HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE EIGHTH DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HONOURABLE SMT JUSTICE RENUKA YARA

WRIT PETITION NO: 11811 OF 2006

Between:

Ramkishan Desai, S/o. Anant Rao Desai, Aged about 57 years, Occ: Joint Director, Office of the Ground Water Department, Hyderabad.

...PETITIONER

AND

1. The Government of Andhra Pradesh, Rep. by its Principal Secretary, Irrigation and CAD Department, Secretariat, Hyderabad-500 022.
2. The Director, Ground Water Department, Government of Andhra Pradesh, Hyderabad.
3. Mohd. Imtiaz, S/o. Late Mohd. Azeemuddin, aged about 54 years, Joint Director, Ground Water Department, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ order or direction more in the nature of writ of Certiorari calling for the records relating to the order of the Hon'ble A.P. Administrative Tribunal dt.5-6-2006 in O.A.No.4171 of 2005 (Ex.P1) and quash the same by holding it as illegal, bad and arbitrary and further direct the respondents to continue the petitioner as joint Director.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to

receive the additional material papers in W.P.No. 11811 of 2006 as part and parcel of material in the interest of justice.

I.A. NO: 2 OF 2006(WPMP. NO: 14696 OF 2006)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order of the Hon'ble A.P. Administrative Tribunal dt.5-6-2006 in O.A.No.4171 of 2005 (Ex.P.1).

I.A. NO: 3 OF 2006(WPMP. NO: 32423 OF 2006)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents not to fill up the vacancy of Director, Ground Water Department, Government of Andhra Pradesh till the disposal of the Writ Petition.

I.A. NO: 1 OF 2007(WPMP. NO: 18736 OF 2007)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to modify the order dt. 28-8-06 made in WVMP NO. 1171/2006 in WPMP NO. 14696/2006 in W.P.No.11811/2006 giving liberty to the 2nd respondent fill up vacancy of Director of Ground Water Department on regular Basis in accordingly with law by considering the claim of petitioner herein.

I.A. NO: 2 OF 2007(WPMP. NO: 19673 OF 2007)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to modify the order of staus-quo made in WVMP.No.1171/2006 in WPMP.No.14696/2006 in WP.No.11811/2006 and permit the Government to fill up the post of Director on adhoc basis pending disposal of the WP.No.11811 of 2006.

I.A. NO: 1 OF 2006(WVMP. NO: 1171 OF 2006)

Between:

Mohd. Imtiaz, S/o. Late Mohd. Azeemuddin, aged about 54 years, Joint Director, Ground Water Department, Hyderabad.

...PETITIONER/RESPONDENT NO.3

AND

1. Ramkishan Desai, S/o. Anant Rao Desai, Aged about 57 years, Occ: Joint Director, Office of the Ground Water Department, Hyderabad.
2. The Government of Andhra Pradesh, Rep. by its Principal Secretary, Irrigation and CAD Department, Secretariat, Hyderabad-500 022.
3. The Director, Ground Water Department, Government of Andhra Pradesh, Hyderabad.

...RESPONDENTS/1ST RESPONDENT IS PETITIONER AND RESPONDENTS 2 AND 3 ARE RESPONDENTS 1 AND 2 IN WP No.11811 of 2006

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the stay granted vide order in WPMP No. 14696 of 2006 in WP No. 11811 of 2006 dated 23-6-2006.

Counsel for the Petitioner: SRI J. R. MANOHAR RAO

Counsel for the Respondent Nos.1 and 2: GP FOR SERVICES II

Counsel for the Respondent No.3: ----

The Court made the following: ORDER

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HONOURABLE SMT. JUSTICE RENUKA YARA

WRIT PETITION No.11811 of 2006

ORDER: *(Per Hon'ble the Acting Chief Justice)*

In this petition filed under Article 226 of the Constitution, the petitioner has prayed for the following relief:

> "...issue a writ, order or direction more in the nature of Writ of Certiorari calling for the records relating to the order of the Hon'ble A.P. Administrative Tribunal dated 05.06.2006 in O.A.No.4171 of 2005 and quash the same by holding it as illegal, bad and arbitrary and further direct the respondents to continue the petitioner as Joint Director..."

