

***THE HONOURABLE SRI JUSTICE P.NAVEEN RAO**

+W.P. No.1439 of 2021

% 1.2.2021

#Y Rajasekhar S/o Y Rama Rao Aged 48 years
Occ Inspector of Police
R/o Flat No S4 Anusha Apartments
Yellareddyguda Yousufguda Hyderabad

....petitioner

Vs.

\$ The State of Telangana and 2 others
Rep by its Principal Secretary Home Department
Secretariat Hyderabad

.... Respondents

!Counsel for the petitioner : Sri B. Mayur Reddy

Counsel for the Respondents: G.P. for Home

<Gist :

>Head Note:

? Cases referred:

(1995) 2 SCC 570
(2004) 9 SCC 286
2017 (4) ALD 538

IN THE HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION NO. 1439 of 2021

Between :

Y Rajasekhar S/o Y Rama Rao Aged 48 years
 Occ Inspector of Police
 R/o Flat No S4 Anusha Apartments
 Yellareddyguda Yousufguda Hyderabad
 Petitioner

....

And

The State of Telangana and 2 others
 Rep by its Principal Secretary Home Department
 Secretariat Hyderabad

.... Respondents

JUDGMENT PRONOUNCED ON : 1.2.2021

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : YES
 Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : YES
 To Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to : NO
 See fair Copy of the Judgment ? :

THE HON'BLE SRI JUSTICE P NAVEEN RAO**WRIT PETITION NO. 1439 OF 2021****ORAL ORDER:**

Heard learned counsel for petitioner and learned Assistant Government Pleader for Home.

2. Petitioner is working as Inspector of Police and aspiring for promotion as Deputy Superintendent of Police. Having come to know that exercise is being undertaken by the respondents to effect promotions to the post of Deputy Superintendent of Police and apprehending that he is not likely to be considered for promotion on account of pending criminal case against him, this writ petition is instituted praying to direct the respondents to consider petitioner for promotion as Deputy Superintendent of Police in accordance with his seniority in the cadre of Inspector of Police and in accordance with G O Ms No. 257 General Administration (Services C) Department dated 10.6.1999 and without reference to CC No. 16 of 2015 pending in the Court of the Additional Special Judge for SPE and ACB cases at Hyderabad. Petitioner also seeks direction to consider representation submitted by him on 19.1.2021 requesting to consider him for promotion on same lines as prayed in this writ petition.

3. Facts as narrated by the petitioner in the affidavit filed in support of the writ petition disclose that while he was working in Nampally police station, he was entrusted with the responsibility to conduct investigation in Crime No. 256 of 2013 wherein persons by

name Sadiq Hussain and Shahbaz Hussain @ Gullu Bhai were shown as accused. Petitioner contends that he conducted investigation, arrested the accused and produced them in the Court for judicial remand and prepared the charge sheet in the case. While so, person by name Sadiq Hussain father of Shahbaz Hussain @ Gullu Bhai stated to have visited the police station and requested the petitioner to ensure release of his son and offered money. Upon refusal by the petitioner, said Sadiq Hussain placed Rs. 20,000/- in the bag of the petitioner without his knowledge. Crime No. 34/ACB-CR-1/2013 was registered on 24.1.2013 under Section 7 of the Prevention of Corruption Act, 1988 in the ACB City Range, Hyderabad police station showing the petitioner as accused. On completion of investigation charge sheet was filed. The petitioner is facing trial in CC No. 16 of 2015 in the Court of the Additional Special Judge for SPE and ACB cases at Hyderabad.

4. According to averments made in the affidavit filed in support of the writ petition, no disciplinary action was initiated against the petitioner. However, after the incident, petitioner was placed under suspension but later reinstated into service.

5. Learned counsel for petitioner vehemently contends that what is alleged against the petitioner is false, made vindictively by the father of accused only to ensure that petitioner would not investigate seriously into the allegations leveled against his son and as petitioner was not obliging to let of son of the complainant.

