



HIGH COURT OF ANDHRA PRADESH
THURSDAY ,THE TWENTY THIRD DAY OF JULY
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SMT JUSTICE T. RAJANI

WRIT PETITION NO: 8292 OF 2020

Between:

1. Seetalam Sekhar, S/o. Late Kondaiah, Hindu, Aged about 50 years, resident of Flat No.201, Lords Enclave, Near ZP Girls High School, Patamatalanka, Vijayawada -520010

...PETITIONER(S)

AND:

1. Govt. of Andhra Pradesh rep. by its The Special Chief secretary,(E.F.S and T) Department, Govt. of AP, Secretariat Buildings, Velagapudi, Amaravati
2. The Special Chief secretary (Revenue) (CT,Excise and Regitsration) Department , Govt. of AP, Secretariat Buildings, Velagapudi, Amaravati
3. Chief Commissioner of State Tax, Govt of AP, D.No.5-59, Bandar Road, Spring Valley Apartments, Rajiv Bhargav Colony Road R.K. Spring valley Apartments, village, Edupugallu, Vijayawada 521151
4. Sri.I Srinagesh, Joint Commissioner (State Tax), O/o The Joint Commissioner (State Tax), Anantapuramu division, PAR Heights, 15t Floor, Gooty road , Anantapuramu
5. Sri.S.E.Krishna Mohan Reddy, Joint Commissioner (State Tax) 0/0 The Joint Commissioner (State Tax), Vijayawada- I division, Door .No. 44-1-36, 1st Floor, Gunadala, Vijayawada.
6. Sri. K. Nagendra, Joint Commissioner (State Tax), 0/0 The Joint Commissioner (State Tax) , Kurnool division. C.T. complex, Ground floor, Near Indus School, Gooty Road, NH-7,Kurnool.

...RESPONDENTS

Counsel for the Petitioner(s): JAVVAJI SARATH CHANDRA

Counsel for the Respondents: GP FOR SERVICES I

The Court made the following: ORDER

**SMT JUSTICE T. RAJANI****WRIT PETITION No.8292 of 2020****ORDER:**

This writ petition is filed seeking to declare G.O.Ms.No.96, Revenue (CT.I) Department, dated 31.03.2020, as illegal and arbitrary.

2. The case of the petitioner, in brief, as follows:

The petitioner completed 23 years of service in the revenue department. He was rendering his services with honesty, but a false ACB Case was booked against him for disproportionate assets, in which he was not arrested or terminated, but was only issued a notice under Section 41 CrPC. Later by virtue of notice, dated 29.10.2018, the investigating officer called explanation from the petitioner with regard to his assets, income, and expenditure. As such, he submitted the explanation on 02.12.2018 along with the documents. Recently government issued G.O.Ms.No.3, Revenue (CT-I) Department, dated 08.01.2020 (for short, "GO-3"), finalising the seniority list in the cadre of Joint Commissioner of State Tax showing him at serial No.22 and showing him in the second place as eligible candidate for promotion to the higher cadre i.e., Additional Commissioner. He is eligible for promotion to the post of Additional Commissioner for the vacancy which arose in the panel year 2018-19. Immediately after issuance of the said GO, he gave a representation on 19.02.2020 to the Special Chief Secretary



