

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.17115 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner against the Director, Sngareni Collieries Company Limited, and its General Manager, is filed seeking the following relief:

'..to call for the records from the Respondents herein by issuing a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus by declaring the action of the Respondent insofar as not considering the seniority in promotion category of charge hand/Electrical supervisor on par with his Junior employees from the date of promotions to the category of charge hand/Electrical supervisor with effect from last selections held in the month of December 2001 as arbitrary, illegal, unjust, contrary to law and also in violation of Articles 14 and 21 of the Constitution of India and consequently direct the respondent herein to reckon the seniority in the promotion category of charge hand/Electrical supervisor from the date of Juniors promoted and pass such other order...'

2. I have heard the submissions of Sri V. Sri Ranga Rao, learned counsel appearing for the writ petitioner, and of Sri J. Sreenivasa Rao, learned Standing Counsel for Sngareni Collieries Company Limited, representing the respondents. I have perused the material record.

3. The case of the petitioner, in brief, is this:

The petitioner was appointed in Sngareni Collieries Company Limited as an electrician, on 01.12.1976. He possessed ITI Electrician (NCTV) qualification. On 01.01.1997, he passed Electrical Supervisor Certificate (Mines Installation), Grade-B examination. He is eligible for further promotion to the post of Electrical Charge Hand/ electrical supervisor from the category of electrician grade. The respondent company entered into settlement under Section 12(3) of the Industrial Disputes Act, 1947, (hereafter, 'the Act'), wherein a cadre scheme in respect of tradesmen and electrical staff has been formulated. The said

settlement is binding on the employer and employees. One of the terms of settlement relates to promotional policy for the tradesmen. The policy reads as follows: 'General conditions for promotional avenues for Tradesmen: Promotion of Tradesman will be of Region wise seniority upto Grade B/Excavation group B and company-wise seniority beyond Grade B/Excavation Group-B.' In respect of Electrical charge hand, cadre scheme prescribes as follows: 'viii: Electrical charge hand possession Electrical supervisory certificate and an authorized as electrical supervisors will be placed in Grade-B only, to fill these posts of charge hands, all those who are in Cat-IV with Electrical supervisory certificate will be considered for promotion in the first instance, later on, those who are having eight years service in Category-V with Electrical supervisory certificate will be considered. This will be the minimum qualification for an electrical supervisor. Existing procedure of Trade Test and interview for these appointments will continue.' Electricians in technical supervisor, Grade-C, are eligible for promotion as electrical charge hand, Grade B, against the vacancies on acquiring Electrical Supervisor Certificate (Mines Installation) and based on assessment report and interview. In pursuance of the cadre scheme, the company issued a circular, dated 06.05.1997, proposing to fill up the vacancies of electrical charge hand, Grade-B, of Kothagudem region with eligible employees who possessed Electrical Supervisor Certificate (Mines Installation) prior to 01.03.1997. The selection is based on interview for 30 marks. The candidates securing 40% and above marks in interview and 50% and above marks in assessment and interview put together shall be considered as qualified. Accordingly, selections were held and promotions were given on the basis of seniority-cum-merit and as per the marks obtained. Another memorandum of settlement was arrived at

under Section 12(3) of the Act, on 21.02.2000. Item no.12 of that settlement relates to 'eligibility criteria for promotion of electrical charge hands in Grade B'. The relevant paragraph reads as follows: - 'After protracted discussions, it is agreed that the eligibility criterion for promotion to the post of Electrical Charge hand possessing Electrical Supervisory Certificate shall be on the basis of date of passing the Electrical Supervisory Certificate examination with a minimum service of 5 years in Cat-V as against 8 years service in Cat-V prescribed earlier in terms of memorandum of settlement dated:3-3-1989. However, the promotion to the post of Electrical charge hand shall continue to be on region basis as hitherto.' Except the change in regard to minimum years of service from 8 years to 5 years in category V, there are no other changes in the eligibility criteria. All persons possessing Electrical Supervisory Certificate (mines installation) with minimum five years experience in category V are eligible for promotion. While so, vacancies arose in the category of Electrical charge hand, Grade-B, and therefore, the company issued Circular, dated 14.12.2000, prescribing guidelines for selection wherein also it was reiterated that among the eligible and selected candidates the list will be prepared in order of seniority and passing of Electrical Supervisory Certificate (Mines installation) examination and seniority-cum-merit. Again the said guidelines were modified and proceedings, dated 17.10.2001, were issued superseding the earlier circular of eligibility and it was stated that all those electricians/ EP electricians possessing the Electrical Supervisory Certificate (mines installation) who are in technical and supervisory Grade-C/ D, Exc.Cat.B/ Cat.C and electricians, Cat.V, with five years are eligible to apply for the post of electrical charge hand, Grade B, and selection will be conducted in one phase for all the eligible candidates.

