

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.34761 2015

Date:30.10.2015

Between:

Smt. B.Vasantha, w/o. Panthulya, Aged 36 years,
Working as Deputy Director (Executive Engineer),
ITDA Plain Areas, Hyderabad (Telangana), Hyderabad.

.... Petitioner

AND

The State of Telanagana, rep.by its Principal Secretary,
Social Welfare (TW) Department, Secretariat, Hyderabad
and others

.... Respondents

The Court made the following:

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER: (Per Hon'ble Sri Justice P.Naveen Rao)

The averments of the petitioner in the affidavit filed in support of the writ petition would disclose that petitioner was selected by the Andhra Pradesh Public Service Commission for appointment as Assistant Executive Engineer in Tribal Welfare Department to the cadre of combined State service in the year 2001. On selection, petitioner was appointed as Assistant Executive Engineer in Zone-II of the combined State of Andhra Pradesh. She was further promoted as Deputy Executive Engineer on 16.03.2007 in zone II. She is presently holding the post of Executive Engineer on in-charge basis in the State of Telangana.

2. Petitioner filed O.A.No.2922 of 2015 before the Andhra Pradesh Administrative Tribunal praying to declare the action of the respondents in taking steps to repatriate her from the post of Executive Engineer to the post of Deputy Executive Engineer without considering the claim of the petitioner under Clause (a) of para-18 of the guidelines notified by the Government of India in F.No.27/13/2013-SRS, dated 29.10.2014 for allotment to the State of Telangana as Executive Engineer and not treating the petitioner as regular Executive Engineer from 03.06.2013 as per her entitlement as person belonging to Scheduled Tribe category and by complying the principle of reservation in promotions to Scheduled Tribe category and treating her as a local candidate of State of Telangana.

3. By order dated 23.06.2015, the Administrative Tribunal directed the respondent authorities to maintain *status quo* regarding continuation of the petitioner in Hyderabad and not to proceed with allocation pending finalization of the seniority in the category of Executive Engineers. Praying to vacate the said interim direction, State of Telangana filed V.M.A.No.1107 of 2015. By order dated 14.10.2015 the Tribunal vacated the interim order earlier passed. However, Tribunal directed the States of Telangana and Andhra Pradesh to consider the possibility of adjusting the petitioner in the vacancy of Executive Engineer on in-charge basis or otherwise. Aggrieved by the order dated 14-10-2015 this writ petition is filed.

4. Heard Sri P.V.Ramana, counsel for petitioner and learned Government Pleader for Services, State of Telangana.

5. Extensive submissions are made by learned counsel for petitioner on entitlement of petitioner for retention in State of Telangana. It is the foremost submission of

learned counsel for petitioner that petitioner should be treated as a local candidate of State of Telangana and the elevation of status granted to petitioner as Executive Engineer in the year 2013 be treated as a regular promotion to State cadre post. Furthermore, there is no need to disturb the petitioner to accommodate the incumbents and, therefore, balance of convenience is in favour of petitioner. Stand of the State of Telangana is that three Engineers hitherto working in the State of Andhra Pradesh are now surrendered to State of Telangana and to accommodate them, it is necessary to relieve the petitioner. Petitioner is treated as person belonging to zone II, as per initial recruitment as Assistant Executive Engineer and promotion as Deputy Executive Engineer and zone II now forms part of residuary State of Andhra Pradesh. O.A. filed by the petitioner is pending consideration of the Tribunal. All the issues agitated by the petitioner in this writ petition are the matters which require consideration by the Tribunal.

6. The only issue that arises for consideration at this stage is whether the balance of convenience is in favour of the petitioner to mandate the State of Telangana to retain him in the State pending final allocation of the Engineers to the respective states in the Tribal Welfare Engineering Service.

