

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR
THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

WRIT PETITION Nos.22002, 25992, 29229 & 29259 OF 2014

Between:

WRIT PETITION No.22002 OF 2014

P. Kareemulla Khan, S/o. P. Reddy Khan,
Aged 44 years, Assistant Executive Engineer,
A.P. Educational & Welfare Infrastructure
Development Corporation, Mantrayalam,
Adoni Sub-Division, Kurnool District. Petitioner.

VERSUS

A.P. Educational & Welfare Infrastructure
Development Corporation, SCERT Compound,
IV Floor, RVM Building, Basheerbagh,
Represented by its Managing Director,
Hyderabad and another. Respondents.

Date of Common Order Pronounced : .06.2016

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SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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|---|-----|
| 1. Whether Reporters of Local newspapers
May be allowed to see the common order? | Yes |
| 2. Whether the copy of order may
be marked to Law Reporters/Journals? | Yes |
| 3. Whether His Lordship wishes to see
Fair copy of the order? | Yes |

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***THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

+ WRIT PETITION Nos.22002, 25992, 29229 & 29259 OF 2014

%Dated: 03-06-2016

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Represented by its Managing Director,
Hyderabad and another. Respondents.**

! Counsel for Petitioner : Sri P.V. Krishnaiah.

^ Counsel for Respondents. : Sri A. Yadava Reddy.

< GIST :

> HEAD NOTE :

? Cases referred :

1. 1981 (1) SLR 233
2. 2011 (6) SCC 725
3. 2011 (8) SLR 290
4. 2011 (5) SLR 478
5. AIR 2000 SC 3020
6. AIR 2012 SC 2901
7. 1981 (1) SLR 359
8. AIR 2002 SC 2422

THIS COURT MADE THE FOLLOWING:

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION Nos.22002, 25992, 29229 AND 29259 OF 2014

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COMMON ORDER:

These Writ Petitions, under Article 226 of the Constitution of India, 1949 are filed by similarly situated petitioners, excluding the petitioner in W.P. No.25992 of 2014, to issue a writ of *mandamus* challenging the inaction of the respondents in promoting the petitioners, who are working as Assistant Executive Engineers, as Deputy Executive Engineers and declare the same as illegal and arbitrary. The petitioner in W.P. No.25992 of 2014 challenges the inaction of the respondents in promoting the petitioner against the vacancies earmarked for Assistant Executive Engineer, who belong to schedule caste community *i.e.*, Roaster Point No.7, in Multi Zone-I as illegal, discriminatory and review the D.P.C. proceedings held on 24.02.2014.

The plea of the petitioners and the respondents in all these writ petitions is one and the same except to the extent of claiming reservation in promotion by the petitioner in W.P. No.25992 of 2014. Hence, all these matters are being decided by common discussion.

The petitioners are working as in-charge Assistant Executive Engineers in the 1st respondent-Corporation more or less from 1986 onwards and they were appointed as Assistant Executive Engineers in a substantive vacancy on regular basis more or less from 1998 on

wards. The petitioners, initially, were appointed as Technical Work Inspectors Grade-II; subsequently, they were converted as Technical Work Inspectors Grade-I. During course of their employment, all the petitioners acquired B.Tech., qualification and, hence, entitled for promotion as Assistant Executive Engineers as per Rule 3 of the A.P. Education and Welfare Infrastructure Development Corporation Employees Service Rules, 2013 (for short, 'the Service Rules'). Though the petitioners were appointed as Work Inspectors Grade-I and put up the required service for their promotion, they were placed as in-charge Assistant Executive Engineers on 17.08.1998 and worked as such till 21.01.2014 *i.e.*, till they were appointed as Assistant Executive Engineers on regular basis against substantive vacancy. As per the Service Rules, the post of Deputy Executive Engineer shall be filled up by promotion from the Assistant Executive Engineers and Assistant Engineers in the ratio of 3:1. Similarly, as per the Service Rules, the Work Inspectors Grade-I, having minimum qualification with 10 years service with graduation in B.Tech./B.E. are eligible for promotion by transfer as Assistant Executive Engineers, of course in the event of non availability of Assistant Engineers with Graduation/Draughtsman with graduation. Similarly, the Work Inspectors Grade-I who are having 10 years experience with Diploma (Civil Engineering) are eligible for appointment by transfer to the post of Assistant Engineers. Therefore, as per the Service Rules, the Work Inspectors Grade-I possessing Diploma (Civil Engineering) qualification are eligible for promotion to the post of Assistant Engineers and the Work Inspectors Grade-I possessing B.Tech./B.E. qualification are eligible for promotion to the post of Assistant Executive Engineers.

