IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF DECEMBER, 2020

BEFORE

THE HON' BLE MR. JUSTICE S.G. PANDIT

WRIT PETITION No.3821/2018 (S-RES)

BETWEEN:

1. SRI. HARIPRASAD H B
   S/O LATE BADIYAPPA
   AGED ABOUT 28 YEARS
   R/O NO.140/5A
   18TH MAIN, 19TH CROSS
   NARASIMHANA GARDEN
   JP NAGAR 5TH PHASE
   BENGALURU-560078.

2. SHRI H O HARSHA
   S/O LATE H C OMKARAPPA
   AGED ABOUT 24 YEARS
   R/O VEERABHADRESWAR NILAYA
   5TH CROSS
   BASAVESHWARA NAGAR
   SHIVAMOGGA-577201.

3. KUMARI K B ANUSHA
   D/O LATE K S BHASKAR
   AGED ABOUT 24 YEARS
   R/O 5/1, NPF SVP COLONY
   JOG-577435, SAGAR TALUK
   SHIVAMOGGA DISTRICT.

4. SHRI P PRASANNA KUMAR
   S/O LATE YESU
   AGED ABOUT 26 YEARS
   R/O PC 14/2, KPC COLONY
   MASTI KATTE-577448.
   HOSSANAGAR TALUK
   SHIVAMOGGA DISTRICT

...PETITIONERS

(BY SRI.RAKSHITH JOIS, ADV. FOR SRI. JAYAPRAKASH, ADV.)

AND:

1. KARNATAKA POWER CORPORATION LTD.,
   NO.82, SHAKTI BHAVAN
   RACE COURSE ROAD
   BENGALURU-560 001
   REPD. BY ITS MANAGING DIRECTOR.

2. STATE OF KARNATAKA
   REPD. BY PRINCIPAL SECRETARY
   DEPT. OF ENERGY
   VIDHANA SOUDHA
   BENGALURU-560 001

3. LABOUR COMMISSIONER
   STATE OF KARNATAKA
   KARMIKA BHAVAN
   BANNERGHATTA ROAD
   BENGALURU-560 029.

...RESPONDENTS

(BY SRI.B ROOPESHA, ADV. FOR
SRI. ARUN V S, ADV. FOR R1
SRI.SRIDHAR N HEGDE, HCGP. FOR R2 & 3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH CLAUSE VII(4) OF THE OFFICE MEMORANDUM DATED 09.03.2015 ISSUED BY THE R1 AS PER ANNEXURE-L3; QUASH THE OFFICE LETTER ORDER DATED 04.11.2016 ISSUED BY THE R1 AS PER ANNEXURE-R3 AND ETC.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

O R D E R

Petitioners are before this Court under Article 226 of the Constitution of India, among other prayers to quash Annexure-R3 dated 04.11.2016 by which their request for elevation to higher position on acquiring higher qualification is rejected and consequently for a direction to consider their cases for elevation to higher position under the Scheme called "Elevation of Employees to Higher Position on Acquiring Multiskilling/ITI/Engineering Diploma/Engineering Degree Qualifications" (for short "***the Elevation Scheme***").

2. The petitioners No.1 to 3 who are B.E. graduates were appointed as Assistant (Administration) on compassionate ground on 15.09.2015, 31.05.2016 and 01.12.2016 respectively. The fourth petitioner who is a graduate with Diploma in Civil was appointed as Assistant (Administration) on compassionate ground on

24.08.2015. Subsequently, the petitioners submitted representations under the required format requesting to consider their case for elevation to higher position based on the qualification they possessed at the time of entering into service under the Scheme. Their request to elevation to higher position was rejected under Annexure-R3 dated 04.11.2016 on the ground that as per the conditions of appointment, the appointment once made under Compassionate Appointment Scheme shall be final and no fresh appointment to a different post or higher post under the Scheme shall be permissible. Aggrieved by the said rejection, the petitioners are before this Court in this writ petition.

3. Heard the learned counsel Sri.Rakshith Jois, Advocate for petitioners and Sri.B.Roopesha, advocate for Sri.Arun V.S., for respondent No.1/Karnataka Power Corporation Limited ("Corporation" for short) as well as

learned High Court Government Pleader for Respondents No.2 and 3.

4. Learned counsel for the petitioners would submit that the rejection of petitioners' request for elevation to higher position on the ground that the appointment once made on compassionate ground shall be final and no fresh appointment to different post or higher post shall be permissible is opposed to the Elevation Scheme. Learned counsel for the petitioners would also submit that the petitioners were appointed on compassionate ground as Assistants (Administration) and it is not open for the petitioners to seek for higher position or post under Compassionate Assistance Scheme for the Dependants of the Deceased Employees who die while in service (for short "***Compassionate Scheme***"). The petitioners are not seeking any fresh appointment nor appointment to a different post under the Compassionate Scheme. But, the petitioners are

seeking for elevation to higher position under the Elevation Scheme, which is applicable to all the employees who acquire higher qualification on deputation by the Corporation or on their own. The Elevation Scheme would not differentiate the employees on the source of their appointment. The Elevation Scheme makes it clear that the Scheme is applicable to all the employees and would not exclude the appointees who are appointed on compassionate grounds. Thus, he prays for allowing the petition.

