

***THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

+W.P.No.5300 of 2016

%13.4.2016

D.Syam Sundar Reddy.

...Petitioner

VERSUS

\$ State of Andhra Pradesh,
Transport Roads & Buildings (Ser) Department,
Secretariat, Hyderabad represented by its
Special Chief Secretary to Government and others.

...Respondents

< **GIST:**

> **HEAD NOTE:**

!Counsel for Petitioner

: Sri O.Manohar Reddy

^Counsel for Respondents 1, 2 and 4 : G.P. For Roads and Buildings
Counsel for Respondnet No.3: : Sri A.Yadava Reddy

? Cases referred

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.37723 of 2015

-
Between:

Sundilla Lingaiah

... Petitioner

and

The Singareni Collieries Company Ltd.,
rep. by its Chairman and Managing Director,
Corporate Office, Hyderabad & others.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 28.3.2016

SUBMITTED FOR APPROVAL:

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THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

- | | |
|---|--------|
| 1. Whether Reporters of Local Newspapers
May be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Lordship wish to see the
Fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.5300 of 2016

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ORDER:

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This writ petition, filed under Article 226 of the Constitution of India, assails the order of the first respondent State Government issued vide G.O.Rt.No.57, Transport, Roads & Buildings (SER) Department, dated 05.02.2016.

2. Briefly stated, the case of the petitioner as per the pleadings, is as under:

2.1. The Government of A.P vide G.O.Ms.No.107, Education, dated 30.08.2008, created A.P. Education and Welfare Infrastructure Development Corporation/the third respondent herein. Petitioner herein was working as Executive Engineer (In-charge) in Social Welfare Department prior to the establishment of the third respondent Corporation. Petitioner was initially appointed in the year 1986 as Assistant Executive Engineer and promoted as Deputy Executive Engineer in the year 2000, and thereafter, as Executive Engineer

(In-charge) in 2005 and kept in-charge to the post of Superintending Engineer in the head office of the third respondent Corporation. In the third respondent Corporation there are four posts of Superintending Engineers and the petitioner stands at Serial No.3 in the seniority and all the posts are being manned by in-charge Executive Engineers who are kept as Superintending Engineers (In-charge) and one Mr.Bhaskar Rao, who is junior to the petitioner, is working as Superintending Engineer (In-charge) at Guntur.

2.2. After bifurcation of the State into the State of Telangana and Andhra Pradesh, the third respondent Corporation is notified at Serial No.77 in the 9th Schedule of A.P. Reorganization Act, 2014. The State Government vide G.O.Rt.No.225, Transport, Roads & Buildings (Ser) Department, dated 07.05.2015, placed the services of one

Sri P.Sreedhar, Superintending Engineer, Roads and Buildings Department (under the orders to serve the State of Telangana and deputed by Telangana State) with third respondent Corporation on deputation for one year initially till completion of final allocation of the state level employees as per G.O.Ms.No.10, dated 22.01.1993. Thereafter, the State Government/Second respondent herein issued G.O.Rt.No.120, dated 26.05.2015, appointing the said Sri

P.Sreedhar as Superintending Engineer in the existing vacancy in the third respondent Corporation. Challenging the same, petitioner filed W.P.No.15270 of 2015, and this Court on 05.06.2015, granted interim suspension. On 01.10.2015, the second respondent School Education Department, Government of Andhra Pradesh vide Lr.No.598/TRG/A1/2015, addressed to the third respondent, requested to place the petitioner as full time additional charge of the post of Superintending Engineer in Guntur or Cuddapah circle subject to outcome of W.P.No.15270 of 2015. Subsequently, petitioner was placed in full Additional Charge to the post of Superintending Engineer in the head office at Hyderabad pursuant to the letter dated 05.12.2015 of the State Government to the third respondent.

2.3. While the things being so, the first respondent State Government issued G.O.Rt.No.57, Transport, Roads and Buildings (Ser) Department dated 05.02.2015, placing the services of the fourth respondent with the third respondent Corporation on deputation initially for a period of one year as per G.O.Rt.No.10, Finance and Planning (FW.FR.II) Department, dated 22.01.1993.

3. In the above background, calling in question, the validity and legal sustainability of the above said orders of the first respondent State Government vide G.O.Rt.No.57, dated 15.02.2016, the present writ petition came to be filed.

4. Counter affidavits have been filed by the respondents 1 and 3, resisting the writ petition and in the direction of justifying the impugned action.

5. Heard Sri O.Manohar Reddy, learned counsel for the petitioner and the learned Government Pleader for the State and Sri A.Yadava Reddy for the third respondent Corporation.

6. Submissions/contentions of Sri O.Manohar Reddy, learned counsel for the petitioner:

6.1. The order impugned is highly illegal and is without jurisdiction.

6.2. The third respondent Corporation falls within the jurisdiction of the Education Department, as such, the impugned order passed by the first respondent suffers from inherent lack of jurisdiction.

6.3. In W.P.No.15270 of 2015 filed by the petitioner herein, questioning the deputation and posting of one Mr.P.Sreedhar as Superintending Engineer of the Roads and Buildings as Superintending Engineer in the third respondent Corporation, this Court granted interim suspension and thereafter petitioner was kept in-charge of the post of Superintending Engineer, as such, the first respondent is not justified in deputing the fourth respondent to the third respondent Corporation.

