

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.16141 OF 2000

ORDER:

The petitioner, who worked as a Deputy Manager in the 1st respondent-industry, filed this writ petition to issue a Writ of Mandamus declaring the action of the respondents in not promoting the petitioner for the post of Deputy Manager (Welfare and Training), as illegal and arbitrary, and consequently to direct the respondents to promote the petitioner for the post of Deputy Manager (Welfare and Training).

2. The brief facts of the case are that the petitioner is a graduate and obtained Post Graduate Diploma in Personnel Management and Public Relations. He was appointed in the respondent organization as a Steno-Typist on 20.02.1963. Subsequently, he was promoted as Personal Assistant to the General Manager in the year 1981. Later, he was promoted as Labour Welfare Officer and posted as Private Secretary to the General Manager. Afterwards, he became the Senior Welfare Officer and would be designated after completion of nine years of service as a Labour Welfare Officer. He was designated in the said post in the year 1991. The 1st respondent, basing on recommendations of the Government, introduced Voluntary Retirement Scheme in the respondent organization in the year 1995 and several employees took voluntary retirement and relieved from their

service. Due to Voluntary Retirement Scheme, the Deputy Manager post fell vacant. The petitioner was posted as Deputy Manager (Welfare and Training) on 01.06.1995 officiating in the scale of Rs.3000-5000/-, by the proceedings of the 2nd respondent dated 02.08.1995. The 1st respondent issued a note designated the petitioner as a Deputy Manager (Welfare and Training), which is a superior post to that of the Senior Welfare Officer. The petitioner was designated as a Deputy Manager (Welfare and Training), which post requires experience and qualified person either from Labour Welfare, Training or Legal Department. Being a senior person in the department, he was officiated for the post of Deputy Manager (Welfare and Training). The 2nd respondent sent a communication to the 1st respondent on 02.08.1995 clarifying the vacancy position and recommending the name of the petitioner for promotion to the post of Deputy Manager (Welfare and Training) as the petitioner was officiating in that post since 1995. The petitioner made a representation to the respondents to regularize his service in the post of Deputy Manager (Welfare and Training). After receiving the representation, the 1st respondent issued a letter dated 12.01.1999 to the petitioner to clarify the Xerox copies of note dated 02.08.1998 and 12.12.1996. The petitioner submitted that those were obtained from the 1st respondent and produced the same to the 2nd respondent. In spite of the same, the respondents did not initiate any action to promote

the petitioner to the post of Deputy Manager (Welfare and Training) though he was officiating in the said post since 01.07.1995. The respondents are not regularizing the services of the petitioner as Deputy Manager in spite of availability of vacancies due to retirement of several employees under Voluntary Retirement Scheme. Being aggrieved by the inaction of the respondents in not promoting the petitioner to the post of Deputy Manager (Welfare and Training), this writ petition came to be filed before this Court.

3. The 2nd respondent – General Manager of the 1st respondent company filed counter stating that the petitioner being a Post Graduate, he was promoted as Personnel Assistant. The petitioner was re-designated as Labour Welfare Officer at his own request with effect from 12.09.1987 in the scale of pay of Rs.700-1300/-. He worked as Personal Secretary to the General Manager with a condition that his seniority would be reckoned from the date of the order i.e. from 12.09.1987 as a Labour Welfare Officer. The Labour Welfare, Training and Legal, which are Unit cadre under the control of Personnel Department, are divided for administrative convenience. The Labour Welfare, Training and Legal are the three distinct branches/divisions and the officers working in these sections maintain separate seniority from each other. They do not have a common seniority list. Their seniority list is maintained as a unit cadre, as was done in the case of production, quality control, research &

development, formulation department, etc. None of the posts in the Labour Welfare, Training and Legal are interchangeable as contended by the petitioner. The post of Training or Legal divisions cannot be transferred to Labour Welfare and vice versa as they carry separate seniority at the unit level. The Personnel Administration wing is a separate entity and the officers right from the 1st cadre enjoying their seniority in the company as a whole and the company has five units as company's common cadre. The petitioner does not belong to Personnel & Administrative cadre and neither his seniority is maintained in it.

