

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 23876 of 2018

Date :23.7.2018

Between:

B Rajesham S/p Pocham
51 yrs Sub Engineer,
O/o ADE/OP/AC Guards sub division
TSSPDCL, Mehdipatnam division
Hyderabad

Petitioner

And

The CMD, TSSPDCL
Mint compound, Hyderabad and others

Respondents

The Court made the following:



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ORAL ORDER:

Petitioner joined service as Helper on 23.9.1993. He was permitted to prosecute diploma course from Indira Gandhi National Open University (IGNOU) through distance mode. In the year 2013, he has completed course of study and was awarded diploma. By proceedings dated 7.1.2016, petitioner and several others were placed in charge of the post of Sub-Engineer. While so, several persons included in the said proceedings and others were promoted as Sub-Engineers vide proceedings dated 23.5.2018, whereas petitioner is ignored. Praying to declare action of respondents in not promoting / appointing petitioner as regular Sub-Engineer, while promoting juniors as arbitrary discriminatory and violates articles 14 and 16 of the Constitution of India, this writ petition is filed. Petitioner further prays to declare that he is entitled to be promoted as regular Sub-Engineer from the date of promotion of juniors.

2. Heard learned senior counsel Sri M Surender Rao for petitioner and learned senior counsel Sri G Vidya Sagar for the respondents.

3. The erstwhile APSEB was bundled into Generation Corporation, Transmission Corporation and Distribution companies, dealing with 3 different aspects of electricity- Generation, Transmission and Distribution respectively. During the existence of APSEB service regulations were notified governing conditions of service of employees working in various categories. After formation of new entities, they have adopted these regulations. In the year 2009 vide T.O. O. Ms. No. 265 dated 11.2. 2009 part – III of service regulations were amended. As per the service regulations governing the post of Sub-Engineer, as amended, a person must have Diploma in any discipline

such as electrical/mechanical/civil/telecommunications/computer science engineering, etc or equivalent qualification recognised by the board /government.

4. According to learned senior counsel for petitioner, petitioner possesses Diploma awarded by IGNOU and is recognised by the State Board of Technical Education as equivalent to the qualification prescribed and therefore he is eligible for promotion. He would submit that Division Bench of this court in WP No 22385 of 2014 and batch held that Diplomas and Degrees obtained through distance education mode are not valid. This decision was upheld by the Supreme Court. However, when petitioner also filed petition seeking leave of the Supreme Court to challenge the decision of the High Court the said petition was dismissed granting liberty to petitioner to avail appropriate remedy. Except invoking the extraordinary jurisdiction of this court under Article 226 of the Constitution of India petitioner has no other remedy. As State Board of Technical Education has recognised the Diploma awarded by IGNOU as equivalent to other Diplomas and as petitioner prosecuted the course of study through distance mode after seeking permission to prosecute the said Diploma cannot be ignored to grant promotion.

5. According to learned senior counsel for respondents, the permission to prosecute diploma course was itself granted in the year 2011 and diploma course was completed in the year 2013. In view of the decision of the Division Bench of this court, all Diplomas and Degrees awarded by institutions/universities by administering course of study through distance mode are not valid. The decision of Division Bench of this Court is upheld by the Supreme Court. The limited relief granted by the Honourable Supreme Court is applicable to Degrees/Diplomas awarded up to 2011 by JNTU. As per the service regulations, either the Board (now corporation/ company as the case may be) or the state Government should recognise a Diploma as equivalent to the qualifications prescribed and not by the State Board of Technical Education. He would therefore submit that as petitioner does not

have the requisite qualification, he was not promoted when promotions were affected vide proceedings dated 23.5.2018.

6. As fairly submitted by learned senior counsel for petitioner, Division Bench of this court in the judgement rendered in WP No. 22385 of 2014 and batch held that Diplomas and Degrees awarded through distance mode of education are not valid. The Jawaharlal Nehru Technological University filed Civil Appeal No. 3697-3698 of 2018 in the Honourable Supreme Court challenging the decision of Division Bench. When the Civil Appeals were taken up, the supreme court was informed that the appellant-University granted admissions in a transparent manner only to the Government employees; faculty was available; practical training was held; DEC gave ex post facto approval; and standards were not compromised. Supreme Court was also informed that after 2009 the distance education system was closed. The Supreme Court while holding that the view taken by the High Court is consistent with the judgement of the Supreme Court, the Degrees and Diplomas already granted by the appellant – University to candidates admitted up to academic year 2009 – 2010 were left undisturbed and to that extent the order of this court was modified.

7. At this stage, it is useful to extract relevant paragraphs of the judgement of Supreme Court. Paragraphs 4 and 6 read as under:

“4. It is submitted that the norms of AICTE have to be followed and distance learning is not permitted at all in technical education. Thus, even if the distinguishing feature noted in the order issuing notice exist, the view of the High Court is consistent with the judgment of this Court.

....

6. While we find merit in the submission of learned counsel for the respondents that the view taken by the High Court is correct in law, in view of distinguishing features in the present case noted in the order issuing notice, while directing that norms must be followed in future, the degrees and diplomas in question already granted by the appellant-university to candidates admitted up to academic year 2009-2010 may be left undisturbed. To this extent, the impugned order stands modified.”

8. It is thus seen, while upholding the decision of this Court, limited relief was granted to the degrees and diplomas awarded by JNTU for the candidates admitted up to academic year 2009 – 2010. The decision of Division Bench has become final in all other respects. The court is informed that IGNOU has not preferred Appeal and the Diplomas awarded by IGNOU are not saved. Furthermore, as seen from the order of the Supreme Court in paragraph 6, extracted above, the Diplomas/ Degrees awarded by the JNTU to the students admitted up to academic year 2009 – 2010 were only saved. Petitioner herein prosecuted diploma course from 2011 – 2013. Thus, even otherwise also he is not covered by the saving clause. Therefore, in view of the declaration given by Division Bench of this court upheld by the Honourable Supreme Court, the Diploma obtained by the petitioner is not valid. Therefore, not granting promotion to the petitioner on par with other employees promoted on 23.5.2018 cannot be faulted. As rightly pointed out by learned senior counsel Sri G. Vidya Sagar, petitioner is only seeking promotion on par with other employees promoted on 23.5.2018 and no other relief is sought. As petitioner does not possess the requisite qualification not granting promotion is not illegal.

9. The writ petition deserves to be dismissed in limini and it is accordingly dismissed. No costs. Pending miscellaneous petitions are closed.

P NAVEEN RAO,J

DATE:23-07-2018

TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO



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