

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

**WRIT PETITION Nos.45732 of 2016, 1128, 1593 and
39034 of 2017**

COMMON ORDER:

These Writ Petitions are being disposed of by this common order as they relate to the maintenance of seniority by not implementing the *Catch-Up* Rule while promoting the petitioners and also making further promotions.

2. W.P.No.45732 of 2016 was filed challenging the action of respondents 1 to 3 in not implementing the *Catch-Up* Rule and restoring the petitioners seniority over respondents 4 to 12 in the promotional category of Deputy General Manager (E&M) E7 Grade, where the respondents 1 to 3 had given accelerated promotion by virtue of policy of the Rule of Reservation in promotions followed by the respondent Corporation.

3. W.P.No.1128 of 2017 is also filed for the same purpose, whereas W.P.No.1593 of 2017 relates to non-implementation of *Catch-Up* Rule in E8 Grade. Thus, the petitioners in W.P.No.45732 of 2016 and W.P.No.1128 of 2017 are working as Deputy General Managers in E7 Grade, whereas the petitioners in W.P.No.1593 of 2017 are working in E8 Grade.

4. W.P.No.39034 of 2017 relates to the action of respondents 1 to 3 in not promoting the petitioners to the post of General Managers. Though it is not directly related to the above three cases, it is also being disposed of by this common order. The facts

in these cases are not in dispute and hence these cases are being disposed of on the point of law.

5. There is no dispute that the petitioners as well as unofficial respondents were promoted by implementing regular service Rules up to the Superintending Engineer cadre and it is the feeder category for promotion to the post of Deputy General Manager. As stated above, the petitioners and the unofficial respondents in W.P.No.45732 of 2016 and W.P.No.1128 of 2017 were promoted to the post of Deputy General Manager and after promotion, the seniority that was maintained in the Cadre of Superintending Engineers was not maintained in the cadre of Deputy General Manager by implementing the *Catch-Up* Rule. Thus, the petitioners in those Writ Petitions who are general category candidates became juniors to the persons who were promoted earlier by following the Rule of Reservation though such promotees were juniors in the cadre of Superintending Engineers.

6. Non-implementation of *Catch-Up* Rule was sought to be justified on the basis of G.O.Ms.No.5, Social Welfare (SW.ROR.1) Department, dated 14.02.2003 and G.O.Ms.No.26, Social Welfare (ROR1) Department, dated 20.02.2009. G.O.Ms.No.5, dated 14.02.2003, was issued by the Government providing Rule of Reservation in promotions in favour of Scheduled Castes and Scheduled Tribes under Article 16 (4A) of the Constitution of India and the same was implemented by the respondent – Corporation by passing a resolution to that effect on 11.07.2003. Later on, the Government issued G.O.Ms.No.26, dated 20.02.2009, amending G.O.Ms.No.5, dated 14.02.2003, providing for consequential

seniority in favour of Scheduled Castes and the Scheduled Tribes in promotion in all categories of posts in all State Government Departments and also providing for in-charge arrangements in exigency of administration for holding higher posts in order to achieve adequacy of representation to Scheduled Castes and Scheduled Tribes in services in relaxation of Rule 10 (h) of the Andhra Pradesh State and Subordinate Services Rules, 1996. Admittedly, no consequential decision was taken by the Board of Directors of the respondent – Corporation after making amendment by passing an appropriate resolution. But, learned Advocate General appearing for the respondent – Corporation, submits that since it was an amendment to G.O.Ms.No.5, dated 14.02.2003, there need not be any separate resolution for implementing G.O.Ms.No.26, dated 20.02.2009, providing consequential seniority and thus, G.O.Ms.Nos.5 and 26 are being implemented, as a result of which, the candidates belonging to the Scheduled Castes and the Scheduled Tribes, who were promoted, were given consequential seniority by not implementing the *Catch-Up* Rule.

7. Learned Senior Counsel, Sri C.V.Mohan Reddy, appearing for the petitioners submits that in view of judgment of Apex Court in **B.K. Pavitra v. Union of India**¹, the exercise for determining ‘inadequacy of representation’, ‘backwardness’ and ‘over all efficiency’ is a must for exercise of power under Article 16(4-A). The same ratio was previously laid down in **M. Nagaraj v. Union of India**² and **S. Panneer Selvam v. State of Tamil Nadu**³.

