

**HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

WRIT PETITION No.10736 OF 2018

ORAL ORDER: (per Hon'ble Sri Justice Abhinand Kumar Shavili)

1. This writ petition is filed seeking to issue a Writ of Certiorari calling for the records relating to and connected with the order dated 7.9.2017 passed in O.A.No.4378 of 2014 by the A.P. Administrative Tribunal and to set aside the same, and to declare the action of the respondents in not promoting the petitioner to the post of Executive Engineer against roster Point No.33 meant for ST category along with similarly placed persons, who got promoted through G.O.Ms.No.154, dated 21.5.2012, and in carrying forward the vacancies meant for ST category at roster Point No.33 without giving promotion to the petitioner, as illegal and arbitrary.

2. Heard Sri J. Sudheer, learned Counsel for the petitioner and the learned Government Pleader for Services I (A.P.) and the learned Government Pleader for Panchayat Raj Rural Development (A.P.)

3. The case of the petitioner in brief is as follows:

He was initially appointed as draftsman in the year 1995 and subsequently, he was selected and appointed as Assistant Executive Engineer in Zone IV in the year 1998 by A.P. Public Service

Commission. After bifurcation, the petitioner was allocated to RWS department. He belongs to ST community and he is eligible for promotion to the post of Deputy Executive Engineer as on 1.4.2008. He was promoted as Deputy Executive Engineer vide proceedings on 4.8.2009 in Zone IV. As he has been working as Deputy Executive Engineer since 2009, he is eligible for promotion to the post of Executive Engineer on regular basis. But his case was not considered for promotion along with others for the panel year 2011-2012. Hence, he filed the above O.A., on the ground that though he is eligible and qualified for promotion to the post of Executive Engineer, on regular basis, against roster point No.33 meant for ST category, his case was not considered. The learned Tribunal dismissed the above O.A., on the ground that there is no material on record to show that the services of the petitioner in the cadre of Deputy Executive Engineer were regularized and he is eligible for promotion. Aggrieved by the same, the petitioner filed this writ petition.

4. Learned Counsel for the petitioner submits that the petitioner has been continuing in the cadre of Deputy Executive Engineer since 2009 and that the failure on the part of the department to declare his probation for the years together cannot be taken as a ground to reject the case of the petitioner and that there is a provision for deemed declaration under A.P. State and Subordinate

Service Rules. He further submits that the Head of the Department sent the seniority list of Deputy Executive Engineers pertaining to SC/ST so that the roster of SC/STs can be filled up and there is no requirement of regular seniority list for filling up the roster point. He further submits that despite availability of material, vacancies and qualified candidates roster points were not filled up and the reservation policy has been violated, and that the Tribunal has failed to consider all these aspects and therefore, the order of the Tribunal warrants interference.

5 Learned Government Pleader for Services submits that the learned Tribunal has considered all the aspects and dismissed the O.A. and that the order of the Tribunal does not warrant any interference by this Court. He further contends that the seniority list in the cadre of Deputy Executive Engineer as well as in the higher cadre has not yet been finalized, and until and unless the seniority list has been finalized, the case of the petitioner cannot be considered for promotion to the post of Executive Engineer.

6. We have considered the rival submissions made by the parties. Perusal of the material on record goes to show that the petitioner is a member belonging to ST category. As per the policy of the State Government, reservations have to be extended in promotions.

7. Admittedly, the petitioner is a senior most Deputy Executive Engineer among STs and he is seeking promotion to the post of Executive Engineer against roster Point No.33. From the letters dated 28.5.2012 and 2.8.2012 of the Engineer-in-Chief, it is evident that the case of the petitioner for promotion to the post of Executive Engineer was recommended. The case of the petitioner can be considered in tune with the policy of the State Government in extending reservations even in the matter of promotions. The petitioner is only staking his claim against roster No.33. He claimed that roster No.33 is earmarked for ST category only and therefore, the finalization of seniority list got no relevancy.

8. In view of the above circumstances and in view of the specific claim made by the petitioner against roster point No.33, which is earmarked for ST category and in the light of the letters of the Engineer-in-Chief, this Court is of the view that the present writ petition can be disposed of directing the respondents to consider the case of the petitioner for promotion to the post of Executive Engineer by duly taking into account the recommendations made by the Engineer-in-Chief vide letters dated 28.5.2012 and 2.8.2012 to the Government.

9. Accordingly, the Writ Petition is allowed setting aside the order dated 7.9.2017 passed by the A.P. Administrative Tribunal in

O.A.No.4378 of 2014. The respondents are directed to consider the case of the petitioner for promotion to the post of Executive Engineer by duly taking into account the recommendations made by the Engineer-in-Chief vide letters dated 28.5.2012 and 2.8.2012 to the Government. No costs. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE SURESH KUMAR KAIT

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 20th July, 2018.
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**HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI**



WRIT PETITION No.10736 OF 2018

(Order delivered by the Hon'ble Sri Justice Abhinand Kumar Shavili)

20/07/2018

Nn.