

(2014) 07 AP CK 0090
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 12 of 2005

K. Sanjeeva Rao	Vs	APPELLANT
The Government of India		RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Citation : (2014) 07 AP CK 0090

Hon'ble Judges : M. Satyanarayana Murthy, J; L.N. Reddy, J

Bench : Division Bench

Advocate : Srinivasa Rao Bodduluri, Advocate for the Appellant; P. Vishnuvardhan Reddy, (Asst. Sol. Gen.) and K. Srinivasa Murthy, Advocate for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner in Writ Petition No. 26661 of 1995 filed this writ appeal aggrieved by the dismissal of the writ petition by the learned single Judge through order dated 06-02-2004.

2. For the sake of convenience, the parties are referred to as arrayed in the writ petition.

3. Briefly stated, the facts are that the petitioner joined the service of the Visakhapatnam Port Trust and by 1983 he was working as a Deputy Controller of Stores. Disciplinary proceedings were initiated against him in relation to purchase of a fire engine. After conducting domestic enquiry, the disciplinary authority i.e., the Chairman, Visakhapatnam Port Trust, the 2nd respondent herein passed an order dated 25-02-1983 imposing the punishment of reduction of pay to a lesser scale for a period of two years. Even while the punishment was in force, the respondents have undertaken the exercise for making promotions to the post of Controller of Stores. The petitioner filed Writ Petition No. 2138 of 1986 with a prayer to direct the respondents to consider his case for appointment on regular basis to the post of Controller of Stores. By the time the

said writ petition was taken up for hearing, the petitioner filed Writ Petition No. 1374 of 1988 challenging the order of punishment.

4. Writ Petition No. 2138 of 1986 was disposed of on 06-04-1988 directing that the case of the petitioner shall be reviewed by the respondents in case Writ Petition No. 1374 of 1988 filed by him challenging the order of punishment is allowed.

5. The petitioner filed Contempt Case No. 387 of 1993 stating that the directions issued in Writ Petition No. 1374 of 1988 were not complied with. The contempt case was closed through order dated 31-01-1994 taking on record, the representation made on behalf of the respondents that the case of the petitioner was reviewed after disposal of Writ Petition No. 1374 of 1988 and that he was not found suitable. It was left open to the petitioner to challenge the order of refusal to promote him. Thus, the petitioner filed Writ Petition No. 26661 of 1995.

6. The petitioner pleaded that his case was not considered during the pendency of Writ Petition No. 1374 of 1988 and despite the direction issued in Writ Petition No. 2138 of 1986, his case was not considered. He contended that the appointing authority did not constitute any DPC and simply a proposal was submitted to the Central Government seeking permission to create a supernumerary post for the petitioner and stating that the Central Government did not accord such permission, promotion was not given. He also cited the instance of promotion of his junior to the post of Controller of Stores.

7. The respondents stated that the appointing authority is the 1st respondent and it is for them to undertake necessary exercise for promotion. It was also pleaded that once the 1st respondent found that the petitioner is not suitable, the question of his being considered once again does not arise.

8. Heard Sri Srinivas Rao Bodduluri, learned counsel for the petitioner and Sri K. Srinivasa Murthy, learned counsel for the respondents.

9. It was way back in the year 1983 that the punishment of reduction in pay scale was imposed upon the petitioner. The promotion to the next post was denied to him since he was undergoing punishment at the relevant point of time. In Writ Petition No. 2138 of 1986 this Court took the view that the case of the petitioner deserves to be considered in case Writ Petition No. 1374 of 1988 filed challenging the order of punishment is allowed. That eventuality took place on 06-11-1992 when Writ Petition No. 1374 of 1988 was allowed through an elaborate and detailed order. The petitioner no doubt was restored to original pay scale consequent upon allowing of Writ Petition No. 1374 of 1988. However, he was not promoted to the superior post though his junior by name J. Mohan Rao (respondent No. 3) was promoted. The petitioner filed Contempt Case No. 387 of 1993 in this behalf. The respondents pleaded that the case of the petitioner was considered but he was not found suitable. The contempt case was closed on 25-01-1994 leaving it open to the petitioner to challenge the order of refusal to promote him.

10. The 2nd respondent addressed letter dated 25-02-1995 to the petitioner by making reference to the order dated 25-01-1994 passed by this Court in the contempt case. The petitioner was informed that his case was reviewed after the order of punishment was set aside and that he was found not suitable for promotion. Beyond that, it was not stated as to when his case was considered and by whom. Except the communication dated 25-02-1995, the petitioner was not issued any proceedings or orders indicating that his case was considered and was rejected for any reasons.

11. Before the learned single Judge as well as this Court extensive submissions were made on behalf of the respondents that authority to appoint the Controller of Stores in the Port Trust is the Central Government and that the petitioner could not be promoted since the Central Government did not find him suitable. This does not appear to be correct. The petitioner filed a copy of the order dated 01-04-1986 issued by the 2nd respondent promoting Mohan Rao as Controller of Stores. There was not even a reference of any approval by the Central Government. It is also important to mention that specific mention was made in the said order that the promotion is subject to the result of Writ Petition No. 2138 of 1986. Curiously enough, in the contempt case, it was mentioned that the case of the petitioner was rejected by the 1st respondent. It is also important to note that the 2nd respondent noted that Writ Petition No. 1374 of 1988 was allowed. What all the 2nd respondent did was that he addressed a letter to the 1st respondent seeking permission to create a supernumerary post and to promote the petitioner in that post. The 1st respondent rejected that request. In other words, the 2nd respondent wanted to continue Mohan Rao, the junior of the petitioner in the post of Controller of Stores and wanted to accommodate the petitioner in a supernumerary post. That exercise obviously is totally untenable and the Central Government has rejected the same. The plea taken was that the promotion of the petitioner was not affected by the Central Government. The learned single Judge has taken the representation of the respondents to be correct.

12. If one takes into account the order dated 01-04-1986 in favour of Mohan Rao, the plea of the respondents becomes untenable. The contention that the Central Government is the appointing authority is belied by another fact that even a person holding the post of Chief Materials Manager, Visakhapatnam Port Trust i.e., J. Mohan Rao was placed under suspension by the 2nd respondent. Order of reversion against Mohan Rao was also passed by the 2nd respondent. That being the case, the respondents have flouted and violated the orders of this Court in Writ Petition No. 1374 of 1988 and the impugned order is totally untenable and illegal.

13. The writ appeal is accordingly allowed. The respondents are directed to pay costs of Rs. 10,000/- to the petitioner for the injustice caused to him over the past three decades. Since the petitioner already attained the age of superannuation, he shall be extended the notional benefit of promotion on par

with his junior Mohan Rao.

14. Miscellaneous petitions filed in this writ appeal shall stand disposed of.