Since the petitioners possessed required qualification and experience as Work Inspectors Grade-I, they were promoted to the post of Assistant Executive Engineers on 22.01.2014. Prior to their

appointment against substantive vacancy, while the petitioners were working as Work Inspectors Grade-I, they were placed as in-charge Assistant Executive Engineers till 21.01.2014 *i.e.*, more than the prescribed period of 10 years and thereby gained experience as Assistant Executive Engineers. After framing of Service Rules by the Government, the 1st respondent would have appointed the petitioners as Deputy Executive Engineers on promotion, treating the experience they gained as in-charge Assistant Executive Engineers, but when the 1st respondent made *ad hoc* promotions prior to framing of Service Rules in 2013, it is legal and constitutional obligation of the 1st respondent to regulate and review all appointments and promotions or transfers as per the Service Rules but the 1st respondent did not review the appointments and promotions even after framing of the Rules and denied promotions to the petitioners on the ground that they did not possess requisite qualifications *i.e.*, experience in the cadre of Assistant Executive Engineers on the date of making the representation dated 28.03.2014 and denied promotions.

It is the specific contention of the petitioners that when the petitioners worked as in-charge Assistant Executive Engineers, the experience they gained as Assistant Executive Engineers shall be taken as experience/service and, if that is taken into consideration, the petitioners are eligible to be appointed as Deputy Executive Engineers by transfer but the respondents denied such promotions only on the ground that the petitioners did not possess the minimum required service in the cadre of Assistant Executive Engineers against substantive vacancy and the action of the 1st respondent is illegal and arbitrary.

Besides claiming the aforesaid relief, the petitioner in W.P. No.25992 of 2014, who belongs to scheduled caste, claimed reservation in promotion against Roster Point No.7 and prayed to grant

the relief.

Respondents 1 and 2 filed counter admitting initial appointment of the petitioners on contract basis and, later, regularizing their services as Work Inspectors Grade-II and, later, as Grade-I, placing them as in-charge for the post of Assistant Executive Engineers for a substantial period and appointing them as regular Assistant Executive Engineers on 22.01.2014, denying their eligibility for being appointed as Deputy Executive Engineers.

It is the specific contention of the respondents 1 and 2 that the Andhra Pradesh Educational and Welfare Infrastructure Development Corporation (for short, 'the APEWIDC') has been incorporated with effect from 16.10.2008 by merging the erstwhile Social Welfare Engineering wing of Andhra Pradesh Schedule Caste Co-operative Finance Corporation Limited (APSCCFCL), Hyderabad along with its staff and assets *vide* G.O.Ms. No.107, Education (SE-TRG) Department, dated 30.08.2008 and G.O.Ms. No.198 Social Welfare (SCP.II.2), Department, dated 03.11.2008. Pursuant to the formation of APEWIDC, it was found expedient to have new staff pattern and new service rules to the employees of APEWIDC. The State Government, in consultation with the Finance Department, has accorded sanction for new staffing pattern to APEWIDC with 847 posts in various categories *vide* G.O.Ms. No.36 Finance (SMPC-I) Department, dated 23.03.2011. Accordingly, orders were issued in Memo No.E1/1163/MD/APEWIDC/2011 dated 27.06.2011 fixing cadre strength to the Head Office, Circle Division and Sub-Division offices District wise covering 23 districts in the United State of Andhra Pradesh. The post of Work Inspector has not been included either in the staffing pattern of erstwhile SW Engineering Wing of APSCCFCL Limited or in the staffing pattern of APEWIDC.

After fixing cadre strength, in pursuance of Government Orders,

the draft service rules for the Employees of APEWIDC prepared on recommendations of the Managing Committee of APEWIDC and the Sub-Committee constituted for examination of the draft Service Rules have been approved by the State Government. Thus, the petitioners are governed by the Service Rules as approved by the Government and adopted in APEWIDC *vide* proceedings in Memo No.E2/10050/APEWIDC/2010 dated 04.07.2013. Therefore, the 1st respondent has to undertake appointments and affect promotions strictly adhering to the Service Rules. The sanctioned strength of the Deputy Executive Engineers is 76 *vide* G.O.Ms. No.36, dated 23.03.2011; out of them, 42 posts were allotted to Multi Zone-I and 31 posts were allotted to Multi Zone-II in the ratio of 13:10 *vide* Memo No.E1/1163/D/APEWIDC/2011 dated 27.06.2011. The remaining 3 posts have been allotted to Head Office; Out of 3 posts in Head Office, 1 post has been added to Multi Zone-I and one post to Multi Zone-II, leaving the 3rd post unfilled. Thus, 43 posts have been fixed to Multi Zone-I. A total of 23 candidates in Multi Zone-I who were promoted by the APSCCFC Limited, Hyderabad during 2000 to 2005 on regular basis are working in the category of Deputy Executive Engineers as on February, 2014 and hence, 20 posts in Multi Zone-I in the category of Deputy Executive Engineers as on February, 2014 have been considered as vacant posts. Appointing authority has taken into account of 20 vacancies into consideration to fill up the vacancies as per the Rules, leaving 1 post of Deputy Executive Engineer (Elec.) in the Head Office for want of qualified Electrical Engineering-Graduate/Electrical Diploma Holder.