FACTS:-

2. The facts as narrated by the petitioner are that this matter relates to Ground Water Department, the promotional post in question is the post of Joint Director. There are three wings in Ground Water Department namely (a) Hydrology, (b) Hydrogeology and (c) Geophysics. It is canvassed that upto the post of Deputy Director, each wing is like a separate water tight compartment. However, for the promotional post in question i.e., Joint Director, all the Deputy Directors of three wings are eligible. The cadre strength of Joint Director was two. In the year 1987, the Departmental Promotion Committee (DPC) was constituted for promotion to the post of Deputy Director. The promotions were

made on three different dates. A combined seniority list of Deputy Directors was prepared by the Government vide G.O.Ms.No.344, dated 24.10.1994.

3. The said seniority list was called in question before the then existing Andhra Pradesh Administrative Tribunal (Tribunal) in O.A.No.6974 of 1994. The Tribunal allowed the said OA and issued certain directions regarding preparation of panels for promotion to the post of Joint Director. This order of Tribunal, in absence of challenge, had attained finality.

4. In turn, the panel for the year 2004-05 was prepared by the DPC and was duly approved by the Government vide G.O.Ms.No.54, dated 18.05.1995. As per this GO, the petitioner was placed at Sl.No.3 and respondent No.3 was at Sl.No.4. Respondent No.3 filed O.A.No.4171 of 2005 before the Tribunal questioning G.O.Ms.No.54. The main ground taken in the said OA was that respondent No.3 herein is senior to the petitioner herein in the cadre of Deputy Director, although in the initial cadre, the petitioner herein was senior. Another ground taken was that Sl.Nos.1 and 2 in the said panel were retiring before 01.08.2005, the date when vacancy arose and as such they had no right of

consideration as against that vacancy which came into being after their retirement

5. The Tribunal allowed the said OA on 05.06.2006 accepting the contention of respondent No.3 herein. This order of Tribunal is subject matter of challenge in this petition.

Contentions of the petitioner:-

6. Sri J.R. Manohar Rao, learned counsel for the petitioner, submits that the petitioner belongs to Hydrogeology wing, whereas respondent No.3 is from Hydrology wing. The DPC considered four names, two from Hydrogeology and two from Hydrology. There were no qualified Deputy Directors in Geophysics wing. Thus, DPC acted in consonance with the directions of the Tribunal in O.A.No.6974 of 1994.

7. Learned counsel for the petitioner further submits that this Court initially suspended the impugned order of the Tribunal passed in O.A.No.4171 of 2005, but on an application made by respondent No.3, modified the same on 28.08.2006 by directing the parties to maintain *status-quo*. In view of that, the petitioner retired as Joint Director, whereas respondent No.3 got promotion as Director and retired.

8. He further submits that the DPC was convened in view of previous order of the Tribunal passed in O.A.No.6974 of 1994 and no fault can be found in the said order. The Tribunal in the impugned order has committed an error in interfering with the DPC proceedings. He also submits that although almost two decades have passed from the date the impugned order was passed by the Tribunal, the fact remains that the petitioner was deprived from the fruits of the proceedings of the DPC because of improper order of the Tribunal. Thus, prayed that the impugned order of the Tribunal may be set aside.

Contention of the unofficial respondent:

9. The Government counsel has taken the same stand which was taken by the Department before the Tribunal. Nobody entered appearance on behalf of unofficial respondent.

