

C. Radhakrishna Reddy and Others

Vs

State of A. P. and Anothers

Writ Petition No. 369 of 1989

(Ranganath Misra, G. L. Oza JJ)

10.11.1989

JUDGMENT

RANGANATH MISRA J. –

1. Promotee Engineers of the Road & Building Wing of the Andhra Pradesh Engineering Service are the petitioners in this application under Article 32 of the Constitution and challenge is to the government circular of August 12, 1988 (Annexure A) fixing the guideline for the drawing up of the seniority list pursuant to a direction issued by this Court in a batch of writ petitions, decision whereof is reported in K. Siva Reddy v. State of A. P.

2. While petitioners are promotees, the respondents, are direct recruits. Petitioners alleged that they had put in continuous service of 6-7 years by 1982 and their service having been regularised in the post of Deputy Executive Engineer in the year 1974-75, direct recruits appointed in the year 1982 cannot under any law be placed above them.

3.. As noticed in Siva Reddy case, substantive vacancies in the category of Assistant Engineer had to be filled up from two sources-37 1/2 years per cent by direct recruitment and the remaining 62 1/2 per cent by transfer of Supervisors and Draughtsmen and by promotion of Junior Engineer, Direct recruit had complained that notwithstanding this prescription, there had been no recruitment of Assistant Engineers and the promotees from the other two modes had come into the cadre far in excess of the limit provided by the Rules. The Chief Engineer by his order dated June 8, 1984 regularised the temporary service of promotees of the year 1972-73, 1973-74 and 1974-75 in the cadre of Assistant Engineers (later designed as Deputy Executive Engineers). They had therefore, asked for quashing of the regularisation and drawing up of a seniority list on the basis of the ratio fixed under Rule 3(1) of the Special Rules. This Court in paragraph 5 of the judgment stated : (SCC pp. 227-28 para 5)

Reopening of the question of inter se seniority on the basis of non-enforcement of the rules from the very beginning may create hardship and that would be difficult to mitigate but we see no justification as to why the benefit of the scheme under the rules should not be made available to direct recruits at least from 1982. When the State Government by rules duly framed prescribed the method of recruitment and put the scheme into operation it had the obligation to comply with it. The explanation offered by the State Government for non-compliance of the requirements of the rules does not at all impress us. We, therefore, direct that as on December 31, 1982, the State Government must ascertain the exact substantive vacancies in the category of Assistant Engineers in the service. On the basis that 37 1/2 percent of such vacancies were to be filled up by direct recruitment the position should be worked out. Promotees should be confined to 62 1/2 per cent of the substantive

vacancies and in regard to 37 1/2 percent of the vacancies the short fall should be filled up by direct recruitment. General rules shall not be applied to the posts within the limits of 37 1/2 percent of the substantive vacancies and even if promotees are placed in those posts, no seniority shall be counted. The State Government shall take step to make recruitment of the short fall in the direct recruitment vacancies upto December 31, 1987 within four months from today by following the normal method of recruitment for direct recruits. The seniority list in the cadre of Assistant Engineers shall be redrawn up as directed by the Tribunal, by the end of September 1988, Keeping the direction referred to above in view.

With a view to implementing this direction the State Government came out with the impugned order dated August 12, 1988 marked Annexure 'A'.

4. In Siva Reddy case this court found that promotees had exceeded the quota and even got regularised in respect of the post in excess of the limit. Taking into consideration the fact that regularisation had been done after the promotees had put in some years of service and disturbing regularisation would considerably affect the officers concerned, regularisation was not interfered with. This Courts intention obviously was not to take away the benefit of regularisation in respect of the officers belonging to the promotee group in excess of their quota but the court did not intend to allow such regularised officers in excess of the quota to also have the benefit of such service for purposes of Seniority. A reading of the judgment in Siva Reddy case clearly indicates that this Court intended what the government has laid down by way of guideline. We see no justification to interfere with the government direction. A draft seniority list on the basis of such direction has already been drawn up and has been circulated. We are told that objections have been received and would be dealt with in usual course by the appropriate authorities. This writ petition had been entertained in view of the allegation that the government direction was on a misconception of what was indicated in the judgment and in case there was any such mistake the same should be rectified at the earliest. Now that we have found that the government order is in accord with the court direction, this writ petition must be dismissed and individual grievances, if any, against the draft seniority list would, we hope, be considered on the basis of objections filed by the competent authority.

5. There shall be no order as to costs.

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