

Challenge in this writ petition is made against the order dated 25.08.2009 issued by the Secretary, Public Health Engineering & Water Supply Department (for short 'PHE & WSD') whereby and whereunder respondent No.2, Kasu Borang and respondent No.3, Mayan Kino were appointed to officiate as Assistant Engineer/Assistant Surveyor of Works (for short 'AE/ASW') on ad hoc basis in the scale of pay band of Rs.15,600-19,000 + GP Rs.4,500/- per month plus other allowances as admissible under Rules from time to time with effect from the date of taking over of charges at the place of posting and by another order dated 25.08.2009 issued by the Secretary PHE & WSD, respondent No.4, Bomjom ADO, respondent No.5, Bhupen Khamyang and respondent No. 6, Sengam Taknyo were allowed to hold the charge of AE/ASW on functional basis in the PHE & WSD in the scale of their own pay grade as Junior Engineer (for short 'JE') as admissible under the Rules from time to time with effect from the date of taking over of charge at the place of posting.

2. Heard Mr. M Pertin, learned counsel appearing for the petitioners. Also heard Ms. G Deka, learned Addl. Senior Govt. Advocate, Arunachal Pradesh appearing for respondent No.1, Mr. D Panging, learned counsel appearing for respondent Nos.2 and 3 and Mr. P Taffo, learned counsel appearing for respondent Nos.4 to 6.

3. From the pleaded facts of the contesting parties only one point has emerged for adjudication as to whether the appointment order on ad hoc basis made in favour of the respondent Nos. 2 and 3 and the order allowing to hold charge as AE/ASW made in favour of respondent Nos.4, 5 and 6 were made against the vacancies occurred before 13.08.2008 i.e. the date prior to the amendment of Recruitment Rules, 2005 (for short 'RR 2005'). In RR 2005, there was difference in eligibility criteria in case of promotion from the feeder cadre of JEs to AEs which is quoted hereunder for better appreciation of the case: -

"At column No.12. under the heading, "In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer to be made."

By promotion from amongst the Junior Engineers of the department who have 8 (eight) years of regular service for diploma holders and 5 (five) years of regular service for degree holders in the grade.

Provided that irrespective of seniority in the cadre of Junior Engineer, promotion to the post of Assistant Engineer shall be considered in order of seniority of completion of respective qualifying services."

4. But the disparity of qualifying service from the feeder cadre of JEs of both the degree holders and diploma holders for promotion to the next higher cadre has been made at par by amendment to the RR 2005 by making the following Rule, viz. "Recruitment to the post of Assistant Engineers (Amendment) Rules 2008" which is quoted hereunder: -

"2. In the Recruitment to the post of Assistant Engineer Rules 2005:

(i) in the Schedule: -

(a) Under the heading 'in case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer to be made" in column (12) for the existing entry, the following entry shall be substituted namely:

"By promotion from amongst the Junior Engineers of the Department who have completed (8) years of regular service in the grade and passed in Accounts Examination as Junior Engineer."

5. The particular provisions in the amended RR 2005 which was issued vide Office Memorandum dated 24.10.2008 and notification dated 27.10.2008 was called in question by the JEs having degree in Engineering in Writ Petition being W.P.(C) No. 428(AP) 2008 wherein the court rendered the judgment on 06.05.2010 holding no infirmity in the Office Memorandum dated 24.10.2008 and notification dated 2

7.10.2008 and accordingly not interfered with.

6. However, the Court has held that vacancies existed prior to the amended rules must be filled up as per the provisions of the earlier recruitment rules as the amended rule will not apply retrospectively.

7. Admittedly, the writ petitioners are degree holders whereas the private respondents are diploma holders and if the vacancies occurred prior to the amendment in case of promotion from the feeder cadre to the higher cadre of AE/ASW, the Rules prior to the amendment of the RR would be applicable. In that case, the petitioners who have attained the qualifying service after 5(five) years became eligible for promotion to the feeder cadre of Junior Engineers, i.e. to the post of AE/ASW whereas the diploma holders would attain the qualifying service after 8 (eight) years to be eligible for promotion from the cadre of JE to the post of AE and hence, the orders dated 25.08.2009 are under challenge seeking judicial review under Article 226 of the Constitution of India.

