

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.16169 of 2006

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed challenging the validity of the Memo No. SE/ O/ VSP/ AO(Expr)/ AAO-III/ JAO/ PRS/ F-3/ D.No. 251/ 05, dated 07.02.2005, and seeking a consequential direction to the respondents to fix the pay of the petitioner in the cadre of Additional Assistant Engineer so as to make the pay of the petitioner equal to the pay of his junior, A. Ramesh Chandra Reddy of the same cadre, as proposed by the Divisional Engineer, Operation, Zone I, Visakhapatnam, in his letter addressed in the month of October, 2004, to the 3rd respondent, Accounts Officer.

2. I have heard the submissions of *Sri S.Ravindranath*, learned counsel appearing for the petitioner, and of *Sri M.Ravindra*, learned standing counsel appearing for the respondents, Andhra Pradesh Eastern Power Distribution Company Limited ('APEPDCL'). I have perused the material record.

3. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

The petitioner was appointed in the then Andhra Pradesh State Electricity Board (APSEB) as a Lineman, on 31.05.1989; and was posted to 33/ 11 KV Sub-Station, Sompeta of Srikakulam District. He was promoted as Sub Engineer and later, as Additional Assistant Engineer, vide Memo No.DS(P)/ DM(R)/ 55-I-D1/ 96, dated 03.02.1998. In the said memo, it is stated that the candidates who are promoted as Additional Assistant Engineer should join duty on or before 20.02.1998 AN. However, in view of the pressing works in the Section, the petitioner's Controlling Officer, i.e., Assistant Engineer, Operation, Sompeta, did not relieve him to enable him to join duty, before 20.02.1998, in the post of Additional Assistant Engineer. The petitioner

approached the 2nd respondent a number of times, for his immediate relief. The same are of no avail. On 11.08.1998, the Assistant Divisional Engineer, Construction & Operation, Sompeta, issued instructions to the Assistant Engineer, Operation, Sompeta, to relieve the petitioner immediately to enable him to join in the promotion post. But, the Assistant Engineer did not relieve the petitioner despite the instructions of the Assistant Divisional Engineer. Therefore, the Assistant Divisional Engineer, Construction & Operation, Sompeta, by memo, dated 02.09.1998, relieved the petitioner with instruction to report to the Superintending Engineer, Operation & Maintenance, Lower Sileru. Thereafter, the petitioner joined as Additional Assistant Engineer, Operation & Maintenance under Divisional Engineer, Operation & Maintenance, Mothugudem, on 26.11.1998. The APSEB introduced Master Scale with effect from 01.07.1998. The pay scale of Sub Engineer has been revised from Rs.3650-150-4100-200-5100-250-6350-300-7250 to Rs.5220-215-5865-290-7315-360-9115-430-10405. The pay scale of Additional Assistant Engineer has been revised from Rs.6950-300-7850-350-9600-400-10800 to Rs.9975-430-11265-500-13765-575-15490. The petitioner and Ramesh Chandra Reddy have been drawing the same pay right from the date of their joining in service and till 03.02.1998, on which date the orders promoting both the petitioner and the said Ramesh Chandra Reddy to the post of Additional Assistant Engineer were issued. However, the petitioner was not relieved from the Sub Engineer's post immediately, while Ramesh Chandra Reddy was relieved immediately. Therefore, the petitioner was compelled to continue as Sub Engineer. Resultantly, in the promotion post, the pay of the petitioner was fixed less by two increments than that of his junior in the Sub Engineer cadre, who was allowed to join as Additional Assistant Engineer before the revision of scales of pay have come into force. Though the petitioner joined late in the post of Additional Assistant Engineer, his seniority continues to be in the order of panel prepared for promotion to the post of Additional Assistant Engineer. In the said

