

THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO*+W.P. No.32841 OF 2017**

% 06-01-2023

M. Narsing Rao

....petitioner

Vs.

\$ State of Telangana, rep. by its Principal Secretary, Industries & Commerce (IFN-L&D) Department, Telangana Secretariat , Hyderabad and another

.... Respondents

!Counsel for the petitioner : K. Ramamohan appearing for learned Senior
counsel K.G. Krishna Moorthy

Counsel for the Respondents : P.V. Ravindra Kumar

<Gist :

>Head Note:

? Cases referred:

IN THE HIGH COURT FOR THE STATE OF TELANGANA

HYDERABAD

* * * *

WP. No.32841 OF 2017

Between:

M. Narsing Rao

....petitioner

Vs.

State of Telangana, rep. by its Principal Secretary, Industries & Commerce (IFN-L&D)
Department, Telangana Secretariat , Hyderabad and another

... Respondents

ORDER PRONOUNCED ON: 06.01.2023

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes

NAMAVARAPU RAJESHWAR RAO, J

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**WRIT PETITION No.32841 of 2017****ORDER:**

The present Writ Petition is filed seeking a Writ of Mandamus declaring the action of the respondents No.1 and 2 in not promoting the petitioner as Assistant Manager and Deputy Manager w.e.f 01.03.2004 and 01.03.2009 with all consequential benefits including seniority and monetary as illegal and violative of Article 14 and 16 (4A) of the Constitution of India, and further direct respondents No.1 and 2 to promote the petitioner notionally w.e.f. 01.03.2004 as Assistant Manager and w.e.f. 01.03.2009 as Deputy Manager with all consequential benefits including seniority, arrears of pay etc.

2. It has been contended by the petitioner that he belongs to the ST community (Yerukala) and was appointed as Record Assistant by the 2nd respondent Corporation in the year 1987; at that time he was an undergraduate and he acquired graduation in the year 2013. Later, he was promoted from time to time and finally, to Assistant Manager in the year 2012. The 2nd respondent Corporation promoted a number of individuals who were undergraduates as Assistant Managers and Deputy

Managers, but he was denied despite his seniority and rule of reservation.

3. The petitioner further contended that he was entitled for promotion under the rule of reservation under Article 16 (4A) of the Constitution of India provides that the State Governments make a provision for reservation in the matter of promotion with consequential seniority in any class or classes of force in the services under the State Government in favour of Scheduled Castes and Scheduled Tribes. The erstwhile State of A.P. Government issued G.O.Ms.No.5 dated 14.02.2003 Social Welfare Department and issued G.O.Ms.No.2 dated 09.02.2004 providing rule of reservation for Scheduled Castes and Scheduled Tribes in promotions. Under the above G.Os, the petitioner made representation to the 2nd respondent Corporation to consider his request for promotion as Assistant Manager w.e.f 01.03.2004 and Deputy Manager w.e.f.01.03.2009. The eligibility for such promotion as notified shall be that the employee ought to have completed 4 years of service and must be a graduate. He was not a graduate until 2013. Keeping this in view, the Board of Directors of the 2nd respondent corporation, upon taking up this issue, clarified the 2nd respondent that the 2nd respondent has the power including to relax the qualification criteria for promotion to Assistant Manager and Deputy Manager. Subsequently, the

2nd respondent approved the note and agreed in principles to relax the qualification and effect promotions of the petitioner as Assistant Manager w.e.f. 01.03.2004 and Deputy Manager w.e.f. 01.03.2009 with arrears and interest and placed the matter before the D.P.C. along with other employees.

3.1 The petitioner further contended that upon the resistance of other employees vide representation dated 05.07.2012 opposing the petitioner's retrospective promotion proposal, the 2nd respondent addressed a letter to the 1st respondent on 23.02.2013 reserving one post of Deputy Manager which is earmarked for Schedule Tribe at Roster point no.8 is kept vacant as there is no eligible ST (W) candidate. As per the Government instructions, when there is no woman candidate available, the post can be converted to an eligible male candidate. Subsequently, the 1st respondent addressed a letter to the 2nd respondent dated 03.08.2015 requesting the 2nd respondent to consider the petitioner's case for promotion as mentioned above. Since there was no response from the 2nd respondent, the petitioner approached various statutory authorities and they in turn addressed letters to the 2nd respondent to consider the petitioner's promotion in the terms mentioned above, yet, no action was taken.