The Service Rules, 2013 classifies the post of Deputy Executive Engineer under Category-IV under Technical Staff in Rule 2(b). Rules 3 and 4 prescribe the method of appointment and the qualifications for the post of Deputy Executive Engineer; Rule 10 of the Service Rules prescribes the minimum service required for

consideration for appointment/transfer. Rule 10 mandates that no person shall be eligible for appointment by transfer or promotion unless he is an approved probationer and has put in not less than (3) three years of service in the category from which such promotion or appointment by transfer is made. As such, unless the petitioners herein have put in not less than 3 years service in the category of Assistant Executive Engineers (AEEs) they shall not be entitled for appointment by transfer on promotion.

Apart from Rules 3 and 10 of Service Rules, G.O.Ms. No.230, GA (Ser-A) Department, dated 31.05.2014 issued by the United State of Andhra Pradesh also envisages that 'notwithstanding anything contained in the relevant Rules or the *ad hoc* Rules for the State and Subordinate Services, the minimum period of service wherever prescribed in the said Rules for a member of a service from the lower category, class or grade, to the next higher category, class or grade whether such appointment is made either by promotion in the regular line or recruitment by transfer from any other service, but the period shall be 3 years in the category, class or grade from which such promotion or transfer is made. Thus, promotion of the petitioners to the post of Deputy Executive Engineer in the case or the post of Assistant Executive Engineer may be considered only after they put in 3 years of service as Assistant Executive Engineer. Therefore, the Departmental Promotion Committee (for short, 'the DPC') met on 24.02.2014 to consider the promotion of individuals working in the category of Assistant Executive Engineers and Assistant Engineers recommended 12 AEEs/AEs in Multi Zone-I for promotion to the post of Deputy Executive Engineer after following 3:1 ratio between AEEs and AEs and Rule of Reservation (ROR) in promotion in favour of Scheduled Castes, Scheduled Tribes and Physically Handicapped persons against 20 vacancies in Multi Zone-I. In Multi Zone-I, 1 vacant post at roster Points 6, 7 and 8 which are meant for Physically Handicapped

(AEE), Scheduled Caste (AEE) and Scheduled Tribe (AE) could not be filled up and carried forward to the next panel year as no candidate is available. The vacant posts at roster Points 14 (OC-AEE), 15 (OC-AEE), 17 (OC-AEE), 18 (OC-AEE) and 19 (OC-AEE) could not be filled as no candidate was available. The carried forward vacancies meant for Scheduled Castes, Scheduled Tribes and Physically Handicapped (Disabled Persons) will be filled subject to availability of candidates fulfilling the requirements for being appointed by transfer on promotion as Deputy Executive Engineers strictly adhering to G.O.Ms. No.42, Department of Women, Children, Disabled and Senior Citizens, dated 19.10.2011. In all these writ petitions, the petitioners request is that to count the service they rendered as in-charge Assistant Executive Engineers but such counting is impermissible since they are required to possess 3 years service in the cadre of Assistant Executive Engineers and shall be declared probationers. Therefore, they are not entitled to claim promotion counting the service they rendered as in-charge Assistant Executive Engineers in the Department and thereby they are not entitled to claim promotion before completing 3 years of service in the cadre of Assistant Executive Engineers and prayed to dismiss the writ petitions.

During course of hearing Sri P.V. Krishnaiah, learned counsel for the petitioners, mainly submit that the services of the petitioners in the cadre of in-charge Assistant Executive Engineers shall be counted for the purpose of promotion as Deputy Executive Engineers and the services rendered on temporary basis/adhoc basis or in-charge basis shall be taken as experience in the cadre and thereby the petitioners are eligible for promotion having rendered services of more than 10 years as in-charge Assistant Executive Engineers, placed reliance on a decision of Punjab and Haryana High Court in ***B.S. Jain and another Vs. The State of Haryana and others***^[1]. He further contended that the petitioner in W.P. No.25992 of 2014, who belongs

to scheduled caste, is entitled for promotion against roster Point No.7 meant for Scheduled Castes but denial of promotion to the petitioners is unconstitutional and prayed to count the service rendered by them as in-charge Assistant Executive Engineers for the substantial period and promote them to the cadre of Deputy Executive Engineers.

Whereas, learned standing counsel appearing for the respondents-corporation would contend that unless the petitioners completed 3 years service in the cadre of Assistant Executive Engineers in the substantive posts and are declared probationers, they are not entitled for being considered to promotion as Deputy Executive Engineers in view of Rule 2(b), 3, 4 and 10 read with G.O.Ms. No.230, dated 31.05.2014 and the services they rendered as in-charge, *ad hoc* or stopgap arrangements cannot be taken into consideration as they are governed by the Service Rules in force as on this date.

