

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

WRIT APPEAL No.1017 of 2018

JUDGMENT: (ORAL)

(Per Suresh Kumar Kait, J)

Heard Smt. Ch. Lakshmi Kumari, learned standing counsel appearing on behalf of the appellants as well as the learned counsel for the respondent and with their consent the appeal is being disposed of at the admission stage.

2. Vide the present appeal, appellants have challenged order dated 05.06.2018 passed in W.P.No.24768 of 2003, whereby the petition filed by the respondent has been allowed.

3. The present appeal is filed on the ground that the promotion order dated 25.08.2000 was cancelled by Zonal Office vide ZO O.O.No.489/2000/E1 dated 07.12.2000 and by virtue of the cancellation, earlier promotion order was not subsisting. The cancellation proceedings mentioned above was not challenged by the writ petitioner and no reply affidavit was filed, disputing the cancellation of the proceedings; thus, the writ petition was not maintainable.

4. Learned standing counsel for the appellants submits that before the promotion order was implemented and before the promotional post occupied, disciplinary action was taken and punishment was imposed; therefore, promotion order dated 25.08.2000 was not implemented. She further submits that promotion is not a matter of

right. The selected candidate need not necessarily be given promotion and due to subsequent misconduct of the respondent, promotion has been postponed. The aforesaid fact has been ignored by the learned single Judge while allowing the writ petition filed by the respondent.

5. The respondent joined the service of the Food Corporation of India on 12.11.1976 as Technical Assistant Grade-III and promoted to Grade-II w.e.f. 31.12.1984 and further promoted to Grade-I by order dated 25.08.2000 of the 1st appellant, but the said order was not implemented by the Regional Office. While so, the respondent was served with memo dated 26.08.2000 on the ground that admixture percentage in rice was more, while he was working as Technical Assistant Grade-II in Srikakulam District. Accordingly, the respondent submitted his explanation. However, not being satisfied with the explanation offered by the respondent and without conducting any enquiry, the disciplinary authority by order dated 29.11.2000 imposed penalty of reduction of pay by one stage in the time scale of pay attached to the post of Grade-II for a period of two years without cumulative effect. Being aggrieved, the respondent filed appeal. The appellate authority confirmed the punishment imposed by the disciplinary authority, against which the respondent filed W.P.No.19342 of 2001, which was pending for adjudication. Meanwhile, the respondent was promoted as Grade-I Technical Assistant by order dated 25.08.2000. Thereafter, he was issued with charge memo dated 26.08.2000.

6. It is not in dispute that on the date of promotion, i.e., 25.08.2000, no charge memo was pending against the respondent. Therefore, the action of the appellants in imposing penalty of reduction of pay by one stage in the time scale of pay attached to the post of Grade-II for a period of two years without cumulative effect is contrary to the settled position of law.

7. It is pertinent to note here that when the respondent was working as Technical Assistant Grade-II, a memo dated 07.07.2000 was issued calling for his explanation within one week from the date of receipt of the said memo. The respondent offered his explanation on 19.07.2000. While forwarding his explanation to the District Manager, the Assistant Manager recommended that a lenient view may be taken for the dropping of the memo. However, no action was taken against the respondent. In the meanwhile, as per proceedings dated 25.08.2000, the Assistant Manager (EI) for Zonal Manager (S) issued an office order, promoting 151 Selection Grade/Assistant Grade-II (Technical) staff to the post of Assistant Grade-I (Technical) in the IDA scale. The respondent's name found place at Sl.No.47 in the list.

8. Undisputed fact is that, in the aforesaid order, it was mentioned that the promotions are subject to regional vigilance clearance and without prejudice to the claims of the officers/officials who may be seniors to them and will take effect from the date of reporting to duty in the place of posting. However, insofar as the respondent is concerned, the vigilance clearance could not have been a hurdle

because no charge memo was framed or served on him by the date of promotion i.e. 25.08.2000. The charge memo dated 26.08.2000 was issued only subsequently. Therefore, for all practical purposes, his promotion has taken effect on 25.08.2000. The subsequent charge memo, which, no doubt, culminated into minor penalty, cannot be pressed into service retrospectively to withhold the promotion given on 25.08.2000.

9. In that view of the matter, the learned single declined to accept the contention of the appellants-authorities that the promotion of the respondent was withheld as he was facing charges and allowed the writ petition filed by the respondent and directed the appellants to promote the respondent as Technical Assistant Grade-I w.e.f. 25.08.2000 and grant all consequential benefits including pay and seniority.

10. In view of the above discussion and the settled law, we find no ground to interfere with the order of the learned single Judge.

11. Writ appeal is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending, stand closed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

July 31, 2018
MRR