

THE HON'BLE Dr.JUSTICE K. MANMADHA RAO

Writ Petition No.26645 of 2022

ORDER:-

This Writ Petition is filed, under Article 226 of the Constitution of India, seeking the following relief:

“.....pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus:

(a) To declare the entire action of the respondents, particularly the entire action of the 1st respondent in not considering the genuine case of the petitioner for promotion to the post of Senior Assistant (which is a non-selection post) even though he is fully eligible, qualified, and within zone of consideration and also not releasing 12 years incremental scale under automatic advancement scheme even though, no departmental or other valid proceedings are pending except a surprise check was conducted as on 21.11.2015 while he was working on rotation basis as Jr.Asst., at Border Commercial Taxes, Check Posts, Panchalingala, Kurnool District is as highly illegal, arbitrary, unjust, improper, opposed to all canons of law, including contrary to various judicial pronouncements, in the same subject matter

(b) and consequently direct the respondents to forthwith consider the case of the petitioner for promotion to the post of Senior Assistant (which is a non-selection post) in the existing vacancies while considering the names of his juniors by duly taking into account that the petitioner is not facing any departmental proceedings nor other proceedings in view of law laid down by Division Bench of Composite High Court dated 10.07.2014 in W.P.No.18774/2014 as well as order dated 06.09.2011 in W.P.No.13359/2011;

© To further direct the respondents to forthwith release SPP Scale-1 on completion of 12 years of incremental service in the cadre of Jr.Asst., which was already released in favour of his juniors by duly taking into account that, no valid proceedings are pending against the petitioner.”

2. Heard Mr.Santhapur Satyanarayana Rao, learned counsel for the petitioner and learned Government Pleader for Services-I, appearing for the respondents. Perused the material available on record.

3. It is the case of the petitioner that though no disciplinary

Junior Assistant at Border Commercial Taxes, Check Posts, Panchalingala, Kurnool District, his case is not being considered for promotion to the post of Senior Assistant, which is a non-selection post.

4. Learned counsel for the petitioner, while reiterating the contentions raised in the writ petition, places reliance on the Division Bench Judgment of Composite High Court dated 10.7.2014 passed in W.P.No.18774 of 2014 and dated 6.9.2011 passed in W.P.No.13359 of 2011.

5. Be that as it may, as per Rule 5(b) of the Andhra Pradesh State and Subordinate Service Rules, 1996, in respect of a non-selection post, promotion cannot be denied unless the charges, if any, against an employee are proved and punishment is ordered.

6. In the light of the above said Rule position and also in view of the orders of the Division Bench referred to above, the respondents are directed to consider the case of the petitioner for promotion to the post of Senior Assistant, whenever the exercise for promotions is taken up.

7. Accordingly, the writ petition is disposed of at the admission stage. No costs.

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

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Date: 24.08.2022

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