(Revenue), explaining his eligibility for promotion to the higher cadre. As per the seniority list published, Special Chief Secretary (Rev.) Department, vide GO-3, requested the Secretary (GAD) to conduct the Departmental Promotion Committee (DPC) meeting and accordingly, DPC is convened on 18.03.2020. The name of the petitioner was not considered in the said DPC Meeting though no charges were framed. Subsequently, the Government issued G.O.Ms.No.96, Revenue (CT.I) Department, dated 31.03.2020, which is the order impugned in this writ petition, wherein the names to be included in the panel of Joint Commissioner of State Tax fit for promotion to the category of Additional Commissioner of State Tax for the panel year 2019-20 were published. Respondents 4 to 6, who are juniors to him are included in the panel and declared as eligible for promotion to the cadre of Additional Commissioner. Petitioner came to know that his name was excluded in terms of para 5B(iii) of G.O.Ms.NO.257, GAD (Services) Department, dated 10.06.1999. Those terms are applicable only in cases wherein charges are framed or charge sheet has been filed by the competent authority as per the judgment of the erstwhile High Court of Judicature at Andhra Pradesh. The impugned order is contrary to its own orders on promotion guidelines which were issued earlier as G.O.Ms.No.424, GAD (Service-C), dated 25.05.1976, G.O.Ms.No.66 GAD (Service-C) dated 30.01.1991 and G.O.Ms.N.257 GAD (Service-C) dated 10.06.1999. Hence, the petitioner seeks to declare the G.O.Ms.No.96,



Revenue (CT.I) Department, dated 31.03.2020, as illegal and arbitrary.

3. Counter filed on behalf of respondents 1 to 3. Respondents 4 to 6 did not appear in spite of notice. Notice to respondent No.5 is dispensed with, since no relief is claimed against him.

4. In the counter filed by respondents 1 to 3 while denying the contents of the affidavit filed by the petitioner, it is stated that the Deputy General, ACB, sent a radio message stating that the petitioner is in possession of disproportionate assets and a criminal case was registered in Crime No. 09/RCA-CIU/2016 and simultaneous searches were conducted at the residential premises of the accused officer and that a preliminary report with the interim findings that *prima facie* case exists against the petitioner and that the properties were also ordered to be attached. According to the counter, the case is under investigation by ACB and final report is awaited. As regards the promotion of the petitioner, guidelines were issued by way of G.O.Ms.No.257, GA (Ser.C) Dept., dated 10.06.1999, to consider the employees against whom disciplinary cases or criminal prosecution are pending or whose conduct for appointment by transfer or transfer to next higher categories and certain guidelines are also specified in the GO, according to which, the petitioner is not entitled for promotion.

5. Heard the counsel for the petitioner and the Government Pleader appearing for respondents 1 to 3.



6. It is no doubt true that as per G.O.Ms.No.257, the details of the employees in the zone of consideration for promotion falling under the categories mentioned therein should be specifically brought to the notice of the Departmental Promotion Committees or Screening Committees. The categories are: i) Officers under suspension; ii) Officers in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; iii) Officers in respect of whom prosecution for a criminal charge is pending; officers who are facing enquiry, trial or investigation can be categorised into the following groups based on the nature of the allegations of charges pending against them or about to be instituted viz., (i) An officer with a clean record, the nature of charges or allegations against whom relate to minor lapses having no bearing on his integrity or efficiency, which even if held proved, would not stand in the way of his being promoted; that he would not be promoted, irrespective of the allegations or charges under enquiry, trial or investigation; and that he would have been promoted had he not been facing enquiry, trial or investigation, in respect of charges which, if held proved, would be sufficient to supersede him. Petitioner admittedly is not subject to any departmental enquiry. The ACB case registered against him stands only at the stage of crime, without any progress in the investigation. There is no material brought before this court to show that the record of the petitioner is not clean till the time of registering the criminal case. Hence, the allegations made against the petitioner do not fall under the nature of allegations mentioned in the above mentioned



first and second categories. But since he was facing investigation for certain charges, he would fall under the third category.

7. The counsel draws attention of this court to G.O.Ms.No.96, dated 31.03.2020, wherein a list of four candidates is made. The candidate at SL.No.1 at the said list is admittedly senior to the petitioner. Hence, the petitioner does not have any grievance in respect of his promotion. It is also not disputed by the respondents that the candidate at Sl.No.1, whose promotion was directed to be deferred, was promoted. The case of the petitioner stands on a better footing since no disciplinary proceedings are initiated against him.

