

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.21918 OF 2018

Date : 03.7.2018

Between:

G.Gattumallu s/o Ramanujam, Aged about 54 years,
Occu: Assistant Social Welfare Officer, Jangaon,
Jangaon District.

....Petitioner

And

The Director of Scheduled Casts Development
Department, State of Telangana, D.S.S. Bhavan,
Masab Tank, Hyderabad and another.

....Respondents



The Court made the following:

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ORDER:

Petitioner joined service as Secondary Grade Teacher in March, 1986, earned his promotions to various categories and is presently working as Assistant Social Welfare Officer. Petitioner is aspiring for promotion to the post of District Scheduled Castes Development Officer (DSDO). According to petitioner, respondents are now taking steps to fill up eight existing vacancies and Departmental Promotion Committee (DPC) was scheduled to be held on 30.06.2018. According to petitioner, though he is fully qualified, eligible and within zone of consideration, he is not likely to be considered for promotion as charge memo was issued on 15.06.2017. Hence, this writ petition.

2. Learned counsel for petitioner would contend that petitioner has meritorious service all through his career and not issued a single memo to him in the entire service. The present charge memo relates to instances that alleged to have occurred in the years 2011 to 2013 and after six long years, charge memo was issued. He would submit that explanation was immediately filed by petitioner denying the charges; that after long lapse of time, in April 2018 Enquiry Officer was appointed; and there is no further progress in the enquiry. According to learned counsel, charges are vague. Based on those charges, which relate to period from 2011-2013, petitioner cannot be denied his promotion as per his turn and entitlement. According to learned counsel, as per the Government policy, even in a case of serious allegations, disciplinary proceedings should be completed within six months,

whereas for more than one year, the disciplinary proceedings are pending and there is no likelihood of said proceedings concluded in a short time. By placing reliance on the decisions of Supreme Court and this Court, learned counsel for petitioner would submit that without reference to the pending disciplinary proceedings, petitioner ought to have been considered for promotion.

3. According to learned Assistant Government Pleader, as charge memo was issued, and disciplinary proceedings are pending, as per the policy of the Government, petitioner is not entitled to claim promotion.

4. From the reading of the averments made in the affidavit filed in support of writ petition and the contentions of learned counsel, the undisputed facts are, disciplinary proceedings are pending against petitioner. Further, petitioner is now coming up for consideration for promotion as District Scheduled Castes Officer for the first time.

5. The charge memo contains three charges. The sum and substance of allegation in the first charge is during the period from 01.11.2011 to 31.08.2013 while he was working as DDO of Government Social Welfare Ashram School, Buttaigudem, failed to handover the diet charges, cosmetic charge bills and vouchers and misplaced them. The allegation in the second charge is, during the same period, he allowed HWO to sign and draw the diet and cosmetic charges and wage bills of daily wage workers to a tune of Rs.2,48,859/-, though such person is not competent. The allegation in the third charge is, he failed to supervise maintenance of records in the Social Welfare College Hostels (Boys & Girls) at

Bhupalapally. The Enquiry Officer was appointed, and matter is pending at that stage.

6. In the light of above facts, whether petitioner is entitled to claim promotion without reference to the charge memo?

7. In **A. Jalander Reddy vs. State of Telangana**¹, this Court considered the claims of several petitioners in batch of writ petitions for promotion without reference to disciplinary proceedings/criminal proceedings. In the batch of cases, the disciplinary action/criminal proceedings are pending at various stages, such as, though charge memo was issued but delay in conclusion of disciplinary proceedings; registration of crime but investigation is not completed but charge sheet is not filed; though final reports are filed by investigating agency but sanction for prosecution was not accorded; decision to take disciplinary action was taken instead of sanction for prosecution but no charge memo served.

8. Having regard to the various aspects of denial of promotion agitated in the batch of writ petitions, this Court reviewed the precedent decisions of Supreme Court dealing with the claims for promotion qua disciplinary/criminal proceedings; considered the scope of Rules 5 & 6 of Telangana State and Subordinate Service Rules, 1966 (Rules) and the policy of the Government as notified vide G.O.Ms.No.424 General Administration (Services.C) Department dated 25.5.1976 and G.O.Ms.No.257 General Administration (Ser.C) Department, dated 10.6.1999.

