

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION Nos. 46843 of 2022 & 6 OF 2023

WP No.46843 OF 2022

Between:

1. Swapna Putta and two others

...Petitioners

AND

1. The State of Telangana rep. by its Special Chief Secretary to Government, Irrigation and CAD Department, Secretariat, Hyderabad (TS) and two others

...Respondents

WP No.6 of 2023

Between:

1. G.Radha and two others

...Petitioners

AND

1. The State of Telangana rep. by its Special Chief Secretary to Government, Irrigation and CAD Department, Secretariat, Hyderabad (TS) and two others

...Respondents

COMMON ORDER PRONOUNCED ON: 12.06.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment may : Yes/No
be marked to Law Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No
wish to see the fair copy of judgment

JUSTICE K.SARATH

THE HON'BLE SRI JUSTICE K.SARATH

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%Dated 12.06.2023

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! Counsel for Petitioners in both the WPs: Sri G.S. Prasen

^ Counsel for Respondent No.1 & 2 : Asst.Govt. Pleader for Services-II

^ Counsel for Unofficial Respondents : Sri V.Jagapathi

< GIST :

> HEAD NOTE :

THE HON'BLE SRI JUSTICE K.SARATH

WRIT PETITION Nos. 46843 of 2022 & 6 of 2023

COMMON ORDER:

1. Heard Sri G.Vidya Sagar, Learned Senior Counsel appearing for Sri G.S.Prasen, Learned Counsel appearing for the petitioners in both the Writ Petitions and Learned Assistant Government Pleader for Services-II for respondent Nos.1 and 2, and Sri V.Jagapathi, Learned Counsel appearing for the unofficial respondents in both the writ petitions.

2. These two writ petitions are filed questioning the action of the official-respondents in granting seniority to the unofficial respondents in both the petitions and their notional promotion to the post of Assistant Executive Engineers w.e.f. 30.08.2008 and 18.10.2007 respectively as per the Telangana Irrigation Engineering Subordinate Service Rules, 2018 and they are not eligible to seek promotion to the post of Deputy

Executive Engineers (DEE) against the quota earmarked for Assistant Engineers (AE). In view of the same both the writ petitions were heard together and being disposed of by way of common order.

3. The Learned Senior Counsel appearing for the petitioners submit that the petitioners are working as Assistant Executive Engineers in the Irrigation Department having been selected through Public Service Commission in the year 2007 and 2008 respectively. The unofficial respondents in both the petitions were initially appointed as Tracers in the Engineering Department and upon their request to the respondent No.2, they were appointed by transfer as Assistant Executive Engineers vide proceedings dated 24.09.2002 and 11.10.2001 respectively with a condition that they shall not claim the benefits of lower post and will not opt for reversion to the lower post and accepting the same the unofficial respondents in both

the petitions joined in the said posts on 30.09.2002 and 18.10.2001 respectively and their probation in the said post were declared and since the unofficial respondents in both the petitions have completed five years of service in the cadre of Assistant Executive Engineer and their lien in the post of Assistant Engineer was terminated by that date.

4. The learned Senior Counsel appearing for the petitioners further submits that the unofficial respondents alleged to have made requests for promotion to the post of Deputy Executive Engineer against the Assistant Engineers' quota by reverting them to the post of Assistant Executive Engineer and the said requests were rejected by the respondent No.2 in Memos dated 30.05.2017 and 03.12.2016 respectively. However, the respondent No.3 in W.P.No.46484 of 2022 did not take any steps, but the respondent No.3 in W.P.No.6 of 2023 filed

W.P.No.8830 of 2017 and this Court disposed of the said writ petition on 15.03.2017, directed the respondent No.1 therein to consider the appeal dated 04.01.2017 and subsequently the appeal was rejected on 09.05.2017.