6. He further submits that for no fault of him, there is no progress in the criminal case, therefore, petitioner cannot be further harassed and humiliated by denying him promotion as per his eligibility and suitability. Learned counsel for petitioner placed reliance on the orders passed by this Court in writ petitions filed by employees claiming promotion without reference to pending disciplinary proceedings.

7. Learned Assistant Government Pleader for Home asserts that since petitioner is facing trial in a criminal case on grave allegation of demand and acceptance of illegal gratification to do official favour, he is not entitled for granting promotion and pending criminal case cannot be ignored while assessing suitability of petitioner for promotion.

8. There is no mention in the averments made in the affidavit filed in support of the writ petition as to whether petitioner was earlier considered for promotion and was over looked. In the present writ petition, there is no challenge to the criminal proceedings even on the ground of inordinate delay in concluding the trial and therefore, Court is not going into the aspect whether there is inordinate delay in conducting trial and such delay is not attributable to the petitioner, to carve out exception and follow the view taken by the Hon'ble Supreme Court in **State of Punjab and others Vs. Chaman Lal Goyal**¹.

9. Therefore, the only issue requires consideration is pending criminal case, whether petitioner can be considered for promotion without reference to criminal proceedings.

¹ (1995) 2 SCC 570

10. Telangana State and Subordinate Service Rules 1996 (for convenience referred to as 'General Rules') deal with general conditions of service of all Government employees. Rule 5 deals with procedure for promotion to selection posts and non-selection posts. According to this Rule, non-gazetted posts are not treated as selection posts. According to sub-rule (a) of Rule 5, all first appointments to a State service and all promotions/appointments by transfer in that service should be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal, from the panel of eligible candidates determined. In case of non-section post, sub-rule (b) contemplates that promotion should be made in accordance with assessment of fitness of persons based on seniority position in the immediate lower cadre.

11. Rule 6 deals with method of preparation of panels. The salient features of this provision are, panel of approved candidates as envisaged in Rule 5 (a) should be prepared by appointing authority/authority empowered, in consultation with, the Departmental Promotion Committee if such posts are outside the purview of the Telangana State Public Service Commission and the Screening Committee, in respect of the posts within the purview of Telangana State Public Service Commission. The appointment should be made from the panels so drawn. Where no consultation is required from the Public Service Commission, panel should be prepared ordinarily during the month of September every year on the basis of estimate of vacancies. The 1st September of the year shall be reckoned as qualifying date to determine the eligibility and such panel would lapse on 31st December of

the succeeding year or when the next panel is prepared, whichever is earlier. The zone of consideration is confined to 1:3. For computation of vacancies, 1st September of the year to the 31st August of the succeeding year should be reckoned as the period.

12. According to Rule 6(i) for non selection posts, competent authority should prepare list of eligible employees every year i.e., from 1st September of the year to the 31st August of the succeeding year, after considering the record sheet and qualifications prescribed.

13. It is appropriate to notice that Rules 5 and 6 of the Telangana State and Subordinate Service Rules, 1996 do not deal with the issue of consideration for promotion when disciplinary proceedings or criminal proceedings are pending. However, these Rules give sufficient indication when they contemplate assessment of suitability/fitness the conduct of employee is an important attribute to be looked into before granting promotion.

14. An employee is entitled to seek advancement in service. Stagnation in a particular post is anti-thesis to the very concept of organizing the service. Every employee has right for consideration for promotion. However, such consideration is subject to seniority, eligibility and availability of vacancy in the higher cadre. If a person fulfils the above criteria, granting promotion depends on assessment of suitability. Once he is found suitable, his promotion cannot be ignored. However, while assessing the suitability, it is permissible for the employer to take note of pending disciplinary action/criminal prosecution and side line

him when there is a cloud on his conduct. More particularly, criminal prosecution directly attributable to the work of employee is more relevant as compared to involvement of an employee in criminal proceedings unconnected to the employment. In the case on hand, crime was registered against the petitioner on the charge of demand and acceptance of illegal gratification to do official favour and petitioner is facing trial before the Special Court. Thus, the conduct of the petitioner as Inspector of Police is under cloud.

