

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.25590 of 2000

ORDER:

The present writ petition came to be filed seeking issuance of a writ of certiorarized mandamus, quashing the order issued by the second respondent in Rc.No.B1/3179/97 dated 24.08.2000 pursuant to which the fourth respondent was appointed as Deputy Executive Engineer and consequently direct respondent Nos.1 to 3 to appoint the petitioner as Deputy Executive Engineer.

The averments in the affidavit filed in support of the writ petition are as under:

The petitioner herein was appointed as an Assistant Engineer on NMR basis on 01.05.1992 in Sri Venkateswara Swamy Vari Devasthanam, Dwarakatirumala, West Godavari District. He was holding a degree in engineering which he completed in the month of June, 1990. By his proceedings Rc.B1/1315/90 dated 18.07.1994, the Executive Officer, Sri Venkateswara Swamy Vari Devasthanam, Dwarakatirumala, appointed the petitioner as an Assistant Engineer for the said Devasthanam. By his proceedings Rc.No.A1/35259/95-1 dated 04.07.1995, the first respondent who was the Commissioner, Endowments Department transferred the petitioner to Sri Durga Malleswara Swamy Devasthanam, Vijayawada, wherein he was re-designated as Assistant Executive Engineer, with effect from 21.12.1996.

The petitioner made a representation to the third respondent to consider his candidature for promotion to the post of Deputy Executive Engineer in the said establishment as he was fully qualified. Instead of considering the case of the petitioner, the third

respondent is said to have appointed one U.Abja Rao as Deputy Executive Engineer. Aggrieved by the same the petitioner filed W.P.No.5240 of 1998 questioning the appointment of U.Abja Rao, who was the third respondent in the said writ petition. By an order dated 12.08.1999 this Court allowed the writ petition and held as under:

“In any case, the claim of the petitioner for promotion to the post of Deputy Executive Engineer is to be considered only along with other eligible Assistant Executive Engineers, working in the unit of eight institutions by the Selection Committee constituted by the 1st respondent. Therefore, the petitioner is not entitled for a direction to consider his case for promotion to the post of Deputy Executive Engineer by the second respondent. The writ petition is accordingly allowed to the extent indicated above.”

As against the judgment of the learned Single Judge, Writ Appeal No.1446 of 1999 was filed by the Commissioner of Endowments and Writ Appeal No.1919 of 1999 was filed by Koteswara Rao and Nageswara Rao. A division Bench of this Court by its judgment dated 25.11.1999, modified the order of the learned single Judge as under:

“Suffice it, therefore, to clarify that the case of the writ petitioner for promotion to the post of Deputy Executive Engineer has to be considered along with other eligible Assistant Engineers working in eight institutions subject to a process of selection. To this limited extent, the order of the learned single Judge is modified.”

When the said judgment was not implemented, the petitioner filed C.C.No.791 of 2000. Thereafter, the provisional seniority list was prepared inviting objections to the said list. After considering the objections, a final seniority list was prepared and

communicated. It is stated that as per the seniority list, the petitioner was at Sl.No.5. Since promotion to the petitioner was denied and as the fourth respondent herein was promoted as Deputy Executive Engineer though the petitioner was more qualified than the fourth respondent the present writ petition came to be filed.

Relying upon Rules 39, 43 and 47 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants Service Rules, 2000 (for short "the Rules") Sri K.V.Satyanarayana, the learned counsel for the petitioner would submit that the petitioner is entitled for promotion. Basing on the Rules framed pursuant to G.O.Ms.No.1478 dated 17.11.1986, the counsel for the petitioner submits that the petitioner is entitled for promotion to the post of Deputy Executive Engineer. According to him, as per Rule 39 and 54 all eight institutions shall constitute one unit for the purpose of recruitment, transfer, promotion, seniority and discharge for want of vacancies etc. Since the petitioner is the only person with a qualification of Engineering and as his appointment has to be treated by taking into consideration Rule-43, it is vehemently contended that the petitioner alone is entitled for promotion. In any event he submits that if merit-cum-ability, as contemplated under Rule 47 is taken into consideration, the petitioner being only engineering candidate, would be entitled for promotion.