It is further stated that there is no sanctioned post of Deputy Manager in the Labour Welfare Division/Cadre at this plant. The officiating of the petitioner as Deputy Manager is not against the sanctioned post of Deputy Manager in Labour Welfare nor it has the approval of the competent authority. The 1st respondent had issued a note in respect of the officiation and the designation of the petitioner as a Deputy Manager (Welfare and Training), which is a superior post next to that of Senior Welfare Officer. The 2nd respondent – General Manager of the plant has never issued any commitment to the 1st respondent, which is quite clear from the Letter No.ID/5(12)/Estt./99-46 dated 25.02.1999, wherein the Chairman and Managing Director of the organization i.e. 1st respondent indicated the policies of the corporate management and as per it, the promotions and

regularizations of officiating employees are made against sanctioned posts as and when the promotions are effected against the existing vacancies in a particular cadre. The position was explained in a communication vide office letter No.IDP/Hyd/A-8(1)/99/5511 dated 12.01.1999. Further, it states that the petitioner was informed vide office letter No.6336 dated 19.05.1999 that as and when a vacancy in the cadre/discipline of Labour Welfare is available, his case will be considered. As there is no sanctioned post of Deputy Manager in the Welfare Department which is a Unit cadre, his regularization/promotion as Deputy Manager cannot be taken up at the plant level. As per the guidelines of corporate office, the promotions in the officers' cadre are subject to vacancy and since there is no vacancy of Deputy Manager (Welfare) in Labour and Welfare Division, it cannot be done. The corporate office has already objected and informed that no post can be created at this juncture when the fate of the company is unknown. The petitioner cannot be allowed to claim his seniority in other sections like Training as Training is a separate cadre than that of Welfare, where three Cadre officers are already functioning in Senior Executive cadre and are all well qualified in their areas whose further line of promotion is Deputy Manager (Training) to which post the petitioner is claiming for promotion which is not in consonance with the rules. The post of Deputy Manager fell vacant due to retirement of officer under Voluntary

Retirement Scheme and such vacancy cannot be filled under the provisions of the Voluntary Retirement Scheme. With this, he seeks to dismiss the writ petition.

4. The petitioner filed reply affidavit to the counter-affidavit denying the above averments of the counter of the 2nd respondent.

5. Sri Siva, learned counsel appearing for Smt. Padma Sharnappa, learned counsel for the petitioner, would contend that in the Office Note No.IDP(H)/A-Cond1/96 dated 12.12.1996, it is clearly mentioned that as there was no post available in the scale of Rs.3000-5000/- in the Welfare Department and that Welfare and Training Departments are having local seniority. It is also clearly mentioned that one post of Manager (Training) and two posts of Deputy Managers (Training) are vacant and present incumbents are at the level of Senior Training Executives only who are also promoted very recently. It was proposed that the petitioner may be adjusted against one of the posts of Deputy Manager giving the petitioner an additional charge of present Department of Welfare and he was designated as Deputy Manager (Welfare and Training). The note was approved by the competent authority i.e. the General Manager and subsequently an Office Order No.IDP(HYD)/A-8(2)/96 dated 13.12.1996 has been issued by the Personnel Manager which has also got the approval of the competent authority in which the petitioner