¹ 2017 SCC Online SC 109

² AIR 2007 SC 71

³ (2015) 10 Supreme Court Cases 292

8. As already stated, G.O.Ms.No.5 dated 14.02.2003 was adopted, but the amended G.O.Ms.No.26, dated 20.02.2009, was not adopted specifically by the Corporation and no exercise was done by the Corporation in terms of the ratio laid down by the Hon'ble Supreme Court in **M.Nagaraj's case** and **S.Panneer Selvam's case**. Those cases were considered in **B.K.Pavitra's case**, wherein the Hon'ble Supreme Court was considering the amendment made by the Karnataka Government to the Service Rules providing for consequential seniority to the Government Servants belonging to the Scheduled Castes and the Scheduled Tribes promoted under Reservation Policy. By considering the said amended Act, which was an enabling provision, the Hon'ble Supreme Court set aside the said Act to the extent of doing away with the *Catch-Up* Rule and providing for consequential seniority under Sections 3 and 4 of the said Act to the persons belonging to the Scheduled Castes and the Scheduled Tribes in promotion against the roster points by holding it to be *Ultra vires* Articles 14 and 16 of the Constitution of India. In view of clear ratio laid down by the Hon'ble Supreme Court, without undertaking the exercise, one cannot avoid implementation of *Catch-Up* Rule consequent to the promotion of candidates belonging to the Scheduled Castes and the Scheduled Tribes.

9. The cause of action for filing the present Writ Petitions appear to be that the respondent Corporation is going ahead with the promotion to the post of General Managers in E8 Grade and as per counter-affidavit filed by the Corporation, it appears that 13 vacancies were identified in E8 Grade of General Managers for the Financial Year 2016-2017, inviting call letters from eligible

executives. In E7 Grade (Deputy General Manager) promotions were based on civil seniority lists duly following the Rule of Reservation vide letter dated 28.12.2016. It was noticed that there was adequate representation of the Scheduled Castes candidates in E8 Grade and hence, all vacancies in E8 Grade were considered as unreserved and 39 eligible candidates, including private respondents were called for interview against 13 vacancies based on the civil seniority list. The Departmental Promotion Committee (DPC) completed its exercise on 26.12.2017.

10. As per the said seniority list in E.7 Grade, admittedly there are 12 candidates, who are seniors to the petitioners and eligible to be considered along with other eligible candidates against 13 posts. But, out of 12 eligible candidates, one candidate was not found fit for promotion. Out of 13 posts, it is said that one post is reserved for Scheduled Tribe candidate. In view of this, the respondent - Corporation can go ahead with filling up of 11 vacancies in E8 Grade, without being effected by the issue involved and decided in the present Writ Petitions. However, in respect of one vacancy, the respondent - Corporation shall keep it vacant, unless the exercise indicated in **M.Nagaraj's case** and **S.Panneer Selvam's case** is undertaken and the seniority in E7 Grade is finalized.

11. The Writ Petitions are, accordingly, allowed to the extent of directing the respondent - Corporation to undertake the exercise spelt out by the Supreme Court in the above case and finalize the seniority in E7 Grade. Until the said exercise is completed, no promotions shall be made from out of the eligible candidates from Sl.No.13 of the said seniority list of E7 Grade now available.

12. Learned Advocate General appearing for the Corporation submits that promotion to the Grade of E8 is based on merit-cum-seniority and petitioners 1 to 4 in W.P.No.45732 of 2016 are already in the zone of consideration and call letters were issued to them, whereas, petitioners 5 to 8, do not come under the zone of consideration and hence, no call letters were issued to them. The Writ Petition does not relate to the consideration of cases of the petitioners for promotion, but it is with regard to implementation of *Catch-Up* Rule in the cadre of Deputy General Manager and hence, unless the same is worked out according to law, there cannot be any further promotions.

13. Learned Senior Counsel Sri G.Vidyasagar, appearing for the unofficial respondents submits that the petitioners did not raise any grievance with regard to their seniority, when they were promoted in E7 Grade finally somewhere around 2007 and hence they cannot raise objection now. But, non-raising of objection by the petitioners do not come in the way of their raising the present point of non-implementation of *Catch-Up* Rule when promotions are going to be effected in violation of Constitutional provisions.

14. Coming to W.P.Nos.1593 and 39034 of 2017, they relate to maintenance of seniority by implementing the *Catch-Up* Rule and the same ratio as stated above in respect of E7 Grade is applicable to E8 Grade petitioners also. However, this will not prevent the Corporation from effecting promotions based on the seniority in E8 Grade, if there is no dispute with regard to the *Catch-Up* Rule.

15. Hence, all the Writ Petitions are allowed to the extent indicated above.

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

A.RAMALINGESWARA RAO, J

NOVEMBER 29, 2017
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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO



**WRIT PETITION Nos.45732 of 2016, 1128, 1593 and
39034 of 2017**

Date: 29.11.2017

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