

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.16999 of 2001

ORDER:

The petitioner filed this writ petition seeking to issue a writ of mandamus, declaring the action of respondents Nos.1 to 3 in not promoting him to the post of Accountant with effect from 26.06.1997, the date on which, respondents Nos.4 to 6, who are juniors to him in the cadre of Clerks, were promoted, and also not considering his case to the post of Superintendent with effect from 28.06.2001, the date on which, respondent No.5 is promoted as the Superintendent, as illegal and arbitrary, and consequently direct respondents Nos.1 to 3 to promote him as Accountant with effect from 26.06.1997 and as Superintendent with effect from 28.06.2001.

The case of the petitioner is that he is a Commerce Graduate and double diploma holder in the Industrial Cooperation. He was appointed as a Clerk in the 1st respondent Bank on 02.02.1976. When the 1st respondent illegally denied his seniority in the cadre of Clerks in the year 1988, the petitioner filed W.P.No.10631/1985. This court, by order dated 03.04.1987, allowed the writ petition, directing the respondents to consider the case of the petitioner for further promotion, as per rules and regulations. Subsequently, the 1st respondent Bank prepared seniority list in the cadre of Clerks, wherein the petitioner's name figured at Sl.No.1. In the year 1993 certain vacancies in the cadre of Accountant arose. In the year 1997, the criterion to get promotion from the cadre of Clerks to the post of Accountant is the seniority alone. Later on, the said Rule was amended with effect from 01.01.1996, from which date onwards, the

criteria for promotion is seniority-cum-merit. When the petitioner was denied promotion, he filed W.P.No.14596/1997. In the said writ petition, the 1st respondent bank took a stand that departmental proceedings were initiated against the petitioner and he was imposed punishment of stoppage of three increments in the year 1994, and as such, the 1st respondent ignored the petitioner's claim for promotion. This court allowed W.P.No.14596/1997, directing the 1st respondent to give notional promotion to the petitioner with effect from 09.07.1993 and pay monetary benefits with effect from 08.07.1997. Aggrieved by the same, the 1st respondent preferred W.A.No.593/2001. The Division Bench of this court disposed of the writ appeal, vide judgment dated 27.04.2001, directing the 1st respondent to consider the case of the petitioner for promotion with retrospective effect, in the event he is found eligible to hold the promotional post upon applying the principle of seniority-cum-merit. In pursuance to the said directions, the 3rd respondent issued a letter, dated 17.05.2001, directing the petitioner to attend the interview before the Staff Selection Committee on 26.05.2001 for considering his case for promotion as Accountant. The petitioner submitted a representation on 18.05.2001 raising objections and requesting the respondents to consider his case for promotion to the post of Superintendent, as his juniors are called for interview for the same post. The petitioner has also submitted a representation on 22.06.2001 claiming retrospective promotion with effect from February, 1997 in the cadre of Accountant. But the 1st respondent issued proceedings, dated 28.06.2001, promoting the petitioner to the post of Accountant with prospective effect. The said proceedings of the 1st respondent are impugned in this writ petition.

Learned counsel for the petitioner would contend that the petitioner is entitled for promotion to the post of Accountant with retrospective effect as per the orders passed by this court in W.A.No.593 of 2001, as his junior were promoted to the post of Accountant and later promoted to the post of Superintendent, and as such, the 1st respondent ought to have considered the case of the petitioner for promotion to the post of Superintendent by giving retrospective promotion in the cadre of Accountant. The learned counsel further would contend that once the petitioner is entitled for promotion to the post of Accountant with effect from 26.06.1997, thereafter, he will be entitled for promotion to the post of Superintendent with effect from 28.06.2001, on which date, his junior was promoted, and hence, he prays to allow the writ petition.

As seen from the docket proceedings, since beginning of admitting the writ petition, none appeared for the respondents and no counter is forthcoming on their behalf. Twice the matter was placed before the High Court Lok Adalat, but the same was not settled on account of absence of parties. Therefore, I am inclined to dispose of the writ petition on merits.

Admittedly, the petitioner was entered into service as a Clerk in the 1st respondent Bank on 02.02.1976. Respondents Nos.4 to 6 are his juniors. On the ground that departmental enquiry is initiated and pending against the petitioner, his case was not considered for promotion to the cadre of Accountant in the year 1993 and his juniors were given promotion. The departmental enquiry was concluded against the petitioner on 20.12.1994. After closure of departmental enquiry also, respondents Nos.1 to 3 have not given promotion to the petitioner. The petitioner filed W.P.No.14596/1997 and this court allowed the said writ petition, directing respondents Nos.1 to 3 to give notional promotion to

the petitioner with effect from 09.07.1993 and to extend the monitory benefit with effect from 08.07.1997. The 1st respondent filed W.A.No.593 of 2001, and the same was disposed of by a Division Bench of this court, vide judgment dated 27.04.2001, with following observations:

“It is, of course, true that after the period of punishment was over, his case should have been considered for promotion. We, therefore, in modification of the order passed by the learned single Judge direct that although the promotion must be granted on the basis of seniority-cum-merit, merit also cannot be said to have no role to play.

In the aforementioned situation, the only relief which can be granted in the review application was a direction to the respondents to consider the case of the 1st respondent for his promotion together with the other eligible candidates. The respondents could also be directed to consider his case for promotion with retrospective effect, in the event he is found eligible to hold the promotional post upon applying the principle of seniority-cum-merit.”

Contrary to the above directions, the 1st respondent issued proceedings, dated 28.06.2001, giving promotion to the petitioner to the post of Accountant with prospective effect. The Juniors of the petitioner were given promotion to the cadre of Accountant and Superintendent, ignoring the petitioner on a mere ground that he was imposed punishment in the departmental proceedings. Even after closure of departmental proceedings, even though the petitioner is qualified and eligible for promotion, he was not given promotion to the cadre of Accountant and subsequent promotion to the cadre of Superintendent with retrospective effect, which is illegal on the part of respondents Nos.1 to 3.

Considering the facts and circumstances of the case, the writ petition is allowed, as prayed for. Across the Bench, the learned counsel for the petitioner submitted that the petitioner has already retired from

service. Therefore, respondents Nos.1 to 3 are directed to give notional promotion to the petitioner in the cadre of Accountant with effect from 26.06.1997 and thereafter, in the cadre of Superintendent with effect from 28.06.2001, and pay retirement monetary benefits for the services rendered in the post of Accountant and Superintendent, within a period of 4 (four) weeks from the date of receipt of a copy of this order. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 25.06.2018
Dsr

M.GANGA RAO,J