In view of the rival contentions, the points that arise for consideration are:

- 1) Whether the petitioners are governed by the APEWIDC Employees Service Rules, 2013?
- 2) Whether the petitioners, who rendered service as in-charge Assistant Executive engineers for the substantial period of more than 10 years are entitled to be considered for promotion as Deputy Executive Engineers, counting their in-charge service as Assistant Executive Engineers? If so, the action of the respondents in not promoting the petitioners as Deputy Executive Engineers is arbitrary and illegal?

POINT No.1: Admittedly, the petitioners were appointed initially on contract/temporary basis as Work Inspectors Grade-II and, later, their services were regularized and appointed against substantive

vacancies in the cadre of Work Inspectors Grade-II and subsequently converted as Work Inspectors Grade-I. While working as Work Inspectors Grade-I, the petitioners were placed as in-charge for the posts of Assistant Executive Engineers *vide* proceedings dated 31.07.1998; wherein, it is made clear that in-charge arrangements are made in the temporary vacancies of Assistant Executive Engineers/Assistant Engineers posts. In view of lesser the poor financial conditions of the society, the arrangement is made without any extra financial commitment. The individuals are not entitled for any additional charge allowances, T.T.A. and other allowances; the in-charge arrangements do not confer any right whatsoever over the post of Assistant Engineer and that the in-charge arrangements are liable for cancellation at any time without giving any reason on completion of the work entrusted. Thus, without conferring any right on the petitioners, in-charge arrangements were made; by the date of in-charge arrangements no rules were framed by the respondents. However, after merging into the APEWIDC, as directed by the Government, Employees Service Rules were framed on 02.07.2013 by exercising power under Article 309 of the Constitution of India and when the Rules are framed fixing qualification for appointment or promotion to different posts, the respondents are bound to strictly adhere to the Rules both in appointments and promotions otherwise those promotions or appointments will become invalid. As on the date of issuance of proceedings under challenge, the Rules governing the service conditions of the employees working in the respondents-corporation are in force. When the Rules are framed, the employees working in the respondents-corporation are entitled to claim any benefit only as per the Rules of the 1st respondent-corporation. Though there were no rules earlier on account of subsequent framing of rules by exercising power under Article 309 of the Constitution of India, all the employees are bound by the Service Rules and not entitled to claim any benefit either promotion or higher

scale of pay outside the purview of the Service Rules, 2013. Thus, the Service Rules existing as on the date of the impugned proceedings alone are applicable and this question is no more *res-integra* in view of the decision of the Apex court in ***Deepak Agarwal and another Vs. State of Uttar Pradesh and others***^[2], wherein the Apex Court held that a candidate has right to be considered in light of existing Rules, which implies rules in force on date consideration took place. When the Government takes conscious decision and amends Rules, promotions have to be made in accordance with rules prevalent at time when consideration takes place.

The Apex Court in ***Deepak Agarwal***², in Para 28 further held as follows:

“28. Similarly, this view has been reiterated by this Court in the cases of ***State of M.P. and others Vs. Raghuveer Singh Yadav and others*** (supra), ***H.S. Grewal Vs. Union of India and others*** (supra) and ***Rajasthan Public Service Commission Vs. Chanan Ram and another*** (supra). This Court in Rajasthan Public Service Commission's case (supra) has held that it is the rules which are prevalent at the time when the consideration took place for promotion, which would be applicable. In Para 17, it has been held as follows:

In the case of ***State of M.P. Vs. Raghuveer Singh Yadav*** a Bench of two learned Judges of this Court consisting of K. Ramaswamy and N. Venkatachala, JJ., had to consider the question whether the State could change a qualification for the recruitment during the process of recruitment which had not resulted into any final decision in favour of any candidate. In paragraph 5 of the Report in this connection it was observed that it is settled law that the State has got power to prescribe qualification for recruitment. In the case before the Court pursuant to the amended Rules, the Government had withdrawn the earlier notification and wanted to proceed with the recruitment afresh. It was held that this was not the case of any accrued right. The candidates who had appeared for the examination and passed the

written examination had only legitimate expectation to be considered according to the rules then in vogue. The amended Rules had only prospective operation. The Government was entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested right against the State. Therefore, the State was entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules. In the case of **J & K Public Service Commission Vs. Dr Narinder Mohan and another** Division Bench of two learned Judges of this Court consisting of K. Ramaswamy and N.P. Singh, JJ. considered the question of interception of recruitment process earlier undertaken by the recruiting agency. In this connection it was observed that the process of selection against existing and anticipated vacancies does not create any right to be appointed to the post which can be enforced by a mandamus. It has to be recalled that in fairness learned Senior Counsel, Shri Ganpule for the Respondent-writ Petitioner, stated that it is not his case that the writ Petitioner should be appointed to the advertised post. All that he claimed was his right to be considered for recruitment to the advertised post as per the earlier advertisement dated 5-11-1993 Annexure P-1 and nothing more. In our view, the aforesaid limited contention also, on the facts of the present case, cannot be of any assistance to the writ Petitioner as the earlier selection process itself had become infructuous and otiose on the abolition of the advertised posts, as we have seen earlier. The second point, therefore, will have to be answered in the negative in favour of the Appellants and against the Respondent-writ Petitioner.”