The said circular gives a go-by to the seniority-cum-merit which is contemplated and which is in vogue for the last several years in pursuance of the settlement, dated 03.03.1989, and the seniority is being fixed on the basis of month in which the examination were held and declared to have passed Electrical Supervisory Certificate (mines installation) irrespective of grades. The General Manager (Personnel) issued another circular, dated 02.10.2001, constituting selection committee for selection of the candidates who possessed the requisite qualification in the order of seniority of passing the Electrical Supervisory Certificate (mines installation) examination. On the date of consideration for promotion to the post of electrical charge hand/ electrical supervisor, in the year 2001, the petitioner is eligible for promotion since he possessed Electrical Supervisory Certificate (mines installation), having acquired the said qualification on 01.01.1997. Without disclosing the circular instructions, the company changed the method of promotion and departed from the procedure of seniority-cum-merit. The petitioner was called for interview in the year 2001. He attended for the interview. Subsequently, select list of candidates is notified by the General Manager (Personnel) and was displayed on notice board. The petitioner secured 33 marks out of 50 marks. Aggrieved of the inaction of the respondents herein, the petitioner along with 11 others filed W.P.No.27013 of 2001. The said writ petition was withdrawn on the assurance given by the respondents that the cases of the petitioners therein will be considered for promotion on par with juniors. But the respondents gave promotion to the petitioner, *vide* order dated 29.02.2008, to the post of charge hand electrical (electrical supervisor). The petitioner has been officiating in the said capacity with effect from 31.05.1998. The petitioner could have been promoted to

the category of charge hand (electrical) on par with his juniors, P. Nageshwar Rao and V. Venugopal Rao in the year 2001 itself. Promotions were given to junior employees, who are unofficial respondents 3 and 4 in the earlier writ petition, W.P.No.27013 of 2001 by application of administrative instructions contrary to the settlements entered into by the management with the recognised unions under Section 12(3) of the Act. The petitioner was promoted only on 27.02.2008. The date of passing of Electrical Supervisory Certificate (mines installation) cannot be the sole criteria for fixing of seniority among the candidates who are selected on merit-cum-seniority or seniority-cum-merit. The seniority of persons holding similar post in the same cadre has to be determined on the basis of length of service but not on the date of acquiring the certificate of competency. The seniority for promotion has to be reckoned on the basis of length of service in the lower cadre or the seniority should be on the basis of marks obtained by the candidates in the selection proceedings. Mere passing of Electrical Supervisory Certificate (Mines installation) examination at an earlier point of time cannot clothe a person with a preferential claim for promotion over those who qualified later. By giving preference to the date of passing of Electrical Supervisory Certificate (Mines installation) examination held by the Board of Technical Education, seniority and assessment by means of marks obtained by the petitioner in the selection process is being ignored. The same is in violation of Articles 14 and 16 of the Constitution. Hence, the writ petition is filed.

4. The case of the respondents, as stated in the counter affidavit of the Deputy General Manager (Personnel) in PM wing of the Company, in brief, is this: 'The petitioner is a workman coming under the definition

of 'workman' under the Act. Therefore, for redressal of his grievance, if any, the petitioner is having an effective and efficacious remedy under the provisions of the Act. He should have availed the remedies under the Act before approaching this Court. As per the cadre scheme in vogue for electricians in pursuance of settlements, dated 03.03.1989, 21.02.2000 and 20.08.2004, under Section 12(3) of the Act with the Trade unions, the eligibility criteria for the post of charge hand (electrical) are as follows: - 'Electricians/ EP electricians possessing Electrical Supervisory Certificate (Mines Installation) who are in Technical Grade-C/ D, Exc.Cat.B/ C and Electricians, Cat.V with 5 years of service in Cat.V are eligible to apply for the post of Charge hand (Electrical), Grade-B. The selection shall be based on interview (20 marks) and Assessment report (30 marks). The candidates who secure 40% and above marks in interview and 50% and above marks in Assessment report and interview put together are treated as qualified in the test. The list of selected candidates will be prepared in the order of seniority of passing Electrical Supervisory Certificate (Mines Installation) examination on company wise basis.' As per settlement, dated 03.03.1989, the electricians who are in category VI with electrical supervisory certificate (Mines installation) will be considered for promotion in the first instance; later those who are having 8 years of service in Category V with electrical supervisory certificate (Mines installation) will be considered. The acquiring of the said certificate is the minimum qualification for the post of electrical charge hand. The existing procedure of trade test and interview remained the same. Promotion to the said post is agreed to be continued. Subsequently, another settlement, dated 21.02.2000, was entered into with the Unions in which the only change made in the selection process is that the

