

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CONTEMPT CASE No.2379 OF 2016

&

W.V.MP.No.4875 of 2016

in

WP.MP.No.43066 of 2016

in

WP.NO.34933 of 2016

COMMON ORDER :

W.V.MP.No.4875 of 2016 is filed by the State and other respondents in the Writ Petition seeking vacate of the interim order dt.18.10.2016 in WP.MP.No.43066 of 2016 in the Writ Petition.

2. It is not in dispute that the writ petitioner entered into service as an Assistant Engineer on 21.03.1978 in the Irrigation Department of the State Government.

3. While working in the office of the Executive Engineer(Minor Irrigation), Irrigation Branch Division, Hyderabad, a case was filed against him on the allegation that he acquired assets disproportionate to the known sources of his legal income and he was suspended under Rule 8(2)(a) of the A.P. Civil Services (Classification, Control and Appeal) Rules 1963 w.e.f. 08.12.2014 under G.O.Rt.No.1515 Irrigation & CAD (IW:Services-VI(1)) Department, dt.18.12.2010.

3. Thereafter, articles of charge were framed against him vide G.O.Rt.No.55, Irrigation & CAD (IW.Services-VI(1)) Department, dt.16.01.2013 and G.O.Rt.No.1041, Irrigation & CAD (SER.VI-2) Department, dt.28.10.2013.

4. Initially, petitioner's candidature for promotion as Deputy Executive Engineer from the post of Assistant Engineer was deferred during the two panel years 2011-12 and 2013-14 in view of G.O.Ms.No.66 GAD (Service-C) Department, dt.30.01.1991, which provided for such deferment since he was under suspension and enquiry was still pending against him.

5. However, writ petitioner represented that for want of finalization of disciplinary action, his juniors were getting promoted to the higher post and requested to consider his candidature for promotion as Deputy Executive Engineer pending conclusion of the disciplinary action against him.

6. Since situations of this nature were covered by G.O.Ms.No.257 GA(SER.C) Department dt.10.06.1999 and since finalization of disciplinary proceedings against him was likely to take more time, his case was considered and it was decided to give him an *ad hoc* promotion. So vide proceedings dt.07.08.2015, he was temporarily appointed by transfer as

Deputy Executive Engineer in the existing vacancy with a condition that *adhoc* promotion thus ordered would be cancelled at any time without issuing any notice in case any punishment orders were issued in respect of charges pending against him.

7. Ultimately, vide G.O.Rt.No.600 Irrigation & CAD (Vign.I) Department dt.29.06.2016, the charges against the writ petitioner in the disciplinary proceedings were proved and a punishment of withholding one annual grade increment without cumulative effect was imposed on him.

8. On the basis of this order passed in G.O.Rt.No.600, the respondent issued proceedings dt.23.09.2016 and 28.09.2016 cancelling the *adhoc* promotion orders issued to the Writ Petitioner on 07.08.2015 and reverting him as Assistant Engineer stating that his promotion orders were issued only conditionally, that they were subject to any punishment in the disciplinary proceedings, and that once punishment was imposed vide G.O.Rt.No.600 dt.29.06.2016, the *adhoc* promotion stood cancelled. Petitioner was thus reverted from the cadre of Deputy Executive Engineer to the post of Assistant Engineer.

9. Challenging the proceeding dt.23.09.2016 as well as G.O.Rt.No.606 dt.29.06.2016, the present Writ Petition has been filed.

10. Along with the Writ Petition, petitioner filed WP.MP.No.43066 of 2016 seeking suspension of the proceedings dt.23.09.2016 issued by the 2nd respondent reverting him from the post of Deputy Executive Engineer to the post of Assistant Engineer and consequential proceedings issued by the 3rd respondent dt.28.09.2016 pending disposal of the Writ Petition.

11. On 18.10.2016, this Court passed the following order in the said application:

“Since after the disciplinary proceedings were initiated against the petitioner vide G.O.Rt.No.600 Irrigation and C.A.D. (Vig.I) Department dt.29.06.2016, no punishment of reversion was imposed on the petitioner, and only a minor penalty of withholding of one annual grade increment without cumulative effect was imposed on him, there shall be interim suspension as prayed for”

12. The State filed W.V.MP.No.4875 of 2016 to vacate the said interim order.

13. Contempt Case No.2379 of 2016 is filed by the Writ Petitioner to punish the respondent for Contempt of Court for

willfully and deliberately disobeying the orders passed on 18.10.2016 in WP.MP.No.43066 of 2016 in W.P.No.34933 of 2016.

14. Counsel for writ petitioner contended that the petitioner cannot be reverted by the respondent without issuing any prior notice in view of Rule 23 of the A.P. State & Sub-Ordinate Services Rules 1998 and in particular the second proviso thereto and also under the proviso to Rule 25 of the said Rules.

