

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.28210 OF 2018

Date: 13.08.2018

Between:

Smt Narseen Banu w/o. Md.Mustaq Ahmed,
Aged 35 years, occu: Town Planning Supervisor,
Nirmal Municipality, Nirmal District, Telangana
State.

.....Petitioner

and

The State of Telangana, rep.by Principal Secretary,
Municipal Administration, Secretariat, Hyderabad
and another

.....Respondents



The Court made the following:

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ORDER:

Petitioner is presently working as Town Planning Supervisor and aspiring for promotion as Town Planning Officer. As per the final seniority list of Town Planning Supervisors, his name stands at Sl.No.26. The DPC was constituted to consider eligible Town Planning Supervisors for promotion. Name of the petitioner was included for consideration. However, DPC has not considered him for promotion on the ground that charges are pending against him. Hence, this writ petition.

2. According to learned counsel for petitioner, petitioner earlier worked as Town Planning Building Overseer in Adilabad Municipality and later transferred to Nirmal Municipality. By proceedings dated 03.09.2015, the Commissioner, Nirmal Municipality, work allotment was made. In terms thereof, petitioner worked under the supervision of Assistant City Planner. The charge memo vide G.O.Rt.No.488, Municipal Administration & Urban Development [Vig.I(2)] Department, dated 21.06.2018 refers to the period from the year 2005 and allegations leveled against her are vague and unsubstantiated. There is no truth in the allegations made. Learned counsel also submitted that charge memo refers to the instances of the year 2014, whereas during that period petitioner was not worked in Nirmal Municipality. Based on those allegations, petitioner is now deprived promotion as per the seniority.

3. Learned Government Pleader submitted that as charges are already drawn and communicated to the petitioner as per the

policy of the Government as reflected in G.O.Ms.No.257, General Administration (Ser.C) Department, dated 10.06.1999, petitioner is not entitled for promotion until petitioner is cleared of the charges.

4. The issue for consideration, in the facts of this case whether petitioner entitled to relief of promotion without reference to pending disciplinary proceedings.

5. In **A. Jalender 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 were pending at various stages, such as, though charge memo was issued but delay in conclusion of disciplinary proceedings; crime was registered but investigation is not completed; investigation was 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.

6. 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)

¹ 2017(4) ALD 538

Department dated 25.5.1976 and G.O.Ms.No.257 General Administration (Ser.C) Department, dated 10.6.1999.

7. 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.

8. 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.

9. 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.

10. 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. 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.

11. 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.

12. 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.

13. In **Jalander Reddy** this court noticed that even if 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 **Government of Andhra Pradesh and others v. V.Appala Swamy**² and if there is inordinate delay not attributable to petitioner direction to consider for promotion may be granted without reference to pending disciplinary proceedings. Thus, such course is an exception to normal rule. In this case, though, learned counsel for petitioner sought to contend that charges are vague, there is inordinate delay in initiation of disciplinary proceedings and that she is not concerned with the allegations levelled, the charge memo is not under challenge and relief sought is confined to consideration for promotion without reference to disciplinary proceedings, therefore, Court cannot

² (2007) 14 SCC 49

express any opinion on the merits of the said contentions at this stage nor call upon the respondents to explain whether charges are validly made, how sustainable, the reasons for delay in initiation of disciplinary proceedings and vagueness of charges.

14. The only issue for consideration in the writ petition is whether petitioner is entitled for promotion while disciplinary proceedings are pending. It is also appropriate to note that charge memo dated 21.6.2018 was served on the petitioner on 07.08.2018 and petitioner is yet to submit her explanation. It is not the case of petitioner that DPC was held prior to drawing of charge memo. At any rate, as of now, charge memo is already drawn, and disciplinary action is pending. On a bare look at the charges it cannot be assumed that there is inordinate delay in initiating disciplinary proceedings warranting invoking exception carved out in third category of cases notice by this Court in **A. Jalander Reddy** and to direct consideration for promotion without reference to pending disciplinary action. In this case, before ink is dried on the charge memo petitioner wants her to be considered for promotion without reference to pending disciplinary action.

15. In the facts of this case petitioner is not entitled to relief sought. Writ Petition is accordingly dismissed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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