In view of the law declared by the Apex Court in **Deepak Agarwal²**, the rule prevalent as on the date of consideration of the petitioners for promotion are alone applicable and the promotions have to be made strictly adhering to those Rules. It is settled law that it is open to the Government or appropriate authority to make rules providing qualifications for appointment or promotion to different posts. The Courts have no jurisdiction to interfere with such qualifications unless the qualifications so laid down discriminate amongst the

candidates in contravention of Articles 14 and 16 and that those rules cannot be challenged on the ground of *mala-fides* or on the ground that they were tailor-made to suit certain individuals. Therefore, when the Rules contemplate certain procedure for promotion of the employees working in the 1st respondent-corporation; unless the Rules are set-aside by a competent Court in challenge, the petitioners are not entitled to claim promotion in deviation of the Rules framed.

In view of my foregoing discussion, I hold that the Rules in force as on the date of consideration of the petitioners for promotion by the DPC prevailing on that date alone are applicable. Accordingly, the point is answered.

POINT No.2: The undisputed fact in all these writ petitions is that the petitioners were appointed initially as Work Inspectors Grade-II. Later, their services were regularized and converted as Work Inspectors Grade-I; subsequently, they were placed as in-charge for the post of Assistant Executive Engineers *vide* proceedings dated 31.07.1998, making it clear that such stopgap arrangements would not confer any right to claim promotion. In any view of the matter, they were placed as in-charge to meet the contingencies due to poor financial conditions of the Society without incurring any financial commitments while denying the additional charge allowances. The petitioners readily agreed for those conditions contained in proceedings dated 31.07.1998 in Rc.No.12/HC/98-99/WCE. Their in-charge arrangement is purely temporary and the 1st respondent reserved its right to cancel the in-charge arrangement without giving any notice. Thus, placing the petitioners as in-charge Assistant Executive Engineers is only based on work entrusted to them and they are bound to come back to their substantive post *i.e.*, Work Inspectors Grade-I. At the same time, it is also not in dispute that the petitioners discharged their duties as Assistant Executive Engineers for a period of approximately 10 years

as in-charge till 21.01.2014. However, they were promoted as Assistant Executive Engineers on 22.01.2014 in the substantive post of Assistant Executive Engineers. By the date of their appointment on promotion, the Rules whatever framed are in force governing the service conditions of the employees of the 1st respondent-corporation. The main grievance of the petitioners is that from the date of their placing as in-charge for Assistant Executive Engineers, the service is to be counted for the purpose of promotion *i.e.*, Deputy Executive Engineers in the 1st respondent-Corporation; if that is counted they are eligible for promotion as per Rules but the DPC in the impugned proceedings denied promotion on the ground that the petitioners did not possess required experience in the cadre of Assistant Executive Engineers *i.e.*, substantive vacancy and that they were not declared probationers.

The main endeavour of learned counsel for the petitioners is that the services rendered during the in-charge arrangement has to be taken into consideration to promote the petitioners to the post of Deputy Executive Engineers but the respondent's contention is totally contrary as the service rendered in the substantive post alone shall be taken to count the service for promotion from Assistant Executive Engineer to Deputy Executive Engineer. At this stage, it is relevant to advert to the Service Rules that are applicable to the employees working in the 1st respondent both technical and non-technical. Rule 3 governs the appointment and promotion of various categories both technical and non-technical. Category-IV is Deputy Executive Engineer and the appointment to the post of Deputy Executive Engineer is by promotion from the category of Assistant Executive Engineer and Assistant Engineer in the ratio of 3:1; Assistant Executive Engineers have to be put in minimum 3 years of service and Assistant Engineers have to put any minimum 6 years of service to consider for promotion as Deputy Executive Engineers, If no qualified

