

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION (TR) No.5637 of 2017

ORDER :

This writ petition is filed seeking *Mandamus* to declare the entire action of the respondents herein, particularly the entire action of respondent No.1, in not considering the genuine claim of the petitioner for promotion to the post of Senior Assistant inspite of availability of vacancies and repeated representations from the petitioner to that effect and expressing orally that the petitioner earlier on 22.11.2011 made a representation that he is not willing to take promotion as Senior Assistant, as arbitrary, illegal and violative of the principles of natural justice and contrary to the judgment of this Court in *M.V.R.L.S. RAVIKANTH v. STATE OF ANDHRA PRADESH AND OTHERS*¹ and sought a consequential direction to the respondents to forthwith consider the case of the petitioner for promotion to the post of Senior Assistant with effect from the day on which his juniors were promoted after his representation dt.15.11.2014 with all consequential benefits.

Heard Sri S. Satyanarayana Rao, learned counsel for the petitioner and the learned Government Pleader for Services-II.

It has been contended by the petitioner that he is working as a Junior Assistant in Commercial Taxes Department and he

¹ 2018 (1) ALD 550 (DB)

is fully eligible and qualified to be promoted as Senior Assistant. The petitioner submits that while he was working as a Junior Assistant, he was promoted to the post of Senior Assistant during August, 2011 and the petitioner has submitted a representation dt.22.08.2011 requesting the respondent authorities to cancel his promotion as he was unwell and the respondents are not considering the case of the petitioner for promotion to the post of Senior Assistant in the subsequent years also treating that the petitioner has permanently relinquished his promotional avenues.

Learned counsel for the petitioner submits that the contention of the respondents that the petitioner has permanently relinquished his promotional avenues is contrary to the judgment rendered by this Court in M.V.R.L.S. RAVIKANTH's case (supra), wherein this Hon'ble Court at para Nos.12 and 13 held as under:

“12. The relinquishment of an opportunity for promotion, which arose for an employee occupying certain place in seniority list, in view of vacancy that arose then, in view of the fact that he/she was eligible for promotion in the light of the criteria laid down in the Rules, would mean that the extent the privilege has been relinquished is confined to the privilege related to that particular vacancy which was available to him/her by virtue of the above mentioned circumstances. The Rule cannot be interpreted to mean that the relinquishment was in respect of future vacancies also. As far as that particular vacancy is concerned, the employee's relinquishment is final. He cannot claim later that he may be deemed to have been promoted to that particular vacancy and that his seniority may be fixed as if he was promoted to that vacancy. If a member of service, who has relinquished his promotion, at one

stage, is promoted subsequently when another vacancy arose, he will be junior to a person who was promoted to the vacancy relinquished by him in the promotion post and he cannot claim seniority over the said person.

13. In the light of the above discussion, we have no hesitation to hold that relinquishment of right or privilege of promotion to a particular vacancy would amount to permanent relinquishment of right or privilege of promotion to that particular vacancy. Rule 28 of the A.P. State and Subordinate Service Rules cannot be read or interpreted to mean that his right to be considered for promotion to any vacancy arising in future also is permanently extinguished. Such interpretation would lead to frustration and unrest in the service defeating the object of promoting efficiency and harmonious functioning.”

Learned counsel for the petitioner contents that the case of the petitioner has to be considered for promotion to the post of Senior Assistant in terms of the above said judgment of this Court.

On the other hand, the learned Government Pleader for Services-II submits that the case of the petitioner would be considered, if the petitioner submits a fresh representation and appropriate orders would be passed by the respondents in accordance with law.

This Court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered view that this writ petition can be disposed of directing the petitioner to submit a fresh representation within a period of two weeks from the date of receipt of a copy of this

order for promotion to the post of Senior Assistant, more particularly in terms of the judgment rendered by this Court in M.V.R.L.S. RAVIKANTH's case (supra) and upon such a representation being received, the respondents are directed to consider the same and pass appropriate orders in accordance with law within a reasonable period of eight (8) weeks from the date of receipt of a copy of this order.

With the above observations, this writ petition is disposed of. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, in this writ petition shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

11.11.2019.
Msr

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