8. The counsel also draws the attention of this court to GO-457, wherein a panel is approved subject to outcome of the disciplinary case in liquor syndicate and other cases pending against them. G.O.Rt.No.1216, Revenue (Excise-I) Department, dated 31.08.2018, pertains to one M.Adishesu effecting his promotion as a Deputy Commissioner of Prohibition and Excise subjecting the same to the outcome of disciplinary case in liquor syndicate and other cases. Similar order is made in respect of one Sri D.Sekhar, Deputy Tahsildar, by virtue a Memo No.14021/9/2018/Ser II-Rev, dated 26.06.2018. The said Memo discloses that in compliance of the interim order, dated 03.04.2018, in W.P.No.11700 of 2018, dated 03.04.2018, passed by the erstwhile High Court of Judicature at Hyderabad, the Government has effected the promotion of the said candidate. It also notes that the matter was examined in terms of the



relevant government orders on the subject and observed that the promotion in respect of officers, who are facing disciplinary proceedings or a criminal case or whose conduct is under investigation and whose case falls under para 2(iii) of G.O.Ms.No.424, GAD, dated 25.05.1976, shall be deferred only when charges of misconduct are framed by the competent authority or a charge sheet has been filed against him in criminal court as the case may be. It was noted that in the case of Sri D.Sekhar, he was continued under suspension and no disciplinary proceedings were initiated and charge memo was issued to him on the allegation of acquiring disproportionate assets. Hence, noting as such, it was decided to implement the orders of the High Court, dated 03.04.2018, by placing his case before the review DPC for consideration for promotion subject to outcome of the writ petition.

9. The case of the petitioner stands on the same footing. Though a case was booked against him for disproportionate assets, the department did not choose to initiate disciplinary action. Neither did it choose to keep him under suspension. There is no progress in the criminal case and charge sheet is admittedly not filed till date. The judgment of the erstwhile High Court of Judgment passed in W.P.No.28625 of 2010 dealt with a similar case, wherein GO-257, was also considered. It is recorded that the said GO *inter alia* provides that the cases of such employees subject to certain conditions was also to be considered for promotion. It was noted that if the petitioner fits in the parameters of GO-257, his case deserves to be considered.



In another writ petition viz., W.P.No.13359 of 2011, the erstwhile High court of Andhra Pradesh dealt with a similar issue in detail. G.O.Ms.No.424, GA (Ser.C) Department, dated 25.05.1976, was also considered, the purport of which is noted as that mere pendency of disciplinary proceedings cannot be a ground not to consider an employee for promotion. It also noted that even while an employee is facing disciplinary proceedings, his case must be considered for promotion and if he is ultimately found fit, the issuance of orders of promotion must be deferred till further steps shall be taken and if he is exonerated from charges, he shall be issued orders of promotion, with effect from the date on which his immediate junior was promoted. In the case dealt with by the High Court of Andhra Pradesh also, the petitioner therein was not kept under suspension and was not facing any disciplinary proceedings except that he was arrested and thereafter released. There was no filing of charge sheet in the said case. The court held that the petitioner therein is entitled to the benefit of first part of paragraph 6 of G.O.Ms.No.257, dated 10.06.1999, on the ground that the question as to whether the charge against an employee or officer involves moral turpitude, would arise, if only a charge is framed in the criminal case. It also held that it is not at all safe to look to any other source or material to form an opinion, whether the charge involves moral turpitude. The said judgment is on all fours to the facts of this case.

10. In view of the above factual and legal position, the writ petition is allowed and the respondents are directed to consider the case of the



petitioner for promotion to the post of Additional Commission, by taking into account the fact that the petitioner is not under suspension nor a charge is framed against him.

As a sequel, the miscellaneous applications pending, if any, shall stand closed.

July 23, 2020
LMV

T. RAJANI, J



SMT JUSTICE T. RAJANI

WRIT PETITION No.8292 of 2020

July 23, 2020

LMV