

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

Writ Petition No.17033 of 2013

ORDER: (oral)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioners have challenged the order dated 12.02.2013 passed in O.A.No.9419 of 2010 whereby the petition filed by the petitioners before the Tribunal has been dismissed.

2) Vide the aforesaid O.A, the petitioners are challenging the action of the official respondents in issuing para 2 (ii) of G.O.Ms.No.16 TR&B (Ser.II) Department dated 16.02.2002 and placing the names of the petitioners subsequent to the name of the 5th respondent who was selected in the year 2001, in the final seniority list of AEEs of Zone-I dated 04.12.2009, as illegal and arbitrary.

3) The facts of the case are that the petitioners are working as Assistant Executive Engineers (R & B) Department in Zone-I. They were selected and appointed in the year 1991 through Employment Exchange, on satisfying the qualifications for the post of AEE i.e, B.E (Civil). They were allotted to Zone-I vide proceedings dated 21.03.1991 and given posting orders on 22.03.1991. While the petitioners were working, their services were terminated by order dated 31.03.1992, stating that their appointment as AEEs on 07.03.1991 was purely on temporary basis subject to allotment of candidates through APPSC. Challenging the said order of termination, the petitioners filed batch of

OAs before the learned Tribunal and the Tribunal issued an interim order, directing the respondents to continue the services of the petitioners if there were other vacancies available in the Department and if no regular candidate was selected by the Service Commission from out of the panel. Further, directed the respondents not to fill up any other temporary vacancies with some other candidates till the case of the existing temporary appointees like the petitioners were first considered and continued. The petitioners were accordingly continued.

4) Later, the batch of OAs were disposed of by the Tribunal by an order dated 29.12.1999 directing the respondents to consider the case of the petitioners for regularisation of their services in view of long number of years of service from the date of their appointment for executing the works under the World Bank Project, in terms of G.O.Ms.No.647 G.A.D dated 14.09.1979 and G.O.Ms.No.413 G.A.D dated 29.03.1983.

5) Further, case of petitioners is that pending disposal of the batch of OAs, the respondent authorities issued fresh appointment orders to the petitioners dated 24.08.1992 stating that the present appointment is without prejudice to the outcome of the said batch of OAs filed before the Tribunal. In that order it was also mentioned that the petitioners have to appear for special qualifying test to be conducted by APPSC and further specified that from the date of passing the special qualifying test, their services will be counted. The consequential appointment orders were issued on 30.08.1992 and the petitioners gave their joining reports.

6) Learned counsel appearing on behalf of the petitioners submits that the petitioners were given increments while taking into consideration the service rendered by them from their initial appointment i.e, 1991 during the pendency of the batch of OAs filed challenging the termination order dated 31.03.1992. The respondents also granted special grade scales at the end of 8 years and 16 years of service while taking into consideration the services rendered by the petitioners with effect from their initial appointment i.e, 07.03.1991. But despite the final orders of the Tribunal in the batch of OAs, the respondents did not regularise the services of petitioners. While so, some candidates similarly situated to that of petitioners, approached this Court by filing W.P.No.13845/2000 seeking to implement the final orders passed by the Tribunal in the batch of OAs dated 29.12.1999 and the W.P was disposed of by order dated 26.12.2000, directing the respondents to implement the orders of the Tribunal within a period of two months from the date of receipt of the said order. However, the respondents did not take any action and accordingly C.C.No.1561 of 2001 was filed, which was disposed of by order dated 18.02.2002, in view of the orders passed by the Government, wherein they had taken a decision to regularise the services of the petitioners along with the similarly situated candidates. Thus the regularisation was done by issue of G.O.Ms.No.362 dated 16.08.2002 and G.O.Ms.No.16 dated 16.02.2002. The services of the petitioners were regularised by issuing individual orders w.e.f. 29.03.2001.

7) Learned counsel further submits that the respondents issued a provisional seniority list of AEEs of Zone-I dated 20.06.2009 and the petitioners submitted their objections to the said list on 05.07.2009, stating that they are in continuous service without any break period from the date of their initial appointment i.e, 07.03.1991 and therefore, placing their names after the name of the 5th respondent i.e, S.No.93 onwards, is totally illegally and requested to place their names above the 4th respondent who was placed at S.No.49 in the provisional seniority list.

8) It is further submitted that the final seniority list of AEEs of Zone-I was issued on 04.12.2009 without properly considering the objections raised by the petitioners and that this was done in accordance with G.O.Ms.No.16 dated 16.02.2002. Thereafter, the petitioners made representations to the 2nd respondent to review the seniority list by counting their services from 1991 but the respondents chose not to pass any orders. Further, by operating the said seniority list, the unofficial respondents 7 and 8 were promoted to the post of Deputy Executive Engineers.

9) Learned counsel appearing on behalf of petitioners submits that the issue raised in the instant petition has already been dealt with by the Honourable Supreme Court in the case of ***D.Vishnu Murthy vs. Government of A.P and others***¹ and the same is not disputed by the learned Government Pleader.

¹ 2016 Law Suit (SC) 417

10) In view of the above judgment rendered by the Honourable Supreme Court, we hereby direct the respondents to issue a fresh seniority list *qua* the petitioners from their initial date of appointment.

11) Accordingly, this petition is disposed of. No costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Date: 13.07.2017
scs/murthy

