

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION Nos.
42271 of 2017, 30914 & 46873 of 2018

COMMON ORDER:

All these writ petitions are being disposed of together as the issue raised in these writ petitions is one and the same. For the sake of convenience, the facts in W.P.No.46873 of 2018 are hereunder discussed.

2. The writ petition is filed seeking a Writ of Mandamus declaring the action of respondents in not issuing appointment/posting orders to the petitioners for the post of Assistant Engineer (E & M) E2 grade on their selection vide final merit list dated 19.03.2016 pursuant to the notification issued by the respondents for carrying out recruitment of internal candidates vide Notification dated 16.01.2015 while promptly issuing appointment/posting orders to external candidates who were selected pursuant to subsequent Notification dated 10.02.2015, the further action of respondents in seeking to conduct fresh recruitment of external candidates once again by issuing Notification dated 23.09.2017 without issuing appointment/posting orders to the petitioners pursuant to their selection thereby adversely affecting their seniority and other service benefits and the action of respondents in issuing revised final merit list dated 11.12.2018, which is placed on the website on 19.12.2018, in which, the petitioners' names were deleted, as arbitrary, illegal, unjust, violative of fundamental rights guaranteed under the Constitution of India, violative of principles of natural justice as well as contrary to the Recruitment Rules of the 1st respondent and violative of the interim orders dated 30.08.2018 made in W.P.No.30914 of 2018 by

this Court, and sought a consequential direction to the respondents to issue appointment/posting orders to the petitioners forthwith basing on the final merit list dated 19.03.2016 duly appointing/posting the petitioners with effect from 06.06.2016 i.e. the date on which external candidates were appointed, with all consequential monetary and other service benefits.

3. Heard both sides.

4. It has been contended by the petitioners that they are internal candidates of the respondents and they are fully eligible and qualified to be appointed to the post of Assistant Engineer (Electrical and Mechanical). The petitioners have acquired B.Tech. Engineering degrees from JNTU by way of distance education mode and respondents have issued a notification on 16.01.2015 to fill up the vacancies of Assistant Engineer meant for internal candidates. Since the petitioners were fully eligible and qualified for appointment to the post of Assistant Engineer, they responded to the said notification, and after undergoing the regular selection process, the petitioners have fared decently well in the said selections and their names were short-listed in the merit list dated 19.03.2016. After preparing the merit list in which the petitioners' names were figured, the respondents have re-drawn the merit list once again on 11.12.2018 by deleting the names of petitioners on the ground that they do not possess the valid requisite qualification as the petitioners have obtained their bachelors degree from JNTU through distance mode. Challenging the same, the present writ petition is filed.

5. Counsel for petitioners has contended that the issue whether the bachelors degree awarded by JNTU is valid or not, has fell for consideration before Hon'ble Supreme Court in Civil Appeal Nos.3697-3698 of 2018 and the Hon'ble Supreme Court, vide orders dated 10.04.2018, has categorically held that the degrees awarded by JNTU are valid in respect of the candidates being admitted into the said courses upto the academic year 2009-2010. Admittedly, in the present writ petition, all the petitioners were admitted into bachelors degree prior to the academic year 2009-10, and in view of the judgment of the Hon'ble Supreme Court referred to supra, the petitioners should be treated as eligible and the degrees possessed by them should be held as valid and the case of the petitioners should be considered for appointment to the post of Assistant Engineer (Electrical & Mechanical) by declaring that the merit list prepared on 19.03.2016 is to be operated, and the subsequent merit list prepared on 11.12.2018, wherein, the names of petitioners were deleted, should be set aside.

6. Counsel for petitioners further contend that subsequently the respondents have issued two other notifications for external candidates on 10.02.2015 and 23.09.2017 and the petitioners are also challenging the action of respondents in giving effect to the selections made pursuant to the said notifications by not taking the selections pursuant to the earlier notification dated 16.01.2015 to the logical conclusion and thereby depriving the benefit of appointment even though the petitioners are declared to have qualified in terms of the judgment rendered by the Hon'ble Supreme Court referred supra. Therefore, counsel for

petitioners contend that appropriate orders be passed in the writ petition directing the respondents to consider the case of petitioners for appointment to the post of Assistant Engineer (E & M) with all consequential benefits, by duly taking into account the fact that the degrees awarded by JNTU were held to be valid by the Hon'ble Supreme Court in the judgment referred supra.

