

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.12121 of 2009

ORDER:

Heard both sides.

The petitioner was appointed as Lower Division Clerk on 15.09.1973 by direct recruitment and his services were regularized with effect from 15.09.1974 in the cadre of LDC. Later on, he passed Accounts Test for Subordinate Officers Part-I on 01.12.1991 and LF Audit Paper-IV on 18.12.1997. Thereafter, the respondents stipulated the Degree in Graduation as minimum qualification for appointment to the post of LDC with effect from 11.07.1974. On completion of 10 years of regular service, he was appointed as Special Grade LDC on 15.09.1983 and he worked at several places and retired from service in the year 2007 in the cadre of UDC on attaining the age of superannuation.

Challenging the action of the respondents in not promoting the petitioner as UDC with effect from 15.09.1988 after completion of 15 years of qualified service and consequent promotions as Junior Account Officer and Superintendent on completion of 22 and 24 years of qualified service, the present Writ Petition was filed.

He states that the respondent issued B.P.Ms.No.664, dt. 05.08.1981 r/w B.P.Ms.No.173 dt.24.04.1975, giving exemption to candidates from passing the departmental tests in the cadre

of lower division clerks/typists/Steno Typists and UDCs, who completed 15 years continuous service in the same post in order to consider his case for promotion for higher post of UD Clerk and Account/Superintendent respectively. The petitioner also states that B.P.Ms.No.676 dt. 27.08.1988 which was issued enables the LDCs working as on 01.04.1981 be promoted to the next higher cadre on completion of 10 years, 15 years, 22 years respectively, without insisting for passing of any departmental tests. The petitioner also states that those instructions were not applied in his case and number of his juniors were promoted on the basis of those instructions. He also states that he completed 15 years of regular service by 15.09.1988 and in spite of the same, he was not promoted. The petitioner made several representations including Representations dt. 21.09.2006 and 29.10.2008, seeking consideration of his case on promotion notionally with effect from 15.09.1988 in the cadre of UDC and for effecting subsequent promotions. He also states that the respondents promoted certain persons in the year 1988 and subsequent years even though they are juniors to him. He filed W.P.No.2245 of 1997 seeking consideration of his case for promotion as LDC in Rangareddy District, but the same was dismissed for non prosecution by Order dt. 12.08.2004.

A counter affidavit was filed by the respondents stating that the promotions to the cadre of UDC, which comes under Accounts Service, shall be made on the basis of seniority only, subject to fitness. As per Annexure-III to Regulation 14 of

APSEB Service Regulations Part-III, the following qualifications are prescribed for promotion to the post of UD Clerk:

“ Must have qualified in Accounts Test for Subordinate Officers Part-I and Government Technical Examination in Accountancy by Lower Grade”.

In order to implement the interim order of the Hon'ble Apex Court, certain exemption orders were obtained by the appointing authority from the Board exempting unqualified candidates from possessing the qualifications prescribed in the regulations before making such promotions. However, after final Orders of the Apex Court in Civil Appeal Nos. 180-181 of 1984., B.P(P&G-Per) Ms.No.217, Dt. 18.01.1997 was issued canceling B.P.Ms.No.664, dt. 05.08.1981 and B.P.Ms.No.442, dt. 27.05.1985, which is providing for exemption from passing the tests prescribed to the unqualified LD Clerks/Typists and Steno Typists for promotion as UDC. Hence, from 27.12.1996, the promotions to the post of UD Clerk from the cadre of LDC/Typist were based on qualifications, seniority and fitness only.

When the Government issued G.O.Ms.No.165, GA (Ser.C) Department, Dt. 22.04.1997, framing adhoc rules to the State and Subordinate Service Rules exempting the Government employees, who crossed 45 years of age from passing the departmental tests prescribed for the purpose of promotion to the next higher category and the said rule was adopted by APSEB vide B.P.Ms.No.39, dt. 19.05.1997 and detailed guidelines were prescribed in B.P.Ms.No.263, dt. 11.01.1999, wherein a ratio of 3:1 between qualified and unqualified candidates, who crossed 45 years of age were exempted from

passing the departmental tests, the case of the petitioner could not come up for consideration for promotion as UD Clerk based on the ratio prescribed for promotion of qualified and unqualified candidates ie., 3:1 as there are several unqualified employees, who are seniors to the petitioner. After passing the Departmental test, the petitioner was promoted to the post of UD Clerk on 01.02.1999. The petitioner was appointed as LD Clerk Special Grade with effect from 15.09.1983 after completion of 10 years of service as LD Clerk. He was also appointed to the post of LD Clerk (Special Promotion Post-I) with effect from 13.09.1993 and he retired from service on 28.02.2007. The representations addressed by the petitioner dt. 21.09.2006 and 29.10.2008 were related to the sanction of 15 years of SPP-I increment on 15.09.1988 and SPI-II increment on completion of 22 years on 15.09.1995 and thus, they do not relate to the issue for promotion.

It is evident from the above sequence of events that the petitioner is an unqualified LD Clerk and his case was not considered for promotion as UD Clerk initially. However, after the Board took a decision in B.P.Ms.No.442 dt, 27.05.1985 to fill up the post of UD Clerk and Accountant by promotion of qualified and unqualified in the ratio of 3:1, certain promotions were made. The petitioner's case could not be taken up as there were other unqualified candidates above the petitioner. The petitioner never protested with regard to the promotions made and the Writ Petition filed by him earlier in W.P.No.2245 of 1997 was also dismissed. The petitioner did not take any steps for revival

of the said petition. Thus, the things were settled prior to the retirement of the petitioner and those settled things cannot be unsettled at the instance of the petitioner even assuming that the Orders are applicable in his case. As stated in detail in the counter affidavit filed on behalf of the respondents, the case of the petitioner could not be considered due to availability of seniors and non possession of qualifications.

In view of the same, this Court feels that no ground to entertain the Writ Petition.

Accordingly, this Writ Petition is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 07.11.2017

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A.RAMALINGESWARA RAO, J



THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO



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Dt.07-11-2017

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