¹ 2017(4) ALD 538

9. As observed by this Court in **Jalender Reddy**, Rules 5 and 6 of the Rules deal with promotions and preparation of panels for promotion. These rules are silent whether a person should be considered for promotion pending disciplinary action. Therefore, the policy notified by the Government has bearing on the claims.

10. As per G.O.Ms.No.424, three categories of Officers to be considered for promotion pending enquiry/trial/investigation. The three categories are as under:

- (i) an officer with a clean record, the nature of charges/ allegations against whom relate to minor lapses having no bearing on his integrity or efficiency, which, even if held proved, would not stand in the way of his being promoted;
- (ii) an officer whose record is such that he would not be promoted, irrespective of the allegations/charges under enquiry, trial or investigation; and
- (iii) an officer whose record is such that he would have been promoted had he not been facing enquiry, trial or investigation, in respect of charges which, if held proved, would be sufficient to supersede him.

11. Revised orders were issued in G.O.Ms.No.257 of 1999. According to G.O.Ms.No.257, Officers categorized as under item (iii) of G.O.ms.No.424 only should be considered for *ad hoc* promotion after completion of two years from the date of Departmental Promotion Committee or Scrutiny Committee meeting in which their cases were considered for the first time.

12. In other words, Officer falling into category (iii) can be considered for promotion on *ad hoc* basis only if he came up for consideration for promotion first time two years prior to such consideration before the DPC and disciplinary/criminal proceedings are not concluded. Further, such consideration is also subject to satisfaction of the competent authority that public interest is not affected if he is granted promotion. The claim of petitioner falls into category-(iii). As noted above, from the averments of the affidavit filed in support of writ petition, petitioner is coming up for consideration for promotion for the first time. Therefore, the exemption carved out in G.O.Ms.No.257 is also not attracted to the case of petitioner.

13. As noted by this Court in **Jalender Reddy**, the policy of the Government is clear and unambiguous; that the Government does not grant promotion even on *ad hoc* basis when the allegations levelled against the employee/officer are grave and that such employee/officer is facing enquiry/trial/investigation.

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/investigation into criminal misconduct/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 /investigation/ 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 in view of pending disciplinary proceedings/criminal proceedings.

15. On review of precedent decisions, this Court noticed that issues considered in the precedent decisions can be classified into three categories. In the first category of cases, issue considered by the Supreme Court was when entitlement of an employee can be deferred; in the second category of cases, Supreme Court was considering the situation when entitlement of an employee for promotion can be deferred even though a formal charge sheet was not issued and in the third category of cases, Supreme Court dealt with situations where though charge sheet was issued there was inordinate delay in initiation/conclusion of disciplinary proceeding and the course that should be adopted by the Courts. Dealing with third category, this Court noted as under:

“64. **State of Punjab and others v. Chaman Lal Goyal**²; **P.V.Mahadevan v M.D., T.N.Housing Board**³; **State of A.P., v. N.Radhakishan**⁴; and **Government of Andhra Pradesh and others v. V.Appala Swamy**⁵; fall into this category. Other cases discussed above deal with delay in initiating and concluding the disciplinary proceeding only and do not deal with entitlement for promotion. In this category, principle deducible from the above precedent decisions is that in case of abnormal delay in initiation/conclusion of disciplinary proceedings and the delay is not satisfactorily explained by the employer,

² (1995) 2 SCC 570

³ (2005) 6 SCC 636

⁴ (1998) 4 SCC 154

⁵ (2007) 14 SCC 49

court is required to consider several relevant factors, apply 'balancing test or balancing process' and pass such appropriate order as court finds just and equitable in the circumstances of a case (**Chaman Lal Goyal**). In this category of cases wherever it was found that the delay in initiation / conclusion of disciplinary proceedings is unreasonably long, direction was issued to consider the employee for promotion without reference to and without taking into consideration the charges or the pendency of the enquiry.