3.2 The petitioner further contended that some other employees who had lesser qualifications than him, were promoted to Assistant Manager in the year 2004 but the petitioner was discriminated against and treated differently and at last he was promoted only in the years 2012 as Assistant Manager and in the year 2016 as Deputy Manager respectively. Accordingly, prayed to allow the Writ Petition.

4. Counter has been filed by respondent No.2 denying all the material averments of the petitioner, and contended that the 2nd respondent Corporation extended their arms and promoted the petitioner as Assistant Manager in the year 2012 by relaxing the qualification criteria and the petitioner himself addressed a letter dt.21.05.2012 to the 2nd respondent expressing his gratitude. The petitioner was promoted to Senior Assistant on 10.03.1999, and as per the B & C employees promotion policy 1991, the eligibility criteria for promotion from the post of Senior Assistant to the post of Assistant Manager is graduation plus four years of service as Senior Assistant. Since the petitioner was an undergraduate and lacked the eligibility criteria, he was denied promotion. However, he was promoted to the post of Assistant Manager w.e.f. 08.05.2012 vide proceedings dt.10.05.2012 by relaxing the condition of a holding of a degree.

4.1 It is further contended that the proceedings of the Board of Directors show the fact that the power of relaxing the eligibility conditions was stood delegated to the Managing Director of the Corporation and that the individual cases need not be brought before them. Further, following the act of relaxation of educational qualification and promotion of the petitioner, he came out with a representation dt. 18.06.2012 asking for considering his promotion with a back date i.e. promotion as Assistant Manager w.e.f. 01.03.2004 and Deputy Manager (Officer cadre) w.e.f. 01.03.2009 along with arrears and interest etc. Thus, it opened up a pandora box and made the Vice Chairman and Managing Director address letters to the Government dated 17.07.2012 and 11.09.2012 seeking clarification upon that issue, but neither a decision has been arrived at nor such circumstance implemented. Thus, there was no change in the status of the said employees who sought promotion with a back date.

4.2 It is further contended by the respondents that due to the restructuring of the Corporation and implementation of VRS, no promotions took place from 2001 to 2007. The petitioner was promoted as Assistant Manager on 10.05.2012 by relaxing the rules in respect of qualification i.e. graduation by the Corporation against roster point 8 which is earmarked for ST (W). The incidents of repeated unruly

behaviour and unbecoming employee attitude of the petitioner, particularly, about the letter dt.31.03.2017 of the Corporation, the 1st respondent has constituted a three-member committee to enquire into the same. However, though the enquiry is in process, the 2nd respondent with all magnanimity paid the retirement benefits to the petitioner who retired from service on 30.09.2017. The petitioner's claim for promotion in a retrospective manner is not justified in any manner and is contrary to the very same G.O. as only G.O. Ms No.5 dated 14.02.2003 provides for the prospective promotion and only for fully qualified and eligible candidates. Lastly, the petitioner filed the present writ petition just before his retirement to gain monetary benefits with a mala fide intention. Accordingly, prayed to dismiss the Writ Petition.

5. The petitioner filed a reply affidavit to the counter affidavit along with additional material documents reiterating the contents of his affidavit by denying the respondents' contentions and submitted that his case for promotion as Assistant Manager w.e.f 01.03.2004 and Deputy Manager w.e.f 01.03.2009 was not considered by the respondents and it is false to contend that positive consideration in the past was purely based on merit and eligibility and requirement of the administration and that such cases cannot be compared with the circumstances of his case

as certain individuals have been promoted despite they being only SSC/intermediate and filed documents to that effect.

6. Learned counsel for the petitioner also submitted that the petitioner retired from service on 30.09.2017 and prays this Hon'ble Court to direct the respondents to grant notional promotion to the petitioner as prayed for with monetary and seniority benefits to get further service benefits.

