

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.27835 OF 2017

ORDER :

It is the case of the petitioners that they are all Engineering Graduates; that 1st and 2nd petitioners have been working as Deputy Executive Engineers since 2010 and the 3rd petitioner has been working as Deputy Executive Engineer since 2011 in the 2nd respondent organisation. As per the service Rules of the 2nd respondent organisation the next promotion for the post of Deputy Executive Engineer is the Executive Engineer and that as per the Rules, for promotion to the post of Executive Engineer, a Degree holder should possess 5 years of experience as Deputy Executive Engineer and a Diploma holder should possess 10 years experience as Deputy Executive Engineer. All the petitioners are Engineering Graduates and 1st and 2nd petitioners are fully eligible and qualified to be considered for promotion for the panel year 2015-2016 and 3rd petitioner is fully eligible and qualified for the panel year 2016-2017 since they have completed five years of service as Deputy Executive Engineers. While so, during the current panel year i.e. 2016-2017 four vacancies of Executive Engineers have arisen and lying vacant. On coming to know about the availability of vacancies, the petitioners have approached the authorities to consider their names for promotion to the post of Executive Engineer since they are senior most eligible and qualified engineering graduates to be considered for promotion. As the 2nd respondent did not respond to their request, the petitioners have approached the 1st respondent and submitted

representations dated 12.08.2016, 31.01.2017, 06.03.2017 and 11.05.2017 requesting consideration of their names for promotion for the panel year 2016-2017 as Executive Engineers. The 1st respondent after noting the genuineness in the claim of the petitioners, has issued Memo No.1449/B1/2017, dated 03.02.2017 requesting the 2nd respondent to furnish remarks for taking further action. But, there is no response from the 2nd respondent and more than six months period is elapsed. Aggrieved by the same, present writ petition is filed.

The 2nd respondent filed counter stating that the Advisory Committee Meeting was convened on 04.01.2016 for considering the promotion to five posts of Executive Engineers from the feeder post of Deputy Executive Engineers, including the names of petitioners 1 and 2, viz. Sri K.Ramesh Kumar & Sri P.Ravinder; that the committee has examined the proposals and recommended five names viz., B.Mohan, M.Radhakrishna Murthy, B.A.Naveen Kumar, K.Nancharaiah and Syed Mazaharuddin as per the seniority; and that the statement of petitioners 1 and 2 stating that their names were considered and included in the panel for the year 2015-2016 by the DPC is not correct. It is stated that final seniority list of 18 Deputy Executive Engineer which consist of Diploma holders and Bachelor degree holders was notified vide HMDA proceedings dated 22.01.2015, wherein the petitioners' names were found in the bottom of the said list i.e. at Sl.Nos.16, 17 and 18. Since the petitioners were juniors in the final seniority list prepared for the cadre of Deputy Executive Engineer and since

the case of Deputy Executive Engineers who are diploma holders having completed ten years of service in the above said cadre are also required to be considered along with others, basing on the seniority and other eligibilities as prescribed in the promotion policy vide G.O.Ms.No.611, dated 22.11.1988, the petitioners have no absolute right to claim over the others who are above the petitioners in the seniority list. Hence there is no truth that they are senior most among the Deputy Executive Engineers and that their representations were not considered. It is further stated in the counter that the list of eligible candidates, including the petitioners will be placed before the ensuing Advisory Committee meeting and that the recommendations of the above committee will be forwarded to the 1st respondent for the necessary order for promoting the eligible candidates.

Learned counsel for the petitioners submits that as per Rule-6 of the A.P.State and Subordinate Services Rules, 1996 (*for short 'the Rules'*), the cut off date to be reckoned as qualified for determining eligibility of the candidate would be the 1st September of the year and that as per Rule 5 (a) of the Rules, it is mandatory on the part of the respondent authorities to prepare a regular year wise panel and that such being the legal position, the petitioners would be the only eligible and qualified senior most candidates with Engineering Graduation to be considered for promotion to the post of Executive Engineer since four vacancies have arisen during the panel year 2016-2017. But, the respondents are prolonging the issue without considering the case of the

petitioners for promotions to see that some Diploma holders who are ineligible for promotion for the panel year 2016-2017 and who are working as Deputy Executive Engineers, would become eligible for the panel year 2016-2017. He further submits that all four vacancies are being manned on in-charge basis in view of administrative exigencies, which goes to show that there is immediate need and requirement to fill up the posts of Executive Engineers. But, the respondents to accommodate certain individuals who are ineligible for the panel year 2016-2017, denied promotions to the petitioners who are eligible to the post of Executive Engineer for the panel year 2016-2017.

On the other hand Sri V.Narasimha Goud, learned Standing Counsel for the 2nd respondent submits that when petitioners' claim for promotions was not considered in the year 2015-2016 they would have challenge the same immediately in the year 2016 itself. He further submits that petitioners are not senior most Deputy Executive Engineers as per the final seniority list, as such their claim for promotion cannot be considered by overlooking their seniors who are above the petitioners in the seniority list.

In this case it is to be seen that the fact that four vacancies are available for promotion to the post of Executive Engineers and all the four posts are being manned on in-charge basis in view of the administrative exigencies, is not disputed. Though there is an assertion in the writ affidavit that four posts are available in the cadre of Executive Engineers which are still vacant and are being manned by in-charge basis, the same is not specifically denied in

the counter affidavit. But, the learned Standing Counsel for the 2nd respondent submits that two existing vacancies are available in the cadre of Executive Engineers and three more vacancies have arisen in March 2017 and July 2017. In view of the same, the respondents are obligated to carryout the mandate under Rule 5(a) of the Rules which reads as follows;

5.Selection posts: (a) All first appointments to a State Service and all promotions/appointments by transfer in that service shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal, by the appointing authority as specified in sub-rule(a) of Rule 6 from the panel of candidates. Such panel shall be prepared as laid down in Rule 6 by the appointing authority or any other authority empowered in this behalf.

In view of the aforesaid Rule and in view of the facts and circumstances of the case, the respondents are directed to carryout the mandate under Rule 5(a) of the Rules and take action for promotion to the post of Executive Engineer by considering the case of the petitioners, in accordance with Rules, within a period of eight weeks from the date of receipt of a copy of this order.

Accordingly, the writ petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition shall stand closed.

A.RAJASHEKER REDDY, J

11.09.2017

Note: Issue CC in three days.

B/o.tk.