

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.2662 OF 2019

ORDER:

This Writ Petition is filed seeking a writ of mandamus declaring the impugned memo dated 19.11.2018 issued by the second respondent whereby the respondents have rejected promotion of the petitioner to the post of Assistant Executive Engineer by ignoring the genuine certificate dated 23.07.2007 obtained by the respondents against the petitioner's educational certificates issued by the Institution of Mechanical Engineers (India), Mumbai (IME, Mumbai) having considered for appointment on transfer as Sub-Engineer in the year 2001 and further promoted as Additional Assistant Engineer in the year 2005 and without considering the seniority in the category of AAE post, now rejecting further promotion, as illegal, arbitrary and erroneous and to set aside the same and sought a consequential direction directing the respondents to promote the petitioner to the post of Assistant Executive Engineer as per the seniority by duly considering the Degree Certificate dated 26.08.2005 issued by the IME, Mumbai.

Heard Sri P.Gangaiah Naidu, learned Senior Counsel appearing for Sri Ramalingeswara Rao Kocherla, learned counsel for the petitioner, the learned Government Pleader for Energy for R-1 and Mr. Zakir Ali Danish, learned Standing Counsel for TSNPDCL, Warangal for R-2 and R-3.

It has been contended by the learned Senior Counsel that initially, the petitioner was appointed as Helper in erstwhile

A.P.S.E.B. on 21.07.1989 and later, he was promoted as Assistant Lineman on 20.08.1994 and further as Lineman on 28.06.1997. It is further submitted that the petitioner has acquired Diploma in Part I and Part II of the Technician Engineers Examination in December, 1998 and in view of such acquisition, the case of the petitioner was considered and he was promoted as Sub-Engineer on 17.02.2001. It is further submitted that while he was working as Sub-Engineer, he sought permission to acquire higher qualification of A.M.I. Mech. Engineer Course from the respondents and respondents were pleased to grant permission vide proceedings dated 21.12.2002 and he applied for 'no objection certificate' for prosecuting Higher Education (Correspondence A.M.I. Mech. Engineer Course). Vide proceedings dated 21.12.2002, the Divisional Electrical Engineer, Operation, Peddapally, has issued 'no objection' to acquire higher qualification through correspondence course without causing any disturbance to his normal duties as Sub-Engineer. Thereafter, he completed Degree in Mechanical Engineering Branch and passed Sections A and B from I.M.E. in December, 2004 and a provisional certificate dated 26.08.2005 issued by the said institution was produced in the Department, which is the requisite qualification to the post of Assistant Executive Engineer. While he was working as Additional Assistant Engineer, APNPDCL, Nizamabad, the then Superintending Engineer (Operation), Nizamabad, vide proceedings dated 08.06.2007 called for the Genuineness of his Degree certificate from the Controlling of Examinations, Institution of Mechanical Engineers (India),

Mumbai. As against the same, the I.M.E. has sent its reply dated 23.07.2007 declaring that the certificate produced by the petitioner is genuine. Subsequently, basing on the directions of this Court in W.P.No.16355 of 2007 dated 24.04.2008, the Transmission Corporation of A.P. Limited has issued comprehensive orders with regard to recognition of Diplomas/Degrees awarded by the Universities/Deemed Universities/Institutions dated 11.09.2008. The second respondent, without considering the petitioner's seniority and contrary to T.O.O.Ms.No.134 dated 11.09.2008, rejected the claim of the petitioner for promotion to the post of Assistant Executive Engineer based on his Degree Certificate vide memo dated 19.11.2018. Challenging the same, the present Writ Petition is filed.

Learned Senior Counsel submitted that the case of the petitioner has to be considered for promotion to the post of Assistant Executive Engineer. The said question fell for consideration in Miscellaneous Application No.2367 of 2018 in Civil Appeal No.17922 of 2017 before the Apex Court and the Hon'ble Supreme Court was pleased to adjudicate the case in favour of the I.M.E. on 13.08.2019 and held as under.

“However, the fact remains that the equivalence to the Certificates awarded by the appellant was granted by the Ministry of the Human Resource Development (MHRD) in consultation with All India Council for Technical Education (AICTE) up to 31.05.2013 as is evident from Notification dated 06.12.2012 issued by the Central Government and Public Notice issued by AICTE in August, 2017. These communications also indicate that all those students who were enrolled up to

31.05.2013 would be eligible for consideration in accordance with MHRD office memorandum/order in course. Though we have laid down that the Certificates issued by the appellant on successful completion of its bi-annual examination to its Members cannot be considered to be equivalent to a Degree, an exception needs to be made in favour of students enrolled up to 31.05.2013 and benefit in terms of the Notification dated 06.12.2012 and Public Notice as aforesaid ought to be extended to such candidates. The candidates had opted to enrol themselves so that they could appear at the examinations conducted by the appellant under a regime which was put in place by the Central Government itself and the course content as well as the curriculum were reviewed by the AICTE. However, the aforementioned Notification and Public Notice were clear that after 01.06.2013 the concerned orders granting equivalence would cease to have any effect.

In the circumstances we do make an exception in favour of such candidates enrolled up to 31.05.2013 and declare that the conclusions drawn in the present matter will apply after 01.06.2013. The Certificate awarded by the appellant to such candidates enrolled up to 31.05.2013 shall be considered equivalent to the Degree in Mechanical Engineering for the purpose of employment in Central Government.”

Learned Senior Counsel further contended that in view of the judgment rendered by the Hon'ble Supreme Court, the Degree Certificate awarded by the I.M.E. has to be treated as valid and the petitioner is eligible to be considered for promotion to the post of Assistant Executive Engineer/Assistant Divisional Engineer by setting aside the impugned memo dated 19.11.2018 with all consequential benefits.

Learned Standing Counsel appearing for the respondents had contended that the Hon'ble Supreme Court at para-40 of the very same judgment has held as under.

“If a degree can be awarded only by those institutions which satisfy the description given in sub-Section (1) of Section 22 of the UGC Act, the mandate of a Parliamentary legislation cannot be circumvented or nullified by awarding equivalence to a Certificate issued and awarded by the appellant. What is the value of that certificate will be considered by each employer as and when the occasion arises. The appellant would certainly be entitled to award Certificate of Membership to its Members. What weightage the Certificates must have is for the individual employers to consider in a given case. The concerned employer may attach due importance to such Certificates while considering the worth and ability of the concerned candidates but to say that the Certificates are equivalent to a degree and as such all the candidates who hold such Certificates are entitled to derive the advantages which a degree holder can, is completely a different issue.”

He submitted that in terms of the judgment rendered by the Hon'ble Supreme Court, it is for the employer to take a decision whether the certificates obtained by the employees can be treated as valid or not and the petitioner's case shall be considered for promotion in terms of the judgment rendered by the Hon'ble Supreme Court and appropriate orders shall be passed in accordance with law.

Having considered the rival submissions made by the learned counsel on either side, the impugned memo dated 19.11.2018 is liable to be set aside and is accordingly set aside only on the ground that the degree certificates awarded by I.M.E. to such students enrolled up to 31.05.2013 are declared to be

valid by the Hon'ble Supreme Court in the judgment referred to supra. Admittedly, in the instant case, the petitioner has acquired the said Degree certificate from the I.M.E. prior to 31.05.2013 i.e. on 26.08.2005. Therefore, the certificate of the petitioner is held to be valid in view of the judgment of the Supreme Court. The respondents are directed to consider the petitioner's case for promotion to the post of Assistant Executive Engineer.

Accordingly, the Writ Petition is allowed.

There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

(ABHINAND KUMAR SHAVILI, J)

11th November 2019
RRB