

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
W.A.No. 838 OF 2008

JUDGMENT: (*per Hon'ble Sri Justice Ramesh Ranganathan*)

This *intra* court appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned single judge in W.P.No. 10760 of 1998 dated 25-06-2007, whereby the Writ Petition filed by the respondent herein was allowed and the appellants herein were directed to pay the respondent-petitioner salary and allowances attached to the post of Assistant Engineer, duly deducting the payments already made by them, within a period of four months.

Learned Advocate General appearing on behalf of the appellants herein would submit that the Managing Director was empowered to permit an employee of the Corporation to work as an in-charge Assistant Engineer; the order passed by the District Collector, East Godavari, was without jurisdiction; the respondent herein was not entitled to be continued as an in-charge Assistant Engineer for a period beyond six months as any in-charge arrangement is temporary in character; and, in any event, the learned single judge ought not to have extended, to the respondent herein, the benefit of allowances also as such a direction falls foul of the law declared by the Supreme Court in ***Secretary, State of Karnataka and others Vs. Umadevi (3) and others***^[1].

On the other hand, Sri J.Satya Prasad, learned counsel for the respondent herein, would vehemently contend that no material has been placed on record to show that the District Collector, East Godavari, lacked jurisdiction to permit the respondent herein to work as a Work Inspector, and later as an in-charge Assistant Engineer; no rules, regulations or instructions in force, which specifically confer such a power only on the Managing Director, and not on the District Collector, has been placed on record; as against the respondent's claim for being paid salary and allowances from 30-11-1988 onwards, when he was placed as an in-charge Work Inspector and

later as an in-charge Assistant Engineer, the learned single judge had only granted him salary and allowances from 16-04-1998 onwards; and the said order does not necessitate interference in an *intra* court appeal.

We find considerable force in the submission of Sri J.Satya Prasad, learned counsel for the respondent herein, that in the absence of any evidence being placed before the Court to the contrary, the learned single judge cannot be faulted for holding that the District Collector, East Godavari, who passed the order entrusting responsibilities as Assistant Engineer, had the jurisdiction to do so, and it is only if appointment of Work Inspectors/Assistant Engineers is governed by statutory rules, having the force of law, would it be a legal contention which can be urged for the first time at the time of arguments in this appeal. The order of the learned single judge, holding that the respondent herein had worked as Work Inspector on in-charge basis and, thereafter, as an in-charge Assistant Engineer from 30-11-1988 onwards, does not suffer from any illegality necessitating interference in appeal.

The order of the learned single judge, to the extent he directed payment of salary to the respondent herein from the date of institution of the Writ Petition *i.e.* 16-04-1998 onwards, is in accordance with law. As the Appellants have admittedly extracted work from the respondent-writ petitioner as Work Inspector and Assistant Engineer, he is entitled to be paid the minimum salary attached to the said post. However, the direction to pay the respondent-writ petitioner all the allowances attached to the post of Assistant Engineer, in addition to the salary, falls foul of the law declared in ***Umadevi (3)*** (*supra*).

As the post, which the respondent-petitioner held as an Assistant Engineer, was only on an in-charge basis, the appellants herein could not have been directed to pay allowances also to him, in addition to his salary. The order of the learned single judge is modified and the relief granted, of payment of allowances attached to the post of Assistant Engineer, from 16-04-1998 onwards, is set aside. Consequently, the appellants herein shall pay the respondent-petitioner only the minimum salary attached to the post of

Assistant Engineer from the date of institution of the Writ Petition *i.e.* from 16-04-1998 onwards, after deducting the amount, if any, paid pursuant to the order of the learned single judge. The said amount shall be paid within three months from the date of receipt of a copy of this judgment.

Learned Advocate General would express apprehension that this judgment may constitute a precedent, and result in around 250 employees now invoking the jurisdiction of this Court. He would request this Court to make it clear that this order would not disable the appellants herein from placing the applicable Government and other Orders relating to the power of the Managing Director and other officers of the corporation to appoint persons to the posts of Work Inspectors/Assistant Engineers, including by way of in-charge arrangements, in proceedings, if any, that may be instituted later by other employees. Such an observation is wholly unnecessary as the order passed by the learned single judge is on the basis of the facts placed on record before him.

The Writ Appeal is disposed of accordingly. Pending miscellaneous petitions, if any, in this Writ Appeal shall stand closed in consequence. No order as to costs.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA

MURTHY, J.

Date: 21st April, 2016.

JSK

[\[1\]](#) (2006) 4 SCC 1