seniority list, the petitioner was at S.No.28 whereas the said Ramesh Chandra Reddy was at S.No.65, as he was a junior to the petitioner both in the cadre of Additional Assistant Engineer and the cadres below the said cadre. The anomaly arose on account of the delay in relieving the petitioner from the post of Sub Engineer. The respondents are required to compensate the loss sustained by the petitioner by fixing his pay on par with his junior's pay as stated in his representation, dated 11.07.2002. The petitioner's pay was fixed at the minimum of the time scale in the post of Additional Assistant Engineer; whereas his juniors' pay was fixed at the minimum of AAE scale and then two service weightage increments have been allowed to the said junior; thereby, the said junior is drawing two increments more than the petitioner in the cadre of Additional Assistant Engineer. In fact, the 5th respondent, Chief General Manager, HRD, APEPDCL, Visakhapatnam, issued orders, vide Memo No.1338, dated 30.05.2003, directing the 2nd respondent to examine the representation of the petitioner for protection of his pay on par with his junior, A.Ramesh Chandra Reddy, and take necessary action to rectify the anomaly. The rank of seniority of the petitioner is '28' whereas that of his said junior is '65'. Basing on the said memo, the Divisional Engineer, Construction Division, Visakhapatnam, addressed a letter in October 2004 to the 3rd respondent proposing stepping up of the pay of the petitioner so as to bring it on par with that of his junior, A. Ramesh Chandra Reddy. However, the anomaly was not rectified and the claim of the petitioner was rejected taking shelter under the guidelines issued for rectification of the anomaly in the context of promotion before the revised scales vis-à-vis promotion after revised scales, though the said aspect is irrelevant and unwarranted in the present context. Hence, the present writ petition is filed.

4. The case of the respondents and the submissions made on their behalf, in brief, are as follows: 'The petitioner who was appointed by the erstwhile APSEB as Lineman, on 31.05.1989, joined as Lineman, on 31.05.1989, in

Operation Division, Tekkali of Operation Circle, Srikakulam. Subsequently, he was appointed by transfer as Sub-Engineer and was later appointed as Additional Assistant Engineer, on 26.11.1998. He discharged the duties and responsibilities in the lower post upto 25.11.1998. Hence, he is eligible to draw the higher time scale of pay from 26.11.1998 only. The APSEB introduced Master Scales with effect from 01.04.1998, but financial benefit was given from 01.07.1998 revising pay scales of employees and other workmen. The pay scale of Sub-Engineer has been revised under revision of pay scales 1998, vide B.P.M.S.No.256, dated 05.01.1999. The pay scale of sub-Engineer has been revised from Rs.2010-90-3090-120-4290 to Rs.3650-150-4100-200-5100-250-6350-300-7250 but not from Rs.3650-150-4100-200-5100-250-6350-300-7250 to Rs.5220-215-5865-290-7315-360-9115-430-10405 as stated by the petitioner. The pay scale of Additional Assistant Engineer has also been revised from Rs.3460-140-4300-150-6400 to Rs.6950-300-7850-350-9600-10800, but not from Rs.6950-300-7850-350-9600-400-10800 to Rs.9975-430-11265-500-13765-575-15490 as stated by the petitioner. Certain guidelines were issued for fixing the pay under the revision of pay scales 1998. The petitioner's pay was fixed @ Rs.5850/- in the time scale of pay of Sub-Engineer, viz., Rs.3650-150-4100-200-5100-250-6350-300-7250, on the date of option exercised by him under revision of pay scales 1998. The pay drawn details of the petitioner as well as A.Ramesh Chandra Reddy indicate that Ramesh Chandra Reddy was not a junior to the petitioner and there is no anomaly in the fixation of pay scale of the petitioner. The petitioner was promoted as Line Inspector, on 19.07.1992, whereas the said Ramesh Chandra Reddy was promoted as Assistant Supervisor, on 17.8.1992. The time scales of pay of Line Inspector and Assistant Supervisor are different. On such promotion, the pay of the petitioner was fixed in the post of Line Inspector whereas the pay of Ramesh Chandra Reddy was fixed in the post of Assistant Supervisor, as per their eligibility and availability of vacant posts in the respective units. Thus, Ramesh Chandra Reddy was

