

THE HON'BLE SRI JUSTICE N.RAVI SHANKAR

WRIT PETITION Nos.7130 & 7374 of 2000 AND 20944 of 2001

COMMON ORDER:

These three writ petitions which are filed against the A.P. Society for Training and Employment Promotion (APSTEP) and other official and non-official respondents can be disposed of by this common order having regard to the reliefs claimed in them. In W.P.No.20944 of 2001, the Government of Andhra Pradesh is also made a party.

2. APSTEP as the name itself suggests has been formed by the Government of Andhra Pradesh for promoting training and employment. It is an apex society formed in the year 1990 through G.O.Ms.No.45 Employment Generation and Youth Services (SES.II) Department dated 12.04.1990. There are several societies for training and employment at the district level and those district level societies came into existence between the years 1981 and 1983, and after the formation of APSTEP, the district level societies were affiliated to it and were all registered under the Societies Registration Act and continued. Thereafter G.O.Ms.No.50 Employment Generation and Youth Services (SES.II) Department dated 28.05.1990 and G.O.Ms.No.51 Employment Generation and Youth Services (SES.II) Department dated 29.05.1990 pertaining to certain staff were issued.

3. It must be stated here that in the material papers filed on behalf of the official respondents, a letter dated 25.11.1994 from the Joint Secretary to Government, Industries Department and addressed to the Chairman and Managing Director of the APSTEP is also filed. That letter shows that the Government have approved two separate sets of service rules for APSTEP and STEP societies. The latter are district level societies to which the petitioners in the three

writ petitioners belong. It is stated that the STEP Employees Service Rules, 1992 which were approved by the Government were brought into force in 1994. The petitioners are relying upon these service rules and their seniority for claiming regularization and promotions. They are also complaining about the discrimination practiced by the Government by the official respondents in denying them regularization and promotion. Petitioners are belong to different district level societies.

4. There are two petitioners in W.P.No.7130 of 2000. They filed that writ petition questioning the validity of the proceedings dated 06.4.2000 issued by the Managing Director of APSTEP promoting unofficial respondents 3 to 16 therein from the posts of Technical Assistants or Supervisors to the posts of Managers on the ground that though they are far juniors to them in the service, they were selected contrary to the rules.

5. The first and second petitioners in this writ petition were appointed as Technical Assistant and Technical Supervisor on consolidated pay in the district societies of Visakhapatnam and Vizianagaram by the Collectors-cum-Chairmen of the said societies by their orders dated 05.9.1984 and 29.9.1986 respectively. They possessed only LME certificates or diplomas in Engineering but not Engineering degrees. Respondents 3 to 16 were subsequently recruited as Technical Assistants or Supervisors from 1990 onwards and they possessed Engineering degrees and other superior degrees required as per STEP Employees Service Rules, 1992 (Service Rules).

6. The grievance of the petitioners is that though respondents 3 to 16 were far junior to them, the official respondents have promoted them illegally contrary to the Service Rules. Their further plea is that they are entitled to relaxation of the qualifications as per Rule 24 of the Service Rules and the official respondents have ignored this

position as they were appointed long prior to the said Service Rules at which time they were not required to possess the present qualification.

7. These petitioners have also pleaded that way back in March, 2000, the Managing Director of APSTEP communicated a seniority list of 33 Technical Assistants and in the said list they have been shown as seniors to the respondents 4 to 16 and despite the same the APSTEP authorities and the Government have wrongly given promotion to respondents 3 to 16 ignoring the above seniority list.

8. Now turning to the petitioner M.Venkata Gopal in W.P.No.20944 of 2001, at the relevant time he was working as Typist in the district society of Karimnagar having been appointed there on 20.12.1983 and regularized by the District Collector-cum-Chairman of that society on 03.9.1993. He is also seeking promotion to the post of Senior Assistant and he says that he is entitled to be considered for the promotion as per Rules in accordance with the seniority over and above the fifth respondent K.Shivalingam who was given promotion illegally ignoring his claim.

9. The plea of this petitioner is that the Managing Director of APSTEP (first respondent) through the proceedings dated 23.3.2000 communicated a seniority list of the Typists and Junior Assistants and in that list he is shown at serial No.8 whereas Shivalingam is shown at serial No.9 and ignoring this seniority list which was not changed the fifth respondent was promoted illegally.

