

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION (TR) No.215 OF 2017

DATED : 22.06.2017

Between :

M.Shankar Rao, S/o.(late) M.Rangaiah,
Aged 67 yrs, Deputy Director (Admn), Retired,
O/o.Commissioner of AYUSH,
R/o.16-4-1439, Shivanagar, Warangal,
Warangal District .

.. Petitioner/Applicant

And

The Commissioner,
Department of Ayurvedic,
Yoga & Homeopathy (AYUSH),
5th floor, A.P.L.I.G. Building, Tilak Road,
Abids, Hyderabad & another.

... Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION (TR) No.215 OF 2017

ORDER :

Heard.

2. Petitioner was initially appointed as Lower Division Clerk on 15.11.1966. He was promoted as Upper Division Clerk, Office Superintendent, Lay Secretary and Treasurer Grade-II and other posts and retired from service as Deputy Director (Admn), on 31.08.2003 on attaining the age of superannuation. In this writ petition, petitioner claims revision of promotion with effect from 05.02.1987 as Lay Secretary and Treasurer Grade-II and as Deputy Director (Admn.) with effect from 01.07.1997 and consequential pay fixation and revision of pension. Petitioner claimed that as a consequence to revision of seniority in the cadre of Lay Secretary and granting of notional promotion and revision of seniority from 05.02.1987, he is entitled for promotion as Deputy Director from 01.07.1997 instead of the date of actual promotion granted to him. Petitioner placed reliance on Government orders in Memo No.32262/E1/98 dated 16.01.2001, where under his seniority was revised and he was treated as granted promotion in the category of Lay Secretary with effect from 05.02.1987. Petitioner submitted representations for grant of the said benefits. In response to the representations submitted by the petitioner, by order dated 03.11.2012, he was informed that he is not entitled to the said benefits which proceeding is impugned in this writ petition.

3. Earlier petitioner filed O.A.No.5991 of 1999 in the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal') challenging the memo dated 30.08.1999, in which one Mr.G.Ramulu was directed to hold the post of Deputy Director and sought for declaration that he be declared as senior to respondents 3 and 4 in the said O.A., and to grant notional promotion in the cadre of Lay Secretary and for consequential benefits. During pendency of this O.A., Government issued orders on 16.01.2001 restoring seniority and granted promotion to the petitioner. The order dated 16.01.2001 was challenged by one Y.B. Damodar, who was respondent No.4 in O.A.No.5991 of 1999. Sri Y.B. Damodar also filed O.A.No.8417 of 2000 and O.A.No.341 of 2000 along with G. Ramulu on some other grievances. In all these O.As, petitioner was arrayed as 3rd respondent. All the 4 O.As were clubbed and disposed of, by common order dated 19.11.2004.

4. Taking note of the fact that all the applicants, including the petitioner, have retired from service by the time O.As were taken up for consideration, all O.As were disposed of. Though Tribunal did not record detailed reasons on the validity of the orders issued in favour of the petitioner on 16.01.2001, in Para No.5 of the order, Tribunal upheld decision of the Government in granting benefits to petitioner earlier, which necessitated the Government to pass further orders in favour of the petitioner. Be it noted that though O.A.5991 of 1999 was disposed of recording that the petitioner retired from service, the cause would not survive as in memo dated 16.01.2001 petitioner was already granted seniority and notional promotion as sought by him.

5. Thus, the memo issued by the Government on 16.01.2001 is valid and needs to be given effect to. This was the claim made by the petitioner in his representations. However, the claim of the petitioner was rejected by referring to interim orders passed by the Tribunal in the said O.As and orders passed by this Court, in the writ petitions arising out of the said interim orders. Except for extracting the orders passed by the Tribunal and this Court, and further orders passed by the Tribunal in disposing of the O.As, on 19.11.2004, there is no discussion in the impugned memo assigning reasons, why the request of the petitioner for grant of benefits as sought by him were not tenable. In other words the decision impugned in the writ petition is contrary to the decision taken by the Government on 16.01.2001 in favour of the petitioner, which decision stands and in terms of the said decision petitioner is entitled to treatment of his promotion as Lay Secretary from 05.02.1987 and as a consequence, he is also entitled to promotion as Deputy Director from 01.07.1997.

6. At this stage, it is also appropriate to note the averments made in the counter affidavit in Para IV by the very same officer. The averments disclose that the respondents do support the claim of the petitioner, but were reluctant to grant the benefits, for the reasons best known to them. It reads as under:

“It is submitted that, the applicant has Senior in the category of Office Superintendent, his case was not been considered for promotion to the post of Lay Secretary & Treasurer Grade-II, since the adverse remarks were recorded in his Annual confidential reports. However, the applicant has subsequently been promoted as Lay Secretary & Treasurer Grade-II, further Govt., have in their Memo.No.30990/I.1/2000, dated 07.12.2000 have clarified that, when the charges are expunged, the individual will get the all the service benefits subject to fitness, eligibility and suitability. Accordingly the applicant seniority has assigned revised seniority list has been issued

placing the applicant at SL.No.01 vide this office Memo No.32262/E1/1993, Dated 16.01.2001."

7. Thus, claim of petitioner for notional promotion as Lay Secretary from 05.02.1987 and as Deputy Director from 01.07.1997 is beyond pale of dispute.

8. However, at this stage, the only issue for consideration is Government passed orders on 16.01.2001 in favour of the petitioner. Even assuming that petitioner has a valid justification for not immediately knocking the doors for enforcing the decision of the Government since the litigation was pending before the Tribunal, there was no impediment on him to seek enforcement of the same after the O.As, were disposed of on 19.11.2004. Petitioner kept quiet for almost five years and for the first time a representation was made on 04.12.2009 followed by further representation on 07.09.2011. No valid reasons are assigned for being dormant for so long. Thus, while granting appropriate relief, this issue requires consideration.

9. Having regard to the above findings, I am of the considered opinion that the order of the Government dated 16.01.2001 is required to be implemented in true letter and spirit and in accordance therewith, petitioner be granted promotion as Lay Secretary-cum-Treasurer Grade-II from 05.02.1987 and as Deputy Director from 01.07.1997, revision of his pay in both posts and consequential revision of retirement benefits and monthly pension.

10. However, having regard to the fact that there was delay in prosecuting the claim, in the interest of justice, I deem it proper to deny payment of monetary benefits flowing out of such revision of

promotion including payment of arrears of retirement benefits. Petitioner is entitled to revised monthly pension in accordance with the above direction from the date of decision in this writ petition. He shall also be paid revised gratuity amount if any, without claim for interest. Appropriate orders to enforce the directions issued above, shall be made and all benefits be settled within a period of two months from the date of receipt of copy of this order.

11. The Writ Petition (Tr) is accordingly allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition (Tr) shall stand closed.

22nd June, 2017
Rds

P.NAVEEN RAO,J



HON'BLE SRI JUSTICE P. NAVEEN RAO

207



WRIT PETITION (TR) No.215 OF 2017

DATED :22.06.2017

Rds