was designated as Deputy Manager (Welfare & Training) and he was kept In-charge of General Manager's Secretariat and attended to the functions of Personal Secretary to the General Manager in addition to his duties as Deputy Manager (Welfare & Training). The contention of the respondents that training is a distinct branch/division to the Welfare Division, is not correct as number of officers who have not looked after Training and not even remotely connected, have been posted in Training Centre. For example, one Mr. P.S.N.Raju, Assistant Superintendent who belongs to Production Department, which is entirely a separate Department and no way connected with the Training, has been posted to Training and promoted as Deputy Superintendent (Training) and subsequently he has been transferred to Legal Cell and Public Relations Department which are under the Personnel Department. One Mr. Quadeer Mohammed, Assistant Foreman who was also working in Production Department has been promoted as Executive (Training) whose seniority and experience are entire different from Training, whereas the petitioner belongs to Personnel Department and Training and that section is part and parcel of Personnel Department and the petitioner was shown against the sanctioned post of Deputy Manager (Welfare & Training). In addition to that, he was designated as Executive Officer (Provident Fund). The allegation of the respondents that the posts of one cadre cannot be transferred to another cadre is wrong as one

Mr. K.Parthasarathy, who was in the Production Department as Senior Lab Assistant, had been posted to Legal section of Personnel Department as Legal Inspector and subsequently he has been promoted as Senior Executive (Legal), which is two posts above. Likewise, one Dr. Bhagatram, who is Personnel Manager, is from Research Department and one Mr. Rama Chary, Senior Executive (Training) has been posted as Senior Public Relations Executive and Mr. Sharpanji, Senior Executive (Training) is functioning as Senior Executive (Administration), Estate Officer, Vigilance Officer, etc., which shows that persons within the Department can be posted to any other section. The petitioner was shown against the sanctioned vacancy of Deputy Manager (Training) as mentioned in the Note dated 12.12.1996 and designated as Deputy Manager (Welfare & Training) as per Office Note dated 13.12.1996, and hence, getting a sanctioned post does not arise. When the petitioner was given officiating in the post of Deputy Manager (Welfare & Training) from 1995 against a substantive post of Deputy Manager (Training), the question remains is only regularization from the date of his junior, Mr. Dhobhal who has been regularized as Deputy Manager (Personnel) on 27.11.1998. The promotees have not even completed minimum number of years of service, whereas the petitioner could not get a promotion after completing 20 years of service. Mr.Dhobhal, Senior Personnel Executive, has got Deputy Manager (Personnel) officiating by dubious means

within a year of his promotion. The corporate office has questioned the local management and has asked to withdraw. When the local office has withdrawn his officiating, he has approached this Court by way of writ petition and as per the Court order, he has been regularized on 27.11.1998, who is a junior to the petitioner and subsequently several officers have been promoted. A perusal of Office Order No.IDP/Hyd/A-14(5)/93 dated 10.12.1999 shows that number of promotions were effected irrespective of vacancy, qualification and experience. Even Arts Graduates who do not know Credit and Debit have been promoted as Accountants which post requires the qualification in Commerce and experience in Accounting. Mr. G.G.K.Murthy, Manager (I.E.); Mr. Rami Reddy, Senior Executive (Instrumentation); Mr. P.K.Khanna, Senior Executive (Fine Chemicals); Dr.Giridhar, Senior Executive (QCD) and Mr. Chandrasekhar, Senior Executive (Formulations) have been promoted to the next cadre without any vacancy. The statement that there is a complete ban on vacancy based promotions is not relevant. In spite of representation of the petitioner dated 30.11.1998, he has been denied regularization and his junior has been regularized on 27.11.1998. The petitioner's name was recommended for regularization as Deputy Manager (Welfare & Training) by the General Manager. The averment of the respondents that there is no vacancy holds no water. In the month of March, 2001, one Regional Manager (Marketing)