5. The learned Senior Counsel for the petitioners further submits that the Government notified and amended the Rules as "Telangana Irrigation Engineering Service Rules, 2018 (TIES Rules, 2018) in G.O.M.No.32, Irrigation and CAD (Services.I) Department dated 25.04.2018 and G.O.Ms.No.1 dated 25.01.2020 amending Rule-5 of the Rules Notified in G.O.Ms.No.32, dated 25.04.2018, according to which the Assistant Engineers with diploma qualification are also eligible for appointment by transfer to the post of Assistant Executive Engineers. Consequent on amendment of said Rules the unofficial respondents in both the petitions made their representations on 28.11.2010 and they also filed W.P.Nos.3991 of 2020

and 3990 of 2020 and this Court was pleased to dispose of the said writ petitions on 28.12.2020 directing the respondents therein to consider the representations submitted by the unofficial respondents dated 28.11.2020.

6. The learned Senior Counsel appearing for the petitioners further submit that the unofficial respondents made another representation on 07.01.2021 and 04.01.2021 respectively and in compliance to the orders of this Court, the respondent No.2 considered and rejected the requests of the unofficial respondents in both the petitions for notional date of appointment to the post of Assistant Executive Engineers as sought by them. After receiving the speaking orders dated 16.02.2021, the respondent N.3 in W.P.No.46483 of 2022 made another representation to the respondent No.1, who in turn addressed to the respondent No.2 on 28.04.2021 to

examine the case of the respondent No.3 and furnish the report for taking up further action. In response thereto, the respondent No.2 submitted a detailed report stating the Government issued New Service Rules issued in G.O.Ms.No.32, Irrigation and CAD (Services.I) Department dated 25.04.2018, and according to which the Assistant Engineers who completes six years of service shall be appointed as Assistant Executive Engineers, and since the unofficial respondents in both the petitions did not have any lien in the cadre of Assistant Engineers and they cannot be reverted as Assistant Engineers and therefore the request of the unofficial respondents for notional promotion as Assistant Executive Engineers does not arise, they are already working as Assistant Executive Engineers.

7. The learned Counsel for the petitioners further submits that thereafter the respondent No.1 issued

Memo No.11214/Ser.I(1) 2020-6 dated 12.04.2022 and Memo No.11213/Ser.I(1) 2020-7 dated 12.04.2022 directing the respondent No.2 to consider the request of the unofficial respondents in both the writ petitions as a Special Case, as one time measure only and to avoid further legal complications in the matter. Since the respondent No.2 did not comply the orders of the respondent No.1, the unofficial respondents in both the petitions filed W.P.No.32709 of 2022 and 32707 of 2022 respectively and this Court disposed of the said writ petitions on 17.08.2022 directing the respondent No.2 to take action on the representation of the unofficial respondents as per the directions of the respondent No.1 within a period of six weeks from the date of receipt of copy of that order.

8. The Learned Senior Counsel appearing for the petitioners further submits that by virtue of the directions of the respondent No.1, the respondent No.2

is taking steps to grant notional promotion to the unofficial respondents in both the petitions w.e.f 30.09.2008 and 18.10.2007 respectively in terms of TIES Rules, 2018 and if the promotions are granted to the unofficial respondents in both the petitions in the cadre of Assistant Executive Engineer, the petitioners in both the petitions will be deprived of further promotions to the post of Deputy Executive Engineers and the unofficial respondents in both the petitions will be placed above the writ petitioners in the seniority list in such event the petitioners will be put to serious and irreparable loss and requested to allow both the writ petitions.

9. The learned Assistant Government Pleader for Services-II appearing for official respondent No.1 and 2, basing on the counter submits that in compliance with the order of this Court dated 17.08.2022, the respondent No.1 considered the case of the unofficial

respondents and directed the respondent No.2 to take a decision on the representation and pass suitable orders and being aggrieved by the same the writ petitioners filed these petitions. The Government considered the request of the unofficial respondents as a special case and as one time measure duly taking into consideration of their immediate juniors in the category of Assistant Engineer got promotions as Deputy Executive Engineer and requested to dismiss the writ petition.

10. Sri V.Jagapathi, Learned Counsel appearing for unofficial respondents in both the petitions submitted that the unofficial respondents have put in more than 20 years of service in the Irrigation Department and possess Graduation in Civil Engineering and their juniors in the cadre of Assistant Engineers notionally with Diploma Qualifications were appointed by transfer to the cadre of Assistant Executive Engineers and

immediately thereafter they were promoted as Deputy Executive Engineers. In spite of possessing higher qualifications and put in more service than their juniors presently working as Assistant Executive Engineers and they are entitled to be considered for promotions to the post of Deputy Executive Engineers treating their appointment as Assistant Executive Engineers notionally i.e. 30.09.2008 and 18.10.2007 respectively on par with their juniors and moreover they would get only one promotion before their retirement. In the case of the petitioners, who were appointed as Assistant Executive Engineers in the year 2007 and 2008 and promotions to the unofficial respondents to the cadre of Deputy Executive Engineers would not in any way affect their services.