10. The petitioner in W.P.No.7374 of 2000 is one M.A.Majeed. He is also an employee of STEP, Nalgonda and he was appointed as a Typist in Nalgonda society by the District Collector of that district on 10.8.1989 and he was paid the regular pay scale from 01.10.1990. In the above W.P.No.7374 of 2000 the petitioner is questioning the promotion given to respondents 4 to 7 as Senior Assistants. His grievance is that though they joined service much later to him as

Typists, they were preferred in violation of the Service Rules.

11. His plea is also based upon the seniority list relied upon by the petitioner M.Venkata Gopal in W.P.No.7374 of 2000. In the said seniority list communicated by the Managing Director through his letter dated 23.3.2000 referred to supra, the petitioner M.A.Majeed is shown at serial No.30 with Intermediate qualification and respondents 4 to 7 P.Annapurna, D.Chennaiah, M.J.Venkat Rao, A.R.Narasimha Rao are shown at serial Nos.31 to 34. They joined in service subsequent to this petitioner.

12. The APSTEP initially filed separate counters in all the three writ petitions and it also filed additional counters. Its stand is that the petitioners in all the three writ petitions do not possess the necessary qualifications as required by the service rules and therefore their cases have been rejected for regularization and promotion even by relaxing the rules. These additional counters refer to the Government Memo No.5471/SES/A2/2000-11, dated 07.04.2001 by which the cases of the petitioners have been rejected.

13. The fourth respondent K.V.Ramana in W.P.No.7130 of 2000 filed separate counter-affidavit opposing the case of the petitioners. In his counter, he pleaded that both the petitioners possessed LME qualifications and are not engineering graduates and therefore they are not eligible to be treated as seniors to him. He says that he is an engineering graduate and his claim for promotion has been rightly considered by the official respondents and that the petitioners are not eligible for promotion as even their posts were not created earlier as required by the service rules. It can be said that the above stand of the fourth respondent based upon qualifications is similar to the stand of APSTEP which it took against the petitioners.

14. It may now be noted that the two sets of service rules referred to supra speak of various posts in the organization of APSTEP at its

level and the district level societies (STEPs) also. Rule 8 speaks of eligibility for appointment and the educational qualifications required for various categories of posts in the STEP. For the posts of Technical Assistant-cum-Supervisor, the educational qualification prescribed is B.E., or M.Sc., (Maths) or (Electronics) etc. These are the feeder posts for the post of Manager the promotions to which are in issue in W.P.No.7130 of 2000.

15. Then turning to the posts of Senior Assistants the promotions to which are in issue in the other two writ petitions, the educational qualification for the same is possession of a degree/graduation. It may also be noted here that for the post of Junior Assistant, the educational qualification should be graduation whereas for the post of typist a pass in 10 + 2 and passing of higher grade in typewriting is necessary. These posts are feeder posts for promotion to the post of Senior Assistant.

16. Both the petitioners in W.P.No.7130 of 2000 though appointed in 1984 and 1986, they are only LME certificate holders or diploma holders in engineering and they did not acquire B.E. degree or other qualifications mentioned above. Similarly, the petitioner M.Venkata Gopal concerned in W.P.No.20944 of 2001 and the petitioner M.A.Majeed in W.P.No.7374 of 2000 have passed only intermediate examination, but not graduation and this is clear from the combined seniority list dated 23.03.2000 of Typists and Junior Assistants relied upon by them. There is no dispute on the above qualifications of the petitioners which show that they do not possess the required educational qualifications as per the service rules. The APSTEP says that in view of the above position, the Government have rejected the case of all the petitioners through the above memo dated 07.04.2001. Copies of the said memo and the list of employees attached to it have been filed.

17. On the other hand, the argument of the learned counsel for all

the petitioners in all the writ petitions is that all the petitioners have been working in the district level societies of APSTEP since a long period even prior to the framing of the Rules and they cannot be denied regularization and promotion on the ground of non-possession of qualifications which were not necessary at the time of their appointments. They also pleaded that the very service rules provide for relaxation of rules in their cases and in fact the then Managing Director of APSTEP recommended their cases for relaxation of Rules but the Government have without any basis rejected the said recommendations and this is also illegal.

