

(2011) 09 AP CK 0044

In the Andhra Pradesh High Court

Case No : Writ Petition No 13359 of 2011

B. Madusudan Reddy, A.P. State Housing Corporation Ltd.,
Tirupathi, Chittoor District. A.P.

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Citation : (2011) 09 AP CK 0044

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : T.K. Anuradha, for the Appellant; T. Sudhakar Reddy Counsel for the Respondent No. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Mr Justice L. Narasimha Reddy

1. The petitioner is working as Assistant Engineer in the A.P. State Housing Corporation (for short "the Corporation"), the 2nd respondent herein. The Anti Corruption Bureau (ACB), of the State of Andhra Pradesh caused verification of the assets of the petitioner. Alleging that the assets held by him are disproportionate to his known sources of income, it caused the arrest of the petitioner. Taking the same into account, the 2nd respondent placed the petitioner under suspension, on 22-05-2008. Obviously, because there was no progress in the case registered by the ACB, the Government issued G.O.Rt.No.98, dated 08-04-2010, directing revocation of the suspension of the petitioner and consequential orders dated 28-04-2010 were issued by the 2nd respondent.

2. The promotions to the posts of Deputy Executive Engineers were taking place in the Corporation. The case of the petitioner was not being considered on the ground that proceedings initiated by the ACB are pending. The petitioner approached this Court by filing W.P.No.28625 of 2010, seeking direction to the

respondents to consider his case. The writ petition was disposed of, on 24-11-2010, directing that the respondents shall consider the case of the petitioner in accordance with the guidelines issued in G.O.Ms.No.257, dated 10-06-1999. In compliance with the said direction, the 2nd respondent considered the case of the petitioner and issued proceedings dated 30-03-2011, declining to place his case before the Departmental Promotion Committee on the ground that a case involving in moral turpitude is pending. The said order is challenged in this writ petition.

3. On behalf of the respondents, a counter-affidavit is filed. It is stated that the petitioner was found to be possessing assets worth Rs. 58,49,043/-, and on finding that the same are disproportionate to his known sources of income, proceedings were initiated. He submits that the case of the petitioner was considered strictly in accordance with the guidelines, in G.O.Ms.No.257, dated 10-06-1999, as directed by this Court, and the impugned order is passed.

4. Smt. T.K. Anuradha, learned counsel for the petitioner submits that, as of now, no disciplinary proceedings are initiated against the petitioner by the 2nd respondent, nor any charge-sheet was filed by the ACB, invoking or citing any provision of law. She contends that G.O.Ms.No. 257 clearly mandates that, unless a charge-sheet is filed or criminal case, involving offences of moral turpitude, is instituted, an employee cannot be denied the benefit of promotion. According to her, quite large number of juniors to the petitioner were promoted. She submits that the impugned order does not accord with G.O.Ms.No.257, dated 10-06-1999.

5. Sri T. Sudhakar Reddy, learned counsel for the respondents 2 and 3, on the other hand, submits that the very basis for suspension of the petitioner is the alleged possession of assets, disproportionate to his known sources of income, and that, if proved, the same would constitute an offence, involving moral turpitude.

6. It is a matter of record that the petitioner was placed under suspension on being arrested by the ACB, and that the order of suspension is revoked by the Government itself, through G.O.Ms.No.98, dated 08-04-2010. The grievance of the petitioner is about non-consideration of his case for promotion.

7. In any department of the Government, or for that matter, any organization, promotion of employees take place periodically, and it is a continuous process. Wherever the consideration for promotion, be it, on the basis of seniority alone, or by way of selection, it would be confined to the incumbents in the immediately inferior category of posts. The zone of consideration would depend upon the parameters, that are stipulated for promotion. Seniority plays a pivotal role in this regard. Where, however, an employee in the feeder category is facing disciplinary proceedings, certain complications arise. The disciplinary proceedings against an employee commence with the service of charge-sheet. In many cases, the disciplinary proceedings are not concluded within a short time. If an occasion

arises for making promotions, even while the disciplinary proceedings are pending, the employees facing disciplinary proceedings are omitted from consideration, in the context of promotion, and this naturally led to several complications.