Per contra, the learned counsel for the third respondent as well as fourth respondent opposed the application. Though respondent Nos.3 and 4 have filed counters, but the same was opposed on the ground that the counters are filed contrary to the provisions of Writ Rules Proceedings Rules, 1977 (for short "the Writ Rules").

However, the learned counsel for the third respondent would submit that even without a counter, he can demonstrate as to how the present writ petition is devoid of merits. According to him, Rules which are relied upon by the learned counsel for the petitioner are no more in force. It is his case that on 08.12.2000 the Government issued G.O.Ms.No.888 dated 08.12.2000 pursuant to which new Rules are brought on record, where by the eight major temples created as per Rule 43 of the Rules, were omitted by virtue of the said G.O. As per New Rule 33, each institution of endowment shall be a unit by itself for the purpose of recruitment, seniority and promotion. In view of the said rule position, it is urged that the petitioner cannot seek general promotion over the eight major institutions and that he can seek promotion only in his parental institution ie. Sri Venkateswara Swamyvari Devasthanam, Dwaraka Tirumala. In any event he submits that pending disposal of the writ petition, the petitioner was promoted as Deputy Executive Engineer and subsequently promoted as Executive Engineer. It is also submitted that by virtue of bifurcation of the State, the fourth respondent, who is now an employee of Sri Ramachandra Swamy Temple, Bhadrachalam was promoted in his parent institution in Telangana Area and his seniority will only be in the second respondent temple, which is in a separate state. Hence, it is submitted that the relief which is sought for in the writ petition cannot be awarded.

Further, the learned counsel for the fourth respondent would submit that even accepting the plea of the petitioner to be correct, namely with regard to application of old Rules, the fourth respondent was appointed in the year 1994 whereas the petitioner was appointed in the year 1995. Though the petitioner is having a B.E. degree but since the fourth respondent has put in more than 10

years of service and he being senior to the petitioner, he is entitled for promotion.

A perusal of the material on records makes it clear that under Rule 43 of the Rules framed under G.O.Ms.No.1478 dated 17.11.1986, eight major temples were clubbed and treated as a single unit. Subsequently, on 08.12.2000 these Rules were superseded by G.O.Ms.No.888, wherein each temple of endowment department was treated as a single unit and promotions were effected within the said unit.

Since the present writ petition came to be filed after the new Rules are brought into existence, the petitioner is governed by the Rules framed as on the date of filing of the writ petition and not as they were existing at the time of promotion of the fourth respondent ie. 24.08.2000.

Even assuming that old Rules would apply, a perusal of the Rules, more particularly Rule 44 of the Old Rules show that for Class-II employees, the recruitment is either direct or by promotion. For direct recruitment one must possess B.E. (civil) degree of any university recognized by the State Government. Secondly, he must have passed the account test for PWD Officers or if he does not possess the B.E.degree he must have put in a service of not less than ten years in category-2 post. The record reveals that fourth respondent was appointed much prior to the petitioner and though he did not possess the B.E. (civil) degree, he has put in morethan 10 years of service in category-2, as required under Old Rules. Further, as per amended Rules, which are brought into force prior to filing of the writ petition, the petitioner would be entitled for promotion within his parental unit only. Viewed from any angle this Court is of the view that no relief can

be granted to the petitioner. Further, a perusal of the prayer made in the writ petition shows that the petitioner sought for issuance of a writ of certiorarized mandamus quashing the order passed by the second respondent appointing the fourth respondent as Deputy Executive Engineer and further sought for appointing the petitioner as Deputy Executive Engineer. From the facts narrated above it is clear that the petitioner is not only promoted as Deputy Executive Engineer but he is now appointed as Executive Engineer. No further promotions could be given since he has reached the highest position in that field. It is also not in dispute that subsequent to the division of the State, the petitioner is occupying the post of Executive Engineer in Andhra Area where as the fourth respondent is working in a temple in Telangana Area. His promotion in Telangana Area will not be of any consequences to the petitioner. Since the petitioner is already appointed as Executive Engineer and having regard to the fact that the fourth respondent is senior to the petitioner as he has put morethan ten years of service in category-II post; and in view of G.O.Ms.No.888, this Court is of the opinion that there are no merits in the writ petition and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. There shall be no order as to costs.

Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

14.10.2015
gkv

