

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.18831 OF 2018

Date: 11.06.2018

Between:

D.Jagan S/o. N.Bichya, Aged about 41 years,
working as Municipal Commissioner Grade-I,
Pedda Amberpet Municipality, Ranga Reddy District.

.....Petitioner

and

The State of Telangana, rep.by its Prl.Secretary,
Municipal Administration and Urban Development,
Secretariat Buildings, Secretariat, Hyderabad and
others.

.....Respondents



The Court made the following:

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ORDER:

Heard Sri M.V.S.Sai Kumar, learned counsel for petitioner and learned Government Pleader for respondents.

2. Petitioner is presently working as Municipal Commissioner in Pedda Amberpet Municipality. He is aspiring for promotion to the post of Special Grade Municipal Commissioner. This writ petition is instituted alleging that on the ground that disciplinary proceedings are pending against him, he is not being considered for promotion.

3. According to learned counsel for petitioner, charge memo was drawn on 10.03.2016, but there is no further progress and disciplinary proceedings are not concluded for no fault of petitioner. Learned counsel further submits that the charges levelled against petitioner relate to the period when he was working as Municipal Commissioner, Mahaboobabad Municipality between 04.04.2013 and 16.12.2013. Thus, the charges relate to more than 4½ years prior to the present stage. The allegations levelled against him are minor. He, therefore, submits that based on these allegations, for incidents relating to the year 2013 and on a charge memo drawn on 10.03.2016, his entitlement for promotion cannot be denied.

4. At this stage, it is appropriate to notice that petitioner is not assailing the initiation and continuation of disciplinary proceedings. The limited grievance in the present writ petition is denying him promotion on the ground of pending disciplinary

proceedings. Therefore, Court is not going into the merits of charges levelled against him leaving it open to petitioner to agitate his grievance in appropriate proceedings.

5. There are long line of precedent decisions dealing with disciplinary proceedings, denial of promotion and/or withholding of promotion on the ground of pending disciplinary proceedings. In the precedent decisions, the Hon'ble Supreme Court broadly dealt with three different contingencies. For convenience, they can be put into three categories. In the first category of cases, Supreme Court considered the issue when entitlement of an employee for promotion can be deferred. In the second category of cases, Supreme Court considered the situation when entitlement of an employee for promotion can be deferred even though a formal charge sheet was not issued. In the third category of cases, Supreme Court dealt with the situation where though charge sheet was issued there was inordinate delay in initiation/conclusion of disciplinary proceedings and the course that should be adopted by the Court whenever such issue arises for consideration. The case on hand falls into third category.

6. In the case on hand, petitioner contends that charges levelled against him in the charge memo dated 10.03.2016 relate to the period between 04.04.2013 and 16.12.2013; there is delay in initiation and conclusion of disciplinary proceedings. Whenever there is allegation of delay in initiation and/or conclusion of disciplinary proceedings, as held by the Supreme Court in **State of Punjab and others v. Chaman Lal Goyal¹; P.V.Mahadevan v.**

¹ (1995) 2 SCC 570

M.D., T.N.Housing Board²; State of Andhra Pradesh v.

N.Radhakishan³ and Government of Andhra Pradesh and

others v. V.Appala Swamy⁴, Court is required to consider several relevant factors, apply 'balancing test or balancing process' and pass appropriate order as Court finds just and equitable in the circumstances of a case. In the cases of this nature, wherever it is found that the delay in initiation/conclusion of disciplinary proceedings is unreasonably long, direction may be issued to consider the employee for promotion without reference to and without taking into consideration the charges or the pendency of the enquiry.

7. On the competing claims of employees seeking promotion and employer denying promotion in the three categories of cases mentioned above, in W.P.No.43182 of 2016 and batch in the judgment dated 17.04.2017, this Court elaborately considered the precedent decisions and the policy of the employer.

