

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CONTEMPT CASE No.1736 OF 2017

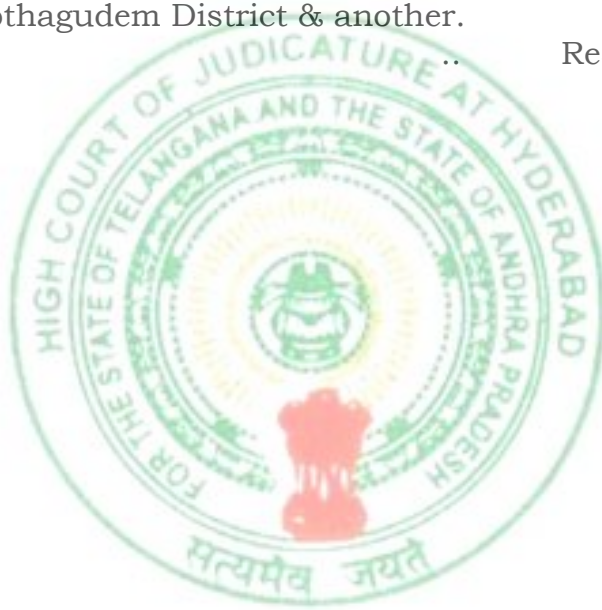
DATED : 27.11.2017

Between :

N.Srinivas S/o.Mathaiah,
Aged about 42 yrs, Working as Executive Engineer,
E & M O/o.Area Work Shop,
Jaishankar Bhupalpalli District & others
.. Petitioners

And

J.Pavithran Kumar, I.R.S.,
The Director (PA & W),
Singareni Collieries Company Limited,
Bhadradri Kothagudem District & another.
.. Respondents



This court made the following :

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ORDER:

Petitioners are presently working in E-4 Grade and aspiring for promotion as E-5 Grade in Engineering and Mechanical Discipline. Alleging that though they were eligible, they were not considered for promotion, instituted W.P.No.45900 of 2016. Petitioners also filed W.P.M.P.No.56556 of 2016 praying to grant direction to respondents to consider them for promotion to E-5 Grade, against the existing vacancies pending disposal of the writ petition. By order dated 18.01.2017, this Court directed respondents 2 and 3 in the writ petition to consider the petitioners for promotion to E-5 Grade against the existing vacancies, if they are eligible and suitable and there is no decision taken not to fill up the vacancies. Alleging violation of the said direction, this contempt case is filed.

2. The respondents filed affidavit deposed by Sri K.Basavaiah, General Manager (Personnel), Executive Establishment Cell, Corporate office. According to the respondents, as there are no vacancies available, petitioners were not granted promotions and that they would be considered for promotions as and when they acquire eligibility under Cluster Promotion Concept.

3. Heard Sri K.Vasudeva Reddy, learned counsel for the petitioners and Sri J.Sreenivas Rao, learned standing counsel representing the respondents.

4. Learned counsel for the petitioners by referring to the averments made in the counter affidavit deposed by Sri K.Basavaiah, and the material enclosed to the said affidavit would submit that the statement would disclose that there are vacancies available in E-5 Grade and in spite of availability of vacancies and eligibility of the petitioners they were illegally not granted promotions. According to learned counsel the statement would disclose that as against 115 sanctioned strength in E-5 Grade only 55 are presently working, leaving 60 vacancies unfilled and therefore, in terms of the direction of this Court, the petitioners ought to have been considered. According to learned counsel, no decision was taken by the respondent-company not to fill up the existing vacancies. Thus, there is no option but to grant promotions, in terms of the direction of this Court and not granting promotions would amount to wilful and deliberate disobedience of the order of this Court. Therefore, respondents are liable for punishment under the Contempt of Courts Act.

5. Learned Standing counsel, submits that above E-5 Grade is called E-6 Grade and the sanctioned strength of E-6 Grade is 57. As against sanctioned strength of 57, presently 135 are working in E-6 Grade who were promoted from E-5 Grade. Therefore, 78 excess promotions were made to E-6 Grade and therefore, no posts in E-5 Grade as sought, be filled up. According to learned counsel, if those 78 excess promotions are taken into account in E-6 Grade, the total strength of E-5 Grade exceeds the sanctioned strength of 155 and therefore, it cannot be said that there are vacancies available and thus justifies the action of the respondents in not granting promotion.

6. The letter bearing No.CRP/PER/CN/2017 dated Nil-03-2017 (signed by General Manager (Personnel) on 06.03.2017 is enclosed at Page Nos.35 and 36 to the counter affidavit filed by the respondents.

7. A reading of the letter would show that the sanctioned strength of E-6 Grade is 57 and E-5 Grade is 115 and presently 135 are working in E-6 Grade and 55 are working in E-5 Grade. According to the respondents as of now, in both grades put together 190 are working as against strength of 172 and therefore, there is excess strength of 18. It is stated that consequential vacancies on account of promotions/retirements in above grades is 16 and even thereafter, there will be two excess in both grades put together. Therefore, they treat that there are no vacancies for the panel year 2016-17 in E-5 Grade to grant further promotions.

8. On the face of it, this statement would show that there are vacancies existing in E-5 Grade, only if the factum of more number of officers working in E-6 Grade within the sanctioned strength is not taken into consideration. However, admittedly, 78 excess are working in E-6 Grade. Therefore, technically they have to be treated as persons belonging to E-5 Grade and working in higher grade.

9. The direction of this Court was to consider the petitioners for promotion to E-5 Grade, if there are vacancies. Such consideration was given, as can be seen from the above proceedings and the averments made in the affidavit filed on behalf of the respondents, but promotions were not granted on the premise that there are excess officers working in E-6 Grade than the total cadre strength and any further promotion to E-5 Grade would only bulge the

cadre further. Thus, it cannot be said that there is no consideration at all and that the decision not to induct more officers in E-5 Grade amounts to deliberate violation of the directions of this Court.

10. It is also appropriate to note at this stage that the order passed by this Court was at the stage of admission and the factual position about the cadre strength was not placed before this Court. This Court was not appraised that there were excess promotions to E-6 Grade. Thus, merely because there are vacancies in E-5 Grade, the same cannot be looked in isolation ignoring the factual background of excess promotions made to E-6 Grade, over all bulging of cadre and the employers' decision not to induct anymore into E-5 Grade.

11. Having regard to these facts, it cannot be said that the respondents have deliberately and wilfully denied promotions to the petitioners to E-5 Grade, even though there are vacancies and thus violated the directions issued by this Court, warranting initiation of proceedings of contempt under the Contempt of Courts Act.

12. The explanation offered by the respondents is accepted. The contempt case is closed. However, it is open to the petitioners to agitate their grievance independently in the writ petition. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this contempt case shall stand closed.

P.NAVEEN RAO,J

27th November 2017
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