who was officiating has been regularized. The contention of the respondents that there is a complete ban on vacancy based promotions holds no water when number of persons were promoted to the higher posts. The petitioner's case was denied on the allegation that there is a complete ban on vacancy based promotions in the letter dated 18/19.04.2001, which is incorrect in view of the note of the Personnel Manager on 02.01.1999 addressed to the Chairman & Managing Director and General Manager, is missing. The petitioner, while being promoted as Private Secretary to the General Manager, has been posted to Legal Cell vide Office Order No.1654/81 dated 13th July, 1981. Again, the petitioner was re-designated as Labour Welfare Officer vide Office Order No.IDP(HYD)/A-14(54)/78/4099 dated 12.09.1987. The petitioner was allowed to officiate in the higher scale of Deputy Manager and designated as Deputy Manager (Training & Welfare) and continue to be In-charge of General Manager's Secretariat and attended to the functions of Private Secretary to General Manager in addition to the duties as Deputy Manager (Training & Welfare) vide Office Order No.IDP/HYD/A-8(2)/96 dated 13.12.1996, which shows that the posts under the Personnel Department i.e. Personal Secretary to General Manager, Labour Welfare, Legal Cell and Training are under the control of Personnel Department. This is also supported by two notes dated 02.08.1995 and 12.12.1996, wherein it was clearly mentioned

that Welfare & Training Departments are under the control of Personnel Department and both the Departments are having local seniority. The petitioner was shown against the sanctioned post of Deputy Manager (Training) and designated as Deputy Manager (Training & Welfare). The said note was approved by the competent authority i.e. General Manager and accorded necessary sanction. The post held by the petitioner is a statutory post under the Factories Act. Hence, the averments of the respondents that the Legal, Welfare and Training are separate distinct units, does not merit any consideration. Apart from these branches, other branches, such as Engineering, Material Control, Stores, Research & Development, Quality Control and Production - all come under the jurisdiction of Personnel Department except a few higher posts which have a common seniority and those posts are from one unit to another all over the country. The petitioner was posted to Legal, Labour Welfare and promoted as Senior Labour Welfare Officer and given Deputy Manager (Training & Welfare) on officiating basis promising to regularize like similarly several higher posts have been filled up with officers of other disciplines. The post of Personnel Manager itself was filled up by a Scientist. As the Welfare & Training are having local seniority as mentioned in office note dated 12.12.1996 and sanctioned post of Deputy Manager (Training) is available, the petitioner could have been adjusted against the same. The petitioner could have been regularized

in the post of Deputy Manager (Training) since he is officiating since 1995 and several of his juniors were already regularized in the promoted vacancies. One Mr.B.N.Dhobal, who is officiating along with the petitioner in the Personnel Department, was regularized and since 1999, more than 150 promotions irrespective of vacancy, qualification and experience have been effected. The petitioner was not regularized in the post of Deputy Manager in spite of sanctioned vacancy available as per Note dated 02.08.1995 and 12.12.1996, which were issued without reference to the Voluntary Retirement Scheme. Hence, the action of the respondents is arbitrary and illegal.

6. Per contra, Mrs. V.Uma Devi, learned counsel for the respondents, would contend that the petitioner was designated as Labour Welfare Officer at his request with effect from 12.09.1987 in the scale of Rs.700-1300/-. The petitioner worked as Personal Secretary to the General Manager with a condition that his seniority as Labour Welfare Officer would be reckoned from the date of order i.e. 12.09.1987. The Labour Welfare, Training and Legal are Unit cadre under the control of Personnel Department for administrative convenience only. While reiterating the averments of the counter, the learned counsel vehemently submitted that there is no sanctioned post of Deputy Manager (Training & Welfare) in the Hyderabad Unit and officiating as the petitioner in the scale of Rs.700-1300/- and continuing

him in the post is illegal without approval from the competent authority. Some cadre officers are already functioning in the Senior Executive cadre and are well qualified in their areas, whose line of promotion is Deputy Manager (Training) to which post the petitioner is claiming for promotion is not according to the rules. The Deputy Manager post is vacant due to the retirement of officer under the Voluntary Retirement Scheme and such a vacancy could not be filled up under the provisions of Voluntary Retirement Scheme. Hence, the petitioner does not deserve for regularization of his services in the cadre of Deputy Manager (Welfare & Training). Hence, the writ petition does not merit consideration and is liable to be dismissed.

