

THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1254 OF 2020

DATED : 22.01.2020

Between :

Smt K.N.Nirmala Jyothi D/o.K.Nagamuni,
Age : 47 yrs, Occu : Gazetted Head Master,
Z.P.H.School Waddapally, Waddapally Mandal,
Jogulamba Gadwala District.

.....Petitioner

And

The District Educational Officer,
Mahabubnagar, Mahabubnagar District & others.

.....Respondents



The Court made the following:

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ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for Education for respondents.

2. Petitioner was initially appointed as School Assistant in Biological Science, pursuant to DSC 2002 selections in Mahabubnagar District. Petitioner belongs to Scheduled Caste community and claims to have secured 67.50 marks. In the year 2009 promotions were made to the post of Gazetted Headmaster in Zilla Parishad Schools. At that time, petitioner was not considered and she was granted promotion on 09.07.2015. Petitioner went on making representations to consider her, for promotion as Gazetted Headmaster on par with the persons, who secured less merit in DSC 2002 selections and who were granted promotions in the year 2009. Petitioner earlier filed W.P.No.127 of 2019 seeking direction to the respondents, therein, to dispose of the representation made by the petitioner on 03.05.2018. The said writ petition was disposed of, by order dated 04.01.2019, directing the respondents to consider the representation submitted by the petitioner on 03.05.2018 and to pass orders. On due consideration of the request of petitioner to grant promotion retrospectively and in compliance of the directions issued by this Court, the District Educational Officer (DEO) passed order on 22.11.2019, rejecting the request of petitioner to grant promotion as Gazetted Headmaster retrospectively.

3. Learned counsel for the petitioner submits that Smt K.Saraswathi, was appointed as School Assistant, in Mathematics, who secured 53 marks, was promoted in the year 2009, to the post of Gazetted Headmaster in an administrative post. Therefore, the combined seniority of all School Assistants should be made and promotions be affected based on the combined seniority list. He would further submit that combined seniority list of School Assistants to grant promotion as Gazetted Headmaster has to be made, basing on the merit secured in the School Assistant Category, irrespective of the discipline in which the candidate is selected. He would further submit that as petitioner secured 67.50 marks, far above the marks secured by Smt K.Saraswathi, petitioner has to be treated as meritorious and she ought to have been granted promotion when Smt K.Saraswathi was granted promotion ignoring the petitioner and granting promotion to Smt K.Saraswathi was illegal. Therefore, petitioner should be granted notional promotion retrospectively from the date of granting promotion to Smt K.Saraswathi.

4. It appears, from the averments made in the affidavit filed in support of writ petition, while effecting promotions in the year 2009, the date of joining in service was taken into consideration ignoring the merit secured. Admittedly, petitioner joined as School Assistant, later to the joining in service by Smt K.Saraswathi. This procedure may not be valid and merit alone would determine inter se seniority of direct recruits, the promotions granted in the year 2009, were never challenged and were allowed to become final. Petitioner did not protest the denial of her promotion earlier and accepted the promotion

granted in the year 2015. Later petitioner started agitating the claim for promotion, on the ground that she secured more merit in the DSC 2002 selections, compared to Smt K.Saraswathi and many others.

5. In other words, petitioner is now seeking retrospective promotion on par with Smt K.Saraswathi, on the ground that she secured more merit. Rule 23 of the Telangana State and Subordinate Service Rules, 1996 (for short 'the Rules'), vests right in aggrieved person to prefer appeal against promotion granted to others ignoring promotion of an employee. Rule 26 of the Rules, vests right to prefer appeal against seniority or any other conditions of service. The Rules prescribe limitation to prefer appeal. Petitioner did not choose to challenge the promotions granted, nor preferred appeal. Therefore, the claim made by the petitioner is a stale claim. Even assuming that there is merit in the contentions urged, no relief can be granted at this distance of time.

6. Further the affected parties are not impleaded in the writ petition. No person can be granted notional promotion unless vacancy is available and a review of eligibility is made. If there is no vacancy, the person junior most would have to be reverted to accommodate the claim of person who was ignored for promotion earlier. Thus, notional promotion is not automatic. There cannot be promotion retrospectively, which would result in promotion of more than one person against one post. Thus, invariably, retrospective promotion would affect the person already promoted, which may also have impact on consideration of further claims to higher posts.

7. In matters concerning service disputes, the grievances have to be agitated soon after any grievance arises and an employee cannot keep quiet and start agitating about denial of service benefits much later. In service disputes Writ Court would be loathe to interfere, if grievance is agitated after long delay, not satisfactorily explained, granting of relief would affect other employees, more so when they are not made parties and would unsettle settled issues.

8. Therefore, for all the aforesaid reasons, the prayer in the writ petition cannot be granted and the writ petition is liable to be dismissed.

9. Accordingly, the Writ Petition is dismissed. Pending miscellaneous petitions, if any, shall stand closed.

22nd January, 2020
Rds

P.NAVEEN RAO,J

