

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION (TR) NOs.73 & 812 OF 2017

COMMON ORDER:

These two writ petitions are being disposed of by way of common order as the issue raised in these two writ petitions is one and the same.

For convenience sake, the facts in W.P.(TR.)No.812 of 2017 are hereunder discussed.

The petitioner had contended that he is fully eligible and qualified for promotion to the post of Research Officer in Soil Mechanics Lab and he is entitled for notional promotion with effect from 05.02.2003, but the respondents have not considered his case of promotion with effect from 05.02.2003. In this set of circumstances, the petitioner has filed O.A.No.1746 of 2007 before the then A.P. Administrative Tribunal at Hyderabad and the Tribunal vide orders dated 12.06.2008 was pleased to allow the O.A filed by the petitioner directing the respondents to consider the case of the petitioner for promotion to the post of Research Officer with effect from 05.02.2003. The petitioner further contends that aggrieved by the orders passed by the Tribunal in the said O.A., the respondents preferred W.P.No.20186 of 2008 before this Court and this Court dismissed the said writ petition vide orders dated 22.09.2008. Thereafter, the petitioner has filed a Contempt Case, as the respondents were not implementing the orders passed by the Tribunal which was subsequently confirmed by this Court in W.P.No.20186 of 2008. The petitioner further contended that only when a contempt case is filed, the respondents have complied with the orders passed by the Tribunal in O.A.No.1746 of 2007 dated 12.06.2008 vide proceedings dated

17.02.2009 and he was promoted as Research Officer with effect from 05.02.2003.

The petitioner also contended that the order of the Tribunal is binding on him as well as the respondents and the respondents have implemented the orders passed by the Tribunal. But, very strangely, the respondents have issued proceedings dated 17.07.2013 revising promotion of the petitioner to the post of Research Officer with effect from 18.02.2009 instead of 05.02.2003 on the ground that as per Government Memo dated 21.06.2011, there is no rule for giving promotion from the date of arising vacancies. Challenging the same, W.P. (Tr.) No.812 of 2017 is filed.

Learned counsel for the petitioner had contended that when once the respondents have suffered an order in O.A.No.1746 of 2007 on 12.06.2008 and it was also confirmed by this Court in W.P.No.20186 of 2008, the respondents ought not to have issued the impugned memo dated 17.07.2013 denying the benefit already extended in favour of the petitioner. Therefore, the impugned memo dated 17.07.2013 is liable to be set aside.

Learned Government Pleader appearing for the respondents had contended that the respondents have complied with the orders passed by the Tribunal under the threat of Contempt and after implementing the orders passed by the Tribunal, the respondents have reviewed the case of the petitioner in terms of Government memo dated 21.06.2011 and held that the petitioner is not entitled for notional promotion and that his case cannot be considered for promotion from the date of arising vacancy. Learned Government Pleader, therefore, contends that the impugned

orders are passed as per Rules and this Court cannot interfere with the same.

This Court, having considered the rival submissions of learned counsel for respective parties, is of the considered view that when once the respondents have complied with the orders passed by the Tribunal in O.A.No.1746 of 2007 dated 12.06.2008, they cannot take away the benefit of the said orders, which was also confirmed by this Court in W.P.No.20186 of 2008. The respondents cannot be allowed to take away the benefit in the form of impugned orders, more so by invoking the Government Memo. Therefore, this Court is of the considered view that the impugned orders are contrary to law and also contrary to the orders passed by the Tribunal which were confirmed by this Court. Hence, the impugned orders are liable to be set aside and are accordingly set aside.

The writ petitions are accordingly allowed with all consequential benefits. No order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

22nd April, 2019
v v