

APHC010072992023



**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3507]

MONDAY ,THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE G.NARENDAR

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT APPEAL NO: 309/2023

Between:

Maddi Venkanna and Others

...APPELLANT(S)

AND

A Ram Babu and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1.N ASHWANI KUMAR

Counsel for the Respondent(S):

1.ADDL ADVOCATE GENERAL

2.MANOJ KUMAR BETHAPUDI

WRIT APPEAL NO: 310/2023

Between:

S Chaitanya Kumar and Others

...APPELLANT(S)

AND

Ch Mani Kumar and Others ...RESPONDENT(S)

Counsel for the Appellant(S):

1.N ASHWANI KUMAR

Counsel for the Respondent(S):

1.ADDL ADVOCATE GENERAL

2.MANOJ KUMAR BETHAPUDI

WRIT APPEAL NO: 311/2023

Between:

H D Eranna and Others ...APPELLANT(S)

AND

S Anitha and Others ...RESPONDENT(S)

Counsel for the Appellant(S):

1.N ASHWANI KUMAR

Counsel for the Respondent(S):

1.ADDL ADVOCATE GENERAL

2.MANOJ KUMAR BETHAPUDI

WRIT APPEAL NO: 312/2023

Between:

Ch Nagarjuna and Others ...APPELLANT(S)

AND

P Sumana and Others ...RESPONDENT(S)

Counsel for the Appellant(S):

1.N ASHWANI KUMAR

Counsel for the Respondent(S):

- 1.ADDL ADVOCATE GENERAL
- 2.MANOJ KUMAR BETHAPUDI

The Court made the following common judgment: (per Hon'ble

Sri Justice T.C.D.Sekhar)

All the appeals are arising out of the common order dated 14.11.2022 passed by the learned Single Judge in W.P.No.20064/2019 and batch.

2. The unsuccessful respondents in the writ petition are the appellants.

3. The writ petitioners challenged memo No.PRR01-PREOESSTT(MISC)/43/2019-Estt.I, dated 08.11.2019 issued by the 1st respondent in rejecting the petitioners request for promotion to the post of Executive Engineer, as the same is contrary to the provisions of Rule 3 (a) & (b) and the Annexure thereto of Andhra Pradesh Panchayat Raj and Rural Development Engineering Service Rules notified *vide* G.O.Ms.No.15 PR & RD (Estt-III) Department dated 08.01.1999 as amended from time to time and to direct the respondents to consider the case of the petitioners for promotion to the post of Executive Engineer with benefits incidental thereto.

4. The case of the writ petitioners is that, they are selected by APPSC and appointed by direct recruitment as Assistant

Engineer (AE) under the control of respondent Nos.1 & 2 by proceedings dated 27.06.1998 issued by the 2nd respondent. Subsequently, the probation was declared on 18.12.2000 and the services were regularized in the said category. In the provisional seniority list of Deputy Executive Engineer (DEE) communicated through memo dated 29.05.2019 of the 2nd respondent by duly including her name in the panel during the year 2016-17. The petitioners have submitted detailed objections of the same as they are entitled to be included their names in 2003-04 panel of DEE. The petitioners case came up for consideration for promotion to the post of DEE and accordingly by virtue of proceedings dated 26.01.2004 they were promoted as DEE and completed more than 14 years of service in the said category. Therefore, they are fully eligible and qualified for promotion to the post of Executive Engineer (EE). The request of the petitioners was rejected by the 2nd respondent by the proceedings dated 09.08.2017 and the same was challenged before the AP Administrative Tribunal, Hyderabad by filing OA.No.1876/2018. Initially the tribunal granted interim order on 31.08.2018 directing the 1st respondent to consider the petitioners representation dated 30.08.2017. In view thereof, the 2nd respondent rejected the