and suitable candidate is available by deputation and Foreign Service duly following the instructions issued by the Government in Finance Department from time to time. The post of Deputy Executive Engineer is equivalent to 2nd level gazetted post in Government. Managing Director is the competent authority in case of deputation and promotions. Thus, it is clear from the Rule 3, the Assistant Executive Engineer who has put in minimum 3 years of service is alone entitled to be considered for promotion as Deputy Executive Engineer. In the present facts, the petitioners were appointed on 22.01.2014 as Assistant Executive Engineers on regular basis in substantive vacancies. Therefore, in view of the Service Rules, the petitioners are disentitled to claim promotion as they did not put in minimum 3 years of service as Assistant Executive Engineers. Similarly, Rule 10 prescribes minimum service for appointment by transfer or promotion. According to it, unless otherwise specified elsewhere in the Rules, no person shall be eligible for appointment by transfer or promotion unless he is an approved probationer as has put in not less than 3 three years of service in the category from which such promotion or appointment by transfer is made. Therefore, Rule 10 provides two conditions for promotion one is putting minimum 3 years of service in the cadre from which the promotion is expecting and must be a declared probationer. Rule 8 deals with probation; according to it, every person appointed by direct recruitment to any of the posts shall be on probation for a total period of 2 years to be spent on duty within a continuous period of 3 years; every person appointed to any of the posts by transfer or by promotion shall be on probation for a total period of one year to be spent on duty within a continuous period of 2 years. Clause (b) Rule 8 says that unless the petitioners spent on duty for 1 year during a continuous period of 2 years or their probation cannot be declared, the petitioners could not have been appointed on 22.01.2014 and the DPC could not have considered their case for promotion on 24.02.2014; by then hardly one candidate has completed

the service as Assistant Executive Engineers in the substantive vacancy. Therefore, by the date of holding meeting of DPC on 24.02.2014, the petitioners were not declared probationers and did not serve as Assistant Executive Engineers for a period of 3 years in the substantive vacancy. Though the Rule is not clear whether service as Assistant Executive Engineer is in the substantive vacancy or not but the Rule is clear that the service as Assistant Executive Engineer indicates that it is only against a substantive vacancy. As per the Rules referred above, to claim consideration for promotion by the petitioners they must satisfy the following two conditions: 1) they must be declared probationers and 2) they must have served for not less than 3 years as Assistant Executive Engineers.

In the present set of facts, the petitioners' probation was not declared by the date of holding DPC meeting and issuance of the impugned proceedings and they did not serve for 3 years as Assistant Executive Engineers. The DPC is bound to adhere to the Rules when the Rules are in force but the contention of the petitioners is that the service they rendered as in-charge Assistant Executive Engineers shall also be counted as service of Assistant Executive Engineers for the purpose of their promotion. Undisputedly, the petitioners served as in-charge Assistant Executive Engineers for a substantial period of more than 10 years while discharging their duties as Work Inspectors Grade-I and such service cannot be said to be a service of 3 years as Assistant Executive Engineers on strict construction.

Learned counsel for the petitioners while contending that the service rendered on temporary basis shall be taken into consideration placed reliance on a decision of Punjab and Haryana High Court in **B.S. Jain¹** wherein at paragraphs 5 and 6 it was held that the services rendered on temporary basis shall also be counted for promotion. In the facts of the decision in **B.S. Jain¹**, the employees rendered service

as temporary Engineers for a period of 8 years but their service as temporary Engineers was not taken into consideration for promotion and thereby denied promotion to the next category but the Punjab and Haryana High Court held that the service rendered for a period of 8 years as temporary Engineers shall be counted for the purpose of their promotion. The principle has no application to the present set of facts for the reason that the petitioners were holding in-charge of Assistant Executive Engineers but not as temporary engineers.

In a Division Bench decision of the Punjab and Haryana High Court in ***Chandigarh Administration Vs. Vipin Gupta and another***^[3], it was held that the period of service rendered as current duty charge on the post of Sub-Divisional Engineer would be treated as 'experience' and would be counted towards eligibility for promotion.

In view of these decisions, the petitioners worked as temporary Engineers for a substantial period and the service rendered by them was directed to be taken into account for the purpose of promotion by the High Court of Punjab and Haryana.

In ***Ram Chander Vs. The Lieutenant Governor and others***^[4], the Kolkata High Court held that the period of service rendered on adhoc basis cannot be counted for the purpose of fixing seniority. The law laid down by the Kolkata High Court is against the contention of learned counsel for the petitioners but the law laid down by the Punjab and Haryana High Court is in their favour but consideration of such probation totally depends upon the Service Rules governing the Department. A straight jacket formula cannot be laid for consideration of the services rendered on temporary basis/*adhoc* basis to count the same for promotion treating the same as service in a particular cadre. Therefore, it is difficult to accept the contention of learned counsel for the petitioners based on the decision of Punjab and Haryana High

Court in ***Chandigarh Administration***³. Since the law laid down by the Apex Court is clear that the services rendered either on *ad hoc* basis or as stopgap arrangement cannot be held to be regular service for getting the benefits of revised scale of pay or selection grade as held by the Apex Court in ***State of Haryana Vs. Haryana Veterinary & A.H.T.S. Association and another***^[5]. Similarly, in ***State of Haryana and others Vs. Vijay Singh and others***^[6], in Paragraphs 21 and 22, the Apex Court held as follows:

“21. In M.K. Shanmugam Vs. U.O.I. (supra), another three Judge Bench referred to the aforementioned two judgments and observed:

If the *ad hoc* selection is followed by regular selection, then the benefit of *ad hoc* service is not admissible if *ad hoc* appointment is in violation of the rules. If the *ad hoc* appointment has been made as a stopgap arrangement and where there was a procedural irregularity in making appointments according to rules and that irregularity was subsequently rectified, the principle to be applied in that case was stated once again. There is difficulty in the way of the Appellants to fight out their case for seniority should be reckoned by reason of the length of the service whether *ad hoc* or otherwise inasmuch as they had not been recruited regularly. As stated earlier, the Appellants were regularly found fit for promotion only in the year 1977 and if that period is reckoned their cases could not be considered as found by the Tribunal. The view expressed by this Court in these cases have been again considered in the decisions in Anuradha Bodi (Dr) Vs. Municipal Corporation of Delhi (1998) 5 SCC 292, Keshav Deo Vs. State of U.P. (1999) 1 SCC 280, Major Yogendra Narain Yadav Vs. Bindeshwar Prasad (1997) 2 SCC 150, I.K. Sukhija Vs. Union of India (1997) 6 SCC 406 and Government of A.P. Vs. Y. Sagaraswara Rao 1995 Supp (1) SCC 16, but all these decisions do not point out that in case the promotions had been made *ad hoc* and they are subsequently regularized in the service in all the cases, *ad hoc* service should be reckoned for the purpose of seniority. It is only in those cases where initially they had been recruited even though they have been appointed *ad hoc* the recruitment was subject to the same process as it had been done in the case of regular appointment and that the same was not a stopgap arrangement.

22. In State of Haryana Vs. Haryana Veterinary and AHTS Association and another (2000) 8 SCC 4, the three Judge Bench considered the question whether the ad hoc service rendered by the Respondents in the cadre of Assistant Engineers can be added to their regular service for the purpose of higher pay scale. While reversing the judgment of the majority of the Full Bench which had ruled in favour of the writ Petitioner and declared that ad hoc service was to be clubbed with the regular service for the purpose of grant of financial benefits, this Court held:

A combined reading of the aforesaid provisions of the Recruitment Rules puts the controversy beyond any doubt and the only conclusion which could be drawn from the aforesaid Rules is that the services rendered either on an ad hoc basis or as a stopgap arrangement, as in the case in hand from 1980 to 1982 cannot be held to be regular service for getting the benefits of the revised scale of pay or of the selection grade under the government memorandum dated 2-6-1989 and 16-5-1990, and therefore, the majority judgment of the High Court must be held to be contrary to the aforesaid provisions of the Recruitment Rules, consequently cannot be sustained. The initial letter of appointment dated 06-12-1979 pursuant to which Respondent Rakesh Kumar joined as an Assistant Engineer on an ad hoc basis in 1980 was also placed before us. The said appointment letter unequivocally indicates that the offer of appointment as Assistant Engineer was on ad hoc basis and clauses 1 to 4 of the said letter further provides that the appointment will be on an ad hoc basis for a period of 6 months from the date of joining and the salary was a fixed salary of Rs.400/- p.m. in the scale of Rs.400/- to Rs.1,100/- and the services were liable to be terminated without any notice and at any time without assigning any reason and that the appointment will not enable the appointee any seniority or any other benefit under the Service Rules for the time being in force and will not count towards increment in the time scale. In view of the aforesaid stipulations in the offer of appointment itself we really fail to understand as to how the aforesaid period of service rendered on ad hoc basis can be held to be service on regular basis. The conclusion of the high Court is contrary to the very terms and conditions stipulated in the offer of appointment and, therefore, the same cannot be sustained.”

In view of the principle laid down by the Apex Court in **Vijaya Singh⁶**, the service rendered on *ad hoc* basis or as a stopgap

arrangement shall not be counted for promotion as service from the feeder cadre.

In ***Shri A.V. Sharma Vs. State of Himachal Pradesh and others***^[7], the Apex Court held that since the adhoc appointee does not acquire any right to the post, he cannot be entitled to claim any seniority or promotion on the basis of that appointment so that placing of direct recruits over adhoc promotees would not contravene Article 14 of the Constitution.

Similarly, in ***State of Punjab and others Vs. Ishar Singh and others***^[8], the Apex Court analyzed the word continuous service and held that the continuous service cannot be equated with regular service. Service rendered on the basis of *adhoc* appointment cannot be included for regular service.

From the principle laid down by the Apex Court in ***Ishar Singh***⁸, it is clear that the service rendered as stopgap arrangement, *adhoc* appointment or temporary appointment cannot be taken into consideration in the regular service rendered in the feeder cadre for promotion.

