

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

**WVMP.No.1605 of 2017 in WPMP.No.52525 of 2016 in
WP.No.42603 of 2016**

and

WP.No.42603 of 2016

COMMON ORDER :

The petitioner has assailed in this Writ Petition the action of respondent nos.2 and 3 in denying promotion to him from the post of Superintendent to that of Assistant Director on the ground that he did not put in required service of five years in the Feeder Post vide Memo dt.23.11.2016, (for short, '**the impugned memo**'), issued by the 3rd respondent.

The brief facts of the case :

2. The petitioner is employed in the Industries Department of the erstwhile State of Andhra Pradesh, and is working as Superintendent in the District Industries Center, Nizamabad.
3. Promotion to the post of Assistant Director is governed by the Andhra Pradesh Industries Service Rules (for short, '**the Rules**'), notified vide G.O.Ms.No.188 Industries & Commerce (I.E.) Department dt.29.04.1993.
4. Rule (3) of the said Rules states that the post of Assistant Director may be filled up by : (a) By direct recruitment; (b) By appointment by transfer of Industrial Promotion Officers in Industries Sub-Ordinate Service; and (c) By appointment by transfer of Superintendents (including Commercial Accountants and Internal

Auditors) in A.P. Ministerial Service of the Department and Sub-Registrar (Industrial Co-op) in the Industries Sub-ordinate Service.

5. The minimum service prescribed for Superintendents to be eligible for consideration for promotion to the post of Assistant Director is prescribed at Rule (7) to be five years. The ratio mentioned in the said Rules is that for every five posts of Assistant Director which are to be filled up by Industrial Promotion Officers, one vacancy would be filled up by Superintendents and Sub-registrars (Ind. Coop).

6. Subsequently, G.O.Ms.No.230, GA (Ser.A) Department, dt.31.05.2014 was issued introducing an *ad hoc* Rule stipulating minimum service of three years in the Feeder Category for promotion or appointment by transfer to the higher category.

7. Even this did not result in the posts getting filled up. So it was further relaxed by issuing G.O.Ms.No.4 General Administration (Ser.A) Department, dt.05.01.2016 introducing another *ad hoc* rule, in exercise of powers conferred by proviso to Article 309 of the Constitution of India stating as under :

“Notwithstanding anything contained in the relevant Special Rules or the Adhoc Rules for the State and Subordinate Services, a minimum period of service of 2 years is stipulated in the category, class or grade from which promotion or appointment by transfer is proposed to the next higher category, class or grade.”

8. This was directed to be in force up to 31.08.2016.

9. By G.O.Ms.No.345 General Administration (Ser.A) Department dt.02.09.2016, the operation of this *ad hoc* rule introduced vide G.O.Ms.No.4 General Administration (Ser.A) Department, dt.05.01.2016 was extended up to 31.08.2017 for exigencies of administration in the context of formation of new districts.

10. A plain reading of the *ad hoc* rule indicates that “notwithstanding anything contained in the relevant special rules including G.O.Ms.No.188 Industries & Commerce (I.E.) Department dt.29.04.1993 (the Andhra Pradesh Industries Service Rules)”, minimum service of two years is stipulated in the category, class or grade from which promotion or appointment by transfer is proposed to the next higher category, class or grade.

11. As a consequence of this *ad hoc* rule, the five year service prescribed in Rule (7) of the Rules for Superintendents to be considered for promotion to the post of Assistant Director came to be reduced to two years in the category of Superintendents.

WP.No.32027 of 2016 :

12. The petitioner filed WP.No.32027 of 2016 in this Court challenging the inaction of respondents in filling up three vacancies of Assistant Directors by Superintendents, and also sought a direction in WPMP.No.39608 of 2016 therein for consideration of his case for promotion to the said vacancy.

13. On 21.09.2016, interim order was granted in WPMP.No.39608 of 2016 in WP.No.32027 of 2016, directing the respondents to consider petitioner's representation dt.28.07.2016 for consideration of his candidature for filling up the 3rd vacancy in the cycle of six vacancies of Assistant Director by Superintendents.

14. However, by the impugned Memo dt.23.11.2016, the said representation was rejected.

The contention of petitioner :

15. The petitioner contended that in view of amendment to the Special Rules (notified vide G.O.Ms.No.188 Industries & Commerce (I.E.) Department dt.29.04.1993 and by G.O.Ms.No.4 General Administration (Ser.A) Department, dt.05.01.2016), the minimum period of service in the Feeder category of Superintendents of two years is adequate; and it is not necessary that he should have five years of service in the category of Superintendent for being considered for promotion to the post of Assistant Director.

