APHC010172902022

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3458]**
(Special Original Jurisdiction)

FRIDAY ,THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SMT JUSTICE KIRANMAYEE MANDAVA

WRIT PETITION NO: 10884/2022

Between:

A. Divya **...PETITIONER**

AND

The State Of Andhra Pradesh and Others **...RESPONDENT(S)**

Counsel for the Petitioner:

1. KISHORE KUMAR.A

Counsel for the Respondent(S):

1. GP FOR SERVICES I
2. V V SATISH

The Court made the following:

ORDER:

Heard Sri A.Kishore Kumar, learned counsel for the petitioner, learned Government Pleader for Services-I appearing for the 1st respondent and Sri V.V.Satish, learned Standing Counsel appearing for the 2nd and 3rd respondents.

2. The petitioner was appointed as Assistant Engineer in APCPDCL on 04-08-2008. Her probation was declared on 02-10-2010. Pursuant to the notification issued for limited recruitment for the post of Assistant Divisional Engineer in 2014, the petitioner had applied for and attended the exam.In the written exam, she was awarded 4th rank. The petitioner contends that the first vacancy of Assistant Divisional Engineer shall be filled up by the candidates selected through limited recruitment. 20% of the total vacancies shall be filled through limited recruitment by the candidates from merit list selected from Assistant Engineers to the extent of 4 times of the vacancies as per the seniority list of Assistant Engineers.The merit list of candidates selected for recruitment shall be based on the performance in a written test after giving weightage at following manner:

Performance in the written test	: 50 Marks
Weightage for relative seniority	: 40 Marks
Acquisition of PG Qualification	: 5 Marks
Annual performance report	: 5 Marks

3. The petitioner contends that the petitioner was awarded 66marks placed at 5th rank. She contends that she is thus eligible for being promoted as Assistant Divisional Engineer, though several representations were made to the respondents to appoint her as ADE, no orders have been passed by the respondents. Challenging the said inaction, the petitioner filed Writ Petition in

W.P. No.8755 of 2021 seeking a direction for promotion as ADE. The said Writ Petition was disposed of, directing the respondents to consider the representation of the petitioner. Pursuant to the same, the 2nd respondent passed the impugned order rejecting the case of the petitioner. The 2nd respondent observed that in the general seniority list of Assistant Engineers, the petitioner was placed at S. No.109.

4. The learned counsel for the petitioner argues that merit list of limited recruitment should be followed in considering the promotions to the post of ADE, and 20% of the vacancies shall be filled through limited recruitment, whereas the respondents are taking into consideration, the general seniority list. If merit list of limited recruitment is taken into consideration, the petitioner would stand at S. No.1. He further relying on regulation 6(b) of B.P.Ms. No.82, contends that out of five vacancies successively arising in categories of Assistant Divisional Engineers/Assistant Executive Engineers, the first vacancy shall be filled up by the candidate selected through the limited recruitment, next three by promotion from Assistant Executive Engineers and fifth by promotion from Additional Assistant Engineers and DraughtsmanGrade - Iand 20 % of the total vacancies shall be filled through limited recruitment by candidates from the merit list drawn based on written test and weightage marks. He thus contends that the respondents are clubbing both the candidates selected through the limited recruitment and the candidates selected through promotion channel.

5. The respondents filed counter affidavit contending that the promotion to the post of ADEs is made from the list of candidates, who are in the zone of consideration for promotion from the integrated seniority list in the ratio of 1:3:1 is applied only to those candidates, who are in the zone of consideration. It is further explained by the respondents in the following manner:

> "For example, if there are twenty five vacancies in the cadre of Assistant Divisional Engineer, the first post is filed from direct recruitment among the candidates in the zone of consideration, the next three posts are filed from the integrated seniority list and the last post is filed from the candidates in the post of Additional Assistant Engineers and Draughtsman."

6. It is further contended that the method of recruitment (direct recruitment) to the post of Assistant Divisional Engineer has been amended in B.P.Ms.No.82 dt: 17.05.1993 in order to improve the efficiency in the higher cadres *i.e*, Assistant Divisional Engineer cadre and it has been decided to resort to limited recruitment to the category of Assistant Divisional Engineers with experienced Assistant Engineers and issued certain amendment to the regulations. It is further contended that the merit list referred to by the petitioner is not a merit list, but the same discloses the total marks secured by a candidate. Merit list is prepared by taking into other parameters such as seniority, annual performance, etc.