selection is to be based on the date of passing of electrical supervisory certificate (Mines installation) examination, that is the seniority of the candidate should be fixed on the basis of date of passing of electrical supervisory certificate (Mines installation). Further, it is sufficient to be Category V with 5 years of service or Grade D. After the said settlement was reached on 21.02.2000, the final selection of charge hands (electrical) from among qualified candidates was based on seniority with reference to the date of passing of electrical supervisory certificate (Mines installation) examination, but, not on the basis of service rendered in the company. Subsequently, another settlement was also entered into with the Unions, on 20.08.2004; according to which there is no change in the eligibility and selection criteria for the post of charge hand (electrical) except the selection is to be done company wise instead of region wise. The settlement, dated 21.02.2000, was put in force. The respondents issued a circular, dated 21.03.2000, and in follow-up, another circular, dated 14.12.2000, was issued requesting General Managers of KGM Region to forward the list of eligible candidates to fill up the vacancies as per the settlement, dated 21.02.2000. Immediately after the circulars were issued, recognised unions represented that the circulars are not as per the spirit of settlement. On being convinced, the respondents agreed to modify the afore-stated circulars in accordance with the settlement and issued revised circular, dated 17.10.2001, giving necessary guidelines for selection of electrical charge hand, Grade-B. The contention of the petitioner that the above circular has given a go-by to the seniority-cum-merit which was in contemplation and which was in vogue for the last several years in pursuance of the settlement, dated 03.03.1989, is not correct. The petitioner is questioning the modification of a settlement,

dated 03.03.1989, done in respect of selection criteria for the post of charge hand (electrical) *vide* memorandum of settlement, dated 21.02.2000, under section 12(3) of the Act. Such matter should be taken for adjudication by the Industrial Tribunal, which is competent and which is having jurisdiction to adjudicate the said issue. As per selection criteria circulated *vide* circular, dated 17.10.2001, selection was conducted on 1st and 2nd December, 2001. The petitioner, who was possessing requisite qualification was also called for the selection and hence he attended for selection. Though he got qualified by securing 33 out of 50 marks, he could not get selected as he was out of zone of selection as per seniority of date of passing of electrical supervisory certificate (Mines installation) examination. All the 12 candidates who were promoted as charge hand (electrical) in the above selection were seniors to the petitioner with reference to the date of passing of electrical supervisory certificate (Mines installation) examination. Nageswar Rao and Venugopal Rao passed electrical supervisory certificate (Mines installation) examination on 01.10.1989 whereas the petitioner passed the said examination on 01.02.1997. Mere officiating as charge hand does not confer any vested right to claim promotion from 1998. The allegation that Nageswar Rao and Venugopal Rao, that is, the unofficial respondents 3 and 4 in WP.no.27013 of 2001 were given promotions for administrative convenience and contrary to settlement entered into by the management under Section 12(3) of the Act is denied. Both the said persons attended before the selection committee for selection for the post of charge hand (electrical) on 1st and 2nd September, 2005. All the other allegations in the affidavit filed in support of the writ petition are false. The petitioner herein subsequently appeared for selection conducted in the year 2007 and got

selected for the post of charge hand (electrical). The petitioner cannot claim promotion on par with his co-employees who got selected in the year 2001 though selection was based on the same eligibility and selection criteria.'

5. Learned counsel for both the parties made submissions in line with the respective contentions of the parties, which are stated supra.

6. The short question for consideration is as to whether one of the eligibility criteria for promotion to the post of charge hand (electrical) or electrical supervisor is the order of seniority of passing electrical supervisory certificate (Mines installation) examination (hereinafter, also referred to as 'examination', for brevity).