15. One of the important parameters in public employment is conduct, character and ability to discharge duties and responsibilities by the employee to the satisfaction of the employer to grant advancement in service. Therefore, the employer assesses the suitability of the person before granting promotion and employer can seek to weed out /keep aside an employee facing disciplinary action/ criminal proceedings till conclusion of such proceedings. It must be made clear at this stage that every employee has right for consideration, including an employee facing disciplinary action/ criminal proceedings but such consideration need not result in granting promotion, if the policy of the Government is against granting promotion to an employee facing disciplinary proceedings/ criminal proceedings.

16. The administrative instructions /orders notified vide G.O.Ms.Nos.424 General Administration (Services. C) Department, dated 25.05.1976 and G.O.Ms.No.257 General Administration (Ser.C) Department, dated 10.06.1999 fill the vacuum created in the Rules and supplement the intendment of the Rules. They reflect the policy of the

Government on consideration for promotion when disciplinary proceedings / criminal proceedings are pending.

17. At this stage, it is expedient to consider the policy of the State Government on consideration for promotion of such Officers. In the combined State, prior to bifurcation, the Government formulated promotion policy on consideration of employees/officers facing the disciplinary proceedings and criminal proceedings and the same is in force in this State. This State has not adopted sealed cover procedure. After consideration of the case by the DPC or by the appointing authority, if the employee is found suitable/fit for promotion, the result of consideration is declared but his actual promotion is deferred till the proceedings pending against him are concluded. Government notified its policy *vide* G.O.Ms.No.424, dated 25.05.1976².

18. For the purpose of such consideration, Government classified the Officers, who are facing enquiry, trial or investigation, into three categories. According to G.O.Ms.No.424, dated 25.05.1976, Officers falling into third category should be deferred for promotion pending departmental enquiry/trial/ investigation. Most of the litigation is generated in cases falling into third category.

² G.O.Ms.No.424 dated 25.5.1976:

The three categories are as under:

- (i) An officer with a clean record, the nature of charges/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;
- (ii) An officer whose record is such that he would not be promoted, irrespective of the allegations/charges under enquiry, trial or investigation; and
- (iii) An officer whose record is such 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.**

19. On further review of this policy and subsequent orders of the Government, Government notified its fresh policy *vide* G.O.Ms.No.257 dated 10.06.1999. Learned counsel for petitioner laid great emphasis on G.O.Ms.No.257 dated 10.06.1999.

20. G.O.Ms.No.257, dated 10.06.1999 mandates that the concerned authority should bring to the notice of the Departmental Promotion Committee, the details of the employees in the zone of consideration for promotion falling under the three categories mentioned there under i.e., (i) officers under suspension; (ii) officers in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and (iii) officers in respect of whom prosecution on criminal charges are pending. Similar categorization of officers as was notified in G.O.Ms. No. 424 is also incorporated in paragraph-5(B) of this G.O.

21. The G.O. enables consideration of claims of officers falling under the third category to grant *ad hoc* promotion, if, even after completion of two years from the date of the Departmental Promotion Committee or Screening Committee meeting, there was no progress in the enquiry/trial/investigation. However, even this consideration is confined to officers against whom charge leveled is not grave, but is a minor one, not involving moral turpitude, embezzlement and grave dereliction of duty.

22. In other words, even if two years time has elapsed after the earlier Departmental Promotion Committee meeting and there is no progress in the case, the officer cannot be considered even to grant

ad hoc promotion if charge leveled is either one of moral turpitude, misappropriation, embezzlement and grave dereliction of duty or all of them.

23. Thus, to claim *ad hoc* promotion, Officer is required to fulfill two conditions, (i) that even after two years from the date of earlier Departmental Promotion Committee meeting, there is no progress in the departmental enquiry/trial/investigation; and (ii) that the allegations leveled do not deal with moral turpitude, misappropriation, embezzlement and grave dereliction of duties.

24. As seen from the two Government orders, policy of the Government is clear and unambiguous; that the Government does not intend to grant promotion even on *ad hoc* basis if the allegations leveled against the employee/officer are grave and that such officer/employee is facing enquiry/trial/investigation. Since, what is alleged against petitioner is demand and acceptance of illegal gratification for doing official favour, the exception carved out is also not attracted.

