

**IN THE HIGH COURT OF JUDICATURE AT HYDERBAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADERSH
W.P.No.9115 of 2009**

Between:

M. Venkat Reddy

.....Petitioner

And:

1. The Government of A.P. rep. by Special Chief Secretary to Government, panchayat Raj & Rural Development, Secretariat, Hyderabad, and others.

..... Respondents

JUDGMENT PRONOUNCED ON :

HON'BLE SRI JUSTICE : V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE : G. SHYAM PRASAD

1. Whether Reporters of local Newspapers may be allowed to see the Judgments? : Yes/No.
2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes/No
3. Whether their Ladyship/Lordship wish to see the fair copy of the judgment? : Yes/No

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G. SHYAM PRASAD**

W.P.No.9115 of 2009

ORDER: (per V. Ramasubramanian, J.)

Aggrieved by the dismissal of his application by the A.P. Administrative Tribunal seeking appointment by the method of recruitment by transfer to the post of Deputy Executive Engineer, the petitioner is before us.

2. Heard Mr. M. Surender Rao, learned Senior counsel for the petitioner and learned Government Pleader for Services for respondents 1 to 4.

3. The petitioner herein was originally appointed as Work Inspector Grade-IV on 20.05.1983. He was promoted as Tracer on 15.09.1984. He was further promoted to the post of Draughtsman Grade-III, Grade-II and Grade-I respectively on 17.05.1990, 04.06.1995 and 07.12.1997.

4. While in service, the petitioner completed a diploma in Civil Engineering in June, 2005 and also passed the Accounts Test for Subordinate Officers Part-I.

5. While working as Draughtsman Grade-I, the petitioner came across two Government Orders in G.O.Ms.Nos.385 & 386, Panchayat Raj and Rural Development, dated 21.11.2005. By virtue of those Government Orders, a person by name G. Malleswara Reddy working as Assistant Engineer was notionally reverted as Draughtsman Grade-III w.e.f., 24.02.1993 and promoted notionally

as Draughtsman Grade-II w.e.f., 24.10.1996 and as Draughtsman Grade-I w.e.f., 6.12.1997. Upon such reversion and promotion, the Government also appointed him by transfer as Deputy Executive Engineer, by relaxing the provisions of Rule 3 of the A.P. Panchayat Raj Engineering Service Rules. By the second order, a person by name S. Hyder, working as Assistant Engineer was notionally reverted as Draughtsman Grade-III w.e.f., 26.03.1983 and promoted notionally to the posts of Draughtsman Grade II and Draughtsman Grade-I w.e.f., 31.12.1985 and 10.04.1995 respectively and was also appointed by transfer as Deputy Executive Engineer by relaxing Rule 3 of the aforesaid Rules.

6. Challenging those orders, the petitioner filed an application before the A.P. Administrative Tribunal. The Government took a stand before the Tribunal that the petitioner was not qualified for the post of Deputy Executive Engineer, since the diploma acquired by him from a particular institution was not recognised by the Government. This stand of the Government was accepted by the Tribunal and the Original Application filed by the petitioner was dismissed on the sole ground that a person ineligible to be appointed as Deputy Executive Engineer cannot challenge the appointment of respondents 5 and 6 herein, as the same would tantamount to entertaining something like a Public Interest Litigation. Therefore, the petitioner has come up with the present writ petition.

7. The case of the petitioner is that he had acquired a diploma in Civil Engineering from the Institute of Advanced Studies in Education (IASE), which is a deemed university under Section 3 of

the UGC Act. According to the petitioner, the Government of India, Ministry of Human Resources Development had issued a notification bearing No.F9-29/2000/V.3, dated 25.06.2002 declaring the said institution to be a deemed university. In G.O.Ms.No.386, Education dated 25.10.1994, the Government declared that the technical/professional qualifications recognised by the central Government shall be recognised by the State Government. Therefore, the petitioner claims that the one and only ground on which the Tribunal denied the relief to him was contrary to law.

8. We have carefully considered the rival submissions. There are actually two issues to be decided. The first relates to the eligibility of the petitioner to be considered for appointment to the post of Deputy Executive Engineer. There is no dispute about the fact that the post of Deputy Executive Engineer falls under Category-5 of Class-A of the A.P. Panchayat Raj and Rural Development Engineering Service. The Special Rules for the said service, issued under G.O.Ms.No.15 PR & RD (Estt.III) Department, dated 08.01.1999, prescribe three methods of recruitment. One of the methods of recruitment is appointment by transfer. To be eligible for appointment by transfer, a person must possess LCE/LME/LAE/LAA or LSE awarded by the Andhra Pradesh State Board of Technical Education and Training or its equivalent qualification. The Government has taken a stand in the reply filed before the Tribunal that no equivalency was accorded to the courses offered by the IASE. But this statement appears to be a bald statement, made without any reference to the Government Order in G.O.Ms.No.386,

dated 25.10.1994. The operative portion of G.O.Ms.No.386, dated 25.10.1994 reads as follows:

“In view of the above position, the Government have carefully examined the issue and decided to reiterate the orders issued in G.O.Ms.No.409, Education (J1) Department dated 18.02.1967 for convenience of all the Government departments for the purpose of recruitment and employment to the suitable posts in the departments of the State Government and also State undertakings are detailed below:-