10. We have heard the parties at length and perused the record.

11. The Tribunal in its first order in O.A.No.6974 of 1994 considered the rival contentions and gave its findings as under:

> "8. The question is, therefore, how the selection will be made to the post of Joint Director by considering the eligible Deputy Directors coming from Classes II, III & IV. We are told in class-II there are 9 eligible Deputy Directors, in class-III, 3 and in Class-IV the unofficial Respondent is only one eligible Deputy Director. They have all been appointed on 25-11-1987 according to the stand of the Government. As already indicated,

in view of Rule 4(a)(i) this is a post to be filled up by selection on the basis of merit-cum-ability and seniority will be taken into consideration only when this is equal. As the last sentence of Rule 4(a)(ii) has been held to be bad, it will be for the Government to determine an appropriate zone of consideration for making the selection. As the Deputy Directors are coming from distinct classes, this will have to be kept in view. The Government will have to decide a rational number of persons to be kept in the zone of consideration – say between 3 and 5. The authorities may, therefore, have to shortlist Deputy Directors of 3 classes by having at least one from each class as the first step. The second step will be the selection on the ground of merit and ability as directed by 4(a)(i) from among the persons so shortlisted from each class. This will be a rational approach for making a selection for a single post from out of the Deputy Directors who come from the three classes. The impugned order determining the seniority among the Deputy Director of different classes which is apparently issued for the sole purpose of making promotion to the post of Joint Director has, therefore, no meaning. We are not saying anything about seniority in each respective class. The impugned GO, therefore, is set aside and the authorities will proceed to make selection to the post of Joint Director in accordance with what we have said above and for this we give the following directions.

(a) The Government will first decide the zone of consideration, namely between (3 and 5) among the Deputy Directors from all the three classes of posts, where ever there are more than one Deputy Director in any of three classes.

(b) The authorities will first proceed to separately shortlist the Deputy Directors in each class so that there is at least, one Deputy Director from each class for satisfying the requirements of number in the zone of consideration from all Deputy Directors.

(c) The DPC will then consider the Deputy Directors so shortlisted from each class on the basis of merit and ability.

(d) The unofficial Respondent, being only Deputy Director in his class, there is no need for shortlisting in that class. There will be a need for shortlising from the Deputy Directors of the other two classes keeping in view the zone of consideration fixed between 3 and 5.

(e) The Deputy Directors so shortlisted and who come within the zone of consideration to be considered by the DPC for appointment by promotion to the post of Joint Director by

applying the principle of merit and ability. The length of service i.e., the seniority as Deputy Director will be considered if merit and ability of any two candidates is approximately equal.

(f) This exercise to be done in three weeks of the date of receipt of this order."

(Emphasis Supplied)

12. In furtherance of this order of the Tribunal, the Department issued G.O.Ms.No.54, dated 18.05.2005, which became the subject matter of challenge in O.A.No.4171 of 2005. In this round of litigation, the Tribunal duly considered its previous order in O.A.No.6974 of 1994. The reasons for interference were spelt out by the Tribunal by holding that **(i)** the matter relates with two branches, namely Hydrology and Hydrogeology. As per the previous order of the Tribunal and G.O.Ms.No.14, dated 11.01.1996, three officers were required to be considered for one vacancy. However, the Department prepared the impugned panel consisting names of four persons. The Tribunal opined that as against one post, four names ought not to have been proposed and recommended, and one name should have been recommended and approved by the official respondent; **(ii)** names of four persons were recommended by keeping in view the two Deputy Directors who were in the feeder cadre and whose names were placed before the DPC would be retiring on 31.05.2005 and 31.07.2005 respectively. The promotional post of Joint Director was falling

vacant and made available only with effect from 01.08.2005. By considering Rule 6 of the **State and Subordinate Service Rules, 1996**, the Tribunal opined that the said two persons were retiring before the date vacancy arose could not have been considered; **(iii)** the vacancies could have been calculated in accordance with Rule 6 of the State and Subordinate Service Rules; and **(iv)** In the instant case, the Tribunal opined that as per its previous order in O.A.No.6974 of 1994, the Government was first required to decide the zone of consideration from all the three categories. One Deputy Director from each category was required to be considered, but in the instant case, two persons belonging to the category of Deputy Director (Hydrology), namely Dr. K.Narasimha Murthy, retiring on 31.05.2005 and Sri Mohd. Imtiyaz, Deputy Directory (Hydrology), were considered. Two persons namely, Haridarshan and Ramakishan Desai belong to the category of Deputy Director of same stream, namely Hydrogeology. The Tribunal opined that applicant therein is senior to the party respondent (petitioner herein) as per the seniority of feeder post of Deputy Director. There were only two names left for consideration against one vacancy of Joint Director. Thus, preparing of panel of four Deputy Directors from only two disciplines of Hydrology and Hydrogeology runs contrary to the previous order of the Tribunal.

