

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.34996 of 2017

ORDER :

Heard the counsel for petitioners, and the learned Government Pleader for Services for respondents.

2. The question which arises for consideration in this Writ Petition is whether the petitioners are entitled to be considered for promotion to the post of Administrative Officer in the three vacancies which arise in that post due to promotion of three persons holding the said post to the higher post of Assistant Directors.

3. The petitioners herein hold the post of Office Superintendent and the next higher post is Administrative Officer.

4. Seniority list was prepared on 18.03.2017 for the year 2016-17 and this was placed before the D.P.C. for consideration of candidates for promotion to the post of Administrative Officers.

5. For the panel year 2016-17, twenty names of eligible candidates were approved by the D.P.C. in a meeting held on 20.04.2017.

6. The petitioners stood at Serial Nos.19 and 20 in the said list. Candidates from Serial Nos.1 to 18 were given promotion orders prior to June, 2017 as Administrative Officers. From the post of Administrative Officers to the next higher post of Assistant Director (Admin) also promotions took place considering the case of three other eligible persons through a counseling done by the D.P.C. on

23.08.2017. They were given time to join in the higher post of Assistant Director (Admin), and they joined in the said posts after 01.09.2017.

7. The petitioners contend that in those three vacancies which arose consequent to the promotion of three persons holding the post of Administrative Officers to the post of Assistant Director (Admin), their cases should have been considered as per the draft D.P.C. Minutes dt.20.04.2017. They contend that Rule 6(b) of the Andhra Pradesh State and Sub-ordinate Service Rules, 1996 (**for short, ‘the Rules**) read with Rule 6(d)(ii)(2) enjoins the respondents to consider the panel prepared for 2016-17 as valid up to 31.12.2017 as the next panel was not prepared even till date and they ought to be considered for such vacancies of Administrative Officer posts which have arisen and the vacancies themselves should be treated as vacancies which have arisen in the panel year 2016-17.

8. The learned Government Pleader for Services, appearing for respondents, however contended that counseling took place on 23.08.2017 for promotions from the post of Administrative Officers to the post of Assistant Directors (Admin) by the D.P.C.; that the promotees got relieved from their respective posts only after 01.09.2017; and unless they get relieved from the Administrative Officer posts they were working in, it cannot be considered or treated that there were vacancies in the cadre of Administrative Officers. He contended that as per Rule 6(b) the validity of the panel of

Superintendents prepared for promotion to post of Administrative Officers is from 1st September of the year to the 31st August of the succeeding year; vacancies of Administrative Officers that may arise during that period only are to be considered for promotion of eligible candidates; that only for those vacancies which arise during that panel year, if there has been any delay in issuing orders of appointment or promotions for any reason, orders of promotion can be issued up to 31st December of the year to the candidates from out of the panel already approved; and since the vacancies themselves arose after 31st August, the petitioners are not entitled to any relief.

9. Rule 6(b) of the said Rules states as follows :

“The panel of candidates for appointment by transfer to a service or a class of service in any case, where the Commission is not consulted on the suitability of a candidate for such appointment under sub-clause (b) of Clause (3) of Article 320 of the Constitution of India or for promotion, shall be prepared ordinarily during the month of September every year on the basis of estimate of vacancies sent in terms of sub-rule (d). 1st September of the year shall be reckoned as the qualifying date to determine the eligibility of a candidate for such appointment, which shall cease to be in force on the afternoon of the 31st December of the succeeding year or till the next panel is prepared whichever is earlier and for the purpose of preparing the said panel, the zone of consideration shall be in the ration of 1:3. The period from 1st September of the year to the 31st August of the succeeding year shall be reckoned for purpose of determining the number of vacancies during the panel”

10. From the above, it is clear that a panel of candidates for appointment by transfer to a service has to be prepared during the

month of September every year on the basis of estimate of vacancies sent in terms of sub-Rule (d).

11. 1st September of the year would be reckoned as the qualifying date to determine the eligibility of a candidate for such appointment, and the panel would cease to be in force on the afternoon of the 31st December of the succeeding year or till the next panel is prepared, whichever is earlier.

12. Therefore, normally the life of a panel would be from 1st of September to 31st of August of the succeeding year. But, if the next panel is not prepared in the succeeding year, the life of the panel would be up to 31st December of the succeeding year and not 31st of August.

13. Rule 6(d)(ii)(2), insofar as it is relevant, states as under :

“(d) The panel of candidates under sub-rule (b) or sub-rule (c) shall consist of such number of candidates as is equal to the number of vacancies which are estimated to arise on the following basis during the currency of that list :

(i) the existing vacancies, including the vacancies which were not filled up in the previous years for any reason;

(ii) (1) vacancies to arise owing the retirement,

(2) consequential vacancies due to promotion or appointment by transfer :”

14. A reading of Clause (d) of Rule 6 also indicates that consequential vacancies due to promotions or appointments by transfer should be taken into account.

15. In the present case, the eligibility of petitioners who are Superintendents to the higher post of Administrative Officer had been determined in the D.P.C. Minutes dt.20.04.2017. But, for some reason, they were not given promotions as Administrative Officers along with the other eighteen people. When three posts of Administrative Officers fell vacant (on the promotion of three incumbent holding the said post to the post of Assistant Director (Admin) in the D.P.C. meeting held on 11.08.2017) for which counseling was held on 23.08.2017, in my considered opinion, three vacancies can be said to have arisen on that date itself. Merely, because the persons promoted availed joining time and joined after 01.09.2017, it cannot be said that a vacancy did not arise prior to 31.08.2017.

16. Admittedly, no fresh panel of Superintendents' cadre for promotion to Administrative Officer posts was prepared on 01.09.2017 by the respondents. Therefore, the panel in force (which had been prepared for 2016-17) continues to be valid till 31.12.2017. It cannot be said that the life of the said panel ended on 31.08.2017 itself since no fresh panel was prepared on 01.09.2017. Therefore, the stand of the respondents that the life of the panel of 2016-17 ended on 31.08.2017 and vacancies themselves cannot be treated as having arisen in the panel year 2016-17, is contrary to Rule 6(b).

17. Accordingly, the Writ Petition is allowed. The action of respondents in not considering the petitioners' cases for promotion to

the post of Administrative Officer for the panel year 2016-17 in spite of availability of three vacancies which arose in the post of Administrative Officer due to promotions to three incumbents of that post to the category of Assistant Directors (Admin) is declared as illegal, arbitrary and violative of Article 14 of the Constitution of India. The respondents are directed to promote the petitioners to the post of Administrative Officers in two of these vacancies with all consequential benefits. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 31.01.2018

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