

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* THE HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

+ WRIT PETITION No.21459 OF 2018

%Date: 03.07.2018

Between:

I. P. Premavani W/ o. G. S Madhu Kumar
Aged 47 years, R/ o. C/ o. Senior Civil Judge's Court,
By pass Road, Punganur, Chittoor District.

...Petitioner

Vs.

\$ The Principal District Judge,
Chittoor and others

.. Respondents

! For Petitioner

: M/ s. Chetluru Sreenivas

^ For Respondents

: Mr. Swaroop Oorella,
Standing Counsel for TAPHC,
Government Pleader for
Law and Legislative Affairs.
(AP)

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HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.21459 OF 2018

ORDER: (per V. Ramasubramanian, J)

Challenging an order of reversion from the post of Senior Assistant to the post of Field Assistant, the petitioner has come up with the above writ petition.

2. Heard Mr.Chetluru Sreenivas, learned counsel for the petitioner. Mr.Swaroop Oorilla, learned Standing Counsel takes notice for the Registry.

3. The petitioner was originally appointed as a Field Assistant on 04.05.2009. She was promoted as Senior Assistant on 30.04.2014 and the promotion was regularized by order dated 27.03.2015 with effect from the date of promotion, namely, 30.04.2014. The petitioner was also declared, by the proceedings dated 24.03.2016 to have successfully completed the probation in the post of Senior Assistant with effect from 04.05.2015.

4. But, nearly after four years of the grant of promotion and after two years of declaration of satisfactory completion of probation, a notice was issued to the petitioner on 11.05.2018, calling upon her to show cause as to why she should not be reverted. The reason stated in the show cause notice was that the petitioner had not passed a paper in CPC, which was pre-requisite for promotion. In response to the show cause notice, the petitioner filed replies dated 23.05.2018 and 26.05.2018 seeking copies of certain documents. Without furnishing copies of those documents, an order of reversion dated 08.06.2018 was passed, forcing the petitioner to come up with the above writ petition.

5. The contentions of Mr.Srinivas, learned counsel for the petitioner are that the petitioner had already appeared for a test in CPC, but was not informed of the results of the same; that the question whether the petitioner had acquired the requisite qualifications or not was within the exclusive knowledge of the respondents; that the respondents, who had such exclusive knowledge choose to promote the petitioner to the post of Senior Assistant on 30.04.2018; that after having chosen to promote the petitioner way back in 2014, it was not open to the petitioner to claim that the petitioner was not qualified as per the Rules to be promoted; that after probation of a person as declared in a particular post, no reversion can be ordered except as a measure of penalty; that obviously the impugned order of reversion was not passed a measure of penalty; after following the procedure prescribed under Rule 20 of the A.P. Civil Services (CCA) Rules; and that in any case, as per the law laid down by the Apex Court in a series of judgments, reversion of a person on the ground of lack of qualifications, after a long lapse of time when such a person had gained sufficient experience is not justified.

6. We have carefully considered the above submissions.

7. Before dealing with those submissions, it is necessary to point out that the post of Senior Assistant from which the petitioner is sought to be reverted, is in the Andhra Pradesh Judicial Ministerial Service. The Special Rules for Andhra Pradesh Judicial Ministerial Service, issued under G.O.Ms.No.129, Law dated 12.11.2003, classify the posts in the judicial ministerial service into nine categories. These Rules were issued in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. The post of Senior Assistant is included in category-III under Rule 5 of the Special Rules.

8. Rule – 6 of these Rules prescribes the method of appointment for all categories of posts in the State Judicial Ministerial Service. The table contained under Rule – 6 of the Special Rules stipulates that the post of Senior Assistant shall be filled up by the method of promotion of Junior Assistants, Personal Assistants and Typists from a combined seniority list.

9. Rule-8 of the Special Rules states that no person shall be eligible for appointment to categories specified in column-I of Annexure-I to the Rules, by the method specified in Column –II, unless such person possesses the qualifications specified in the corresponding entry in column-III of the Annexure.

10. In the Annexure to the Special Rules, the qualifications for promotion to the post of Senior Assistant, are indicated in Column-3 of the table as against Serial No.3. It may be usefully extracted as follows:

S. No.	Category and name of the Post	Method of appointment	Qualifications
1.	...	...	...
2.	...	...	...
3.	Senior Assistant	By promotion	i) Must have passed Civil Judicial Test Parts I & II and Criminal Judicial Test. ii) Must have passed Accounts Test for Subordinate Officers, Part-I. <u>Note 1:</u> A person who possesses a Degree in Law of any University in India established or incorporated by or under a Central Act, Provincial Act or a State Act or an institution recognized by the University Grants Commission the syllabus of which includes procedure shall not be require to pass Civil Judicial Test Parts 1 & II and Criminal Judicial Test. <u>2.</u> For promotion to posts in categories 1 to 3 preference shall be give to the member who hold a degree in law of any University in India established or incorporated by or under a Central Act, Provincial Act or a State Act or an institution recognized by the University Grants Commission, besides being otherwise qualified and suitable for appointment.