1. In G.O.Ms.No.2941, Edn.Dept, dt.14.09.1960, orders were issued laying down the procedure to be followed for submitting proposals regarding recognition of degree and Diploma awarded by various institutions outside the State for the purposes of appointment in the State Government service.
2. The Government of India have set up a Board of Assessment consisting of experts in individual subjects besides representatives of All India Council for Technical Edn., Institution of Engineers, India, Inter University Board and presided by a Member of the Union Public Service Commission, for the purpose of assessing the standard of degree and diplomas awarded by different Universities in India and abroad / State Boards, for recruitment to different categories of posts. The Government of India have requested the State Governments that the recognition by the Government of India of various Technical/Professional qualifications be automatically recognised by the State Government for purpose of recruitment to different posts in the State Government service.
3. The matter has been examined in consultation with the three Universities, the Public Service Commission, the Director of Technical Education who are all agreeable to the suggestion of the Government of India. Government accordingly direct that the Technical/Professional qualifications recognised by the Central government shall recognised by the State Government without further processing for recruitment to different posts in the State Government service.

According to the above notification of Andhra Pradesh Government all qualifications recognised by Government of India are automatically recognised by the Andhra Pradesh State Government for Employment.

Therefore, the first issue needs to be addressed by the official respondents carefully.

9. The second issue arising in the case is about the manner in which respondents 5 and 6 were promoted. They were actually promoted under G.O.Ms.No.385 and 386 dated 21.11.2005 after first reversing them to the post of Draughtsman Grade-III with

retrospective effect and re-promoting them to 2 posts, again with retrospective effect.

10. As could be seen from the counter affidavit filed by the Government before the Tribunal, Mr. G. Malleswara Reddy, who is the 5th respondent herein was a diploma holder in Civil Engineering and was appointed as Work Inspector Grade-IV on 08.04.1982. He was promoted as Grade-I on 01.10.1991 and he acquired AMIE qualification in 1992. He was appointed as Draughtsman Grade-III and subsequently promoted as Assistant Engineer on 20.08.1994.

11. Similarly, Mr. S. Hyder, who was a diploma holder in Civil Engineering was initially appointed as Tracer w.e.f., 28.01.1981 and promoted as Draughtsman Grade-III w.e.f., 26.03.1983. He was later promoted as Assistant Engineer w.e.f., 19.04.1990.

12. In the year 2000, respondents 5 and 6 appear to have represented that the 24th point in the Cycle meant for Draughtsman Grade-I for promotion to the post of Deputy Executive Engineer was not filled up for want of candidates. Therefore, they wanted reversion to the post of Draughtsman Grade-III and promotion to the posts of Draughtsman Grade-II and Grade-I, so that they could go to the post of Deputy Executive Engineer.

13. According to the Government, the reversion with notional effect and re-promotion with notional effect were done in relaxation of the Rules. Therefore, the question is whether such a relaxation is permissible in law or not.

14. There is no dispute about the fact that Rule 31 of the A.P. State and Subordinate Services Rules, 1996, empowers the

Governor to relax any sub-rule or general rule in favour of any person. Rule 31 reads as follows:

“Relaxation of rules by the Governor:- Notwithstanding anything contained in these rules or in the special rules, the Governor shall have the power to relax any rules contained in these rules or special rules, in favour of any person or class of persons, in relation to their application to any member of a service or to any person to be appointed to the service, class of category or a person or a class of persons, who have served in any civil capacity in the Government of Andhra Pradesh in such manner as may appear to be just and equitable to him, where such relaxation is considered necessary in the public interest or where the application of such rule or rules is likely to cause undue hardship to the person or class of persons concerned.”

15. But unfortunately for the respondents, the power conferred by Rule 31 is only for the purpose of relaxing any eligibility criteria fixed under the Special Rules or the general rules for the purpose of promotion. The aforesaid rule is not to be taken as a licence granted to the Government to completely flout the entire set of rules. What the official respondents have done in the case on hand is that it has reverted two persons from the post of Assistant Engineer to the post of Draughtsman Grade-III with notional effect from a date 20 to 25 years back and re-promoted them with notional effect to the next 2 higher categories again with retrospective effect. As per the fundamental rules, no person can hold a lien over two posts at the same time. Similarly, no rule contemplates reversion of a person except by way of penalty. Even at the request of an individual, a reversion to a category three or four stages below the one occupied by a person cannot be ordered and no rule permits such a reversion. Moreover, the sine quo non for invoking the aforesaid Rule 31 is the existence of public interest. The Government orders do not disclose any public interest. It is only a

combination of public interest and the private interest of the employees that the above rule can be invoked. Therefore, the orders impugned in the Original Application appear to be completely contrary to law. The power of relaxation available under Rule 31 is not to be understood as a licence to appoint any person in any category of post to any other post in any other service by following the dubious method of notional reversion with retrospective effect and notional promotion to other posts. Unfortunately, this aspect has not been examined by the Tribunal.

16. Therefore, the writ petition deserves to be allowed. Accordingly it is allowed and the impugned orders are set aside. The Government is directed to re-examine the matter with reference to the above observations and issue orders afresh within a period of eight weeks.

17. As a sequel, pending miscellaneous petitions, if any, in this writ petition shall stand closed. There shall be no order as to costs.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE G. SHYAM PRASAD

Date:29.11.2016
Js

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No.9115 of 2009



Date: 29.11.2016

Js.