
(2022) 12 TEL CK 0006
In the Telangana High Court
Case No : Writ Petition No. 28781 Of 2022

Maddela Nagaraju

APPELLANT

Vs

State Of Telangana And 2 Others

RESPONDENT

Date of Decision : 01-12-2022

Acts Referred:

Citation : (2022) 12 TEL CK 0006

Hon'ble Judges : P.Madhavi Devi, J

Bench : Single Bench

Advocate : S Krishna Sharma

Final Decision : Allowed

Judgement

1. This Writ Petition is filed seeking a writ of mandamus declaring the action of the respondent No.2 in not considering the candidature of the petitioner for promotion from the post of Assistant Divisional Engineer to Divisional Engineer/ Electrical and promoting his juniors, ignoring his seniority solely on the ground of pendency of FIR No.09/RCA-KUR/2017 dated 07.07.2017 against him as illegal and arbitrary and consequently to direct the respondents to consider the candidature of the petitioner for promotion to the post of Divisional Engineer/ Electrical from the Assistant Divisional Engineer without referring to the pending FIR No. 09/RCA-KUR/2017 dated 07.07.2017 and to pass such other order or orders.

2. Brief facts leading to the filing of the present Writ Petition are that the petitioner was appointed as Sub-Engineer in the year 1990 and was promoted as Assistant Engineer in the year 1996 and later as Assistant Divisional Engineer in the year 2005. It is submitted that while the petitioner was working as Assistant Divisional Engineer at Allagadda, Kurnool District in the year 2017, the ACB officials of Kurnool have implicated him in a false disproportionate assets case vide FIR No.09/RCA-KUR/2017 dated 10.07.2017 and on the basis of the said allegation, the petitioner was suspended from the service on 13.07.2017. It is

submitted that thereafter, the ACB officials issued a notice to the petitioner on the disproportionate assets case on 06.09.2018 and on 17.12.2018, the petitioner submitted his detailed explanation to the ACB authorities and aggrieved by the suspension order dated 13.07.2017, the petitioner filed W.P.No.16616 of 2019 and this Court vide orders dated 15.11.2019, has set aside the suspension order. It is submitted that when the petitioner was not reinstated into the service even after receipt of the copy of the order of the High Court, the petitioner filed a contempt application vide C.C.No.173 of 2020. It is submitted that after bifurcation of the State of Andhra Pradesh into States of Telangana and Andhra Pradesh, the petitioner was allotted to TSSPDCL and was relieved from the services of APSPDCL with effect from 14.03.2020 and his services were allotted to TSSPDCL vide S.O.O(CGM-HRD)Ms.No.198. Thereafter, on the instructions of the Secretary to the Energy Department, Government of Telangana, the CMD TSSPDCL, the petitioner was reinstated into services vide order No.Energy/HR/A2/VALL/3/2021-HR dated 22.07.2021 and was posted as Assistant Divisional Engineer at TRE Gadwal vide memo dated 16.08.2021. It is submitted that the petitioner joined as ADE, TRE Gadwal on 18.08.2021 and he is discharging his duties as Assistant Divisional Engineer, TRE Gadwal till the date of filing of the Writ Petition without any complaint whatsoever. It is submitted that on 16.01.2021, the respondents had prepared a seniority list of the Assistant Divisional Engineers as on 16.01.2021 and the petitioner was standing at Sl.No.143 but the candidature of the petitioner was not included in the list of eligible candidates for promotion prepared by the respondent No.2 vide proceedings No.SP.O.O.(CGM-HRD) Rt.No.611 dated 20.07.2021. It is submitted that based on the seniority list 20.07.2021, the respondent No.2 effected promotions to the post of Divisional Engineers/Electrical from the cadre of Assistant Divisional Engineers and 14 names were considered vide proceedings No.SP.O.O.(CGM-HRD) Rt.No.611 dated 20.07.2021. The petitioner therefore made a representation dated 10.06.2022 to the respondent No.2 to consider his candidature for promotion and since the same was not considered, the present Writ Petition was filed.

3. Learned counsel for the petitioner submitted that as on the date of filing of the Writ Petition, neither was any charge memo issued nor any disciplinary case was pending against the petitioner and even the ACB authorities have not filed charge sheet in disproportionate assets case since 2017 in respect of FIR No.09/RCA-KUR/2017. It is submitted that there is no lapse on the part of the petitioner for the above pendency of the criminal case. It is submitted that solely on the ground that the disproportionate assets case is pending against the petitioner, he is being deprived for the promotion to the higher post to which the petitioner was fully entitled. It is submitted that the actions of respondent No.2 in ignoring the petitioner's candidature for promotion and considering his juniors for promotion is highly arbitrary and irrational. It is submitted that the respondents are under likely to the process of effecting promotions to the post of Divisional Engineer/ Electrical on the basis of seniority list dated 16.01.2021. It is submitted that the

Government has issued several GO's vide G.O.Ms.No.424 GAD Department dated 25.05.1976, G.O.Ms.No.66 GAD Department dated 30.01.1991, G.O.Ms.No.257 GAD Department dated 10.06.1999 wherein guidelines were issued for consideration of cases of the Government Servants against whom disciplinary or court proceedings are pending or whose conduct is under investigation for promotion to the next higher categories. It is submitted that under the said GO's, cases of employees who are in the zone of consideration for promotion, but falls under certain categories mentioned therein i.e., where the employee is under suspension or in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending or where the officer in respect of whom prosecution for a criminal charge is pending, should be specifically brought to the notice of the promotion committee. It is submitted that neither of the above contentions are satisfied in the case of the petitioner and therefore ignoring the candidature of the petitioner while considering the juniors of the petitioner for promotion is illegal.