18. Now to examine whether the stand of the APSTEP can be accepted, the above Government memo dated 07.04.2001 and the rule position as per the service rules relied upon by the Government have to be seen. Firstly, the above Government memo would show that the Managing Director of APSTEP sent a proposal for relaxation of Rules in respect of qualifications for 17 employees out of 81 employees. It must be noted that out of 17 employees whose names are mentioned in para-6 of that memo, the employees at serial Nos.1 and 5 therein are P.Jagjeevan Rao and K.Satyam and these are the petitioners in W.P.No.7130 of 2000 which is the first writ petition.

19. It may then be noted that to this memo two lists of employees are also enclosed. The first list contains the names of 59 employees and the second list of 22 employees totaling 81 working in different posts and these are the total number of 81 employees mentioned in para-6 of the above memo. The first list contains the name of M.Venkata Gopal and he is the petitioner in W.P.No.20944 of 2001, but the name of the petitioner M.A.Majeed in W.P.No.7374 of 2000 is not found in any of the lists appended to the said memo and no reasons are given by the APSTEP.

20. The whole memo reads that a meeting was conducted in the

chambers of the Minister concerned on 04.12.2000 and the Commissioner of Youth Services was requested to process the regularization issue of the services of the employees of the APSTEP in terms of G.O.Ms.No.212, Finance Department, dated 22.4.1994. The memo reads that the issue was considered but the request for relaxation of the Rules was rejected. Paras 7 and 8 of the said memo are relevant and they read as follows.

The Hon'ble High Court in its order dated 16.7.1997 while disposing in W.P.No.12272 of 1992 and batch cases filed by the Employees of APSTEP claiming for regularization of the services etc., have observed that it is only after the decision is taken by the Government, the respondent societies will have to consider the question of regularisation of all or some of the petitioners having due regard to the sanctioned posts, the work available and the service rules.

The Government after careful examination of the issue consider that the posts mentioned in G.O.Ms.Nos.50 & 51 E.G. & Y.S. (SES-II) Department dated 28.5.1990 and 29.5.1990 respectively are not regular posts as these posts are sanctioned on consolidated pay. Hence, the said posts are not regular posts. In the absence of regular sanctioned posts, the question of regularization under G.O.Ms.No.212, Finance & Planning (F.W.) Department, dated 22.4.1994 does not arise. Therefore, the claim of the petitioners for regularization of their services is hereby rejected.

21. It may be noted that the service rules of the APSTEP and STEPs were framed in 1992 and were brought into force from 1994 i.e., roughly about 7 years prior to the above Government memo dated 07.04.2001. That memo also reads that the Commissioner or the Managing Director of the APSTEP even recommended for relaxation of the rules for regularization of 81 employees of the APSTEP and STEPs working at various levels. However, that letter of the Managing Director of the APSTEP has not been filed before the court, despite grant of sufficient adjournments and therefore it is not known on what ground the Managing Director has recommended exemptions. The counsel for official respondents is not able to throw any light on this aspect.

22. Now the above Government memo in substance reads that the Government have considered the question of regularization of 81 employees in terms of G.O.Ms.No.212 Finance and Planning dated 22.04.1994 referred to supra and rejected the regularization proposals on the ground that the posts in question in district societies or APSTEP were not regularly sanctioned posts and they were created only temporarily on consolidated pays in terms of G.O.Ms.No.50 Employment Generation and Youth Services (SES.II) Department dated 28.05.1990 (G.O.Ms.No.50) and G.O.Ms.No.51 of the same department dated 29.05.1990 (G.O.Ms.No.51). The said memo reads that since posts are temporary, they are not covered by G.O.Ms.No.212 and petitioners do not fall within the parameters of the said GO.

23. It should be noted that G.O.Ms.Nos.50 and 51 are of the year 1990. Petitioners in W.P.No.7130 of 2000 were appointed on 05.09.1984 and 29.09.1986. The petitioner in W.P.No.20944 of 2001 was appointed on 20.12.1983 and the petitioner in W.P.No.7374 of 2000 was appointed on 10.08.1989 i.e., even long prior to G.O.Ms.Nos.50 and 51. It is not clear how they can be treated as those appointed in the posts created through the said G.O.Ms.Nos.50 and 51. Further the aforesaid memo dated 07.04.2001 does not read that the petitioners case for regularization was rejected on the ground that they did not possess the educational qualification as required by the service rules of STEPs.