In the present set of facts, the petitioners worked as in-charge Assistant Executive Engineers without expecting any financial benefit of in-charge allowances and, agreeing for the terms in the proceedings, they rendered service as in-charge Assistant Executive Engineers, though they were holding substantive post of Work Inspectors Grade-I, till the said period. However, in the present set of facts, Rule 3 Read with Rule 10 made it clear that the Assistant Executive Engineers who served for 3 years alone are eligible for promotion after declaration of their probation. Here, the probation of the petitioners was not declared in view of Rule 8 (b) and they did not

serve for 3 years as Assistant Executive Engineers except in the cadre of in-charge Assistant Executive Engineers while holding substantive post of Work Inspectors Grade-I. Therefore, the services rendered by the petitioners as stopgap arrangement in the cadre of Assistant Executive Engineers which is a feeder cadre for the promotion for Deputy Executive Engineers cannot be counted for their promotion.

As per Rule, the minimum eligibility to consider for promotion is 3 years service in the feeder cadre besides declaration of probation. If both these requirements are not satisfied, the petitioners are not eligible for consideration. Even accepting the contention of the petitioners for argument sake, without conceding to count the service rendered by them as in-charge Assistant Executive Engineers, they are not declared probationers as such they are not eligible for promotion as Deputy Executive Engineers. If they are promoted as Deputy Executive Engineers counting their service rendered as in-charge Assistant Executive Engineers, such promotion is in total disregard of Rule 8 of the Rules. Viewed from any angle, the petitioners are not entitled to be considered for promotion.

As discussed above in Point No.1, the Rules, which are in force as on date the petitioners consideration for promotion, alone are applicable to the petitioners and, admittedly, the petitioners did not serve for a minimum period of 3 years as Assistant Executive Engineers (in substantive posts) and that their probation was not declared by the date of impugned proceedings. Thus the claim of the petitioners is against Rules 3, 8 and 10 of the Service Rules.

No doubt, the law declared by the Punjab and Haryana High Court in ***Chandigarh Administration***³, is in support of the petitioners and the principle laid down therein was based on the Rules of the particular Department of that State. The same principle cannot be applied to the present set of facts in view of the law declared by the

Apex Court in the decisions cited supra. Hence, by applying the principles laid down in the above decisions, I find no illegality in the impugned orders passed by the Departmental Promotion Committee dated 24.02.2014, warranting interference of this Court and issue any direction to consider the petitioners case for promotion counting the service rendered by them as in-charge Assistant Executive Engineers while holding substantive post of Work Inspectors Grade-I.

Further, the power of judicial review under Article 226 of the Constitution is limited, unless the impugned order is in violation of any statutory rule or provision of this Court. Exercise of power of judicial review cannot be interfered for the reason that this Court cannot sit in Appeal over the order passed by the administrative authority *i.e.*, Departmental Promotion Committee and set-aside the same.

In the present set of facts, the petitioners miserably failed to prove any violation in statutory rule or provision for passing the impugned orders by the Departmental Promotion Committee. In the absence of which, the impugned orders cannot be interfered by exercising power of judicial review. At any rate the petitioners are not entitled to claim counting of service rendered by them as in-charge Assistant Executive Engineers since the basic requirement for promotion is that they must be declared probationers and must have served for not less than 3 years as Assistant Executive Engineers. Even though the petitioners served as in-charge Assistant Executive Engineers, their service cannot be treated as Assistant Executive Engineers for the purpose of Departmental Promotion Committee.

In Writ Petition No.25992 of 2014, the petitioner claimed promotion against roster Point No.7, meant for Scheduled Caste in Multi Zone-I. Unless the petitioner herein possessed required qualification for promotion *i.e.*, 3 years service in the feeder cadre and

a declared probationer, he cannot be promoted as Deputy Executive Engineer against roster Point No.7 in Multi zone-I since it is the basic requirement for being considered to promotion. There is no separate relaxation of Rules either to Scheduled Caste or Scheduled Tribe candidates to promote them. Therefore, the petitioner herein is not eligible for being considered to promotion on the date of impugned D.P.C. proceedings. Hence, I am not inclined to issue any direction to the respondents to consider the petitioner herein for being promoted and appoint against roster Point No.7 in Multi Zone-I, as I find no merit in his contention; consequently, the Writ Petition No.25992 of 2014 is liable for dismissal.

Accordingly, all these Writ Petitions are dismissed.

In consequence, miscellaneous petitions, if any, pending in these Writ Petitions shall stand dismissed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 03-06-2016.

Note:

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION Nos. 22002, 25992, 29229 AND 29259 OF 2014

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Date. 03-06-2016

DSH

[\[1\]](#) 1981 (1) SLR 233

[\[2\]](#) 2011 (6) SCC 725

[\[3\]](#) 2011 (8) SLR 290

[\[4\]](#) 2011 (5) SLR 478

[\[5\]](#) AIR 2000 SC 3020

[\[6\]](#) AIR 2012 SC 2901

[\[7\]](#) 1981 (1) SLR 359

[\[8\]](#) AIR 2002 SC 2422