

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.24698 OF 2005

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records pertaining to the impugned speaking order dated 14.10.2004 of the 2nd respondent and to quash the said order by holding it as illegal and arbitrary, and consequently, to direct respondents Nos.1 and 2 to effect the promotion of the petitioner as SE/GM with effect from 28.8.2003 on par with Ch. Narsimha Reddy and Y. Narsaiah, and further to effect the promotion of the petitioner as Chief Engineer/Chief General manager with effect from 30.8.2004 with all consequential benefits.

2. Heard Sri M. Narsimloo, party-in-person and Sri Zakir Ali Danish, learned Standing Counsel for TSNPDCL.

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

(i) He was appointed as an Assistant Engineer in November, 1976 and he got further promotions. He retired as SE/General Manager (Projects) on 31.10.2004. The 3rd respondent, who belongs to scheduled caste community, was appointed as an Assistant Engineer, in the year 1986. The petitioner is senior to the 3rd respondent in all the cadres of Assistant Engineers, Assistant Divisional Engineer and Divisional Engineer. The petitioner was

promoted as Divisional Engineer in the year 2000 whereas the 3rd respondent was promoted as Divisional Engineer in the year 2002.

(ii) While so, the Government issued G.O.Ms.No.5, Social Welfare Department (ROR-I) dated 14.2.2003 and G.O.Ms.No.21 Social Welfare Department (ROR) dated 18.3.2003 prescribing the rule of reservations in the matter of promotions in respect of scheduled castes/scheduled tribes to the extent of 15% and 6% respectively to remove the inadequacy in the higher cadre posts.

(iii) Meanwhile, the petitioner and the 3rd respondent were promoted to the cadre of SE/General Manager through order dated 31.10.2003. The 1st respondent communicated the provisional seniority list of all SE/General Managers on 15.6.2004 wherein the name of the petitioner was shown at Sl.No.4 above the 3rd respondent. Thereafter, seniority list was revised without notice. As per the revised seniority list, which was communicated on 18.6.2004, the name of the petitioner was shown at Sl.No.5 below the name of the 3rd respondent, who was shown at Sl.No.4. Aggrieved by the revised seniority list, the petitioner made a representation to correct the seniority of the petitioner. The 2nd respondent issued orders vide memo dated 30.8.2004 wherein the seniority list of SEs communicated on 18.6.2004 was confirmed.

(iv) Challenging the said order dated 30.8.2004, the petitioner filed W.P.No.17825 of 2004 before this Court. This Court set aside

the order of the 2nd respondent dated 30.8.2004 and directed the 2nd respondent to pass a fresh order by taking into consideration the objections raised by the petitioner and the instructions issued by the Government of A.P. in G.O.Ms.No.2, dated 9.1.2004, within two weeks from the date of receipt of the copy of the order. In pursuance of the orders of this Court in W.P.No.17825 of 2004, the 2nd respondent passed the order dated 14.10.2004 rejecting the claim of the petitioner. Hence, the petitioner filed this writ petition.

4. The petitioner contends that there are five categories of posts/cadres available in the organization viz., Assistant Engineer (AE), Assistant Divisional Engineer (ADE), Divisional Engineer (DE), Superintending Engineer/General Manager (SE/GM) and Chief Engineer/Chief General Manager (CE/CGM) and he is senior to the 3rd respondent in all cadres of AE, ADE and DE, but however, the 3rd respondent was also promoted along with the petitioner to the next higher cadre i.e., SE/GM through order dated 31.10.2003 even though the 3rd respondent is not entitled to get promotion.

5. Further, it is the contention of the petitioner that in the promotion order of SE/GM as on 31.10.2003, the 3rd respondent was shown as senior to him i.e., at Sl.No.1, whereas the petitioner was shown at Sl.No.2., as a result of which, the petitioner lost his

next promotion to the cadre of CE/CGM before his retirement as on 31.10.2004.

6. The petitioner claims that he is entitled for notional promotion to the cadre of SE/GM as on 28.8.2003 along with Ch. Narsimha Reddy and Y. Narsaiah to the 3rd vacancy, and he is also entitled for further promotion to the next cadre of CE/CGM along with Ch. Narsimha Reddy before his retirement as on 31.10.2004, as his predecessor Y. Narsaiah retired as on 31.12.2003.

7. The learned Standing Counsel for the respondents contends that speaking order dated 14.10.2004 was issued duly explaining the reasons under which the seniority of the petitioner was fixed below the 3rd respondent. He contends that the promotions will be considered based on the merit-cum-seniority subject to availability of vacancies. Further, he contends that promotions from Divisional Engineer to Superintending Engineer and fixation of seniority in respect of the petitioner as well as the 3rd respondent herein are made in accordance with the guidelines issued by the Government from time to time and the order impugned is in accordance with law.

8. This Court has considered the rival submissions made by the parties and perused the material available on record. The petitioner was promoted as Divisional Engineer in March, 2000 and the 3rd

respondent was promoted as Divisional Engineer on 27.9.2002 and their next promotion is SE/GM. Three vacancies arose on 28.2.2003, 30.6.2003 and 31.7.2003. Out of three vacancies, one is earmarked for SC (Women). Two vacancies were filled up with two seniors to the petitioner. It is the case of the petitioner that when there are no qualified and eligible SC candidate, the vacancies be filled with regular candidates from the feeder category, but the third vacancy was kept unfilled even though the petitioner was fully eligible and qualified to be promoted. The third vacancy was carried forward and after retirement of the petitioner from service, promotion was given to the 3rd respondent. The petitioner challenged the action of the respondents in carrying forward the vacancy earmarked for SC (women).

9. Admittedly, the petitioner retired on 31.10.2004 when the third vacancy was available. Even though the 3rd vacancy was available, the respondents have not filled up the said vacancy by wrongly applying the principles of reservation in terms of G.O.Ms.No.5, dated 14.2.2003. Admittedly, when the petitioner was in service, the 3rd respondent was not qualified and eligible to be promoted as SE. As a clarification to G.O.Ms.No.5, dated 14.2.2003, in connection with carrying forward the vacancies earmarked for SC/ST candidates, G.O.Ms.No.2, dated 9.1.2004 was issued. While the third vacancy in the cadre of SE/GM, which was

earmarked for SC(Women) was available, the third respondent was not qualified. Then, the respondents carried forward the said vacancy and denied promotion to the petitioner. When the third respondent was not eligible, they ought to have filled up the said vacancy with the petitioner, in terms of carrying forward policy stated in G.O.Ms.No.2, dated 9.1.2004. Further, it is evident that the vacancy, which was earmarked for SC, arose prior to issuance of G.O.Ms.No.2, dated 9.1.2004. Therefore, the respondents were not justified in carrying forward the vacancy earmarked for SC instead of filling the same with the petitioner.

10. Accordingly, the Writ Petition is allowed and the respondents are directed to review the case of the petitioner to effect his promotion to the post of SE/GM from 28.8.2003 and the further promotion with effect from 30.8.2004 with all consequential benefits. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 10th September, 2018.
Nn.

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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10/09/2018

Nn.