

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.5801 OF 2017

ORDER
(*Per* Justice Sanjay Kumar)

The petitioner is the unsuccessful applicant in O.A.No.7981 of 2013 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (*for brevity*, 'the Tribunal'), which was dismissed *vide* order dated 10.12.2015. Therein, his prayer was to declare the order dated 05.11.2013 passed by the Superintendent of Police, Nalgonda District, cancelling his promotion as an Assistant Sub-Inspector of Police and reverting him to the post of Head Constable, was illegal. He sought a further declaration that he had completed his probation in the category of Head Constable with effect from 10.06.2012 and was eligible for further promotion to the post of Assistant Sub-Inspector (Civil) in the vacancy which had arisen on or after 10.06.2012. By the order under challenge, the Tribunal opined that as the petitioner-applicant suffered the punishment of postponement of increments for two years without effect on future increments and pension and his appeal against the same was rejected, he was not eligible for promotion.

Heard Smt.Udaya Sri, learned counsel for the petitioner-applicant, and the learned Govt. Pleader for Services (Telangana) for the respondents.

The petitioner-applicant entered uniformed service as a Police Constable on 28.05.1983. He was promoted as a Head Constable on 28.02.2010 and was sent for training upto 10.06.2010. Thereafter, he joined duty on 11.06.2010. His probation in the rank of Head Constable commenced from that day. During the period 2005-2011, he was entrusted with Court duties. While so, he was issued the Memorandum of Charges

dated 25.10.2010 alleging that he had demanded money from an accused in a criminal case and accepted a bribe. By proceedings dated 16.05.2011 of the Superintendent of Police, Nalgonda District, he was visited with the punishment of postponement of his increments for two years without effect on future increments and pension. His appeal against the same was rejected on 07.01.2013.

His probation in the cadre of Head Constable was extended from 10.06.2011 to 09.12.2011 and further extended from 10.12.2011 to 09.06.2012. These extensions were in the light of the punishment imposed upon him. There was no further extension of his probation after 09.06.2012. By order dated 18.10.2013, the Superintendent of Police, Nalgonda District, promoted him as an Assistant Sub-Inspector of Police (Civil). While so, he was issued the impugned order dated 05.11.2013 informing him that his case was recommended for promotion by oversight as he had not completed his probation in the cadre of Head Constable as on the date of the proposal. His promotion was accordingly cancelled and he was reverted to the post of Head Constable. Aggrieved thereby, he went before the Tribunal by way of the subject O.A. but met with failure, constraining him to approach this Court by way of this writ petition.

In the usual course, the probation of the petitioner-applicant in the cadre of Head Constable would have been declared on 10.06.2011. Owing to the currency of the punishment imposed upon him, his probation was extended for six months with effect from 10.06.2011 *vide* Office Order dated 05.10.2011. Thereafter, his probation was again extended for six months with effect from 10.12.2011 *vide* Office Order dated 03.01.2012. This extended period of probation ended on 09.06.2012. It appears that show-cause notice dated 27.08.2013 was issued to the petitioner-applicant

under Rule 17 of the Andhra Pradesh State and Subordinate Service Rules, 1996 (*hereinafter*, 'the Rules of 1996'), calling upon him to show cause as to why his services as a Head Constable should not be terminated and why he should not be reverted as a Police Constable. According to the authorities, the petitioner-applicant failed to respond to the show-cause notice. In any event, no further action was taken pursuant thereto. In the meanwhile, the case of the petitioner-applicant was recommended for promotion as an Assistant Sub-Inspector of Police, by letter dated 15.10.2013. Pursuant thereto, he was granted the said promotion *vide* Office Order dated 18.10.2013. According to the authorities, this was due to a clerical error as the petitioner-applicant was not eligible for the said promotion having failed to complete his probation in the rank of Head Constable. That is the reason why his promotion was sought to be cancelled *vide* order dated 05.11.2013.

It is an admitted fact that the currency of the punishment imposed upon the petitioner-applicant came to an end on 16.05.2013. The petitioner-applicant was placed on probation upon his promotion as a Head Constable in 2010 but his probation could not have been declared during the currency of the punishment. That was the reason why his probation was extended from 10.06.2011 to 09.12.2011 and again from 10.12.2011 to 09.06.2012.

Rule 16(c) of the Rules of 1996 deals with the 'period of probation' and under Clause (ii) thereof, every person appointed to any post either by promotion or by transfer shall, from the date on which he commences his probation, be on probation for a period of one year on duty within a continuous period of two years. Rule 17 of the Rules of 1996 authorizes extension of probation. Sub-rule (ii) thereof entitles the Appointing Authority to extend the period of probation of a probationer by not more than one year. Rule 18 of the Rules of 1996 deals with declaration of probation.

