

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE SMT. JUSTICE ANIS

CONTEMPT CASE NO. 661 OF 2015

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This contempt case is instituted by the petitioner in W.P.No.8295 of 2012. That writ petition was heard together with another writ petition bearing W.P.No.37634 of 2013. The Division Bench by its judgment dated 18.06.2014 while disposing of both the writ petitions gave certain directions in paragraphs 6 & 7 of the judgment to cover two different areas. In paragraph 7 of the judgment, the Division Bench has dealt with the proceedings of reversion of the petitioner in W.P.No.37634 of 2013 and insulated against any such possible reversion by directing that the said writ petitioner in W.P.No.37634 of 2013 shall not be reverted. In paragraph 6 of the judgment, while confirming the interlocutory order passed by the Andhra Pradesh Administrative Tribunal, it was clarified by this Court that the order would not come in the way of appropriate authority in giving promotions to Scheduled Caste/Scheduled Tribe candidates, if they come up in the zone of consideration basing on their general seniority in the feeder category.

The grievance of the petitioner for initiation of this Contempt of Courts action is that, on 22.11.2014, the State Government passed orders, considering the report submitted by the Engineer-in-Chief, Irrigation and Command Area Development Department, Hyderabad and effected in-charge arrangements to the vacant posts of Chief Engineers, as annexed to the memo. In that memo, out of 5 persons to whom the in-charge arrangements are made, the person at Serial No.4 is Mohammed Sabjan. He was working as Superintending Engineer at Somasila Project Circle, Nellore and he is now kept as In-charge Chief Engineer, Minor Irrigation, Andhra Pradesh & Rayalaseema Region at Hyderabad. It is urged before us by Sri Suresh Reddy, learned Senior Counsel that the State Government has itself taken a decision in their G.O.Rt.No.253 Irrigation & C.A.D (Ser.III) Department dated

07.04.2014 including the name of the petitioner herein at Serial No.8 in the list of Superintendent Engineers, while the name of Mohammed Sabjan Shaik was shown at serial No.24. Thus, a person who has been placed at 16th place, down below the name of the petitioner has been picked up for in-charge arrangement of holding the post of Chief Engineer, contrary to the above directions.

The learned Government Pleader has rightly drawn our attention to the contents of the counter affidavit filed in paragraph 5 in this contempt case, wherein, it is clearly brought out that, out of 19 sanctioned posts of Chief Engineers, there are three officers belonging to Scheduled Castes who have been holding the posts of Chief Engineers and one post of Chief Engineer was also held by a candidate belonging to Scheduled Tribe and consequently, there is no shortfall of representation of the social sectors in the promotion category of Chief Engineers. In that view of the matter, question of considering on out of turn basis the candidature of any of the candidates belonging to the Scheduled Castes/Scheduled Tribes for out-of-turn promotion would not arise.

When it comes to the question of seniority, it is true that, as contended by the learned Senior Counsel, the name of the petitioner herein is included at Serial No.8, while that of the person who has been now appointed as Chief Engineer is standing at Serial No.24 and consequently is lower down in the seniority list. In that regard, the learned Government Pleader has pointed out that the petitioner herein has earned his promotion as Executive Engineer and Superintending Engineer on out-of-turn basis as he is a member belonging to Scheduled Caste. While, an out of turn promotion can be accorded to Scheduled Caste/Scheduled Tribe candidate, but however, when it comes to the question of fixing *inter se* seniority, once the open category candidates also join the rank held by the out-of-turn promotee candidate belonging to Scheduled Caste/Scheduled Tribe, the Open Competition candidate will be given credit for overall general length of seniority. In other words, though candidates belonging to Scheduled Caste/Scheduled Tribe may have earned a promotion on out of turn basis, earlier in point of time than open competition candidates, however, the moment the Open Category candidates earn promotion in their own right and join the rank of the promoted category, they still are liable to be treated as senior members of the cadre. For purposes of seniority, the original *inter se* seniority position existing in the feeder categories would matter. Hence, we do

not find any willful or wanton disobedience of the order passed by the Division Bench of this Court, for us to proceed against the respondents in this contempt case.

We, therefore, discharge the notice before admission issued by this Court on 08.06.2015 and since we do not find any merit in this contempt case, it is accordingly dismissed, but however without costs. Consequently, miscellaneous applications pending if any shall also stand dismissed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

07.09.2015

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