

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.27551 of 2017

ORDER :

Heard the counsel for petitioner, the learned Government Pleader for Municipal Administration for 1st respondent, and Sri N. Ashok Kumar, learned Standing Counsel for Greater Hyderabad Municipal Corporation, for 2nd respondent.

2. In this Writ Petition, the petitioner has assailed proceedings dt.31.07.2017 of the 2nd respondent rejecting his request for promotion to the post of Senior Assistant in the 2nd respondent-Organization on the ground that he had earlier on 25.09.2010 relinquished his right to seek promotion in future for appointment under Automatic Advancement Scheme .

3. The counsel for petitioner contends that merely because the petitioner had relinquished his right to seek promotion in 2010, the same cannot be put against him.

4. According to petitioner, the right to be considered for promotion is a fundamental right under Article 16(1) of the Constitution of India; the relinquishment of an opportunity for promotion which arose for an employee occupying certain place in seniority list, in view of vacancy that arose then [in view of the fact that he was eligible for promotion in the light of the criteria laid down in the Andhra Pradesh State and Subordinate Services Rules, 1996

(for short, 'the Rules')], would mean that the extent the privilege has been relinquished, is confined to the privilege related to that particular vacancy which was available for him by virtue of the above mentioned circumstances; and that only as far as that particular vacancy is concerned, the employee's relinquishment is final, and it cannot be contended that the relinquishment was in respect of future vacancies also.

5. The counsel for petitioner placed reliance on the Division Bench judgment of this Court in **M.V.R.L.S. Ravikanth v. The State of Andhra Pradesh**¹.

6. The 2nd respondent filed counter-affidavit reiterating the stand taken in the impugned order and quoting Rule 28 of the above Rules in support of his plea that petitioner would not be entitled to seek any promotion to the post of Senior Assistant having regard to the undertaking dt.25.09.2010 given by him. He however does not dispute the legal position laid down in **M.V.R.L.S. Ravikanth** (1 supra).

7. In the counter-affidavit filed by 2nd respondent, it is also admitted that there are vacancies available in the category of Senior Assistant even as of date.

8. I have noted the contentions of both sides.

¹ WP.No.13624 of 2015, dt.02.06.2017

9. Rule 28 of above Rules states as under :

28. *“Relinquishment of rights by members : Any member of a service may, in writing, relinquish any right or privilege to which he may be entitled to, under these rules or the special rules, if in the opinion of the appointing authority such relinquishment is not opposed to public interest. Such relinquishment once made will be final and irrevocable. Nothing contained in these rules or the special rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished :*

Provided that no conditional relinquishment or relinquishment of right for a temporary period shall be permitted.”

10. This provision has been interpreted by a Division Bench of this Court in **M.V.R.L.S. Ravikanth** (1 supra) in the context of similar claim for relinquishment of promotion. After considering Rule 28, the Division Bench held that Rule 28 would not disentitle a member of service from being considered for promotion in a future vacancy merely because he had relinquished his right for promotion earlier. It held as under :

“12. *The relinquishment of an opportunity for promotion, which arose for an employee occupying certain place in seniority list, in view of vacancy that arose then, in view of the fact that he/she was eligible for promotion in the light of the criteria laid down in the Rules, would mean that the extent the privilege has been relinquished is confined to the privilege related to that particular vacancy which was available to him/her by virtue of the above mentioned circumstances. The Rule cannot be interpreted to mean that the relinquishment was in respect of future vacancies also. As far as that particular vacancy is concerned, the employee's relinquishment is final. He cannot claim later that he may be deemed to have been promoted to that particular vacancy and that his seniority may be fixed as if he was promoted to that vacancy. If a member of service, who has relinquished his*

promotion, at one stage, is promoted subsequently when another vacancy arose, he will be junior to a person who was promoted to the vacancy relinquished by him in the promotion post and he cannot claim seniority over the said person.

13. *In the light of the above discussion, we have no hesitation to hold that relinquishment of right or privilege of promotion to a particular vacancy would amount to permanent relinquishment of right or privilege of promotion to that particular vacancy. Rule 28 of the A.P. State and Subordinate Service Rules cannot be read or interpreted to mean that his right to be considered for promotion to any vacancy arising in future also is permanently extinguished. Such interpretation would lead to frustration and unrest in the service defeating the object of promoting efficiency and harmonious functioning.”*

11. From the above, it is clear that the relinquishment given by an employee at a given point of time would apply only to the vacancy which was in existence at that point of time and he cannot be deemed to have relinquished his claim for promotion in future vacancies. There cannot be any permanent extinguishment of a right to claim promotion; and the right to be considered for promotion, being a fundamental right enshrined under Article 16-1 of the Constitution of India, there can also not be any *estoppel* against exercise of such fundamental right.

12. In this view of the matter, the impugned order dt.31.07.2017 passed by the 2nd respondent cannot be sustained.

13. Accordingly, the Writ Petition is allowed. The order dt.31.07.2017 is set aside, and since admittedly vacancies are available in the post of Senior Assistant as per the counter filed by the

2nd respondent, the 2nd respondent shall forthwith consider the claim of the petitioner for promotion to the existing vacancies in Senior Assistant Cadre in the 2nd respondent-Organization within a period of six (06) weeks in accordance with the applicable Rules and communicate his decision thereon to the petitioner. No order as to cost.

14. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 05.03.2018

Ndr/*