promoted as Assistant Supervisor, which is a higher post carrying a higher time scale of pay than that of the post of Line Inspector. Orders were issued constituting the category of Sub-Engineer in the Supervisory cadre under APSEB Engineering service in lieu of the existing categories of Assistant Supervisor and Sub Overseer in the scale of pay of Rs.1360-60-2080-80-2880 with effect from 01.09.1992. Ramesh Chandra Reddy was an Assistant Supervisor as on 01.09.1992. His post was re-designated as Sub-Engineer with effect from 01.09.1992. The petitioner was appointed by transfer as Sub-Engineer from the post of Line Inspector, on 08.12.1992; whereas, the said Ramesh Chandra Reddy's post of Assistant Supervisor was re-designated as Sub Engineer, on 01.09.1992. In that view of the matter, Ramesh Chandra Reddy was drawing more pay than the petitioner from time to time. Therefore, the contention of the petitioner that he and Ramesh Chandra Reddy were drawing the same pay right from the date of joining in service of the Board and till 03.02.1998 is not correct as the said Ramesh Chandra Reddy was drawing higher pay from time to time as he was working in higher posts carrying higher duties and responsibilities. The erstwhile APSEB issued appointment orders, vide Memo No.DS(P)/ DM(5)/ 1551-D1/ 96, dated 03.02.1998, enclosing a list of candidates appointed to the cadre of AAE in which the name of the petitioner was placed at Sl.No.28, whereas the name of A.Ramesh Chandra Reddy was placed at Sl.No.65. It is not a seniority list. It is a list enclosed to the appointment orders. The anomaly has arisen on account of the delayed relieving of the petitioner from the post of Sub Engineer is not correct. Ramesh Chandra Reddy was getting higher scale of pay from time to time with effect from 17.08.1992, i.e., the date he assumed charge of higher post as Assistant Supervisor, which is re-designated as Sub-Engineer from 01.09.1992; whereas, the petitioner was appointed as Sub-Engineer on 08.12.1992. The petitioner is said to have been relieved from his duties of Sub Engineer with effect from 02.09.1998 AN with a direction to report before the Superintending Engineer (O & M), Lower Sileru,

as he was allotted the post of Additional Assistant Engineer at that place, vide Memo No.ADE/ CW/ SPT/ F1/ D.No.498198, Dated 02.09.1998. Though the petitioner was relieved on 02.09.1998, he has not reported to duty till 25.11.1998 before the abovesaid Superintending Engineer (O & M), Lower Sleru. The petitioner submitted representations, dated 23.11.1998 and 01.12.1998, seeking regularization of his absence period as Earned Leave from 03.09.1998 to 25.11.1998 stating that he could not join duty in the post of Additional Assistant Engineer due to certain personal and domestic affairs. He assumed charge of the post of Additional Assistant Engineer with higher duties and higher responsibilities and with higher time scale of pay with effect from 26.11.1998. The representations of the petitioner were rejected for valid reasons as the petitioner has not fulfilled the required conditions for stepping up his pay. Hence, the writ petition is liable to be dismissed being devoid of merit.

5. I have given earnest consideration to the facts and submissions.

6. Since the petitioner is comparing his case with that of A.Ramesh Chandra Reddy and is claiming fixation of his pay in the cadre of Additional Assistant Engineer so as to make his pay equivalent to the pay of Ramesh Chandra Reddy, who is of the same cadre, it is necessary to examine in juxtaposition the career events of both the petitioner and the said Ramesh Chandra Reddy from the inception upto the date of their appointments by transfer to the post of Additional Assistant Engineer. Be it first noted that the petitioner joined the then APSEB as Lineman, on 31.05.1989; whereas, Ramesh Chandra Reddy joined as Lineman, on 31.07.1989. Thus, it appears that the said Ramesh Chandra Reddy is a junior to the petitioner at the inception. However, it is not in dispute that the unit of operation for fixation of seniority and promotion to the higher post for Operation & Maintenance category from Junior Lineman to the Line Inspector is Operation Division. Though both the petitioner and Ramesh

Chandra Reddy were born in the service of the Department as Lineman in Operation & Maintenance cadre, their units of operation are different being Operation Division, Tekkali, and Operation Division, Nizamabad. In that view of the matter, A.Ramesh Chandra Reddy cannot be considered as a junior to the petitioner in the first cadre of Lineman as they belonged to different Operation Divisions. Subsequently, the petitioner was promoted as Line Inspector in the Operation Division, Tekkali, on 19.07.1992. The time scale of the post of Line Inspector, by then, was 14070-50-2020-60-2620. Therefore, the petitioner's pay was fixed on 19.07.1992 at Rs.1570/- . Whereas, Ramesh Chandra Reddy was promoted as Assistant Supervisor in his Operation Division, on 17.08.1992, and the time scale of pay of the said post was Rs.1530-50-2280-75-2880 and hence, the pay of Ramesh Chandra Reddy was fixed on 17.8.1992 as Rs.1580/- . The said promotions were respectively given to the petitioner and Ramesh Chandra Reddy as per their respective eligibility criteria and availability of vacant posts for promotion in the unit of operation, i.e., Operation Division. Thus, A.Ramesh Chandra Reddy was promoted to the post of Assistant Supervisor, which is a post higher than that of the post of the petitioner, that is, Line Inspector. The time scales of pay of the two posts are also different and the time scale of pay of the post of Assistant Supervisor was higher than that of the time scale of pay of the post of Line Inspector. However, in view of the constitution of category of Sub-Engineer in the Supervisory cadre under APSEB Engineering Service, the post of the said Ramesh Chandra Reddy, as on 01.09.1992, viz., the post of Assistant Supervisor, was re-designated as Sub-Engineer with effect from 01.09.1992; whereas, the petitioner was promoted as Sub-Engineer on 08.12.1992. Thus, the promotion of the petitioner as Sub-Engineer from the post of Line Inspector was subsequent to the re-designation of the post of Assistant Supervisor held by Ramesh Chandra Reddy as Sub-Engineer. Thus, the pay of Ramesh Chandra Reddy as Sub-Engineer was fixed at Rs.1600/- as on 01.09.1992; whereas the petitioner was at that time a Line