7. Heard Sri K. Rama Mohan, learned Counsel appearing for the petitioner and Sri P.V. Ravindra Kumar, learned Standing Counsel appearing for respondent No.2. Perused the record.

8. This Court has considered the rival submissions made by the parties and is of the view that the following facts and material are required to be dealt with which are relied upon by the petitioner in support of his contentions:

The relevant portion of the copy of the minutes of the meeting of the respondent Corporation dated 03.07.2012 is necessary to be extracted which is as hereunder:

238(4): *The Board of Directors at their meeting held on 13.4.2012 adopted the G.Os relating to RoR from the date of their issue. Though, the G.O relating to RoR was issued in*

2004, there were no promotions in the Corporation and the promotions were taken up only in 2007. Sri M. nursing Rao was promoted as Sr. Assistant on 1.3.1999 and he has fulfilled the service criteria for promotion to the post of AM by 1.3.2004 but he does not possess the required qualification and hence he was not promoted as AM.

238(5): *The Corporation has considered his request and promoted him as AM w.e.f 8.5.2012.*

238(7): *Further it is submitted that he is requesting promotion to the post of DM w.e.f 1.3.2009. However the Corporation has not conducted any DPC for promotion of AM to DMs in the year 2009 and the Corporation is taking up the promotions to the post of DMs now only.*

241: *In view of the above, the file is circulated for orders of the VC & MD (FAC) on the following.*

a) whether to consider his promotion as Assistant Manger w.e.f 1.3.2004 instead of 8.5.2012 and also as AM to DM w.e.f 1.3.2009 with payment of arrears and interest as requested by him.

or

b) whether to consider his promotion as AM w.e.f 1.3.2004 instead of 8.5.2012 with arrears and interest and to call him to appear before the DPC for interactive session for promotion to the post of DM along with the other employees by relaxing qualification.

9. A perusal of the letter dated 03.08.2015 addressed by the Secretary to the Government and CIP, Industries and Commerce Department, Hyderabad to the 2nd respondent wherein, it was requested by the Secretary to consider the petitioner's case for promotion as Deputy Manager from the date of his acquired qualification and take necessary action as per rules in force keeping in view the Rule of Reservation as approved by the 2nd respondent in their note dated 03.07.2012 in terms of G.O.Ms.No.2 dated 09.01.2004 of Social Welfare(RoR.1) Department and also since the AP Industrial Corporation Board is competent to relax rules of AP Industrial Development Corporation B & C Employees promotion policy 1991, the Secretary requested the 2nd respondent to intimate the action taken to the Government as the AP Industrial Development Corporation has already taken a decision to promote the individual as Deputy Manager by relaxing qualification by placing his name before the DPC, as per their note dated 03.07.2012.

10. It is necessary to look into the G.O. which is the basis for the writ petitioner's contentions. The relevant portion from the G.O. Ms No.5 dated 14.02.2003, Social Welfare (SW.ROR.1) Dept. is extracted and produced hereunder:

4. The Government after careful consideration, have decided to implement rule of reservation in promotion to ensure adequate

representation of the Scheduled Caste and Scheduled Tribe employees, ie. 15% and 6% respectively in all categories of posts in all departments. The government therefore direct that;

a) Reservation shall be implemented in favour of Scheduled Castes and Scheduled Tribes in promotion in all categories of posts in all State Government departments with immediate effect.

b) Reservation in promotion in favour of Scheduled Castes and Scheduled Tribes is applicable to all categories or cadres whose cadre strength is more than five.

c) The existing 100 point roster already prescribed in Rule 22 of the Andhra Pradesh State and Subordinate Service Rules by the State Government shall be followed in cases of promotion in all the categories where reservation in promotion in favour of Scheduled Castes and Scheduled Tribes is followed.

d) Reservation in promotion in favour of Scheduled Castes and Scheduled Tribes shall be prospective and shall be made applicable to the posts to be filled up. As on the date of issue of these orders, the Panel year for 2002-2003 has already commenced from 1st September, 2002 and therefore the panels already prepared and given effect shall not be disturbed. The Panels which are not yet prepared shall now be prepared based on rule of reservation in promotion and Panels prepared and not given effect to, shall be reviewed on the principle of reservation in promotion in favour of Scheduled Castes and Scheduled Tribes .

e) Reservation in promotion in favour of Scheduled Castes and Scheduled Tribes shall be applicable to those candidates who are

fully qualified and eligible to hold the post as per existing Rules and guidelines.