petitioner's representation by way of impugned memo dated 07.06.2009 *inter alia* on the ground that, in view of the amendment issued in G.O.Ms.No.338, dated 07.11.2009, there is no promotion channel to the post of EE for such of those DEE who are appointed from the category of AE and that their names have been pushed down in the provisional seniority list. The amendment made by virtue of G.O.Ms.No.338, dated 07.11.2009 may not be applicable to be case of the petitioners in as much as, the petitioners were graduates in engineering even at the time of their entry into service and they did not acquire BE/B.tech qualification while working as DEE. The petitioners service conditions are governed by provisions of AP State & Subordinate Service Rules, 1996 and the AP Panchayati Raj & Rural Development Engineering Service Rules notified in G.O.No.15, dated 08.01.1999 as amended from time to time. The post of DEE comes under Class-A, Category 5 and the next higher post of EE comes under Class-A, Category 4. Rule 3 deals with the method of appointment of various posts. The post of EE shall be filled by promotion from Category 5. The post of DEE shall be filled by promotion from Category 6 i.e., AEE and by appointment by transfer of AE in AP Panchayati Raj & and Rural Development

Engineering Subordinate Service Rules and other feeder categories.

5. It is further contended that, as per Note (1) appended to Rule 3, in a Cycle of 36 vacancies in the Category of DEE, 4th, 8th, 12th, 16th, 20th, 24th, 28th is earmarked for AEE and 36th vacancy is earmarked for AE with BE/B.Tech qualification. Subsequently, the Rule 3 amended by G.O.Ms.No.314, dated 17.08.2002 prescribing a uniform minimum qualifying service of three (03) years for promotion or appointment by transfer to the post of EE subject to the ratio prescribed in Note (3) (III) under Rule 3. These rules were further amended *vide* G.O.Ms.No.338, dated 07.11.2009, where under in Rule 3 the existing clauses (II) & (III) under Note (3) were omitted. By virtue of the said amendment, the case of the DEE who promoted from the feeder category of AE to the EE category is not being considered and the respondents are considering the cases of only those DEE for promotion who are appointed from the feeder category of AEE stating that there is no channel of promotion to the post of EE in services rules.

6. The official respondents filed counter in the said writ petition supporting the impugned proceedings *inter alia* contending that the method of appointment and qualification under Rule 3 of Category 4 i.e., EE in Class A issued by the G.O.Ms.No.15, dated 08.01.1999 was challenged before the tribunal in OA.No.8195/2002 and batch. Where under, the tribunal set aside the rules by order dated 13.09.2004. The said order was further challenged before this Court in W.P.No.7086/2005 wherein, this Court set aside the Note 3(III) of 3(A) Rules, holding that the qualification prescribed for promotion to the post of EE in Annexure to Rule 3 (b) of the Rules prescribing Bachelor Engineering Degree is mandatory. Pursuant to the said orders, the Government issued G.O.Ms.No.338, dated 07.11.2009 amending the rules in G.O.Ms.No.15, dated 08.01.1999. Subsequently, a state wide integrated seniority list of graduate DEE Panchayat Raj *vide* Gazette No.91, dated 04.12.2009 was issued and the same was confirmed in the year 2009, where the DEE who were promoted from the cadre of AEE were only covered and the DEE, who were appointed by transfer from the AE, Panchayat Raj cadre (either diploma or degree qualification) did not find place. Based on the integrated seniority list prepared

state wide, regular promotion to the post of EE, Panchayat Raj were considered and the same was confirmed by G.O.Ms.No.337, dated 01.10.2011 wherein, the DEE, Panchayat Raj, who were promoted from the cadre of AEE were only considered as EE, for which the AE, who were appointed by transfer to the cadre of DEE, have not raised any objection.

