the amendment carried out in the year 2007. As the writ petitioner was never promoted to the post of Secretary or General Manager and the impugned proceedings cannot be termed as reversion proceedings as the post of Secretary has to be filled from the category of Managers but not from the Regional Managers (presently called as General Manager) as per the amendment made in the year 2007. The impugned order is only a simple transfer order and not the order of reversion and as such issuance of notice does not arise and the writ petitioner is trying to mislead the court by saying that he is being reverted.

Heard learned counsel for the petitioner, who reiterated the contents mentioned in the writ affidavit.

Heard learned Standing Counsel for the 2<sup>nd</sup> respondent and learned counsel for the 3<sup>rd</sup> respondent.

Reply affidavit is filed by the petitioner reiterating the contents in the writ affidavit.

It is to be seen that the fact that the petitioner while he was working as Manager-Grade-I was kept FAC to the post of Secretary/General Manager (P&A) by head office vide proceedings dated 02-11-2016 was not denied by the petitioner in his reply affidavit and the promotion of the petitioner according to the official respondents was on 07-10-2016. Along with written instructions Seniority list of Senior Assistants/Godown Keepers/Technical Assistants is filed. In that Seniority list, the petitioner has shown at Sl.No.21, whereas, the 3<sup>rd</sup> respondent shown at Sl.No.18. The petitioner was only kept as in-charge vide proceedings dated 16-11-2015. Now, the petitioner is relieved and transferred as Regional Manager, as such, the question of reversion does not arise. The petitioner is aggrieved by the posting of the 3<sup>rd</sup> respondent. But the fact remains that the petitioner while working as Manager Grade-I was kept in charge Secretary on 16-11-2015, by that time the petitioner was not promoted as Regional Manager and the petitioner was promoted as Regional Manager only on 17-10-2016. More so, in the counter affidavit filed by respondent No.2 serious allegations are made against the petitioner and enquiry was conducted on the said allegations, which are not specifically denied by the petitioner. The Regulations were amended in the year 2007. The petitioner has also suppressed that fact in the writ petition. As per amended regulation promotion to the post of Secretary is from the category of Managers not from the Regional Managers,

as such the petitioner being senior most in the category of Regional Manager cannot gain promotion to the post of Secretary. Serious allegations are made against the petitioner regarding harassing of lady employee and deposition of the lady employee is also filed. All these aspects are suppressed and the writ petition is liable to be dismissed for suppression of facts. The Supreme Court in In **K.D.Sharma v. Steel Authority of India Limited**, (Civil Appeal No.4270 of 2008 arising out of Special Leave Petition (Civil) No.17005 of 2006), the Apex Court held in para Nos 24 to 29 as follows:

24. “ The jurisdiction of the Supreme Court under [Article 32](#) and of the High Court under [Article 226](#) of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

25. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of [R. v. Kensington Income Tax Commissioners](#), (1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136 in the following words:

"[I]t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- it says facts, not

law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement".

(emphasis supplied)

26. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it.

27. In *Kensington Income Tax Commissioner*, Viscount Reading, C.J. observed:

"Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the applicant was not candid and did not fairly state the facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that

can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that this Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit".

(emphasis supplied)

28. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under [Article 32](#) or of a High Court under [Article 226](#) of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play 'hide and seek' or to 'pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts".

29. If the primary object as highlighted in Kensington Income Tax Commissioners is kept in mind, an applicant who does not come with candid facts and 'clean breast' cannot hold a writ of the Court with 'soiled hands'. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse

to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court.”

In view of the above facts and circumstances of the case, I do not see any reason to entertain the writ petition.

Accordingly, the writ petition is dismissed. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

12-09-2017  
Nvl



**A.RAJASHEKER REDDY,J**