11. A perusal of G.O.Ms No.2 dated 09.01.2004, Social Welfare (SW.ROR1) Department reveals at para no.12 as hereunder:

“12. Conversion of rosterpoint of Women: In case there are no qualified women candidates available, the following procedure shall be followed. (a) If no eligible women candidate is available to fill up the roster point earmarked for Schedule Caste (Woman), the vacancy shall be filled up with male candidate. However while filling the said vacancy, the roster point shall be filled up with the same group of Scheduled Caste male candidate as that of Scheduled Caste (Woman), to which it was originally earmarked. If no male candidate is available then the same shall be filled up with other Scheduled Castes candidates following in the same order. Note: In the case of roster points fixed for Scheduled Caste (woman), if Scheduled Caste-A (Woman) is not available, the vacancy may be filled up by a Scheduled Caste-B(woman) and so on. If Scheduled Caste (A,B,C,D) woman candidate is not available, the vacancy may be filled up by Scheduled Caste (A,B,C,D) Male candidate in that order. If the roster point is earmarked for Scheduled Caste-B woman candidate and no Scheduled Caste woman candidate is available, the roster point shall be filled up with male candidate belonging to Scheduled Caste-B category. If no Scheduled Caste-B male candidate is available, the roster point shall be filled up with Scheduled Caste-C male candidate and so on and so forth. (b) In respect of Schedule Tribes, if Scheduled Tribe (Woman) candidate is not available, for promotion to fill in the roster point earmarked for Scheduled Tribe (Woman), the vacancy shall be filled up by a Scheduled Tribe Male candidate.”

12. A perusal of the list of promotional candidates appended to the list of final seniority of Assistant Managers dated 29.12.2011 goes to show that one D. Shashikala was promoted as Deputy Manager in the year 2007 even though her qualification was SSC which would mean that the eligibility criteria was relaxed in her case. An analogy can be drawn in favour of the petitioner that he was denied promotion in terms of G.O Ms. No.5 (supra) as the 2nd respondent did not relax the eligibility criteria of the petitioner any sooner than the year 2012, whereas, in the matter of D. Shashikala, her eligibility criteria was relaxed in the year 2007 itself by promoting her to the post of Deputy Manager, which would, in turn mean that she was promoted to the post of Assistant Manager way prior in time by relaxing her eligibility criteria on an earlier occasion as well. The above event clearly shows that the petitioner was discriminated against despite various efforts and requests and the same is not acceptable. The petitioner on the above grounds and inter-alia has satisfied this Court to lean towards him in granting favourable relief. However, upon careful examination, it is noticed that the petitioner had shown his gratitude to the 2nd respondent upon his qualification criteria being relaxed and had accepted the promotion in the year 2012 without protest, but has resorted to demanding retrospective promotion immediately after one month of his promotion to the post of Assistant

Manager but has filed the present writ petition only after a lapse of (5) years that too at the fag end of his service. Also, the burden which would be put on the state exchequer if the petitioner's relief as sought is granted would be very high and unwarranted. In these circumstances, it would be justified if the petitioner is notionally promoted as Assistant Manager w.e.f 01.03.2004 without any consequential benefits and as Deputy Manager w.e.f 01.03.2009 instead of 20.10.2016 with consequential benefits.

13. Accordingly, this writ petition is partly allowed. The respondents are directed to notionally promote the petitioner as Assistant Manager w.e.f 01.03.2004 without any consequential benefits, and as Deputy Manager w.e.f. 01.03.2009 with consequential benefits and revise the retirement benefits and pay all benefits in accordance with the law. It is made clear that the petitioner shall not be entitled to claim any difference amount and consequential benefits for the period pertaining to the years 2004 to 2009. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

6th day of January, 2023

BDR