7. The learned counsel for the respondents further argues that as per the Recruitment Regulations, the merit list under limited recruitment quota prepared by selecting the candidates from eligible Assistant Engineers as per the seniority list of the Assistant Engineers prepared by DPC. The selection thus made from the list of candidates, who are in the zone of consideration for promotion from integrated seniority only, the ratio of 3:1:1 would be applied. It is further argued that the case of the petitioner would be considered as and when his turn comes up in the panel for promotion.

8. Considered the rival submissions.

9. The reason assigned by the 2nd respondent in rejecting the claim of the petitioner is that the petitioner is placed at Sl.No.109 in the final general seniority list of Assistant Executive Engineers andher case would be considered for promotion as per eligibility under limited recruitment ratio when her turn comes up.

10. The amendment to Recruitment Regulations provides that 20% of vacancies of Assistant Divisional Engineers should be filled up by the candidates selected on the basis of merit list in the limited recruitment prepared on the basis of performance in the written test, weightage marks acquisition of P.G qualification and annual performance reports. It is further provided that out of five vacancies, one vacancy invariably will have to be filled by candidates

selected in limited recruitment, three by promotion from the category of Assistant Engineers and the remaining one by promotion from the category of additional Assistant Engineers and Draughtsman.

11. Meaning thereby the 20% of the vacancies are earmarked for limited recruitment. The said vacancy would in any will have to be filled in by the person selected in the limited recruitment, on the basis of merit list prepared for the said category of limited recruitment in the prescribed manner which is as specified under the regulation is as follows:

"Asst. Divl. Engineer/ Assistant Executive Engineer	*Limited Recruitment*	*i) 20% of the total vacancies shall be filled through limited recruitment by candidates from the merit list, referred to in clause (ii) below, selected from eligible Assistant. Engineers to the extent of 4 times of the vacancies as per seniority list of the Asst. Engineers. The seniority list will be prepared after screening by the Departmental Promotion Committee by excluding those not cleared on account of unfitness or disciplinary cases pending.*
		ii) A merit list of candidates selected for recruitment shall be drawn based on the performance in a Written Test and after giving weightages as detailed below:

	Marks:
Performance in the Written Test	*50*
Weightage for relative seniority	*40*
Acquisition of P.G. qualification	*5*
Annual Performance Reports	*5*

Note:- *Out of five vacancies successively arising in the category of Assistant Divisional Engineers/Assistant Executive Engineers, the first vacancy shall be filled up by the candidate selected through the limited recruitment, the next three by promotion from the Assistant Engineers and 5th by promotion from the Additional Assistant Engineers and Draughtsman Grade-I.*

(i) 20% of the total vacancies shall be filled through limited recruitment by candidates from the merit list, referred to in clause (ii) below, selected from eligible Assistant Engineers to the extent of 4 times of the vacancies as per seniority list of the Assistant Engineers. The seniority list will be prepared after screening by the Departmental Promotion Committee by excluding those not cleared on account of unfitness or disciplinary cases pending."

12. In the light of the said unambiguous provisions of the Regulations, the order of the respondent in denying the claim of the petitioner observing that she is placed at Sl.No.109 of the Assistant Engineers and the same would be considered in order of turn, is baseless and illogical. When a separate selection process is made for the post of Assistant Divisional Engineers, through merit in the limited recruitment test, throwing the candidates selected in the said limited recruitment based on merit to the fate of common seniority list of Assistant Engineers would lead to an absurd situation, in such a circumstance conducting test/examination for limited recruitment and earmarking certain percentage to the said category would be redundant, if one has to wait till their turn comes up in the routine seniority. Therefore, the impugned order of the 2nd respondent is not sustainable. The same is accordingly set aside.

13. The 2nd respondent is directed to consider the case of the petitioner for promotion to the post of Assistant Divisional Engineer in accordance with law and in terms of the merit list prepared for limited recruitment for the posts of Assistant Divisional Engineers, with effect from the date she acquires/acquired, eligibility to the said post, within a period of three (3) months from the date of the receipt of the order.

14. The Writ Petition is accordingly allowed. There shall be no order as to costs.

As a sequel, interlocutory applications, pending if any, shall stand closed.

JUSTICE KIRANMAYEE MANDAVA

Date:28.03.2025
MVK

15

THE HON'BLE SMT. JUSTICE KIRANMAYEE MANDAVA

WRIT PETITION No.10884 of 2022

Date:28.03.2025

MVK