7. The pleadings on record would disclose that issue of seniority in various cadres of engineering wing in Tribal Welfare Department is not finalized. It appears that, prior to bifurcation and after bifurcation respective States are resorting to in-charge arrangements to fill vacancies in higher cadres to attend to the administrative requirements of the States. In the said manner, the post of Executive Engineers and Superintendent Engineers in Tribal Welfare Department are filled up on in-charge basis. The essential ingredient of in-charge arrangement is that a person continues to hold the substantive post in which he was working but he would be assigned the duties and responsibilities of the higher post. Ordinarily, such in-charge arrangements by very nature are temporary to attend to some administrative exigency. However, due to compulsions of not making regular promotions, the States are resorting to make in-charge arrangements to fill regular vacancies in the higher cadre. In the said manner, petitioner is presently holding post of Executive Engineer. However, the substantive post of the petitioner remains as that of Deputy Executive Engineer. Petitioner may be entitled to claim promotion as Executive

Engineer retrospectively from the date she was granted in-charge arrangements but till such promotion is granted, her substantive post is Deputy Executive Engineer.

8. *Prima facie*, as seen from the provision contained in Section 77 of the Andhra Pradesh Reorganization Act, 2014, a person who was serving the combined State of Andhra Pradesh on substantive basis shall continue from the appointed day provisionally in connection with the affairs of the State of Andhra Pradesh unless he is required by general or special order of the Central Government as required to serve provisionally in connection with the affairs of the State of Telangana. Thus, ordinarily a person appointed in zonal cadre post and holding a zonal cadre post in substantive capacity should normally serve the State of Andhra Pradesh on a provisional basis until final allocation is made to the respective States. Thus, *prima facie*, the petitioner is ordinarily required to serve in the State of Andhra Pradesh.

9. In addition to mandate of the AP Reorganisation Act, the State of Telangana has compulsion to repatriate the petitioner since three engineers, who were earlier working in the State of Andhra Pradesh are repatriated to the State of Telangana and awaiting postings. The stand of the State of Telangana is that they cannot accommodate all of them, unless petitioner is relieved. Thus, the stand of the State of Telangana that petitioner is required to go to State of Andhra Pradesh and serve the State of Andhra Pradesh until final allocation is made, cannot be faulted.

10. Learned counsel for petitioner asserted that if the person who is holding charges of posts of Executive Engineer as well as Superintendent Engineer, the petitioner can be accommodated even after adjusting three officers repatriated to the State of Telangana and therefore there is no necessity to transfer her to State of Andhra Pradesh. This is a matter which is within the realm of the State Administration and no direction can be issued to mandate the State to retain petitioner by adjusting the existing cadre. Moreover, the substantive cadre of petitioner is in Zone-II which forms part of State of Andhra Pradesh and Section 77 mandates him to work in that State. However, the Tribunal has taken note of the concerns expressed by the petitioner and issued directions to two States to consider the possibility of adjusting the petitioner either in the State of Telangana or Andhra Pradesh as Executive

Engineer. Thus, interests of petitioner are sufficiently protected.

11. It is premature to go into the issue as to whether the petitioner would be continued as Executive Engineer or whether the State of Andhra Pradesh would treat the petitioner as belonging to the Deputy Executive Engineer cadre and would put her back in Deputy Executive Engineer cadre even before the petitioner reports to the State of Andhra Pradesh and before that State takes decision on the issue of posting the petitioner. If petitioner has any grievance arising out of her posting on joining State of Andhra Pradesh, petitioner can avail such remedies as available in law.

12. The Hon'ble Tribunal on detailed consideration of the rival claims and having regard to statutory mandate and on weighing the balance of convenience vacated the interim orders. We are not persuaded to take a view different from the view taken by the Tribunal. There is no error, much less patent error warranting interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India in a matter arising out of interlocutory order of the Andhra Pradesh Administrative Tribunal. Therefore, the writ petition fails and accordingly dismissed. It is made clear that what is discussed in the foregoing paragraphs is only for the purpose of consideration of balance of convenience to grant the relief prayed by the petitioner pending disposal of O.A.No.2922 of 2015 by the Andhra Pradesh Administrative Tribunal and is not an expression of opinion on merits. All the issues are left open to be adjudicated by the Andhra Pradesh Administrative Tribunal.

Miscellaneous petitions if any pending in the writ petition shall stand closed. There shall be no order as to costs.

JUSTICE VILAS V.AFZULPURKAR

JUSTICE P.NAVEEN RAO

Date:30.10.2015

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