11. From a perusal of the above, it can be seen that for promotion to the post Senior Assistant, a person should have passed Civil Judicial Test parts 1 and 2 and Criminal Judicial Test, apart from passing accounts test for subordinate officers part-I. But, there is an exemption available for persons, who hold a degree in law.

12. It is not the case of the petitioner that she holds a degree in law. Therefore, passing of the tests prescribed in column No.3 of the table in the annexure, is mandatory.

13. *De hors* the contentions now sought to be raised, the fact remains that the petitioner has not passed one of the requisite tests, to be qualified for promotion to the post of Senior Assistant. If a person who is not qualified for promotion, in terms of the Rules, is actually promoted, the employer has the right to cancel the promotion and revert the person. Such a reversion would not fall under the category of penalty, but a case of mere cancellation of promotion, for want of necessary qualifications prescribed by the statutory rules. Keeping this in mind, let us now test the correctness of the contentions raised by Mr.Srinivas, learned counsel for the petitioner.

14. It is true that the petitioner was not responsible for gaining promotion that she was not lawfully entitled to in terms of the Rules. It was clearly a case of mistake on the part of the appointing authority. But, the mistake is not incurable or in-correctable. In cases of this nature where a person is granted promotion on a mistaken fact, the employer always has the right, nay duty, to cancel such wrongful promotion. But, the only requirement for the employer was to give an opportunity to show cause as against such cancellation. Such an opportunity has been granted in this case, by way of a show cause notice dated 11.05.2018.

15. The contention of Mr.Srinivas, learned counsel for the petitioner is that the opportunity to show cause was actually turned into an empty formality, when the respondents did not reply to her requests for furnishing copies of certain documents, before furnishing a reply. It is seen from the replies given by the petitioner on 23.05.2018 and 26.05.2018 that the petitioner sought for copies of (1) promotion file containing the gradation list, (2) recommendations for her promotion, (3) copy of the service register and (4) proceedings of promotion.

16. It is true that these documents were not furnished to the petitioner. But the non-furnishing of these documents may only lead to the presumption (a) that the petitioner was not at fault and (b) that the appointing authority was clearly at fault in granting promotion to the petitioner, overlooking the statutory rules.

17. In such circumstances, the right of the employer to cancel promotion, granted in violation of the statutory rules, will not go. The petitioner is not accused of gaining promotion wrongfully through misrepresentation or otherwise. If such allegations had been made, the documents sought for by the petitioner would have proved to be useful to the petitioner. In the absence of such allegations, even if the copies sought for by the petitioner had been furnished to her, the same would not have taken her case beyond this point. Hence, the contention that the opportunity to show cause was turned into an empty formality, cannot be accepted.

18. The decision of the Supreme Court in M.A. Hameed v. State of Andhra Pradesh¹ is relied upon by Mr.Srinivas, learned counsel for the petitioner in support of his contention that a reversion cannot be ordered after the promotion of a person long time ago. Similarly, the decision of a learned single Judge of this Court in K.Nagamuni v.

¹ 2001 (9) SCC 261

Managing Director, A.P. Vikalangula Cooperative Corporation² and the decision of the Supreme Court in Dr.M.S.Mudhol v. S.D. Halegkar³ are also pressed into service, in support of the contention that the experience gained by a person over a long period of time in the promoted post can really offset the lack of qualification at the time of promotion.

19. But, we do not agree. In the case on hand, the petitioner was promoted on 30.04.2014 and she was declared to have satisfactorily completed the probation, by proceedings dated 24.03.2016. But, the show cause notice was issued on 11.05.2018. A period of two years had elapsed from the date of declaration of probation and a period of four years had elapsed from the date of promotion. This period cannot be stated to be sufficiently long period where the petitioner could have gained such an experience that would offset the lack of qualification.

20. As a matter of fact, the decision of Dr.M.S.Mudhole, arose out of peculiar circumstances, where the writ of quo warranto was sought against a person appointed as the Principal. By that time, he had held the post for 12 years and it was also not a case of total lack of qualifications. It was a case of lack of the second division in the degree. Similarly, in M.A. Hameed's case, a period of 11 years had passed after the promotion. In fact, by the time the matter reached the Supreme Court, the individual had even attained superannuation.

21. Therefore, the cases in which the Supreme Court took a pragmatic view stand on a completely different footing than the case on hand.

22. In view of the above, it is not feasible to grant relief to the petitioner especially in the light of the uncontraverted fact that she did

² 1993 (3) ALD 213

³ 1999 (3) SCC 591

not possess the qualification for promotion. However, we make it clear that the benefits that the petitioner enjoyed during the period of promotion, can never be sought to be recovered from her, since the petitioner was not at fault. It is also made clear that if the petitioner claims the benefit of G.O.Ms.No.225, dated 18.05.1999, the same may be granted to her to the extent she is eligible to the said benefit.

23. It appears that upon reversion, the petitioner has been transferred. But, this appears to be unnecessary. Therefore, the District Judge may re-examine the question of transfer alone and not reversion and accommodate her. The petitioner shall make a representation in this regard and the District Judge may pass orders on the said representation within two (2) weeks.

24. With the above observations, the writ petition is dismissed. As a sequel thereto, miscellaneous petitions, if any pending, shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

KONGARA VIJAYA LAKSHMI, J

July 03, 2018

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