
(1997) 10 AP CK 0066
In the Andhra Pradesh High Court
Case No : C.C.No. 1226 of 1997

M. Mohan Reddy	Vs	APPELLANT
T. Damodar Dass, Nalgonda		RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Citation : (1998) 3 ALD 127

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Mr. V.R. Balachary, for the Appellant; Mr. A.V. Sivaiah, SC for APSRTC, for the Respondent

Judgement

1. This contempt case is filed by the petitioner contending that the order of this Court in W.P.No.6927/1997 dated 22-4-1997 was not implemented in the true spirit. In other words his case for promotion for Traffic Inspector Grade-11 was not considered inspite of the directions of this Court.

2. The respondents filed a counter wherein they contended that the post of Traffic Inspector Grade-11 is a selection post and the Selection Committee constituted for selecting the candidates conducted interviews from 12-8-1997 and prepared a panel of 75 candidates. But, the petitioner could not come up for selection. With the result he was not promoted to the post of Traffic Inspector Grade-II. Countering the arguments of the respondent's Counsel Mr. V.R. Balachary strenuously contended that the members of the department of the Selection Committee did not interview him on the subject except stating that you were reinstated to duty pursuant to the orders of the Court and asked him to leave the hall.

3. In the light of these contentions I directed the respondent's Counsel to produce the proceedings of the departmental Selection Committee. The Committee divided the interview marks as here under :

1. Merit Rating Reports - 50

2. Length of Service - 25
 3. Additional qualifications - 5
 4. Rewards - 5
 5. Appreciation and commendation recorded in Merit Rating Reports - 5
 6. Interview - 10
- Total -
- 100

4. The Selection Committee members gave only 2 marks in the interview to the petitioner and has not awarded any marks under any of the items noted above. The reason is that the petitioner who was promoted as Traffic Inspector Grade III on 21-2-1987 was removed from service by order dated 8-7-87 for unauthorised absence pursuant to the departmental enquiry held in that regard. After exhausting the departmental remedies the petitioner approached the Labour Court No.III, A.P., Hyderabad in I.D.No.385 of 1993. Which in its turn set aside the order of removal from service and reinstated the petitioner to duty with continuity of service denying the attendant benefits for the interregnum period and reducing him by five places in the vertical seniority list of his post. It is not in dispute that the judgment of the Labour Court became final and the petitioner was reinstated to duty as a Depot clerk, instead of Traffic Inspector Grade-III, the post held by him at the time of his removal from service. After getting reinstated to duty the petitioner seemed to have filed representations to appoint him as T.I. Grade. III and further to consider his case for promotion as Traffic Inspector Grade-II and above as he was reinstated to duty with continuity of service. When the respondents did not heed to the request of the petitioner, he filed Writ Petition No.6927 of 1997 on the file of this Court. At the stage of admission I heard the respondent's Counsel Mr. A. V. Shivaiah and disposed of the writ petition by order dated 22-1-1997. In the penultimate para of the Judgment I gave the following direction :

"Hence I have no hesitation to give a direction to the respondents to immediately restore the position held by the petitioner before removal, i.e., as Traffic Inspector Grade-III and consider his case for further promotion in the vacancy that has arisen from the date of removal of the petitioner till the date of reinstatement in accordance with law".

5. From the above it is seen that the petitioner was out of service practically after he got promotion as Traffic Inspector Grade-III on 21-2-1987 till 6-3-1995 i.e., just two years prior to the process of selection that has taken place in this case. A look at the Selection Committee proceedings show that even for these two years also the petitioner was not awarded any marks under any of the heads the interview marks were divided. He was given only two marks in the interview.

6. In the light of these facts the question that arises for consideration of this

Court would be whether the petitioner can be deprived of his promotion for higher post on the ground that he was out of service in that preceding ten years in spite of the orders of a competent Court wherein he was reinstated to duty with continuity of service. The answer should be an emphatic no. The reason being that the respondents cannot ignore the claims of the petitioner as he has now been reinstated to duty with continuity of service. In fact, petitioner was not given any marks for the length of service he has put-in in the feeder posts while all others were given marks for the length of service. A look at the selection list indicates that the persons who were working in the feeder posts for about 10 years and below were only considered and they were all given marks for length of service at the rate of two marks per year. The Selection Committee members have not given marks for the merit rating reports for the last two proceeding years after his reinstatement. A look at the Selection Committee proceedings indicates that though the interview marks were divided under several heads, mostly the candidates were selected on the basis of merit rating reports, length of service and marks secured in the interview. In the case of the petitioner, awarding marks under Merit Rating Reports is not possible in the circumstances in which the parties are placed and the Selection Committee in all fairness would have considered his case excluding the marks given to the other candidates under Merit Rating Reports to find out whether the petitioner would have got selection or not. As far as length of service is concerned, out of the 130 candidates that were interviewed the petitioner stood almost 6th in the seniority with 10 years 5 months service. Had the Selection Committee awarded 2 marks per year, he would have secured 21 marks for the length of service. Likewise, it is also seen that out of a select panel of 75, very few candidates secured marks under other heads, the petitioner would have been promoted as Traffic Inspector Grade-II as most of the candidates appeared for interview included in the panel secured two marks in the interview. In other words in the viva voce candidates who secured 2 marks out of 10 marks were found eligible for promotion to the post of Traffic Inspector Grade-II. In the instant case, the petitioner has secured 2 marks in the viva voce and by virtue of the length of service he is far senior to most of the selected candidates.

7. Hence, I am of the firm opinion that while assessing the merit and ability of the petitioner the marks awarded to others under Merit Rating Reports would not have been taken into consideration. Had the Selection Committee followed that procedure, I have no hesitation that the petitioner would have found a place in the select list. Hence the direction is given to the respondents to fix up the rank of the petitioner in the select list by arriving at the marks secured by each of the candidates excluding the marks awarded under Merit Rating Reports. At the same time, it is not the intention of the Court to give a direction to the respondents to ignore the marks obtained by other candidates under Merit Rating Reports while assessing the merit of the candidates for whom such reports are available.

8. In the light of the peculiar circumstances where Merit Rating Reports are not

available in case of the petitioner, a procedure has to be adopted to safeguard the interests of the employee and the safest method to assess the merit of the individual would be on the lines suggested above. As the post of Traffic Inspector Grade-II is a selection post under the staff regulation of the Corporation, a panel has to be prepared in order of merit and seniority has to be considered where merit and ability, are approximately equal. Hence, the seniority of the petitioner in Traffic Inspector Grade-II may be fixed keeping the guidelines indicated above.

9. From the narration of the above facts, it cannot be said that the respondents have violated the orders of this Court either wilfully or wantonly, but under bona fide impression they did not consider his case mainly due to non availability of Merit Rating Reports. Hence, I am not inclined to proceed against the respondents for Contempt of Court. Hence, the Contempt Case is closed with the above directions.

10. The respondents are directed to implement the order of this Court within two weeks from the date of receipt of a copy of this order.