

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION NO.38897 OF 2017

ORDER: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

The relief sought for in this Writ Petition is for a writ of mandamus to declare G.O.Ms.No.72 Water Resources (Services.II) Department dated 07.11.2017, issued by the State of Andhra Pradesh, as without jurisdiction, unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India, apart from being contrary to Rules 6, 23, 24, 25 and 33 of the Andhra Pradesh State and Subordinate Service Rules, and in violation of principles of natural justice.

By G.O.Ms.No.72 dated 07.11.2017, panels were prepared from the years 2004-05 to 2017-18, and from 2007-08 to 2017-18, in the cadre of Superintending Engineers/Chief Engineers. Annexures I and II to G.O.Ms.No.72 dated 07.11.2017 contain a list of 43 Superintending Engineers empanelled as Chief Engineers. The petitioner, a Chief Engineer in-charge, is shown at Sl.No.14 in the list of Executive Engineers prepared for the panel year 2017-18 which would enable him to be considered for promotion to the post of Superintending Engineer. A bare reading of G.O.Ms.No.72 dated 07.11.2017 shows that the entire exercise was undertaken pursuant to the orders of the Supreme Court in Contempt Petition (C) No.770 of 2016 in Civil Appeal No.4142 of 2004 dated 15.11.2017.

Sri P.V.Krishnaiah, learned counsel for the petitioner, would contend that, since the State of Telangana was arrayed as the

second respondent in the Writ Petition, and as the Andhra Pradesh Administrative Tribunal (“the APAT” for brevity) does not exercise jurisdiction over the State of Telangana, the petitioner can only invoke the jurisdiction of this Court under Article 226 of the Constitution of India; since employees, working in different cadres in the State of Telangana, were not included in the common seniority list prior to bifurcation of the State on 02.06.2014, the action of the Government of Andhra Pradesh in preparing a separate panel for Engineers initially appointed as Executive Engineers in Zones I to IV, without taking into account employees working in Zones V & VI (which are now under the State of Telangana), is illegal; though the State of Andhra Pradesh was arrayed as a respondent in WP.No.33065 of 2017, this Court had entertained the Writ Petition, and had passed an interim order in WP.MP.No.41140 of 2017 in WP.No.33065 of 2017 dated 05.10.2017; a Division Bench of this Court, in WP.MP.No.39828 of 2016 in WP.No.32207 of 2016 dated 21.10.2016, has observed that public servants, aggrieved by orders passed by the Government of Telangana, can no longer approach the Tribunal and can only approach the High Court directly; the Writ Petitions filed by them shall be heard by a Single Judge of this Court; orders passed by the APAT, in so far as service disputes of public servants from the State of Andhra Pradesh are concerned, shall, in the light of the law declared by the Supreme Court in **L.Chandra Kumar v. Union of India**¹, be continued to be heard by a Division Bench of the High Court; in such of those cases, where service disputes involve both the States/Governments of Telangana and Andhra

¹ AIR 1997 SC 1125

Pradesh, the persons aggrieved would no longer be entitled to approach the APAT; and the petitioner is, therefore, entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

The contention in WP.No.33065 of 2017, and the relief sought for therein, was to direct the Engineer-in-Chief, Irrigation & Command Area Development Department, State of Telangana not to proceed further with promotions to the posts of Executive Engineers, and other higher categories, by suspending the operation of the impugned seniority list vide Circular Memo dated 19.09.2017 passed by the Engineer-in-Chief, as arbitrary and illegal. This Court, while entertaining the Writ Petition, had directed the Engineer-in-Chief, I & CAD Department, Government of Telangana not to proceed further with promotions to the posts of Executive Engineers as, *prima facie*, he lacked jurisdiction to prepare the seniority list. The Learned Single Judge made it clear that the order passed by him did not preclude the State of Andhra Pradesh, and its Engineer-in-Chief, from preparing the seniority list.

As noted hereinabove, the relief sought for in the said Writ Petition was against the Engineer-in-Chief, Irrigation & Command Area Development Department, State of Telangana and, as the APAT lacks jurisdiction to entertain an O.A. wherein relief is sought against the State of Telangana and its officials, the jurisdiction of this Court, under Article 226 of the Constitution of India, was invoked. In the present case, the relief sought for is only against the Government of Andhra Pradesh, and the validity of G.O.Ms.No.72 dated 07.11.2017, issued by them is put in issue.

While the State of Telangana has, no doubt, been arrayed as a respondent, no relief has been sought against them. As the action of the Government of Andhra Pradesh, in preparing panels of Engineers belonging to Zones 1 to 4 of the State of A.P. is in issue, it is evident that the petitioner, who was originally from Zone I which falls within the State of Andhra Pradesh, ought to have invoked the jurisdiction of the APAT in the first instance, before invoking the writ jurisdiction of this Court in the light of the law declared by the Supreme Court in **L.Chandra Kumar**¹.

As noted hereinabove, the petitioner was initially appointed in Zone I which falls within the State of Andhra Pradesh. It is not as if any employee from Zones V and VI, falling within the State of Telangana, has invoked our jurisdiction contending that preparation of a separate panel restricting empanelment of Engineers only to Zones I to IV, (which falls within the State of Andhra Pradesh), violated their right to be considered for promotion to higher posts. The petitioner, admittedly from Zone-I, has questioned the validity of the G.O issued by the Government of Andhra Pradesh whereby panels were prepared. While the petitioner has, no doubt, contended that a common seniority list ought to have prepared by the Government of Andhra Pradesh, including officers from both the States of Andhra Pradesh and Telangana, such a contention, urged while challenging the validity of G.O.Ms.No.72 dated 07.11.2017 issued by the Government of Andhra Pradesh, can also be put forth before the APAT. We see no reason, therefore, to entertain the Writ Petition. Suffice it to make it clear that we have not expressed any opinion on merits and, in case the petitioner invokes the jurisdiction of APAT in this regard,

the O.A. shall be considered by the APAT on its merits uninfluenced by any observations made in this order.

The Writ Petition is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

27th November 2017
RRB