13. Broadly, for these reasons, the Tribunal interfered with G.O.Ms.No.54, dated 18.05.2005 and matter is remitted back to the first respondent for re-examination. In turn, the DPC took place and as projected by the present petitioner, unofficial respondent secured a march in the ladder of promotion over and above the present petitioner and became Director and retired, whereas the petitioner before retirement could be promoted only as Joint Director.

14. One of the contentions of learned counsel for the petitioner was that although unofficial respondent was senior to him in the feeder post of Deputy Director, on the initial post, the present petitioner was senior to the unofficial respondent. We do not see any merit in this contention. This is settled in service jurisprudence that for the purpose of considering seniority for promotion, the seniority of feeder post needs to be taken into account and not the seniority of any initial post. Once unofficial respondent is promoted as Deputy Director prior to the petitioner, he got a preferential right over and above the petitioner in terms of seniority. It is not the case of the petitioner that he is more meritorious than the unofficial respondent. Since criteria for promotion is 'merit-cum-ability', and the petitioner was unable to

show that he is more meritorious *qua* unofficial respondent, no fault can be found if the Tribunal has treated unofficial respondent as senior.

15. The Tribunal gave finding in consonance with its previous order passed in O.A.No.6974 of 1994. The zone of consideration was required to be drawn from three feeder class of posts and from one category no eligible person was available, zone of consideration could have been restricted to three persons only. No amount of argument could be advanced to attack this finding of the Tribunal. Thus, the plausible view taken by the Tribunal deserves stamp of approval by this Court.

16. The Tribunal also considered Rule 6 of the State and Subordinate Service Rules for the purpose of calculation of vacancies and opined that persons retiring before the date vacancy arose, i.e., 01.08.2005 could not have been considered. During the course of arguments, learned counsel for the petitioner did not raise any argument to assail this finding, which is in consonance with the statutory rule governing the field, namely Rule 6 of the State and Subordinate Service Rules. Thus, on this count also, no interference is warranted.

17. The Tribunal also held that as per the previous order passed in O.A.No.6974 of 1994, the first exercise needs to be done by the Department was to draw a zone of consideration brining all Deputy Directors of three streams into consideration. Since Deputy Director of one stream was not available, the persons from other streams alone could have been taken into account. Preparation of panel of four names by impugned G.O., runs contrary to the previous order passed in O.A.No.6974 of 1994. We have considered this aspect and in view of the detailed analysis made in this regard by the Tribunal, the Tribunal in our judgment has taken a plausible view. The Tribunal after detailed discussion came to hold that G.O.Ms.No.54, dated 18.05.2005 cannot sustain scrutiny and resultantly directed the Department to re-look into the matter and proceed accordingly.

18. The detailed analysis by the Tribunal is based upon the rule position and no violation of any statutory provision could be pointed out. The scope of interference under Article 227 of the Constitution of India is limited. This Court is not obliged to sit as an appellate Court to re-weigh and re-appreciate the entire matter. Unless violation of any legal provision is pointed out with clarity, interference cannot be made merely because another view is

possible. The petitioner miserably failed to show that order of the Tribunal violates any statutory provision or its previous order. Since a plausible view is taken, interference is declined at this distance of time.

19. Resultantly, the petition fails and is hereby **dismissed.** There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

SD/-K. SREE RAMA MURTHY
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to Sri J. R. Manohar Rao, Advocate [OPUC]
2. Two CCs to GP for Services II, High Court for the State of Telangana, at Hyderabad [OUT]
3. Two CD Copies

T J
BS

HIGH COURT

DATED:08/04/2025

ORDER

WP.No.11811 of 2006



DISMISSING THE WRIT PETITION
WITHOUT COSTS

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kyr
19/4/25