24. The Government have not considered what are the rights that are given to the staff of the STEPs i.e., the district level societies who have been appointed prior to the issuance of the said rules and petitioners are those who are appointed prior to the issuance of the said rules. Thus it can be said that their cases have not been considered in the manner in which they should have been

considered.

25. It should also be mentioned that earlier in a batch of writ petitions i.e., in W.P.No.12272 of 1992 and batch a Division Bench of this court considered the formation of the APSTEP i.e., the apex society and the registration of all societies including the district level societies under the Societies Registration Act and in substance directed the Government to take a decision regarding continuance of the societies and the issues of regularization on the undertaking given by the then learned Advocate General. It is not known whether the said exercise was done and any decision was taken.

26. On the other hand, from 1990 onwards the authorities of STEPs and even the APSTEP recruited several Technical Assistants or Supervisors, Typists and Junior Assistant with requisite qualifications under the STEP Rules and also promoted them as is evident from the pleadings in these three writ petitions of both sides. This was done by the STEP authorities and also the APSTEP ignoring the claims of persons like petitioners who were appointed long back i.e., in 1980s when present qualifications were not prescribed at the time of their appointments. Despite the same, the Government and the authorities of APSTEP and STEPs have ignored the cases of the persons like petitioners for regularization and seniority in promotions and now the official respondents say that since the petitioners do not possess the qualifications as per Rules and which were not there at the time of their appointments, they are not eligible either for regularization or promotions. This stand of official respondents can be said to be totally unjust even though earlier combined seniority list has been issued for all cadres showing the petitioners in these writ petitions as seniors. It appears that the said seniority list was also cancelled without any notice or hearing to the petitioners.

27. Sri M.R.K.Chowdary, learned counsel for the petitioners in

W.P.No.7130 of 2000 relied upon a judgment of this court in W.P.No.19518 of 1988 (S.V.Nancharaiah v M/s.A.P.State Seeds Development Corporation Ltd.,) in support of his clients' contention. In that decision, this court in substance laid down the principle that a qualification which was not prescribed at the time of appointment of an employee in the service of A.P. State Seeds Development Corporation Limited cannot be insisted upon while subsequently granting regularization and seniority and the seniority cannot be counted from the date of granting exemption from possessing the qualifications but the seniority should be counted right from the date of initial appointment once exemption was given. This was subsequently confirmed in W.A.No.49 of 1995, dated 01.4.1997.

28. Sri M.R.K.Chowdary also relied upon Rule 24 of the Service Rules governing the STEP employees and also various other provisions contending that they govern the staff of STEPs appointed prior to the commencement of the said Rules. This was however controverted by Sri G.Ashok Kumar Reddy, learned counsel for APSTEP and Sri Surya Prakash Rao appearing for unofficial respondent in W.P.No.7130 of 2000.

29. It should however be noted that the interpretation of service rules, the issue of regularization by granting relaxation if that is necessary or mandated by rules, and the issue of promotion which is not a matter of right cannot be decided by this court straightaway. It would be essential that these matters first decided by the employer as it has not decided them earlier with reference to the service rules as indicated above. It should also be noted that APSTEP and STEPs have been formed by the Government and the Government have also taken a decision earlier through its memo dated 07.04.2001 referred to supra, negating the case of petitioners without reference to the rules. This apart, the Government is made a party in one of the writ petitions i.e., W.P.No.20944 of 2001.

Hence, for the aforesaid reasons, the cases of petitioners should be again decided by the Government in accordance with the service rules and the other rules relevant to the subject.

30. Accordingly, there shall be a direction to the Government to consider the rights of the petitioners regarding their claims for regularization, promotions and seniority once again ignoring the above Government memo dated 07.04.2001 with reference to the service rules and other rules on the subject. It shall be open for the petitioners to submit their representations before the Government making out their case on the above aspects within one month from today. On receipt of the same, the Government shall pass appropriate orders in the matter within six months thereafter. The Government shall give appropriate opportunity to the unofficial respondents in these writ petitions and all the affected persons also before passing the orders.

31. The writ petitions are disposed of accordingly. Miscellaneous petitions pending if any shall stand closed. No costs.

N.RAVI SHANKAR, J

June, 2013

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