Inspector and his pay was fixed at Rs.1570/-, that is, as on 01.09.1992. Thus, Ramesh Chandra Reddy was drawing a higher pay than that of the petitioner from time to time. Nevertheless, both the petitioner and the said Ramesh Chandra Reddy are appointed by transfer, purely, on temporary basis, as Additional Assistant Engineer (Electrical) (Civil), vide Memo No.DS(P)/ DM(5)/ 1551-D1/ 96, dated 03.02.1998, with effect from the date of their actual joining duty in the time scale of pay of Rs.3460-140-4380-150-5400 with usual allowances admissible from time to time. Thus, both of them were appointed to the post of Additional Assistant Engineer, by transfer, purely on temporary basis. Ramesh Chandra Reddy got himself relieved and joined as Additional Assistant Engineer on 07.03.1998. He exercised option to fix his pay on 01.04.1998 FBF in the cadre of Additional Assistant Engineer. Since the time scale of the said post under revised pay scales 1998 was Rs.6950-300-7850-350-9600-400-1800, the pay of Ramesh Chandra Reddy in the said post of Additional Assistant Engineer was fixed at Rs.7550/- with effect from 01.04.1998. However, as on 01.04.1998, the petitioner was a Sub-Engineer. Therefore, he exercised his option to fix his pay on 01.04.1998 in the cadre of Sub-Engineer. The time scale of pay of Sub-Engineer under revised pay scale 1998 was Rs.3650-150-4100-200-5100-250-6350-300-7250. Therefore, the pay of the petitioner was fixed at Rs.5850/- with effect from 01.04.1998 in the cadre of Sub-Engineer. Therefore, as on 01.04.1998, the petitioner was drawing his eligible pay in the cadre of Sub-Engineer; whereas, Ramesh Chandra Reddy was drawing his eligible pay in the cadre of Additional Assistant Engineer, which is a higher post with higher duties and responsibilities. Though the petitioner contends that he was not immediately relieved from the post of Sub-Engineer and hence, there was delay in joining in the post of Additional Assistant Engineer, the said contention, in the facts and circumstances stated supra, does not make a material difference and hence, the said contention is of no avail to the petitioner. Admittedly, the petitioner was relieved belatedly from

the post of Sub Engineer. However, it is an admitted fact that he was relieved from the post of Sub Engineer, on 02.09.1998. But, the petitioner did not report immediately before the Superintendent Engineer concerned for joining duty as Additional Assistant Engineer. He reported belatedly before the said Officer concerned, on 25.11.1998, and gave representations for regularization of the absence period as Earned Leave from 03.09.1998 to 25.11.1998. Therefore, despite the fact that he was relieved on 02.09.1998 AN, the petitioner did not join as Additional Assistant Engineer till 25.11.1998. Further, even by the date 03.02.1998, i.e., the date of appointment by transfer to the post of Additional Assistant Engineer, the petitioner and Ramesh Chandra Reddy were drawing different amounts of pay as per the pay structures applicable to their individual categories. Therefore, the contention of the petitioner that he and Ramesh Chandra Reddy have been drawing the same pay right from the date of joining till 03.02.1998, i.e., the date of appointment by transfer to the post of Additional Assistant Engineer is not correct. For all the above reasons, this Court is of the considered view that the contention of the petitioner that the anomaly in the pay scales of the petitioner and Ramesh Chandra Reddy arose only due to the delay in relieving the petitioner from the post of Line Inspector cannot be countenanced.

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

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

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

01.06.2017
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