

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

WRIT PETITION No.15504 OF 2018

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is the applicant in O.A.No.6395 of 2015 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. Her prayer therein was as under:

“Application filed under Section 19 of the Administrative Tribunals Act, 1985 praying this Tribunal to declare the action of the 3rd respondent in reverting the applicant from PHN (NT) to her initial appointment post of MPHA(F) by cancelling two promotions without served any notice on the applicant by his Rc.No.0391/B3/2015 dated 04-11-2015 is illegal, arbitrary and violate all principles of natural justice and the same is liable to be set aside and further direct the respondent to continue the applicant as PHN (NT).”

Having admitted the O.A. as long back as in the year 2015 and kept it pending for consideration all along, the Tribunal passed order dated 16.03.2018 holding that the petitioner/applicant ought to have availed the alternative remedy of a statutory appeal instead of approaching it. The Tribunal further observed that the O.A. was barred by Section 20 of the Administrative Tribunals Act, 1985, and that there were no extraordinary circumstances to entertain it, when there was a statutory remedy available under the rules. The Tribunal accordingly dismissed the O.A. granting liberty to the petitioner/applicant to avail the alternative remedy, which was effective and efficacious, subject to the period of limitation.

Perusal of the record reflects that the petitioner/applicant filed the O.A. in November, 2015, itself assailing the proceedings dated

04.11.2015. Therefore, there was no delay on the part of the petitioner/applicant in approaching the Tribunal. In the event the Tribunal was of the opinion that she ought to have availed the statutory remedy in the first instance, the O.A. ought not to have been admitted and kept pending for nearly two and a half years.

It is well settled that when a case is entertained and kept pending for years together, the availability of an alternative remedy would pale into significance and it would not be open to the Court or Tribunal which entertained the matter and kept it pending to relegate the petitioner/applicant before it to the alternative remedy after such a long lapse of time. The Tribunal therefore ought not to have taken recourse to this step having kept the O.A. pending on its file for years together.

The order under challenge is accordingly set aside and the matter is remitted to the Tribunal for consideration on merits.

The writ petition is 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

Date: 27.04.2018
IBL