

**HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE M.GANGA RAO**

WRIT PETITION Nos. 41623 & 41625 OF 2017

COMMON ORDER: *(Per Hon'ble Sri Justice Sanjay Kumar)*

The petitioners are the unsuccessful applicants in O.A.Nos.2581 and 2580 of 2017 respectively on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal').

2. Their prayer therein was to consider their case for appointment to the post of Assistant Executive Engineer by transfer. By common order, dated 07.09.2017, the Tribunal dismissed the petitioners-applicants' O.As. Therein, the Tribunal opined that appointment by transfer was in the nature of a promotion and could not be secured by applying for it across the table, as the authorities would have to follow seniority in all the feeder categories apart from considering suitability, eligibility and desirability of the candidate, and appointment could not be ordered as a matter of course. The Tribunal accordingly held the O.As. to be devoid of substance and dismissed them.

3. Sri Poodattu Amarender, learned counsel for the petitioners-applicants, would point out that his clients are already working as Assistant Engineers in Vijayawada Municipal Corporation and that the Andhra Pradesh Public Health and Municipal Engineering Service Rules, 1965,

provide for appointment by transfer of Assistant Executive Engineers in the Andhra Pradesh Public Health and Municipal Engineering Subordinate Service and also from any other service. He would contend that the Tribunal was not correct in holding against the petitioners-applicants on the ground that they were trying to secure an out of turn promotion. He would further inform this Court that the petitioners-applicants' representations dated 23.09.2016 addressed to the Engineer-in-Chief (Public Health), Public Health and Municipal Engineering Department, Government of Andhra Pradesh, in this regard, was forwarded by the Commissioner, Vijayawada Municipal Corporation to the Superintending Engineer, Public Health Circle, Rajamahendravaram for onward transmission to the Engineer-in-Chief, Public Health Circle, Andhra Pradesh. He would therefore state that it was for the said authority to consider the representations of the petitioners-applicants but such consideration was pre-empted by the Tribunal by holding against them on merits.

4. We find merit in the said submission. The Tribunal ought not to have prejudged the issue when the concerned authority was seized of the matter. The common order under challenge passed by the Tribunal in O.A.Nos.2581 and 2580 of 2017 is accordingly set aside and both the writ petitions are allowed to that extent. The Engineer-in-Chief, Public

Health, Andhra Pradesh, the first respondent in both the writ petitions, shall consider the representations dated 23.09.2016 made by both the petitioners-applicants, seeking appointment as Assistant Executive Engineers by transfer, on their own merits and in accordance with the relevant Rules. This exercise shall be completed expeditiously and, in any event, not later than four weeks from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

M.GANGA RAO, J

Date: 26.04.2018
anr

**HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE M.GANGA RAO**



WRIT PETITION Nos. 41623 & 41625 OF 2017

26th day of April, 2018

anr