8. On a consideration of the issue, the Government issued guidelines, from time to time, in this regard; to start with, through G.O.Ms.No.424, GA (Ser.C) Department, dated 25-05-1976. The purport thereof is that, mere pendency of disciplinary proceedings cannot be a ground, not to consider an employee for promotion. It was also directed that, even while an employee is facing disciplinary proceedings, his case must be considered for promotion, and if he is ultimately found fit, the issuance of orders of promotion must be deferred, till the conclusion of the proceedings, and depending on the outcome thereof, the further steps shall be taken. If an employee is exonerated from charges, he shall be issued orders of promotion, with effect from the date on which, his immediate junior was promoted.

9. The matter pertaining to this is reviewed, and through G.O.Ms.No.257, General Administration, dated 10-06-1999, the Government issued fresh guidelines. To the extent they are relevant for the purpose of this case, the guidelines read,

A. The details of employees, in the zone of consideration for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee of Screening Committee:-

(i) Officers under suspension;

(ii) Officers in respect of whom prosecution for a criminal charge is pending.

B. Officers who are facing enquiry, trial or investigation can be categorized into the following groups based on the nature of the allegations of charges pending against them or about to be instituted namely:-

(i) an officer with a clean record, the nature of charges or 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 have been promoted, irrespective of the allegations or 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.

Para-6. The appointing authority should consider and decide that it would not be against public interest to allow ad hoc promotion to the officer concerned and this shall be decided with reference to the charge under enquiry. If the charge is one of moral turpitude, misappropriation, embezzlement and grave dereliction of duty then the appointing authority should consider as not in the public interest to

consider ad hoc promotion to such charged officer. But, however, if the charge is not a grave one but is a minor one, not involving moral turpitude, embezzlement and grave dereliction of duty then only in such cases the appointing authority should consider that it would not be against public interest to allow ad hoc promotion because till then his record is clean with reference to ACRs past punishment and reputation in the department as vouchsafed by the Head of the Department and Secretary to Government. The appointing authorities should strive to finalise the disciplinary cases pursuing them vigorously so that within two years the proceedings are concluded and final orders issued.

10. When the case of the petitioner was not considered, he approached this Court, by filing W.P.No.28625 of 2010, and the writ petition was disposed of on 24-11-2010, directing that the case of the petitioner be considered in terms of G.O.Ms.No.257, dated 10-06-1999. The 2nd respondent, however, rejected the case of the petitioner through impugned proceedings on the ground that the petitioner is facing a case, involving moral turpitude, obviously treating the case as the one, falling under paragraph 6 of the CO., extracted above.

11. A close scrutiny of the facts of the case discloses that the petitioner is not under suspension, nor any disciplinary proceedings were initiated against him. Except that he was arrested and thereafter released, even the prosecution was not launched by filing a charge-sheet. In paragraph 6 of the G.O.Ms.No.257, dated 10-06-1999, the emphasis is to ensure that at least ad hoc promotion is extended to the officer concerned, even where enquiry is pending. It is only when an employee is facing a charge, involving moral turpitude, misappropriation, or grave dereliction of duty, that even ad hoc promotion can be denied to an officer.

12. The question, as to whether the charge against an employee or officer involves moral turpitude, would arise, if only a charge is framed either in the disciplinary proceedings, or in the criminal case. It is not at all safe to look to any other source or material to form an opinion, whether the charge involves moral turpitude. Viewed in this context, the petitioner cannot be said to be facing a charge of moral turpitude. When that is so, he was entitled to the benefit of first part of paragraph 6 of the G.O.Ms.No.257, dated 10-06-1999.

13. Hence, the writ petition is allowed, and the impugned order is set aside. The respondents 2 and 3 are directed to consider the case of the petitioner by taking into account, the fact that the petitioner is not under suspension, nor a charge, involving moral turpitude, is framed against him. This exercise shall be completed within four weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.