
(2017) 06 AP CK 0001
In the Andhra Pradesh High Court
Case No : 13624 of 2015

M.V.R.L.S. Ravikanth

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 02-06-2017

Acts Referred:

[Constitution of India](#), [Article 16\(1\)](#) -
Dissolution of a District or a Regional Council

Citation : (2017) 06 AP CK 0001

Hon'ble Judges : Sanjay Kumar, N. Balayogi

Bench : DIVISON BENCH

Advocate : P.V. Ramana

Judgement

1. Originally the petitioner was appointed as Typist on 23.05.1992. He is fully eligible and qualified to be promoted as Senior Assistant. A combined seniority list in the category of Junior Assistants, Typists and Junior Stenos of Zone-II was prepared on 01.01.2014 and the same was communicated vide Memo dated 27.06.2014 wherein the petitioner was placed at Serial No.2. Despite the same, when the respondents did not consider his case for promotion, he approached the Andhra Pradesh Administrative Tribunal through O.A.No.1802 of 2015, which was dismissed by order dated 6.4.2015. Aggrieved by the same, he preferred the present Writ Petition.

2. Heard learned Counsel for the petitioner and learned Government Pleader for the respondents. Perused the material on record.

3. Earlier, the third respondent in his proceedings in Rc.No.582/2006/M2, dated 05.07.2006 temporarily promoted the petitioner to the post of Senior Assistant and asked him to join at promotion on receipt of the allotment orders from the second respondent. The said promotion was given as per the seniority list of Junior Assistants, Typists and Junior Stenos of Rajahmundry Circle of Zone-II. The petitioner made a representation on 18.07.2006 reporting that he could not join the post of Senior Assistant for the reason that two years back, he met with

an accident and lost his wife and younger son and also lost one finger of right hand, and requested for consideration of his claim for promotion as Senior Assistant after one year in pursuance of Government Orders in G.O.Ms.No. 145, General Administration (SER.D) Department, dated 15.06.2004. The third respondent in his proceedings Rc.No. 582/2006-M2 dated 03.08.2006 having considered the representation of the petitioner in pursuance of the Government Orders in G.O.Ms.No.145 dated 15.06.2004 accepted his request for consideration of promotion again after a period of one year subject to availability of vacancy. In pursuance of his request, it is further stated in the said proceedings that the petitioner now loses his right of promotion as Senior Assistant for one year from the date of offer of appointment. Accordingly the promotion orders of the petitioner were cancelled with immediate effect while making it clear that his case for promotion would be considered again after a period of one year subject to availability of vacancies and as per rules in vogue.

4. The case of the petitioner for promotion was again considered in the next year as per the seniority list and promoted to the post of Senior Assistant vide orders in Rc.No.5222/07-M2 dated 24.12.2007. The petitioner made a representation on 5.1.2008 requesting to consider his case for permanent relinquishment of promotion to the next category on the ground that due to physical disability and other family problems, he can not shift his family out of Vijayawada. The third respondent vide proceedings Rc.No.5222/2007- M2, dated 25.01.2008 accepted the representation of the petitioner dated 8.1.2008 and informed that relinquishment once made will be final and irrevocable without any claim for promotion in future as per Rule 28 of A.P. State and Subordinate Service Rules, 1996. It was further stated therein that the petitioner is not having any right for future promotion at any time during his remaining period of service in the department.

5. In fact the petitioner through his representations dated 18.07.2006 and 8.1.2008 relinquished his right to be considered for promotion for the vacancies of those particular years in view of suffering from depression and mental agony on account of death of his wife and son, and, loss of right hand finger in the accident.

6. In Writ Petition No. 26654 of 2005 (The District Educational Officer, Kurnool & Ors Vs. Shahnaz Begum) a Division Bench of this Court through its order dated 09.08.2006, having considered the Rule 28 of the A.P. State and Subordinate Service Rules, 1996 held that a careful perusal of Rule 28 of the A.P. State and Subordinate Service Rules would reveal that an option is given to any member of a service to relinquish any right or privilege to which he may be entitled to under the relevant rules and such relinquishment is subject to acceptance of the appointing authority having satisfied that such relinquishment was not opposed to public interest and such replenishment once made will be final and irrevocable. It means that his right to be considered for promotion while he was occupying a particular place in the seniority list, at a time when he was eligible

for promotion by virtue of passing of the test etc., as required under the then existing rules and in respect of a vacancy that has arisen at the relevant time has been relinquished. It further follows that the extent of relinquishment has to be confined in the context of that particular occasion when the right or privilege of promotion had arisen for a member of a service. The rule cannot be interpreted to mean that relinquishment was in respect of future vacancies also. Ultimately it was held that relinquishment of right or privilege of promotion to a particular vacancy would amount to permanent relinquishment of right or privilege of promotion to that particular vacancy. The Rule 28 of the State and Subordinate Service Rules cannot be read or interpreted to mean that his right to be considered for promotion to any vacancy arising in future also is permanently extinguished. Such an interpretation would lead to frustration and unrest in the service defeating the object of promoting efficiency and harmonious functioning. Thus Rule 28 does not prohibit consideration of the petitioner's case for promotion forever, for a right to be considered for promotion, if the petitioner is otherwise eligible, is a fundamental right under Article 16(1) of the Constitution of India, as was held in *Ajit Singh II Vs. State of Punjab* {1999(7) SCC 209} and, *Delhi Jal Board Vs. Mahinder Singh* {2000(7) SCC 210}. It is also well settled that fundamental rights cannot be waived. When the petitioner did not specifically waive his right to be considered for promotion, no such waiver can be said to have been made by necessary implication either. Rule 28 does not disentitle a member of a service from being considered for promotion in a future vacancy merely because he/she had relinquished his/her right under the rules for promotion earlier.

