
(2008) 06 AP CK 0027

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22286 of 1999

General Manager, S.C. Railway and Others

APPELLANT

Vs

G. Kameswara Rao and Another

RESPONDENT

Date of Decision : 18-06-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 5 ALD 785

Hon'ble Judges : Ghulam Mohammed, J;C.V. Ramulu, J

Bench : Division Bench

Advocate : R.S. Murthy, for the Appellant; Abhinand Kumar Shavili, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Ramulu, J.—This writ petition has been directed against the order made in O.A. No. 455 of 1997 dated 6.1.1999 (as amended on 2.2.1999) on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

2. The 1st respondent, who is the applicant in O.A. No. 455 of 1997 before the Tribunal, was an employee of erstwhile Nizam State Railways in the Grain-Shop Department and upon abolition of Grain shop Department, the 1st respondent was absorbed in the Indian Railways and was deputed as Commercial Clerk, and thereafter he was transferred as Office Clerk.

3. It appears, the petitioners have published seniority list dated 25.3.1987 showing the respondent No. I at serial No. 14. In fact, the respondent No. I was promoted as O.S. Grade II with retrospective effect. While that being so, the impugned order was passed cancelling the promotion of the respondent No. I as O.S. Grade II, and the same was challenged before the Tribunal. The Tribunal, after going through the entire pleadings and arguments on both sides, found that the petitioners having issued letter dated 18.3.1987, cannot go back and say that the seniority of the respondent No. I was not correctly fixed, particularly

after giving promotion to the level of O.S. Grade II and that the cancellation was done after eight years i.e., on 30.10.1995 stating that promotion to Senior Clerk as ordered by memorandum dated 30.12.1987 stands cancelled. In the memorandum dated 30.10.1995 there was no whisper in regard to the cancellation of the seniority position as conveyed to him by letter dated 18/25.3.1987. Therefore, without cancelling the revision of seniority which was conveyed to him by letter dated 18/25.3.1987, the authorities cannot cancel his promotion to Senior Clerk and also to higher grades. The Tribunal further found that cancellation of the seniority position as fixed by letter dated 18/25.3.1987 after a lapse of about 8 years is unwarranted in view of the Supreme Court judgment that "settled position of the seniority cannot be unsettled.

4. Therefore, the impugned order was set aside and it was declared that the respondent No. 1 is entitled for promotion as O.S. Grade I from the date when his immediate junior was promoted. Since the respondent No. 1 has not worked as O.S. Grade I, it was observed that the respondent No. 1 is entitled for promotion as O.S. Grade I from the date when his immediate junior was promoted and his pay in the OS Grade I should be fixed notionally from the date his immediate junior was promoted. However, his pension and pensionary benefits were ordered to be fixed on the basis of the said notional promotion. Thus, the O.A. preferred by the applicant-respondent No. 1 was allowed. Hence, this writ petition.

5. Sri R.S. Murthy, learned Standing Counsel appearing on behalf of the writ petitioners strenuously contends that the respondent No. 1 gave an undertaking on 8.11.1956 when he was sought to be converted and allotted from Commercial Clerk to that of Office Clerk and therefore the respondent No. 1 is not entitled for seniority from the date of his initial appointment in the Grain Shop Department of erstwhile Nizam's State Railway. This argument though appears to be very attractive, but it does not hold water since as early as in the year 1987 the respondent No. 1's seniority was fixed and he was shown at serial No. 14, vide letter dated 18/25.3.1987 and his seniority counts from 16.3.1951 onwards. That apart on the basis of the very seniority list dated 18/25.3.1987 the respondent No. 1 was promoted and thereafter he was further promoted to O.S. Grade II as well as Grade I. What was the reason for cancellation of promotions given to the respondent No. 1 and refusing his seniority as a result of the promotion is not known, except saying that the respondent No. 1 has given a consent/undertaking at the time of his appointment in the post of Clerk in the present department. The respondent No. 1 retired from service on 31.12.1987 i.e., one day after the respondent No. 1 was promoted to O.S. Grade I. Now that is sought to be unsettled by way of putting some unreasonable arguments and raking up the issue eight years after the " promotion, which is nothing but unreasonable and atrocious. It is not the case of the respondent No. 1 that he did not work in those posts nor he is seeking promotion to those posts after his retirement. We are of the view that the Tribunal has not committed any error calling for interference of this Court under Article 226 of the Constitution of India. The writ petition is

devoid of merits and is liable to be dismissed.

6. Accordingly, the writ petition is dismissed. No costs.