

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.26207 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner is filed challenging the order of the 2nd respondent passed in Memo No. DE/ O/ GTY/ JAO/ ADM/ C2/ D/ No.2053/ 06, dated 13.12.2006, and the consequential order in Memo No.DE/ O/ GTY/ JAO/ ADM/ C2/ D/ No.2055/ 06, dated 13.12.2006, whereby the promotion order of the petitioner from the post of Lineman to the Line Inspector was cancelled on the ground that SC reservation quota was already exhausted.

I have heard the submissions of Sri S.Ravindranath, learned counsel appearing for the writ petitioner, and of Ms. Jagarlamudi Koteswari Devi, learned standing counsel for APCPDCL representing the official respondents. I have perused the material record.

The admitted facts are as follows:

The petitioner and another, who were by then working as lineman in Operation division, Gooty, were temporarily promoted as line inspectors vide proceedings in Memo No.DE(O) Gooty/ JAO/ Admn/ C2/ D.No.1461/ 2005, dated 14.06.2005, and they both were directed to report to duty within 15 days after obtaining proper relief at their then respective places of work. The petitioner was relieved from his post of lineman and joined the promotion post. Thereafter, the impugned proceedings, dated 13.12.2006, and consequential proceedings of even date were issued. As already noted, the promotion orders insofar as the petitioner were cancelled on the ground that the same were erroneously issued in SC roster point number 16 though SC reservation quota adequacy was already over. The proceedings also reflect that the error was

rectified in DPC held on 06.12.2006 and that the petitioner is reverted as Lineman and that the excess amounts paid will be recovered from his salary.

Aggrieved thereby, the petitioner filed this writ petition.

This Court, on 18.12.2006, at the time of admission of the writ petition, passed the following interim order:

'Prima facie, it seems that the reversion order dated 13.12.2006 passed against the petitioner without giving any notice to him which fact was also not disputed by the learned standing counsel. Under the circumstances, there shall be interim suspension as prayed for.'

Subsequently, the petitioner filed W.P.MP.No.20740 of 2009 requesting to direct the respondents 1 and 2 to release annual increment for the year 2008-09 and continue the same till the disposal of the writ petition. On 24.08.2009, this Court passed the following order in the said petition.

'Heard both sides.

Having regard to the facts and circumstances of the case, there shall be a direction to the respondents 1 and 2 to release the annual increment for the year 2008-09 in accordance with law to which the petitioner is entitled to forthwith and continue the same.

However, in case there is any objection for releasing such increment, the reasons for the same shall be communicated to the petitioner within two weeks from the date of receipt of a copy of this order.'

The main contention of the petitioner is that the impugned proceedings, both of the date, 13.12.2006, were issued without following the Regulations and without even issuing a notice and opportunity of hearing to the petitioner and the said proceedings, which are issued in violation of Regulations and principles of natural justice, are liable to be set aside.

Per contra, learned Standing Counsel while reiterating the contents of the memo, dated 13.12.2006, would submit that the promotions are purely temporary and that the petitioner was informed at the time of promotion itself that the promotion order is purely temporary and does not confirm any right of seniority and retention etcetera and that the promotion is liable for reversion

at any time without any notice and without assigning any reasons thereof and, therefore, the action taken by the respondents is correct and no notice is necessary.

However, learned counsel for the petitioner would submit that normally every promotion would be first on temporary basis and the APSEB service Regulations dealing with review under 25(b) clearly contemplate that no order of review under the regulation shall be passed unless the person affected thereby is given an opportunity of making his representation against the proposed review and that even the principles of natural justice contemplate issuance of a notice before any adverse order is passed against the interests of the employee and, therefore, the contention of the respondents is untenable.

Regulation 25(b) reads as under:

Review: The Board may, of its own motion or otherwise, review any original order passed by it, promoting a member of a service or class to a selection category or grade, or approving any list of candidates for appointment or promotion to any category, class or service prepared by it in exercise of the powers conferred on it by the Andhra Pradesh State Electricity Board Service Regulations, Part-III for any service, or any order of revision passed under Regulation 24(2) or Regulation 25(a), if it was passed under any mistake, whether of fact or of law, or in ignorance of any material fact or for any other sufficient cause;

Provided that no order of review under this Regulations shall be passed unless the person affected thereby is given an opportunity of making his presentation against the proposed review.

Having given detailed and thoughtful consideration and in the light of the afore-said Regulation and the violation of the principles of natural justice, this Court is of the considered view that the orders impugned are liable to be set aside and resultantly, the writ petitioner is entitled to the relief claimed.

In the result, the Writ Petition is allowed and the orders impugned are set aside. However, it is made clear that the respondents 1 and 2, if they so wish and are so advised, may take necessary action for passing appropriate

orders by following the Regulations and principles of natural justice. It is also made clear that in view of the long lapse of time and the fact that the petitioner is continuing in the promotion post since the date of joining in the month of June, 2005 and is also drawing increments pursuant to the interim orders of this Court in this writ petition, the respondents 1 and 2 may, in their discretion and wisdom, consider whether or not it would be just and fair to disturb his position at this distance of time.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

19.04.2017
Vjl



JUSTICE M. SEETHARAMA MURTI