7. Further, by virtue of the impugned memo dated 09.05.2019, the respondent department has issued instructions to maintain 3:1 ratio in between AEEs/AEs in the matter of implementation of Rule of Reservation in promotion to the category of DEE. Therefore, the claim of the petitioners for promotion from 2003-04 is not valid since their seniority in the cadre of DEE, Panchayat Raj is not confirmed so far. The learned Single Judge while considering the writ petition observed that the petitioners were graduates in engineering with B.Tech (civil) prior to their appointment and they were fully eligible and qualified for promotion to the post of EE. It is also observed that for effecting promotion to the category of EE, which is a state level category, an integrated senior list of DEE has to be prepared and a provision has been made in Note 3(III) and Rule 3, fixing a ratio of 3:1 between the graduates and non graduates on the total cadre

strength of said category posts in the department. However, the said clause (III) along with clause (II) of Note 3 were subsequently omitted by G.O.Ms.No.338, dated 07.11.2009.

8. Meaning thereby, the quota which was fixed for the appellants/unofficial respondents were taken away but their avenue for promotion is kept intact. In this regard, this Court directed the personal secretary to the Government, Panchayat Raj and Rural Development Department to file an affidavit specifying rule position accordingly, additional affidavit was filed by the 2nd respondent on 18.12.2024 and para 8-9 reads as follows:

8. It is necessary to submit here that the wording in Note 3(I) of Rule 3 whereby it is specified that at every 9th position in an cycle of 36 vacancies shall be read to be the 9th position of Assistant Engineers in a cycle of 36 vacancies and the said 9th position is the 36th vacancy is earmarked specifically for appointment by transfer of Assistant Engineers with BE/B.Tech qualification.

9. It is humbly further submitted that, out of 36th vacancy cycle, every 4th point is reserved for Assistant Engineer for appointment by transfer to the post of Deputy Executive Engineer (i.e 4th, 8th, 12th, 16th, 20th, 24th, 28th, 32nd (if the suitable draughts man, Special Grade or Grade I is not available, then this vacancy shall be allotted to the category of qualified Assistant Engineer) and every 36th vacancy in the cycle, shall be filled by appointment by

transfer of Assistant Engineer with BE/B.Tech qualification as per the Note-1 read with Note-3(1).

10. It is further submitted that, as per the Note 3 (I) of Rule 3, it is the 9th position but not 9th vacancy which is reserved for Assistant Engineers with BE/B.Tech qualification. In view of that, as per Note-1 read with Note-3(I), every 4th vacancy is reserved for appointment by transfer is not contrary to the Note-3 and the reservation of every 4th vacancy at the ratio of 3:1 is as per rules only.

9. In that view of the matter, the learned Single Judge rightly allowed the writ petition by setting aside the said impugned memo dated 08.11.2019 by directing the 2nd respondent in the writ petition to prepare a state wide integrated seniority list of graduate DEE, Panchayat Raj keeping in view of the amendment made to G.O.Ms.No.15, dated 08.01.1999 by G.O.Ms.No.338 of Panchayat Raj dated 07.11.2009 and to consider the cases of the eligible persons as per cycle for promotion to the post of EE as the petitioners are graduates which is admittedly the only channel for promotion to the post of EE as expeditiously as possible.

10. As already stated, the quota which was fixed for the appellants/unofficial respondents though taken away by omitting clause 2 and clause 3 under Note 3 of AP Panchayat Raj and Rural Development Engineering Service Rules thereby, the quota

reserved for the appellants/unofficial respondents were taken away. But nevertheless, their avenue for promotion is kept intact. In view of the fact that Rule 3 which prescribes the method of promotion and qualifications in which category 4 for the post of EE, the method of appointment is clearly stated as by promotion from category 5. In that view of the matter, unless the amendment made to the rules are challenged, the contention of the appellants/unofficial respondents in the writ petition cannot be entertained.

11. In that view of the matter, there are no merits in the writ appeals and accordingly the same are dismissed.

There shall be no order as to costs.

As sequel thereto, miscellaneous petition, if any, pending shall stand closed. Interim orders, if any, shall stand vacated.

JUSTICE G.NARENDAR

JUSTICE T.C.D.SEKHAR

Dt.23.12.2024
DSB

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THE HONOURABLE SRI JUSTICE G.NARENDAR

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT APPEAL NOS: 309, 310, 311 & 312 of 2023

Date: 23.12.2024

DSB