7. In the facts and circumstances of the case and in considered view of this Court that in the Office Note dated 12.12.1996, it is clearly mentioned that one post of Manager (Training) and two posts of Deputy Managers (Training) are vacant and present incumbents are at the level of Senior Training Executives only, who are promoted very recently. The petitioner was attached against one of the posts of Deputy Manager based on his experience, seniority and educational qualifications and he was designated as Deputy Manager (Welfare & Training) and the same was approved by the competent authority i.e. General Manager. When the same was approved by the Personnel Manager on 13.12.1996, which has got the approval of the competent authority, the

petitioner was asked to be In-charge of General Manager's Secretariat and attended to the functions of Personal Secretary to General Manager in addition to his duties as Deputy Manager (Welfare & Training). When several of his juniors, Mr. P.S.N.Raju, Assistant Superintendent, Production Department; Mr. Quadeer Mohammed, Assistant Foreman, Production Department and several others were given promotions considering their educational qualifications. Mr.G.G.K.Murthy, Manager; Mr. Rami Reddy, Senior Executive; Mr. P.K.Khanna, Senior Executive; Dr.Giridhar, Senior Executive; and Sri Chandrasekhar, Senior Executive were given promotions in spite of ban on vacancy based promotions, whereas the petitioner was denied the same benefits and his juniors were regularized on 27.11.1998. In the month of March, 2001, Regional Manager (Marketing) who was officiating has been regularized, whereas the petitioner was denied the same on untenable grounds, which is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

8. The petitioner has been working as Deputy Manager (Training & Welfare) from 01.07.1995 and post of Deputy Manager is a sanctioned vacancy as per order dated 02.08.1995 and 12.12.1996. The persons who have been officiating in the post of Deputy Manager were not regularized, whereas the junior to the petitioner by name Mr.Dhobhal has been regularized as Deputy Manager

(Personnel) on 27.11.1998. This Court found that the respondents are adopting different methods for regularizing the officiating persons in the higher post. The respondents are regularizing the persons with officiating posts as per their whims and fancies without any rhyme or rhythm or a rule. But, the petitioner was denied the regularization in the post of Deputy Manager (Welfare & Training) on untenable grounds. Therefore, the petitioner is entitled for regularization in the post of Deputy Manager (Welfare & Training) or Deputy Manager (Training) which are vacant as on the date of his officiating the said post i.e. 01.07.1995.

9. The learned counsel for the respondents would contend that at present the plant operations have totally stopped since 1996 (bulk) and 2003 (formulations) and only Effluent Treatment Plant (ETP) is being operated for treating effluents of other industries. She further contended that now with the help of Government of India, Department of Pharmaceuticals, manufacturing operations pertaining to formulations, with few selected products, are in progress and likely to be commissioned shortly. The Indian Drugs & Pharmaceuticals Limited is now functioning from Head Office, New Delhi. The Hyderabad plant is a Branch unit. The company is functioning actively in other areas. Hence, the contention of the learned counsel for the respondents that Hyderabad unit is closed and wind up and no relief could be given to the petitioner, is untenable.

10. During the pendency of the writ petition, the petitioner reached superannuation and he was retired from service. In those circumstances, a positive direction could not be given even to regularize his services in the post of Deputy Manager (Welfare & Training) by extending the pay scale of Deputy Manager (Training) as he is fully qualified and eligible to be appointed and he is having sufficient experience and educational qualifications. In those circumstances, this Court felt that to meet the ends of justice, the respondents are directed to regularize the services of the petitioner as Deputy Manager (Welfare & Training) from 01.07.1995 from which date he has been officiating in the post of Deputy Manager (Welfare & Training) and thereby pay all the arrears of salary and retirement benefits.

11. Accordingly, the Writ Petition is allowed. No order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

03-08-2018
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