25. It is settled principle of law that an employee has right for consideration for promotion, but has no right to ask promotion as a matter of course [**K Samantaray v. National Insurance Company Limited**, (2004) 9 SCC 286]. One of the important parameters of public service is if an employee is facing disciplinary action/trial on his/her misdemeanor or misconduct-criminal/civil, he/she should not be granted promotion. It is not in public interest to grant promotion to an employee when on serious allegation enquiry/trial is pending against him. Thus, employee is entitled to be considered for promotion and in

such consideration even if he is found fit, his promotion can be differed on the ground that disciplinary proceedings/criminal proceedings are pending. Thus, employee cannot seek consideration for promotion and to grant promotion without reference to pending criminal proceedings and disciplinary proceedings.

26. In W.P.Nos.2688 of 2017 and 3576 of 2017, identical contentions were urged by the petitioners therein, and sought for direction to grant promotion without reference to pending departmental proceedings and criminal proceedings. They were facing charges of corruption. The above two writ petitions along with several other writ petitions were considered and common judgment was rendered on 17.04.2017 which was reported as **A.Jalender Reddy vs. State of Telangana and another**³. The batch of cases concern different aspects of non-consideration for promotion pending departmental proceedings/criminal proceedings including on the ground of inordinate delay.

27. This Court reviewed precedent decisions on all aspects concerning grievance of employees against not granting promotion to them on the ground that disciplinary proceedings and/or criminal proceedings are pending. Having regard to the policy of the Government, as noted above, the claims of petitioners in W.P.No.2686 of 2017 and 3576 of 2017 on the identical issue was considered from paragraphs 64 to 101 of the decision reported in the ALD journal and was rejected. The

³ 2017 (4) ALD 538

operative portion of the order in the above two writ petitions reads as under:

“105. In WP Nos. 2688 of 2017 and 3576 of 2017 admittedly charge sheets are filed and trial has to be conducted. Though petitioners contend that they are not responsible for the delay in completion of trial, it is to be noted that registration of crime and continuation of criminal proceedings is not the subject matter in these writ petitions. To maintain sanctity in public service, no person who is facing such serious allegations can be rewarded with promotion. It is not in public interest. The policy of the Government is clear and unambiguous and in terms thereof petitioners are not entitled for promotion even on *ad hoc* basis when criminal cases are pending. It cannot be said that such employee is remediless. If he comes clean on the charge of illegal gratification, he can claim all benefits from retrospective date. Thus, these writ petitions deserve to be dismissed. They are accordingly, dismissed.”

28. At this stage, if the prayer of the petitioner is seen, on the one hand, petitioner asks for consideration of his case in accordance with G.O.Ms No. 257 dated 10.6.1999 and on the other hand he seeks direction to ignore pendency of criminal case while considering him for promotion. Both cannot go hand in hand. As noticed above, G.O.Ms No. 257 dated 10.6.1999 categorizes employees on various parameters and consideration of employee facing disciplinary action/ criminal action depends on fitting into those parameters. If allegation is grave, such as demand and acceptance of illegal gratification as in this case, the question of granting promotion even on *ad hoc* basis, does not arise. In the instant case, petitioner has not disclosed as to whether he was earlier considered for promotion, therefore, question of considering him for granting *ad-hoc* promotion also does not arise.

29. For the foregoing reasons, writ petition merits no consideration and accordingly dismissed. However, it is made clear that this order does not come in the way of consideration of the petitioner

strictly in accordance with G O Ms No. 257 dated 10.6.1999 by duly taking note of pending criminal case. No costs. Miscellaneous petitions, if any pending, shall stand closed.

P.NAVEEN RAO,J

Date: 01.02.2021
tvk

Note: Mark L R Copy--YES



THE HON'BLE SRI JUSTICE P NAVEEN RAO



WRIT PETITION NO. 1439 OF 2021

Date: 1.2.2021