7. The heart of the contentions of the petitioner is as under: 'The petitioner passed the examination on 01.01.1997. Therefore, he is qualified in all respects for selection held in the year 2001 for the post of charge hand (electrical). Though Nageswara Rao and Venugopal Rao, his junior colleagues, passed the said examination on 01.10.1989, the date of passing of the said examination is irrelevant. When once all the candidates eligible to appear for selection have passed the examination well before the selection that was held in the year 2001, the date of passing of the examination is irrelevant. On the basis of seniority with reference to the date of passing of the examination, the petitioner ought not to have been denied selection in the year 2001, despite the facts that he is otherwise qualified and the said Nageswara Rao and Venugopal Rao are juniors to him and also as the petitioner was officiating in the post of charge hand (electrical) right from 1998 in a clear vacancy.'

8. The case of the Company is that there was a settlement between the company and the Unions and that as per the said settlement, dated 21.02.2000, selection is to be based on the date of passing of electrical supervisory certificate (Mines installation) examination, that is, seniority of the candidate should be fixed on the basis of the date of passing of the said examination. The settlement arrived at with the union which is binding and in force cannot be violated; and, if the course being suggested by the petitioner, which is contrary to the settlement is to be followed the same would result in Industrial and Labour unrest. The writ petition is devoid of merit and is liable to be dismissed.

9. A perusal of the material record shows that after protracted discussions between the company and the Unions a settlement was reached, on 21.02.2000, and that as per the said settlement, the final selection of charge hands (electrical) from among qualified candidates shall be based on seniority with reference to the date of passing of electrical supervisory certificate (Mines installation) examination, but, not on the basis of service rendered in the company. Item No. 12 of the said settlement reads thus: "*Item No. 12: Eligibility Criteria for promotion of Electrical Charge hands in Grade 'B' (Demand No.11 b):* After protracted discussions, it is agreed that the eligibility criterion for promotion to the post of Electrical Charge hand possessing Electrical Supervisory Certificate shall be on the basis of date of passing the Electrical Supervisory Certificate Examination with a minimum service of 5 years in Cat-V as against 8 years service in Cat-V prescribed earlier in terms of memorandum of settlement dated 03.03.1989." Thus, as per settlement, one of the eligible criteria for promotion to the post of electrical charge hand is seniority based on the

date of passing of the electrical supervisory certificate (Mines installation) examination. Following the said settlement the final selection of charge hand (electrical) from among the qualified candidates was done. Thus the selection was based on the seniority with reference to the date of passing of electrical supervisory certificate (Mines installation) examination. Even the subsequent settlement of the year 2004 also evidences the fact that the seniority shall be with reference to the date of passing of the examination. Thus, as per the said settled selection criteria, which are binding on the Management and the employees, all the eligible candidates including the petitioner were called for selection. Though the petitioner got otherwise qualified by securing 33 out of 50 marks, he was not selected as he was out of the zone of selection as per the seniority with reference to the date of passing of electrical supervisory certificate (Mines installation) examination. All the 12 candidates who were promoted at that selection as charge hands (electrical) were seniors to the petitioner with reference to the date of passing of the said examination. Thus, a plain perusal of the material record would show that the selection was done as per the settlement arrived at between the Company and the Union, on 21.02.2000, prior to the selection in the year 2001. It is not in dispute that P. Nageswara Rao and V. Venugopal Rao passed the required examination on 01.10.1989 whereas the petitioner passed the said examination on 01.02.1997. The petitioner cannot question the modification of a settlement, dated 03.03.1989, done in respect of selection criteria for the post of charge hand (electrical) *vide* memorandum of settlement, dated 21.02.2000, arrived at between the Company and the employees Union under section 12(3) of the Act. The jurisdiction to adjudicate such issue vests with the Industrial Tribunal. If

the petitioner intends to contend that the selection shall be made deviating from the settlement arrived at with the employees Union under section 12 (3) of the Act, he ought to have challenged the settlement before an appropriate forum by invoking the provisions of the Act. Therefore, as rightly contended by the Company, he cannot claim the instant remedy/relief in this writ petition without challenging the said settlement by following the procedure established by law. The fact of the matter is that the petitioner was selected in the year 2007 for the post of charge hand (electrical) and at that time also the same eligibility criteria including the seniority with reference to date of passing of the said examination were followed.

10. In that view of the matter, this Court finds that the petitioner cannot claim seniority on par with his juniors in service in terms of numbers of years as they have admittedly secured the required qualification and are seniors to the petitioner as they passed the electrical supervisory certificate (Mines installation) examination on 01.10.1989 whereas the petitioner passed the said examination on 01.02.1997.

11. On the above analysis, this court finds that there is no merit in the writ petition and that the writ petition is liable to be dismissed.

12. In the result, the Writ Petition is dismissed.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

24.03.2017
Vjl

M. SEETHARAMA MURTI, J