

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.28090 of 2017

Date: 29.08.2017

Between :

V. Ravindra

... Petitioner

And

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
M.A. & U.D. Department,
A.P. Secretariat, Velagapudi,
Guntur District and others.

... Respondents

COUNSEL FOR PETITIONER : Sri M.V. Raja Raam

COUNSEL FOR THE RESPONDENTS :
G.P. for Services (A.P.)

THE COURT MADE THE FOLLOWING:

ORDER : (per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

Feeling aggrieved by the order dated 03.02.2016 in O.A.No.256 of 2016 passed by the A.P. Administrative Tribunal, Hyderabad (for brevity "the Tribunal"), the applicant therein has filed this writ petition.

2. We have heard the learned counsel for petitioner and the learned Government Pleader for Services (Andhra Pradesh).

3. The petitioner is working as a Deputy Commissioner of Greater Visakha Municipal Corporation, Visakhapatnam. He was subjected to departmental proceedings. The Enquiry Officer appointed to hold enquiry submitted an Enquiry Report exonerating the petitioner of all the charges. Evidently, not satisfied with the findings of the Enquiry Officer, respondent No.1 has issued Memo No.4303/Vig.III.1/2011, dated 19.02.2015 differing with the findings of the Enquiry Officer. On receipt of the said Memo, the petitioner has submitted a written representation on 30.05.2015 to respondent No.1. Since then, respondent No.1 has not passed any order, as a result of which the disciplinary proceedings are left unconcluded. In this scenario, the petitioner was constrained to file the aforementioned O.A. challenging the action of the respondents in not including his name before respondent No.3 – Departmental Promotion Committee for promotion to the post of Municipal Commissioner, Grade-I,

on the ground of pendency of departmental proceedings against him. The Tribunal, by the impugned order dated 03.02.2016 dismissed the O.A. in *limine*.

4. At the hearing, the learned Government Pleader has submitted that as the proceedings are still pending before respondent No.1 and that no final order has been passed, the petitioner's name is not included in the list of eligible candidates for promotion.

5. A perusal of the order of the Tribunal shows that it has formed an incorrect opinion that the petitioner has questioned the Memo dated 19.02.2015 of respondent No.1 whereby he has differed with the findings of the Enquiry Officer. The prayer of the petitioner does not admit of any ambiguity. The relief he has sought for before the Tribunal was to declare the action of respondent No.2 in not including his name in the list of eligible candidates for promotion to the post of Municipal Commissioner, Grade-I. He has thus sought for inclusion of his name without reference to the Memo dated 19.02.2015 issued by respondent No.1. In our opinion, respondent No.1 cannot deny consideration of petitioner's name for promotion under the guise of pendency of departmental proceedings, moreso, when the petitioner was exonerated from the charges by the Enquiry Officer.

6. The learned Government Pleader for Services (Andhra Pradesh) fairly admitted that this Court has allowed many

writ petitions filed questioning the orders of the Tribunal where the cases of the employees were not considered merely on account of pendency of the departmental proceedings. The petitioner stands on a better footing as he was exonerated from the charges by the Enquiry Officer.

7. In the facts and circumstances of the case, the impugned order dated 03.02.2016 passed by the Tribunal is set aside and the writ petition is allowed with a direction to respondent No.2 to include the name of the petitioner in the list of eligible candidates for promotion to the post of Municipal Commissioner, Grade-I, without reference to the Memo No.4303/Vig.III.1/2011, dated 19.02.2015, issued by respondent No.1. It is, however, made clear that the promotion, if any, to the petitioner will be subject to outcome of the departmental proceedings pending against him.

8. The writ petition is accordingly allowed subject to the above observations.

9. As a sequel to the disposal of writ petition, W.P.M.P.No.34901 of 2017 shall stand disposed of.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

29.08.2017.
Msr

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