Sub-rule (a) thereof states that at the end of the prescribed or extended period of probation, as the case may be, the Appointing Authority shall consider whether the probationer should be considered to have satisfactorily completed his period of probation and after taking a decision in that regard, he shall issue an order declaring the probationer to have satisfactorily completed his probation. A decision whether a probationer should be considered to have satisfactorily completed his probation or his probation should be extended or he should be discharged or suspended shall be taken within a period of eight weeks after the expiry of the prescribed or extended period of probation. Rule 18(b)(ii) of the Rules of 1996 states that if no order as referred to in sub-rule (a) is issued within one year from the date of expiry of the prescribed or extended period of probation, the probationer shall, subject to other provisions of the Rules of 1996, be deemed to have satisfactorily completed his probation with retrospective effect from the date of expiry of the prescribed or extended period of probation and a formal order to that effect may be issued for the purpose of record. The *proviso* thereto stipulates that nothing in Rule 18(b)(ii) shall apply to a probationer who is communicated a Memorandum of Charges during the prescribed or extended period of probation.

It may also be noted that Rule 17(a)(ii) of the Rules of 1996 authorizes not only extension of the probation but also termination of the probation and discharge of the probationer from service after giving him one month's notice or one month's pay in lieu of such notice, on account of unsatisfactory performance of duty or unsatisfactory conduct or for any other sufficient reason to be recorded in writing.

This being the statutory milieu, it may be noted that though the authorities purported to exercise the power vesting in them under Rule

17(a)(ii) of the Rules 1996 and issued show-cause notice dated 27.08.2013 to the petitioner-applicant, calling upon him to show cause as to why his services as a Head Constable should not be terminated for unsatisfactory work, they did not choose to carry through with this exercise and allowed the said proceedings to lapse. As the *proviso* to Rule 18(b)(ii) states that the deemed declaration of probation contemplated under Rule 18(b)(ii) would not apply to a probationer who has been issued a Memorandum of Charges, it would also mean that one who is under the currency of any punishment but is yet to complete his probation cannot bank upon the deeming provision under Rule 18(b)(ii) of the Rules of 1996. Having extended the probation of the petitioner-applicant upto 09.06.2012, the authorities, in their wisdom, did not choose to extend it thereafter. The currency of the punishment imposed upon the petitioner-applicant came to an end on 15.05.2013. After the said date, there was no hindrance for passing of orders by the Appointing Authority declaring his probation under Rule 18(a) of the Rules of 1996.

However, the authorities seem to have completely lost sight of the fact that the period of probation of the petitioner-applicant had not been extended after 09.06.2012 and that there was no impediment to declaration his of probation after 15.05.2013. In such circumstances, Rule 18(b)(ii) would invariably have application. It is not open to the authorities to completely forget about a probationer even though he suffers no ineligibility to have his probation declared. The petitioner-applicant would therefore be entitled to claim the protection of the deeming provision under Rule 18(b)(ii) of the Rules of 1996 with effect from 15.05.2013.

The order dated 10.12.2015 passed by the Tribunal in O.A.No.7981 of 2013 is therefore set aside. The petitioner-applicant is deemed to have completed his probation under Rule 18(b)(ii) of the Rules of 1996 with effect

from 15.05.2013 and consequently, the promotion granted to him on 18.10.2013 cannot be said to be illegal for want of declaration of his probation in the rank of Head Constable.

We are informed that the petitioner-applicant was promoted as an Assistant Sub-Inspector of Police during the pendency of this case and is now eligible to be promoted to the post of Sub-Inspector. However, by virtue of this order, he would be entitled to have the benefit of his promotion to the post of Assistant Sub-Inspector counted from 18.10.2013 as the said promotion was sought to be cancelled, *vide* the order dated 05.11.2013, on the sole ground that he had not completed his probation as a Head Constable, which is now found to be incorrect.

We are not informed whether the petitioner-applicant continued to work as an Assistant Sub-Inspector or was reverted to the post of Head Constable till his subsequent promotion. We make it clear that the petitioner-applicant will not be entitled to monetary benefits pursuant to this order if he did not actually work as an Assistant Sub-Inspector from 18.10.2013 till his later promotion. In the event he continued to function as an Assistant Sub-Inspector all through, this part of the order would have no effect.

The writ petition is accordingly allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

M.GANGA RAO, J

8th JUNE, 2018
PGS