4. Learned counsel for the petitioner also places reliance upon the decision of this Court in W.P.No.13359 of 2011 dated 16.09.2011 wherein it was directed that the case of the petitioner therein should be considered in terms of G.O.Ms.No.257 dated 10.06.1999. The learned counsel for the petitioner is praying for similar relief.

5. After filing of the Writ petition, the petitioner has filed I.A.No.2 of 2022 seeking amendment of the cause title as well as the prayer portion of the Writ Petition and the same was allowed vide orders dated 18.07.2022. Further on 18.07.2022, an interim direction was also given that any promotion made to the subject post of Divisional Engineer/Electrical will be subject to the final outcome of the Writ Petition. Therefore, the prayer portion as well as in the writ affidavit, wherever it is mentioned as Assistant Engineer, it is amended as Assistant Divisional Engineer.

6. Learned counsel for the petitioner further prayed that since no charge sheet has been filed in the disproportionate assets case, the petitioner's case should be considered for promotion without reference to pendency of FIR No.09/RCA-KUR/2017 dated 10.07.2017. For this preposition, he placed reliance upon the interim direction of this Court dated 16.08.2017 in W.P.M.P.No.29957 of 2017 in W.P.No.24211 of 2017.

7. The respondents have filed a counter affidavit admitting that consequent to the directions of this Court in Writ Petition filed by the petitioner, the petitioner has been reinstated into the service subject to the condition that the same will be reviewed after the conclusion of the criminal proceedings. It is submitted that TSSPDCL, vide memo dated 16.01.2021, has notified the revised provisional seniority list of Assistant Divisional Engineers (Electrical) as on 01.06.2014 and the petitioner stood at Sl.No.142 and thereafter keeping in view the exigencies of services, 14 No's of Assistant Divisional Engineers (Elec.) have been promoted temporarily as Divisional Engineers/Elec. on adhoc basis. It is submitted that

since a criminal case is pending against the petitioner on the file of the Hon'ble Court of Special Judge for ACB cases, Kurnool, Andhra Pradesh, the petitioner is not entitled for promotion to the higher post. It is further submitted that the 14 personnel who have been promoted are seniors to the petitioner in the provisional seniority list dated 16.01.2021 and therefore no juniors of the petitioner have been promoted. It is further submitted that regular promotions were not undertaken since 2015 in view of the pendency of allocation of employees among the two successor states in terms of Act No.6 of 2014 and that the petitioner's case for promotion came up for the first time in July 2021. It is submitted that the vide G.O.Ms.No.257 dated 10.06.1999, if an employee is not promoted on the date of the any departmental promotion and two years have lapsed thereafter, only then he is entitled to be considered, if the allegations leveled do not deal with moral turpitude, misappropriation, embezzlement and grave dereliction of duties. It is submitted that the petitioner does not fall within the provisions of G.O.Ms.No.257 dated 10.06.1999 as his case for consideration had come up only in the year 2021. Therefore, the learned counsel for the respondents prayed for dismissal of the Writ Petition.

8. Learned counsel for the respondents also referred to the posting orders of the officers as provisional promotion of the Assistant Divisional Engineers as Divisional Engineers/Electrical. It is submitted that the said promotions are subject to the outcome of the Writ Petition in W.P.No.43182 of 2016 and batch.

9. Having regard to the rival contentions and the material on record, this Court finds that there is no dispute that there is an FIR pending against the petitioner before the ACB Court, Kurnool and the same is pending trial. It is also not disputed by the respondents that no charge sheet has been filed by the ACB officials in the said case till date. The Hon'ble Supreme Court in the case of Darshan Singh Ram Kishan v. the State of Maharashtra reported in 1971 (2) SCC 654 has observed that in a criminal case, Magistrate can be said to have taken cognizance of the offence only when a charge sheet has been filed and a committal order has been passed. Since, no charge sheet has been filed in this case and as observed by this Court in W.P.M.P.No.29957 of 2017 in W.P.No.24211 of 2017, the case of the petitioner herein shall also be considered for promotion without reference to pendency of the FIR No.09/RCA-KUR/2017 dated 10.07.2017 against the petitioner before the ACB Court, Kurnool. The respondents are therefore directed to consider the case of the petitioner for adhoc promotion pending disposal of the criminal case against him whenever the next vacancy arises since it is stated by the respondents that no juniors of the petitioner have been promoted to the post of Divisional Engineers/Electrical.

10. Accordingly, the Writ Petition is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.