5. Per contra, Sri.B.Roopesha, learned counsel for the respondent/Corporation submits that since the petitioners are appointed on compassionate grounds, they are not entitled to seek for any fresh appointment to a different post or higher post. Since the petitioners are not entitled to seek any fresh appointment to a different post or higher post under the companionate scheme they are not entitled to any benefit under the

Elevation Scheme. Further, the learned counsel inviting attention of this Court to clause 3.0 of the Elevation Scheme would submit that the Elevation Scheme would be applicable only to technical posts and since the petitioners are holding Administrative Posts, the Elevation Scheme would not be applicable to the petitioners. Having accepted the compassionate appointment, it is not open for the petitioners to seek for higher position based on their educational qualification. Learned counsel for respondent/ Corporation would rely upon Division Bench decision of this Court in W.A.No.200073/2017 (The Managing Director of GESCOM and others V/S Sri.Nagaraj Shankrappa and another) to contend that once appointment made under the Compassionate Scheme shall be final and no fresh appointment to a different post or higher post shall be permissible. Thus, he prays for dismissal of the writ petition.

6. It is not in dispute that the petitioners are appointed on compassionate grounds under the Compassionate Scheme. It is also not in dispute that, under the Compassionate Scheme, appointment once made shall be final and no fresh appointment to a different post or higher post under the Compassionate Scheme shall be permissible. The only question would be whether the Elevation Scheme excludes compassionate appointees for elevation to higher position. For the said purpose, it would be useful to refer to the Elevation Scheme. Relevant portion of the Elevation Scheme, Clause 2.0 and 3.0 reads as follows:

> *"**2.0 APPLICABILITY:***
>
> *2.1:- This scheme is applicable to all employees who are deputed by the Corporation and acquire relevant higher qualification including those acquiring the said qualification on their own.*

Note: *Employees who possess higher qualification at the time of appointment (for eg. A JE possessing BE qualification at the time of appointment as JE) are also covered in this scheme. However, they have to complete the probationary period satisfactorily for being considered for elevation under this scheme.*

2.2:- This scheme excludes JEs who acquire BE/AMIE qualification on their own during the course of employment as they get the benefit under the existing scheme of appointment by transfer to the level of AE. (In Memo No.A1 P1 A dated 28.03.1987)

3.0 POSITIONING ON ELEVATION:

3.1 ITI passed employees will be elevated to the level of Technicians in the relevant trades.

3.2 Employees who have successfully undergone multiskill training course designed by the Corporation, upon completion of a period of one year of service thereafter in the works side will be elevated to the level of Operative (Electrical).

3.3 Employees who have passed Diploma in Engineering will be elevated to the level of Junior Engineers in the relevant disciplines.

3.4 Employees who have passed Degree in Engineering will be elevated to the level of Assistant Engineers in the relevant disciplines."

Reading of the above clauses of the Elevation Scheme makes it clear that Scheme is applicable to all employees who are deputed by the Corporation for acquiring higher qualification and also includes those acquiring the higher qualification on their own.

7. Clause 3.3 and 3.4 makes it clear that Employees who have passed Diploma in Engineering or Degree in Engineering will be elevated to the Junior Engineers or Assistant Engineers in the relevant disciplines i.e., Civil, Electrical, Mechanical, etc. The above Elevation Scheme would be applicable to all employees irrespective of their source of appointment. The

Elevation Scheme also would not exclude the employees who are appointed on compassionate grounds. It is to be kept in mind that the petitioners are not seeking for any fresh appointment to a different post or higher post under the Compassionate Scheme. But petitioners are seeking elevation to higher position under Elevation Scheme. Compassionate Scheme and Elevation Scheme are introduced with different objects and they operate independently. A person who is appointed under compassionate ground once appointed would become an employee of the Corporation and such employee cannot be discriminated on the basis of source of appointment. In the facts of present case, rejection of petitioners' case for elevation to higher position only on the ground that they are appointed under Compassionate Scheme would amount to violation of Articles 14 and 16 of the Constitution of India. The decision relied upon by the learned counsel for the respondent/Corporation would have no application to the facts of the present case,

since the petitioners are not seeking for any fresh appointment nor for higher post under the Compassionate Scheme. Further contention of the respondent No.1 that Elevation Scheme would be applicable only to technical posts would not stand to reasons. Clause-3 of the Elevation Scheme provides for positioning of an employee on elevation and it would not differentiate between technical and non-technical employees. It only speaks of positioning on elevation on acquiring technical qualification.

8. When the Elevation Scheme applies to all the employees irrespective of their source of appointment and when the elevation scheme would not exclude the compassionate appointees, the rejection of petitioners' request for elevation to higher position is wholly illegal and opposed to the Elevation Scheme.

9. For the reasons stated above, the writ petition is ***disposed of***. Annexure-R3 bearing No.A1 P1 A/1386

dated 04.11.2016 is set aside. The petitioners are at liberty to make representation to the respondents to consider their case for elevation to higher position under the Elevation Scheme. If such representation is filed, the respondents to consider the same under Elevation Scheme and in the light of the observations made above, if they are otherwise eligible.

Sd/-
JUDGE

mpk/-*
CT:bms