6.4. The third Respondent Corporation is under the control of the Education Department and the first respondent Transport, Roads and Buildings Department has no power to send a person on deputation to the third respondent Corporation.

6.5. The third respondent Corporation is one of the entities listed in the 9th Schedule and before completion of bifurcation of the third respondent, it is not open for the first respondent to send a person on deputation to the third respondent.

6.6. The impugned action is contrary to APEWIDC Employees Service Rules, 2013 and in view of the availability of qualified persons in feeder category of Executive Engineers, it is not open for the first respondent to resort to deputation from outside.

7. Submissions/contentions of the learned Government Pleader:

7.1. There is no illegality nor there exist any irregularity in the impugned action.

7.2. the School Education Department vide UO Note No.598/TRG/A1/2015, dated 19.01.2016, requested the Transport, Roads and Buildings Department to depute a Superintending

Engineer cadre officer to work in the third respondent Corporation on deputation.

7.3. As per the request of the School Education Department, vide impugned Governmental order the first respondent State placed the services of the fourth respondent on deputation to the third respondent Corporation and the Managing Director of the third respondent Corporation vide proceedings No.E3/4271/2015, dated 17.02.2016, admitted the fourth respondent to duty with effect from 17.02.2016, duly relieving the petitioner who is a Deputy Executive Engineer from the Full Additional Charge of Superintending Engineer and asked the petitioner to hand over the charge to the fourth respondent and the fourth respondent was made in-charge on 18.02.2016.

8. Submissions/Contentions of Sri A.Yadava Reddy, learned Standing Counsel for the third respondent Corporation:

8.1. In the absence of violation of any constitutional or statutory rights of the petitioner, the present writ petition is not maintainable and the petitioner is not entitled for any relief from this Court under Article 226 of the Constitution of India.

8.2. There are four posts of Superintending Engineers in the third respondent Corporation and one post each has been allotted for three circles viz., Guntur, Cuddapah and Hyderabad and one post to the Corporate Office at Hyderabad.

8.3. Petitioner is one among the Deputy Executive Engineers, placed as in-charge Executive Engineers and has no right to claim the post of Superintending Engineer.

8.4. Impugned order is in accordance with the Rules and the petitioner has no *locus standi* to question the same as the post which the petitioner is holding is not a feeder category for the post of Superintending Engineer.

9. In the above back ground, now the issues that emerges for consideration of this Court are (1) "Whether the petitioner has *locus standi*

to assail the impugned order? and (2) “Whether the questioned order is in accordance with law?

10. The information available before this Court vividly and candidly discloses that there is absolutely no controversy with regard to the reality that the petitioner is presently working in the category of Deputy Executive Engineer and owing to the exigency of work, petitioner was placed as full additional charge to the post of Superintending Engineer. It is also the case of the third respondent Corporation, as pleaded in the counter affidavit, that certain Deputy Executive Engineers including the petitioner have been made as Executive Engineers (In-charge) purely on temporary basis and not on regular basis in view of the exigency of work subject to the condition that they would not be eligible for drawing the pay of the new post and not eligible to claim seniority or any right on the new post. The said averment is neither denied nor controverted by the writ petitioner by way of filing any reply. The employees of the third respondent Corporation are governed by the A.P. Education and Welfare Infrastructural Development Corporation Employees Service Rules, 2013. The post of Superintending Engineer falls under Category II of Rule 2 (b) (a). Rule III of the said Rules deals with the method of appointment/promotion. To the extent of relevancy for the present case, the same reads as under:

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Category – II: Superintending Engineer	1. By promotion from the category of Executive Engineer (Graduate) with a minimum service of 3 years in the category of Executive Engineer.	This is equivalent to IVth level Gazetted p o s t in Govt. Government is the competent authority in case of deputation.
	2. If no qualified and suitable candidate is available by deputation aand Foreign Service d u l y following the instructions issued by the Government inFinance Department from time to time.	Managing Committee of APEWIDC with approval of Government in case of promotion.

“

11. A reading of the above said Rule makes it very much evident that there are two channels prescribed for filling up the posts of Superintending

Engineers, viz., one by way of promotion from the category of Executive Engineer (graduate) with a minimum service of three years of service and secondly by deputation from other service. In the instant case, the first respondent State Government on the request of the second respondent School Education Department placed the services of the fourth respondent with the third respondent Corporation on deputation obviously in accordance with the above said rule.

12. In the instant case, petitioner herein admittedly is a Deputy Executive Engineer and as per the above said Rule he is not eligible for consideration by way of promotion to the category of Superintending Engineer. Therefore, this Court has absolutely no hesitation to hold that the petitioner has no *locus standi* to question the impugned order as he is not an employee falling under the feeder category for being considered for promotion as Superintending Engineer.

13. For the aforesaid reasons, writ petition is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 13.04.2016
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Note: L.R. Copy to be
marked.
b/o grk



THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.5300 of 2016

Dated: 13th April, 2016

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