16. In the impugned memo, however, the said contention was rejected stating as under :

“He is informed that in this case, the minimum service required for promotion to the post of Assistant Director is (5) years and not (3) years whereas in the above said G.Os. the minimum service required for promotion has been reduced from (3) to (2) years and hence, the above G.Os. are not applicable in his case.”

17. Thus, the 3rd respondent has thus taken a view that notwithstanding G.O.Ms.No.4 General Administration (Ser.A)

Department, dt.05.01.2016 and G.O.Ms.No.345 General Administration (Ser.A) Department dt.02.09.2016, the minimum service of five years prescribed for consideration of Superintendents for promotion to the post of Assistant Director continues and that only where minimum service was three years, it stood reduced to two years.

WP.No.42603 of 2016 :

18. The present Writ Petition was admitted on 07.12.2016, and in WPMP.No.52525 of 2016 this Court directed the respondents to consider the case of petitioner for promotion as Assistant Director by following G.O.Ms.No.4 General Administration (Ser.A) Department, dt.05.01.2016 and G.O.Ms.No.345 General Administration (Ser.A) Department dt.02.09.2016 without insisting for five years' service in the Feeder post by conducting a review D.P.C.

WVMP.No.1605 of 2017 :

19. WVMP.No.1605 of 2017 is filed to vacate the order dt.07.12.2016 passed in WPMP.No.52525 of 2016 in WP.No.42603 of 2016.

20. In the vacate stay petition also the same reason given by the 3rd respondent in the impugned memo is mentioned.

21. The learned Government Pleader for Services, appearing for respondents, contended that the *ad hoc* Rule did not over-ride the Special Rules contained in G.O.Ms.No.188 Industries & Commerce

(I.E.) Department dt.29.04.1993, i.e., the Andhra Pradesh Industries Service Rules.

22. This contention is without any merit because G.O.Ms.No.4 General Administration (Ser.A) Department, dt.05.01.2016 and G.O.Ms.No.345 General Administration (Ser.A) Department dt.02.09.2016 state that ad hoc rule framed thereunder would operate notwithstanding anything contained in the relevant Special Rules. In other words, the 1st respondent has clearly indicated in the said G.Os. that even if the Special Rules prescribe a longer period of minimum service in the Feeder category, i.e., five years prescribed as in proviso to Rule (7) in G.O.Ms.No.188 Industries & Commerce (I.E.) Department dt.29.04.1993, still it is sufficient if a candidate in the category of Superintendent possesses two years of service in the category of Superintendent.

23. The 3rd respondent, in my considered opinion, wrongly interpreted G.O.Ms.No.4 General Administration (Ser.A) Department, dt.05.01.2016 and G.O.Ms.No.345 General Administration (Ser.A) Department dt.02.09.2016 as having applicability only for reduction of the period of service from three to two years. He seems to have understood the G.Os. to mean that if the maximum period of service is prescribed as three years for promotion to any particular post, only then it would stand reduced to two years in the Feeder category. Such an interpretation cannot be sustained in the light of the clear language in the *ad hoc* Rule issued by the 1st respondent in exercise of its power under proviso to Article 309 of the Constitution of India over-riding

even the requirement of minimum period of service prescribed in the Special Rules.

24. Accordingly, the order dt.07.12.2016 passed in WPMP.No.52525 of 2016 in WP.No.42603 of 2016 is made absolute. Consequently, WVMP.No.1605 of 2017 in WPMP.No.52525 of 2016 in WP.No.42603 of 2016 is dismissed.

25. The Writ Petition is allowed. The impugned Memo dt.23.11.2016, issued by 3rd respondent, is set aside, and a *Writ of Mandamus* is issued to respondents to consider the case of petitioner for promotion to the post of Assistant Director in the Industries and Commerce Department of the State of Telangana by following G.O.Ms.No.4 General Administration (Ser.A) Department, dt.05.01.2016 and G.O.Ms.No.345 General Administration (Ser.A) Department dt.02.09.2016, without insisting for five years' service for the Feeder post by conducting a review D.P.C. within a period of two (2) months from the date of receipt of copy of the order. No order as to costs.

26. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23.01.2018

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