

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL No.1365 OF 2018

JUDGMENT: (per SK,J)

The appellant is the petitioner in W.P.No.21918 of 2018. His prayer therein was to consider his case for promotion to the post of District Schedule Castes Development Officer (DSDO) without reference to the Charge Memo dated 15.06.2017. By order dated 03.07.2018, a learned Judge of this Court disposed of the said writ petition directing the respondents to conclude the disciplinary proceedings within a time frame. The present appeal is filed by the appellant-petitioner contending that his case may be considered for promotion to the post of DSDO even during the pendency of disciplinary proceedings in terms of G.O.Ms.No.257, General Administration (Ser.C) Department, dated 10.06.1999.

Paragraph 12 of the order under challenge reflects that the learned Judge was of the opinion that an officer falling into category (iii) of the said G.O.Ms.No.257 dated 10.06.199 can be considered for promotion on *ad hoc* basis only if he came up for consideration for promotion for the first time two years prior to such consideration before the Departmental Promotion Committee and disciplinary/criminal proceedings were not concluded. As the appellant-petitioner was coming up for consideration for promotion for the first time, the learned Judge held that the exemption carved out in the said G.O. was not attracted to the case of the appellant-petitioner.

However, as rightly pointed out by Sri S.Satyanarayana Rao, learned counsel, we find that the stipulation with regard to the expiry of two years for consideration of an employee for *ad hoc* promotion was

stipulated in G.O.Ms.No.74, General Administration (Ser.C) Department, dated 24.02.1994, but the said G.O. stood cancelled *vide* G.O.Ms.No.257 dated 10.06.1999.

The procedure and guidelines to be followed while considering the cases of employees for promotion, against whom disciplinary proceedings or criminal prosecution are pending, are set out in Para 5 of G.O.Ms.No.257 dated 10.06.1999. The said guidelines do not require expiry of two years after initiation of the disciplinary proceedings as a condition precedent for consideration of the candidature of the employee concerned, who is facing disciplinary proceedings or criminal prosecution.

We are of the considered opinion that when the Government prescribed guidelines to be followed in cases involving the candidature of employees for further promotion who are subjected to either disciplinary proceedings or criminal proceedings, it is for the authorities concerned to apply the said guidelines in the first instance and only if the validity of such application is sought to be challenged, a Court of law would be entitled to review the same. It appears that the learned Judge lost sight of this aspect and misapplied the guidelines prescribed in G.O.Ms.No.257 dated 10.06.1999.

Learned Government Pleader for Services, State of Andhra Pradesh, would also concede that the case of the appellant-petitioner would have to be considered in terms of G.O.Ms.No.257 dated 10.06.1999.

On the above analysis, the writ appeal is allowed setting aside the order dated 03.07.2018 passed by the learned Judge in W.P.No.21918 of 2018. There shall be a consequential direction to the respondents to consider the candidature of the appellant-petitioner for further promotion

in accordance with the provisions of G.O.Ms.No.257 dated 10.06.1999 as and when such promotions are taken up.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

Date:05.12.2018

GJ