65. As can be seen from the precedent decisions referred to above, it is desirable for the disciplinary authority to conclude the disciplinary proceedings within the fixed time frame. The orders of the Government in G.O.Ms.No.679 give guidance to the disciplinary authority to conclude the disciplinary proceedings within reasonable time. However, merely because disciplinary proceedings are not concluded within the time fixed, it does not automatically invalidate the disciplinary action and each case has to be seen in accordance with the parameters laid down by the Supreme Court in **V.Appala Swamy** (supra). However, even while upholding the disciplinary action, court may consider issuing direction to consider for promotion, depending on the facts of the case, nature of allegations leveled, reason for delay and the policy of the employer.

66. At this stage it is appropriate to note the observations of the Supreme Court in **Chaman Lal Goyal**. Supreme Court observed, "*At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. **This direction is made in the particular facts and circumstances of the case though we are aware that the rules and practice normally followed in such cases may be different.***"

16. Merely because disciplinary proceedings are not concluded within the time fixed, it does not automatically invalidate the disciplinary action and each case has to be seen in accordance with parameters laid down by the Supreme Court in **V.Appala Swamy** (supra). In this case, though, learned counsel for petitioner sought to contend that charges are vague and there is inordinate delay in initiation of disciplinary proceedings, the charge memo is not under challenge and relief sought is confined to consideration for promotion without reference to disciplinary proceedings, therefore, Court cannot express any opinion at this stage nor call upon the respondents to explain the reasons for delay in initiation of disciplinary proceedings and vagueness of charges.

17. According to petitioner, he is coming up for consideration for promotion for the first time. It is not known whether petitioner would be considered for promotion and promotion would be deferred due to pending disciplinary proceedings. By the time writ petition was filed, DPC was not held and petitioner was apprehending that DPC was scheduled to be held on 30.6.2018 and he would not be considered for promotion. Thus, by the time, writ petition was instituted, the claim itself was premature. Judicial review is available only when a decision is taken affecting the right of employee. In anticipation of consideration or non-consideration, petitioner cannot invoke jurisdiction of this Court. It cannot be said that grave prejudice would be caused, even if promotions are affected without considering him and which cannot be remedied later, to entertain the writ petition at this stage. The claim for promotion can be examined only after the decision is

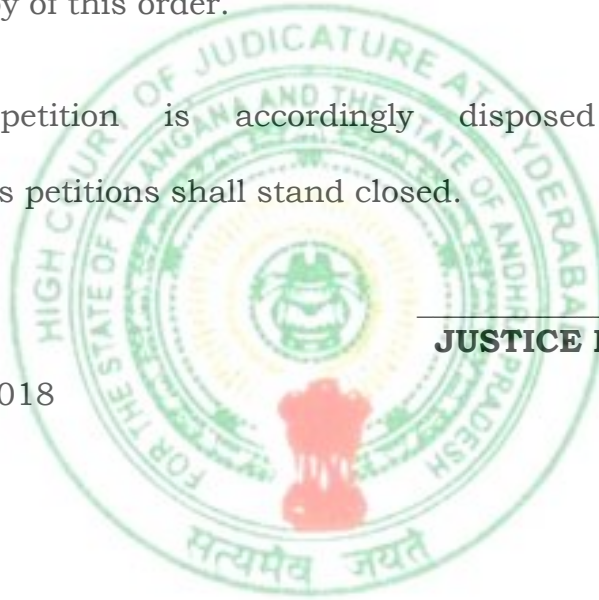
taken by the competent authority, granting or refusing such promotion and cannot mandate the competent authority to act in a particular- manner even before he takes a decision.

18. Admittedly, charge memo was issued on 15.06.2017; petitioner filed his explanation; not satisfied with the explanation, Enquiry Officer was appointed to conduct enquiry. By applying '*balancing test or balancing process*', the respondents are directed to conclude the disciplinary proceedings as expeditiously as possible, preferably within a period of four months from the date of receipt of copy of this order.

19. Writ petition is accordingly disposed of. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date:03.07.2018
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