15. Rules 23 and 25 of the A.P. State & Sub Ordinate Services Rules 1998 reads as follows:

“23. Appeal, revision and review of orders of appointment (including promotion) to higher posts:

An order appointing a member of a service or class of service or category, to a higher post by transfer or by promotion may, within a period of six months from the date of such order, be revised by an authority to which an appeal would lie against the order of dismissal passed against a member of a service, class or category, such revision may be made by the appellate authority aforesaid, either on its own motion or on an appeal filed by the aggrieved member of the service, class or category:

Provided that the Government may, irrespective of whether they are the appellate authority or not, revise such order of appointment after the expiry of the period of six months aforesaid, for special and sufficient reasons to be recorded in writing;

Provided further that no order or revision under this rule shall be passed unless the person likely to be affected

by such revision is given an opportunity of making his representation against the proposed revision:

[Provided also that a member of service may submit a revision petition against the order of the Appellate Authority, within three months of the order passed by the Appellate Authority, to the Government.]

25. Review: *The State Government may, of their own motion or otherwise, review any original order passed by them promoting a member of a service or class, to a higher post or approving a panel of candidates for appointment or promotion to any category, class or service, prepared by them, or any order of revision passed by them under Rule 24, 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 reason :*

Provided that no order of review under this rule shall be passed unless the person affected or likely to be affected thereby is given an opportunity of making his representation against the proposed review.”

16. Counsel for petitioner also placed reliance on the judgment in **Y.Prakasham v. Dy. Inspector General of Registration and Stamps**¹.

17. The Government Pleader on the other hand contended that the *adhoc* promotion given to the petitioner by order dt. 07.08.2015 itself was a conditional promotion and it was specifically mentioned in the said order that the *adhoc* promotion to the petitioner to the post of Deputy Executive Engineer can be cancelled at any time without issuing any notice, in case any punishment orders were issued in respect

¹ 2000(3) SLR Pg. 86.

of the charges pending against the writ petitioner; that this is consistent with the para 8 of G.O.Ms.No.257 dt.10.06.1999 which stated that if an officer is not exonerated in departmental proceedings, the *ad hoc* promotion given to him should be brought to an end; and that since the writ petitioner was found guilty of misconduct in the order dt.29.06.2016 in G.O.Rt.No.600, there was no illegality committed by the 2nd respondent in the writ petition/4th respondent in the Contempt Case in taking note of the said punishment and cancelling his *ad hoc* promotion and in the action of the 3rd respondent in the Writ Petition in issuing the consequential proceedings dt.28.09.2016.

18. Having regard to the rival submissions, the question to be considered is *“Whether the interim order granted by this Court on 18.10.2016 in WP.MP.No.43066 of 2016 in WP.No.34933 of 2016 is liable to be vacated?”*

19. The premise on the basis of which interim order was granted is that there was no punishment of reversion imposed on the petitioner and therefore there could not have been any reversion of the petitioner.

20. The G.O.Ms.No.257, dt.10.06.1999, was not brought to the notice of the Court at that time which categorically states

that if an officer is facing departmental proceedings and is given an *adhoc* promotion pending said proceedings, and if he is not exonerated in the departmental proceedings, the *adhoc* promotion granted to him should be brought to an end.

21. No doubt, Rule 23 of the above Rules permits reversion of an officer who has been given promotion by giving the officer promoted an opportunity to make a revision and Rule 25 enables the State Government also to exercise such power after issuing notice to the promoted candidates.

22. In my considered opinion, these two provisions could be attracted only when there is a regular promotion and not in a situation like in the present one, where only an *adhoc* promotion is given which is subject to the result of the disciplinary proceedings, that too, with a specific condition that the *adhoc* promotion can be cancelled without issuing any notice, in case any punishment order is issued in respect of the charges leveled against the promoted petitioner.

23. **Y.Prakasam**'s case (1 supra), cited by the counsel for petitioner, deals with a case where there was a reversion of persons who are given regular promotions on the ground that they were excessive to the quota reserved for Scheduled

Castes communities, that too, long after such promotions were given. It was held that it was violative of Rules 23 and 25 of the A.P. State & Sub-Ordinate Services Rules, 1998. That was not a case where the promotion given was an *ad hoc* promotion nor was it a case where there was any disciplinary action pending against the promoted candidates when they were promoted. Therefore, the said decision has no application.

24. I am therefore satisfied that the interim order dt.18.10.2016 in W.P.MP.No.43066 of 2016 in WP.No.34933 of 2016 is liable to be vacated having regard to the paragraph 8 in G.O.Ms.No.257 GA(SER.C) Department dt.10.06.1999.

25. Accordingly, WV.MP.No.4385 of 2016 is allowed vacating the interim order dt.18.10.2016 in W.P.MP.No.43066 of 2016 in WP.No.34933 of 2016.

26. In view of this order, I am not inclined to punish the respondent for not implementing the order dt.18.10.2016 in WP.MP.No.43066 of 2016 in WP.No.34933 of 2016. Therefore, Contempt Case is closed.

27. Consequently, miscellaneous petitions pending if any, in the Contempt Case shall also stand closed.

M.S. RAMACHANDRA RAO, J

13th March, 2017
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