7. Following the aforesaid decision, in the case of *G. Boyanna Vs. Registrar (Administration)*, High Court of AP and another { 2009(2) ALD 402 (DB)}, a Division Bench of this Court held that merely reversion sought earlier on personal grounds did not disentitle the employee from being considered for promotion thereafter and that Rule 28 of the Rules of 1996 does not have the effect of extinguishing the right of the employee to be considered for promotion permanently. That being the legal position, the rejection of the employee's request to be considered for promotion on the ground of his/her alleged relinquishment is unsustainable.

8. The facts of the case on hand clearly goes to suggest that there is no permanent relinquishment of right or privilege of promotion of a public servant against future vacancy. The extent of relinquishment has to be considered against a particular vacancy that arose in that particular year. There is no waiver against fundamental right for consideration of promotion under Article 16(1) of the Constitution of India. The relinquishment of promotion sought for by the petitioner in his letters dated 18.07.2006 and 08.01.2008 is only in respect of particularly vacancies that arose in those years, but not in respect vacancies that would arise in subsequent years.

9. In the above two decisions, i.e. Writ Petition No. 26654 of 2005 (The District

Educational Officer, Kurnool & Ors Vs. Shahnaz Begum, and, G. Boyanna Vs. Registrar (Administration), High Court of AP and another { 2009(2) ALD 402 (DB)}, the petitioners therein relinquished their rights for promotion after issuing promotion orders, but not before giving promotion orders. The Tribunal without considering these facts, distinguished the case of the petitioner and dismissed O.A.No.1802 of 2015. It is settled law in the aforesaid decisions that the question of permanent relinquishment of promotion under Article 16(1) of the Constitution of India does not arise.

10. Further, the A.P. State and Subordinate Service Rules, 1962 were superseded by the A.P. State and Subordinate Service Rules, 1996, whereby Rule 45 has been substituted by Rule 28. Insofar as Rule 28 of the Rules of 1996 is concerned, it is sum and substance, a replication of the earlier Rule 45 of the Rules of 1962. The only addition in the new rule is that the relinquishment once made is to be treated as final and irrevocable and a proviso is added stating to the effect that no conditional or temporary relinquishment shall be permitted and it has to be considered in the context of that particular vacancy that arose in that particular year, but not through out service.

11. The right to be considered for promotion is a fundamental right under Article 16(1) of the Constitution of India. The Rule 28 of the Rules of 1996 did not disentitle a member of a service from being considered for promotion in a future vacancy merely because he/she had relinquished his/her right for promotion earlier. In the case on hand, the mere fact is that the petitioner's relinquishment for promotion on account of suffering from depression due to sustaining physical disability, loss of wife and son in the accident did not disentitle him from being considered for promotion in future vacancies.

12. The relinquishment of an opportunity for promotion, which arose for an employee occupying certain place in seniority list, in view of vacancy that arose then, in view of the fact that he/she was eligible for promotion in the light of the criteria laid down in the Rules, would mean that the extent the privilege has been relinquished is confined to the privilege related to that particular vacancy which was available to him/her by virtue of the above mentioned circumstances. The Rule cannot be interpreted to mean that the relinquishment was in respect of future vacancies also. As far as that particular vacancy is concerned, the employee's relinquishment is final. He cannot claim later that he may be deemed to have been promoted to that particular vacancy and that his seniority may be fixed as if he was promoted to that vacancy. If a member of service, who has relinquished his promotion, at one stage, is promoted subsequently when another vacancy arose, he will be junior to a person who was promoted to the vacancy relinquished by him in the promotion post and he cannot claim seniority over the said person.

13. In the light of the above discussion, we have no hesitation to hold that relinquishment of right or privilege of promotion to a particular vacancy would amount to permanent relinquishment of right or privilege of promotion to that

particular vacancy. Rule 28 of the A.P. State and Subordinate Service Rules cannot be read or interpreted to mean that his right to be considered for promotion to any vacancy arising in future also is permanently extinguished. Such interpretation would lead to frustration and unrest in the service defeating the object of promoting efficiency and harmonious functioning.

14. The Tribunal by interpreting Rules 28 and 11 (b) of the A.P. State and Subordinate Service Rules, 1996 held that the petitioner cannot be considered for promotion for the third time since he has failed to join his promotion post twice within fifteen days and ultimately came to the conclusion that the petitioner is not entitled to be offered promotion for third time, which is illegal and arbitrary.

15. In the facts and circumstances discussed hereinabove, we find ourselves in consensus with the opinion expressed in the two decisions in Writ Petition No. 26654 of 2005 (The District Educational Officer, Kurnool & Ors Vs. Shahnaz Begum, and, G. Boyanna Vs. Registrar (Administration), High Court of AP and another { 2009(2) ALD 402 (DB)}). The mere fact that the petitioner sought reversion earlier on personal grounds did not disentitle him from being considered for promotion thereafter. Rule 28 of the A.P.State and Subordinate Service Rules does not have the effect of extinguishing the right of the petitioner to be considered for promotion permanently. This being the legal position, the rejection of the petitioner's request to be considered for promotion on the ground of his alleged relinquishment is unsustainable.

16. Accordingly, the Writ Petition is allowed, setting aside the judgment dated 06.04.2015 passed in OA.No.1802 of 2015 by the Andhra Pradesh Administrative Tribunal, at Hyderabad and directing the third respondent to consider the case of the petitioner for promotion to the post of Senior Assistant in the existing vacancy as per rules, if he is otherwise qualified and eligible for the said post.

17. Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.