

**HON'BLE DR. JUSTICE K. MANMADHA RAO**

**WRIT PETITION No. 41411 of 2017**

**ORDER :**

This writ petition is filed under Article 226 of the Constitution of India for the following relief:-

*“to issue a Writ order or Direction more particularly one in the nature of Writ of Mandamus*

- a) declaring the action of the Respondents in rejecting the option of the Petitioner for conversion as Development Officer (Administration) by the Head Office by its letter dated 08.11.2016 communicated vide mail dated 08.12.2016 as arbitrary, illegal, unjust, unsustainable and violative of Article 14 of the Constitution of India;*
- b) Also declare the proceedings dated 12.04.2017 and 05.10.2017 of the Branch Manager on the command of the 3<sup>rd</sup> Respondent as arbitrary, illegal and unsustainable;*
- c) Consequently, direct the Respondents to act upon the option for conversion as Development Officer (Administration) on and from the date on which he has been reinstated pursuant to the orders of this Hon'ble Court in Writ Appeal No.218 of 2014 dated 20.08.2014 as affirmed by the Supreme Court of India and release all the benefits that flow from out of granting the reliefs prayed for herein and to grant such other or further orders.....”*

2. Heard Mr. P. Durga Prasad, learned counsel for the petitioner and Mr. Vedula Srinivas, learned Counsel for the respondents.

3. Brief facts of the case are that :

The petitioner was appointed as a Development Officer on 01.05.1987 and he was appointed as General Candidate. The service of the petitioner was confirmed in the year 1988. On the ground that there was a complaint from the SC and ST Welfare Association alleging that the petitioner did not belong to the Scheduled Caste, but he was appointed against the quota

earmarked for candidate from the Scheduled Castes. Basing on the complaint, the Oriental Insurance Company Limited issued a Charge Memo dated 07.03.2001. Basing on the enquiry report dated 12.07.2002 the Disciplinary Authority imposed penalty of removal from service. Assailing the same, the petitioner filed an Appeal before the Appellate Authority, which was rejected by its order dated 24.05.2004. Later the petitioner filed W.P.No.2643 of 2004 before this Court and this Court by its order dated 19.11.2013, the order of dismissal of the petitioner is set aside and the Disciplinary Authority shall consider afresh the punishment to be imposed against the petitioner other than the dismissal removal or compulsory retirement and pass appropriate orders after according opportunity to the petitioner and the respondents shall complete the process within six weeks. Since the said order is not complied with, the petitioner filed contempt case.

The respondents filed Writ Appeal No.218 of 2014 against the orders of learned single judge. After hearing both the parties, learned Division Bench of this Court passed final order dated 10.07.2014. Since there arose clarification, the petitioner filed Writ Appeal Miscellaneous Petition No.2492 of 2014 and the order passed on 10.07.2014 was modified by an order dated 20.08.2014 holding that the order of dismissal dated 17.07.2002 passed against the respondent is set aside and the respondent shall be reinstated into service with continuity of service, but without back wages. The respondents filed SLP No.34744 of 2014 before the Hon'ble Apex Court, which was dismissed on 23.08.2016, thus the order of the Division Bench became final.

Pursuant to the same, the petitioner was reinstated into service on 20.09.2016. Thus the petitioner became an employee of the company and by virtue of the continuity of service ordered by this Court, the petitioner is entitled to the benefits, but the respondent denied the back wages.

Therefore the petitioner made a representation dated 24.10.2016 requesting the respondents to permit the petitioner to exercise the option to move over to administration i.e Development Officer (Administration as could not do the same due to penalty imposed him, which the courts set aside as being untenable. But the respondents did not take any action so far, hence inaction of the respondent is questioned in this writ petition.

4. *Per contra*, the respondents filed counter affidavit denying material averments made in the writ affidavit and mainly contended that the respondent company has launched Special Voluntary Retirement to the Development Officers and he has also given option for conversion into Development Officers on Administrative side. The said scheme was notified by Government of India vide notification dated 02.01.2003 and applicable to the Development Officers, who were in service as on 03.01.2003 and was kept open for a certain period of that year. Since the petitioner was not in service at that time, he did not exercise the option. Further the petitioner was informed that his request for conversion into Administrative side cannot be considered as it was available for a limited period in the year 2003 and the same is not in force in the year 2016. It is further contended that the

direction to reinstate him with continuity of service, without back wages, cannot be interpreted to include the extension of an option which was in force for a short period in the year 2003, after a lapse of 13 years in favour of the petitioner. Hence, the petitioner is not entitled for the benefit as claimed in the writ petition and same is liable to be dismissed.

5. During hearing learned counsel for the petitioner reiterated the contents urged in the writ petition and contended that as per orders passed by the Division Bench of erstwhile High Court of A.P in W.A.No.218 of 2014, dated 20.08.2014, the petitioner was reinstated into service by its order dated 20.09.2016. Since order of dismissal dated 12.07.2002 passed against the petitioner is set aside and there is a direction to reinstated into service with continuity of service, but without back wages, therefore the petitioner is entitled for the scheme notified by the government of India vide notification dated 02.01.2003, which is applicable to the petitioner. Therefore the contention of the learned counsel for the respondents that by the date of scheme enunciated, the petitioner was not in service and hence he did not exercise the option is not a valid ground to reject the option of the petitioner for conversion as Development Officer. Such act of the respondents is highly illegal and arbitrary.

6. Therefore, the petitioner is entitled for the benefits as on notified date pursuant to the orders of Hon'ble Division Bench of this Court in W.A.No.218 of 2014, dated 20.08.2014, which is binding on the respondents. Therefore the respondents are bound to act upon as such and also consider the request of the

petitioner for conversion as Development Officer. Though there are latches on the part of the respondents in following the decision of Hon'ble Division Bench of this Court, the petitioner cannot be penalized. Therefore the petitioner is entitled to claim relief as claimed in the writ petition in *toto*.

7. Accordingly, the Writ Petition is allowed. There shall be no order as to costs.

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

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**DR. K. MANMADHA RAO, J.**

Date : 30.06.2022

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