8. As noticed by this Court, Government notified its policy on the subject in G.O.Ms.No.424 General Administration (Ser.C) Department dated 25.05.1976 and in G.O.Ms.No.257 General Administration (Ser.C) Department dated 10.06.1999. On consideration of above two GOs, this Court observed as under:

"12.6. This G.O. mandates that the concerned authority should bring to the notice of the Departmental Promotion Committee, the details of the employees in the zone of consideration for promotion falling under the three categories mentioned there under i.e., i) officers under suspension; ii) officers in respect of whom a charge sheet has

² (2005) 6 SCC 636

³ (1998) 4 SCC 154

⁴ (2007) 14 SCC 49

been issued and the disciplinary proceedings are pending; and iii) officers in respect of whom prosecution on criminal charges are pending. Similar categorization of officers as was notified in G.O.Ms.No.424 is also incorporated in paragraph-5(B) of this G.O. The G.O. enables consideration of claims of officers also falling under the third category, if, even after completion of two years from the date of the Departmental Promotion Committee or Screening Committee meeting, there was no progress in the enquiry/trial/investigation. However, even this consideration is confined to officers against whom charge leveled is not grave, but is a minor one, not involving moral turpitude, embezzlement and grave dereliction of duty.

12.7. In other words, even if two years time has elapsed after the earlier Departmental Promotion Committee meeting and there is no progress in the case, the officer cannot be considered for granting *ad hoc* promotion also if charge leveled is either one of moral turpitude, misappropriation, embezzlement and grave dereliction of duty or all of them.

12.8. Thus, to claim *ad hoc* promotion, Officer is required to fulfill two conditions, i) that even after two years from the date of earlier Departmental Promotion Committee meeting, there is no progress in the departmental enquiry/trial/investigation; and ii) that the allegations leveled do not deal with moral turpitude, misappropriation, embezzlement and grave dereliction of duties.

12.9. As seen from the two Government orders, policy of the Government is clear and unambiguous; that the Government does not intend to grant promotion even on *ad hoc* basis if the allegations leveled against the employee/officer are grave and that such officer/employee is facing enquiry/trial/investigation.

9. This Court further held as under:

“14. It is settled principle of law that an employee has right for consideration for promotion, but has no right to ask promotion as a matter of course [**K Samantaray Vs National Insurance Company Limited - (2004) 9 SCC**]

286]. One of the important parameters of public service is if an employee is facing disciplinary action/trial on his/her misdemeanor or misconduct-criminal/civil, he/she should not be granted promotion. It is not in public interest to grant promotion to an employee when on serious allegation enquiry / trial is pending against him. Thus, employee is entitled to be considered for promotion and in such consideration even if he is found fit, his promotion can be differed on the ground that disciplinary proceedings/ criminal proceedings are pending.”

10. In the case on hand, according to petitioner, he is within the zone of consideration for promotion for the first time. The limited relief available to an employee seeking promotion pending disciplinary proceedings, as per the policy of the Government, is after initiation of disciplinary proceedings and consideration by the earlier Departmental Promotion Committee (DPC), for the next two years, there is no progress in the departmental enquiry, employee is entitled for consideration for promotion. However, even such consideration is confined to cases where the charges are not grave, not involving moral turpitude, embezzlement and grave dereliction of duty. In the case on hand, examination on these parameters need not be gone into as petitioner has come up for consideration only for the first time now; he was not considered by DPC earlier and, therefore, the limited relaxation granted by the Government for consideration, in their policy decision also do not come to the aid of petitioner.

11. Having regard to the parameters set out by the Hon'ble Supreme Court in the four decisions referred to above, in the facts of this case, Court is not inclined to grant relief of consideration straightaway. However, having regard to the fact that charge

memo is dated 10.03.2016, which is more than two years, it is deemed fit to direct the disciplinary authority to finalize the disciplinary proceedings as expeditiously as possible, preferably within a period of four months from the date of receipt of copy of this order. For any reason, disciplinary proceedings cannot be concluded, not attributable to petitioner, his case may be considered for promotion in accordance with the policy guidelines referred to above. Writ Petition is disposed of accordingly. Pending miscellaneous petitions shall stand closed. No costs.

Date: 11.06.2018
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JUSTICE P.NAVEEN RAO



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