11. The learned Counsel for the unofficial respondents further submitted that the petitioners have neither questioned the proceedings dated

27.01.2020 issued by the respondent No.2 by which all the Assistant Engineers, who were appointed by transfer to the post of Assistant Executive Engineers on temporary basis with retrospective effect from the dates they have completed six years of service in the cadre of Assistant Engineers and discharged the duties of AEEs on and from 27.01.2020 and promoted as Deputy Executive Engineers in the year 2020 itself and therefore the petitioners have no *locus standi* to question to the orders passed by the respondent No.1 in compliance with the orders passed by this court and since the Government is the competent authority and there are no merits in writ petitions and requested to dismiss both the writ petitions.

12. After hearing both sides and on perusing the material papers available on record this Court is of the considered view that the unofficial respondents in both the petitions were initially appointed as Tracers and

subsequently they were appointed by transfer as Assistant Engineers in the year 2002 and 2001 respectively and their probation was declared in the said cadre after completion of one year of service. After acquiring graduation in AMIE the unofficial respondents requested for appointment by transfer to the post of Assistant Executive Engineers and basing on their request both the unofficial respondents were appointed by transfer to the post of Assistant Executive Engineers and joined their duties on 01.08.2012 and 20.05.2011 respectively.

13. Admittedly the petitioners in both the petitions are direct recruitees as Assistant Executive Engineers and were appointed in the year 2007 and 2008 respectively in pursuance to the Notification issued by the Public Service Commission. The unofficial respondents in both the petitions were appointed by transfer as Assistant Executive Engineers with a

condition that they shall not claim the benefits of lower post and will not opt for reversion to the lower post and joined in the said posts on 01.08.2012 and 20.05.2011 respectively. Earlier the unofficial respondents in both the petitions have made representation for promotion to the post of Deputy Executive Engineers and their requests were rejected by the respondent No.2 on 03.12.2016 and 30.05.2017 respectively.

14. The State Government issued G.O.Ms.No.32 Irrigation and CAD dated 25.04.2018 amending the Rules as "Telangana Irrigation Engineering Service Rules, 2018" dated 25.04.2018 and as per the same, the qualification for the post of Assistant Executive Engineer by direct recruitment and by appointment by transfer is Bachelors Degree in specified Engineering Service. The Assistant Executive Engineer under Category-6 is eligible for further promotion to the post of Deputy Executive Engineer, Category-V and for

promotion to the post of Deputy Executive Engineer from the Assistant Executive Engineer, one should render five years of regular service in the cadre of Assistant Executive Engineer, out of which two years should be field service.

15. The State Government issued G.O.Ms.No.1 dated 25.01.2020 amending Rule-5 of the Rules notified in G.O.Ms.No.32 dated 25.04.2018 and as per the said amendment, for appointment by transfer to the post of Assistant Executive Engineer, the minimum qualification is Diploma in specified discipline and the Assistant Engineers with diploma qualifications are also eligible for appointment by transfer to the post of Assistant Executive Engineers.

16. It is not disputed fact that after amending the rules, the juniors to the unofficial respondents in the cadre of Assistant Engineers with Diploma qualifications were appointed by transfer notionally to

the post of Assistant Executive Engineers through Proceedings dated 27.01.2020 and immediately thereafter, they were promoted as Deputy Executive Engineers.

