

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.16722 of 2001

ORDER:

This writ petition is filed by the petitioner seeking promotion to the post of U.D.Clerk as per terms of B.P.Ms.No.365, dated 25.03.1996, with effect from the date on which his juniors were promoted as U.D.Clerks, by proceedings, dated 08.11.1996 with all consequential benefits, holding that the action of the respondents in rejecting his claim for promotion, vide proceedings, dated 23.03.1999 and subsequent proceedings dated 27.03.1999 issued by the Superintending Engineer, Operation, Nizamabad, as illegal, arbitrary and contrary to B.P.Ms.No.365, dated 25.03.1996.

Brief facts of the case are that the petitioner was appointed as L.D.Clerk on 03.05.1973 under the control of the respondents. He was promoted as U.D.Clerk by proceedings, dated 15.10.1991, issued by the Chief Engineer, Operation, APSEB, Nizamabad and posted to Adilabad. The petitioner submitted a representation on 08.04.1993, requesting the 1st respondent Board to revert him as L.D.Clerk and retain him in Operation Circle, Nizamabad, on the ground that his wife was sick and undergoing treatment and children are studying at Nizamabad. Accordingly, the 1st respondent issued a memo, dated 08.07.1993, permitting the 2nd respondent to take necessary action for permanent reversion of the petitioner, subject to the conditions that he shall not be eligible for promotion as UDC permanently; he shall not be eligible for appointment to Special Promotion Post Scale I and II in the category of LDC in terms of B.P.Ms.No.1146, dated 20.12.1988; and that he shall not be eligible to claim parity in pay on par with the juniors subsequently

promoted as UDCs. Consequently, the 2nd respondent issued a Memo, dated 15.07.1993, reverting the petitioner as L.D.Clerk as per the terms and conditions, stipulated in the memo of the 1st respondent, dated 08.07.1993. Thereafter, the respondents Board issued B.P.(P&G-Per) Ms.No.365, dated 25.03.1996, amending the Service Regulations as under:

“ADD the following at the end of Regulation 40 of A.P.S.E.B.Service Regulations Part-II, namely,

“However any person who relinquished his right for promotion earlier shall be considered for promotion at his request after three years from the date of such relinquishment. This second opportunity shall be final. The persons who relinquished rights for promotion shall not be eligible for appointment under Automatic Advancement Scheme i.e., SGP/SPP Scales.”

The petitioner subsequently made a representation to the 1st respondent to consider his case for promotion as U.D.Clerk, as per B.P.Ms.No.365, dated 25.03.1996, as his juniors were promoted as U.D.Clerks.

As his case was not considered, the petitioner filed W.P.No.35968/1998 to declare him as eligible for promotion to the post of U.D.Clerk, as per the terms of B.P.Ms.No.365, dated 25.03.1996 with effect from the date on which his immediate junior was promoted, vide proceedings, dated 08.11.1996. The said writ petition was disposed of on 17.02.1999, directing the respondents to consider the case of the petitioner, as per terms of B.P.Ms.No.365, dated 25.03.1996, within a period of 8 weeks from the date of receipt of the copy of the order.

Pursuant to the orders of this Court, dated 17.02.1999, passed in W.P.No.35968/1998, the case of the petitioner was considered, and vide proceedings, dated 23.03.1999, the Additional Secretary, Transmission Corporation of A.P.Limited, Vidyutsoudha, Hyderabad, informed the

Superintending Engineer, Operation, Nizamabad that the orders issued in B.P.Ms.No.365, dated 25.03.1996 shall be applicable only to the cases of individuals who have relinquished their right for promotion before assuming higher responsibilities, and hence, the case of the petitioner for promotion as U.D.Clerk cannot be considered, and further, the Superintending Engineer, Operation, Nizamabad is requested to issue a speaking order to the petitioner. The Superintending Engineer, Operation, Nizamabad, vide Memo, dated 27.03.1999, issued a speaking order, intimating the petitioner, as directed by the Additional Secretary, Transmission Corporation of A.P.Limited, Hyderabad. Questioning the same, the present writ petition is filed.

The 1st respondent filed counter, mainly contending that on the instructions of the Director Personnel, AP Transco, Vidyut Soudha, Hyderabad for conducting of D.P.C for giving promotion to the petitioner, the Additional Secretary, Vidyut Soudha, Hyderabad has informed that the orders issued in B.P.Ms.No.365, dated 25.03.1996 shall be applicable only to the case of individuals who have relinquished their right for promotion before assuming the higher responsibility, and the case of the petitioner for promotion as U.D.Clerk cannot be considered. A speaking order was also issued to the petitioner in this regard.

The learned counsel for the petitioner has contended that as per B.P.Ms.No.365, dated 25.03.1996, the petitioner is entitled for promotion as U.D.Clerk. He has further contended that in the said B.P.Ms.No.365, dated 25.03.1996, there is no prohibition for the persons to be promoted, who have relinquished their right after assuming higher responsibilities on promotion as U.D.Clerk. The said contention is untenable in view of the

subsequent proceedings, dated 23.03.1999 and 27.03.1999 issued to the petitioner.

Per contra, the learned counsel for the respondents, while reiterating the averments of the counter affidavit, has contended that the petitioner is not entitled to promotion as U.D.Clerk, as per B.P.Ms.No.365, dated 25.03.1996, as he has already relinquished his right after being promoted as U.D.Clerk and thereafter, he was reverted to the post of L.D.Clerk on his request only, subject to the conditions, as mentioned in Memo, dated 15.07.1993, issued by the 2nd respondent.

Initially, in the year 1991, the petitioner has been promoted as U.D.Clerk. Thereafter, on 08.04.1993, the petitioner made a representation to the 1st respondent, requesting to revert back him as L.D.Clerk, due to his personal reasons, and he also relinquished his right of promotion permanently. In the year 1996, the respondents made an amendment to Regulation No.40 of the respondents Board. As per the said amendment, the persons who relinquished their right for promotion earlier shall be considered for promotion at their request after three years. But, as per the said amendment, the persons, who relinquished their right of promotion after assuming of higher responsibilities on promotion, shall not be eligible for promotion. The petitioner made a representation to the respondents to consider his case for promotion as per terms of B.P.Ms.No.365, dated 25.03.1996. The petitioner has also filed a writ petition in W.P.No.35968 of 1998 and the same was disposed of, directing the respondents to consider the case of the petitioner for promotion. Pursuant to the orders of this Court and representation of the petitioner, the respondents considered the case of the petitioner and rejected his claim for promotion, vide proceedings dated 23.03.1999 and 27.03.1999,

stating that the case of the petitioner would not come under the purview of B.P.Ms.No.365, dated 25.03.1996. The persons, who have relinquished their right for promotion before assuming higher responsibilities, on promotion alone, entitled for promotion after completion of three years from the date of such relinquishment. This court find no illegality or irregularity in the proceedings of the respondents dated 23.03.1999 and 27.03.1999 warranting interference.

In view of the above, the writ petition is dismissed. No order as to costs.

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

Date: 27.06.2018
Dsr



M.GANGA RAO,J