7. The Standing Counsel appearing for respondents contended that the petitioners are not possessing the requisite qualification as notified in the notification dated 16.01.2015. The notification makes it very clear that the persons must possess BE/B.Tech qualification on regular basis, whereas, the petitioners have secured BE/B.Tech. degrees through distance mode, but the petitioners have not challenged the notification. As the petitioners have not fulfilled the requisite qualification criteria, their cases cannot be considered. There are no merits in these writ petitions and the same are liable to be dismissed. The Standing Counsel appearing for respondents has also relied on the judgments rendered by this Court in **V.Ajay Kumar & others v. Singareni Collieries Co. Ltd., Kothagudem, Khammam District & another¹** and in **Kukkala Venkateswarlu & others v. Acharya Nagarjuna University, Guntur & others²**. By relying on the above judgments, the Standing Counsel appearing for respondents has contended that the petitioners cannot claim, as a matter of right, that their cases are to be considered for appointment, more so, when they do not possess the requisite qualifications as set out in the notification.

¹ 2016 (4) ALD 437

² 2015 (5) ALD 493

8. Counsel for petitioners has contended that the very same respondents have filed counter affidavit in W.P.No.5643 of 2015 and in para 9 of the said counter, the respondents have admitted that the petitioners do possess the requisite qualifications and that they are fully eligible for appointment as Assistant Engineers. Therefore, the respondents now cannot be allowed to contend that the petitioners do not fulfill the qualification criteria as set out in the notification. When the respondents have admitted in the counter affidavit filed in W.P.No.5643 of 2015 that the petitioners fulfill the eligibility criteria as set out in the notification, they cannot now turn around and contend that the petitioners are not entitled for appointment as they do not possess the requisite qualification.

9. The counsel appearing for the impleaded respondents has contended that they are the regular Engineering graduates and they completed their graduation after prosecuting the four years course and they fulfill the eligibility criteria as set out in the notification. Therefore, their cases are also to be considered, if they are coming up within the zone of consideration in accordance with the merit list.

10. This Court, having considered the rival submissions of the parties, is of the considered view that the case of the petitioners deserves to be considered for appointment to the post of Assistant Engineer, if they are coming up within the zone of consideration, in view of the judgment of the Hon'ble Supreme Court. Therefore, these writ petitions are disposed of directing the respondents to consider the case of petitioners for appointment to the post of Assistant Engineer (Electrical and

Mechanical), as the degrees obtained by the petitioners are held to be valid by the Hon'ble Supreme Court in the orders dated 10.04.2018 in Civil Appeal Nos.3697-3698. Respondents are directed to conclude the selection process initiated pursuant to recruitment notification dated 16.01.2015 and pass appropriate orders in accordance with law. It is needless to say that not only the cases of petitioners and the impleaded respondents in these writ petitions, but also the cases of other candidates who have responded to the notifications dated 10.02.2015 and 23.09.2017 as external candidates, shall also be considered in accordance with law, within a reasonable period of time, preferably within Eight weeks from the date of receipt of a copy of this order. The seniority and other issues are to be adjudicated by the respondents in accordance with the Rules in existence after giving opportunity to all the affected persons.

11. With the above directions, all the writ petitions are disposed of. No order as to costs.

12. After dictating the order, the Standing Counsel appearing for respondents contends that let the above said direction be confined as a one time measure. This Court, having considered the said submission, is of the considered view that the exercise which is directed by this Court, in this order, should be carried as a one time measure, confining to the three notifications which were issued by the respondents on 16.01.2015, 10.02.2015 and 23.09.2017.

Pending miscellaneous applications, if any, shall stand closed.

13th November, 2019
ajr

ABHINAND KUMAR SHAVILI, J