17. The unofficial respondents in both the petitions made representations to the respondent No.2 to consider their cases for promoting to the posts of Deputy Executive Engineers on par with the juniors, treating their appointment as AEE notionally from 2007 and 2008 on par with their juniors and the same was rejected by the respondent No.2. Against that the unofficial respondents approached this court and filed W.P.Nos.3930 of 2020 and 3991 of 2021 and the same were disposed of by this court on 28.12.2010 directing the respondents therein to consider the cases of the unofficial respondents and basing on the same, the respondent No.1 passed the impugned Memos No.11214/Ser.I/A1/2020-6 dated 12.04.2022 and No.11213/Ser.I/A1/2020-7 dated 12.04.2022 in

respect of unofficial respondents and also consequential orders on 21.11.2022 and 01.12.2022 respectively for implementation of the said orders.

18. The operative portions of the impugned Proceedings dated 12.04.2022 in both the petitions is one and the same except change of names, which reads as follows:

*“The attention of the Engineer-in-Chief (admn.) (I/c), Irrigation Department is invited to the reference **12th/11th** cited, and he is informed that **Sri P.V.H.Rafiquddin, AEE/Sri V.Subba Raju, AEE**, while working as AE opted for conversion as AEE, naturally to make his service conditions better, as per the service rules prevailing that time. Subsequently the service rules have been revised as TIES Rules, 2018, due to which, his services conditions were affected adversely and his juniors in the category of AE have got promoting as DEE and he remained as AEE. Further while converting the AEs as AEEs notionally, after the TIES Rules, 2018 came into force, the individual as well the similarly situated*

persons might have been given an opportunity to state whether they intend to continue as AEE or opt for AE, keeping in view the TIES Rules, 2018. It seems that same has not been done.

The Engineer-in-Chief (Admn) I/c, Irrigation & CAD Department, is therefore directed to consider the request of the individual on the above lines and take necessary action accordingly as a Special Case, as one time measure and report compliance to Government”

19. In the impugned orders it is clearly stated that the unofficial respondents while working as Assistant Engineers have opted for conversion as Assistant Executive Engineers, naturally to make their service conditions better, as per the services rules prevailing at that time and subsequently the service rules have been revised as TIES 2018, due to which their service conditions were affected adversely and their juniors in the category of Assistant Engineers have got promotions as Deputy Executive Engineers and they

remained as AEEs only. Further the conversions were made notionally after the TIES 2018 came into force. The unofficial respondents and similarly situated persons might have given opportunity to state whether they intend to continue as AEE or opt for AE keeping in view the TIES Rules, 2018 and the same has not been done.

20. The unofficial respondents have specifically raised a ground that the petitioners without questioning the promotion of the juniors to the unofficial respondents who were given notional seniority in cadre of Assistant Executive Engineers and effected promotions to the Deputy Executive Engineers cadre, cannot question the notional seniority extended to the unofficial respondents on par with their juniors.

21. It clearly shows that the petitioners are selectively questioning the notional seniority of the unofficial respondents, who are seeking notional

seniority on par with their juniors. The writ petitioners have not questioned the notional seniority and promotions of the juniors to the unofficial respondents, who were now promoted as Deputy Executive Engineers basing on notional seniority.

22. Once the juniors to the unofficial respondents were given notional seniority in the cadre of Assistant Executive Engineers and given further promotion to the post of Deputy Executive Engineers, the same adversely affects the service conditions of the unofficial respondents and the respondent No.1 has rightly extended the similar benefit to the unofficial respondents as was extended to their juniors.

23. The respondent No.1 being a Government have power to relax the rules and in the instant case, as per directions of this Court in W.P.Nos.3939 of 2020 and 3991 of 2020 dated 28.12.2020 considered the case of the unofficial respondents, passed impugned orders as

special cases and as one time measure in view of juniors to the unofficial respondents with diploma qualification were given notional promotion to the post of Assistant Executive Engineer from the cadre of Assistant Engineers and subsequently promoted to the post of Deputy Executive Engineer in the year 2020.

24. In view of the same the petitioners without questioning the notional seniority given to the juniors of the unofficial respondents in the year 2020, now cannot question the impugned orders for providing notional seniority to the unofficial residents and effecting promotion to the post of Deputy Executive Engineers. The impugned orders passed by the respondents needs no interference and both the writ petitions are devoid of merits and liable to be dismissed.

25. In view of the above finding, both the writ petitions are dismissed. There shall be no order as to costs.

26. Miscellaneous petitions, pending if any, shall stand closed.

JUSTICE K.SARATH

Date:12.06.2023

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