8. The pleadings have been exchanged in the case. The stand of the state respondent is that five (5) diploma holders holding the post of JEs were given promotion to the post of AE/ASW including private respondent Nos.2 and 3 vide order dated 25.08.2009 on the basis of seniority and as per amended RR and after disposal of WP(C) No.428(AP)2008, thereby supported the orders dated 25.08.2009. Further stand of the State respondent is that the vacancy position from 1996 to 2008 would disclose that out of the 13 posts as available till 13.08.2008, as many as 10 vacancies from Sl. No.1 to Sl. No. 8 to 10 and Sl. No.13 had been filled up through earlier promotion which have not been called in question by the writ petitioners. The vacancy at Sl. No. 13 being for AE Mechanical and filled up separately and thus the same has no relevancy in the instant writ petition. After filling up the posts as mentioned, there remains only 3(three) vacancies against Sl. No. 7 (Shri K. Borang) Diploma Holder JE and Sl No.11(Shri M. Kino) were reverted back to the original post of JE at Sl. No. 11 and 12 and therefore, ad hoc promotion made on 25.08.2009 were not in order of merit or seniority, whereas the order dated 25.08.2009 whereby the private respondent Nos.3, 4 and 5 were allowed to hold financial charge of ASW/AE as a stopgap arrangement without any financial benefit as per amended RR which do not require to be interfered with.

9. The stand of the respondent Nos. 2 and 3 in a nutshell is that the vacancy position of AEs from 1996 to 2008 would show that their names appear at Sl. Nos. 7 and 11 and they were reverted back to their feeder cadre of JEs in pursuance to the judgment passed in WP(C) No.65(AP)/2008 and 432(AP)/2008. Thereafter, there remains 6(six) JEs, who were promoted to the post of AEs in terms of pre-amended RR and after coming into force of the amended RR on 27.10.2008, 2(two) posts of AEs fell vacant on 07.08.2009 on account of promotion of 2(two) Assistant Engineers Shri Subat Pertin and Shri Nyapum Konya to the post of Executive Engineers and against the resultant vacancies of AEs the respondent Nos. 2 and 3 were promoted that too after the amended RR came into operation which do not require to be interfered with under the guise of judicial review.

10. The stand of the private respondent Nos.4, 5 and 6 as pleaded would disclose that they were allowed to hold charge of AE/ASW on functional basis in their own pay grade of JE meaning thereby that they are not occupying any post of AE/ASW that fell vacant before the amendment of RR 2005. They are senior to the petitioners and have been given functional charge at their own pay and scale, more so, the posts are not substantive posts, but they were given the charge only to look after the Central Government Scheme called Total Sanitation Programme which thus do not require to be interfered with in the public interest.

11. An additional affidavit has been filed by the writ petitioners, contending inter alia that the respondent Nos. 2 and 3 have not been promoted against va

cant post of Shri Nyapum Konya and Shri Subat Pertin, on the other hand, the record would show that the process of promotion was initiated before Shri Nyapum Konya and Shri Subat Pertin were promoted to the next higher grade and hence the matter requires interference.

12. In the affidavit-in-reply filed by the petitioners against the counter affidavit filed by respondent No.1, it has been contended that the posts where the private respondents have been appointed/promoted were against vacancies occurred prior to amended RR, i.e. vacancies occurred in the years 2006, 2007 and latest by 13.8.2008.

13. The Court have considered the pleadings of the parties alongwith the judgment rendered by the Court in WP(C) No. 65(AP) 2008 and WP(C) No. 432(AP)2008 wherefrom it would reflect that in both the cases, the Court dealt with the RR prevailed prior to the amendment of RR 2005 and the Court set aside the impugned orders dated 12.11.2007 and 08.09.2008 respectively whereby the private respondent Nos. 2 and 3 were allowed to officiate as AE purely on ad hoc basis and to officiate as consultant (AE) under CCDU Scheme implemented in the State with funds provided by the Central Government. In both the writ petitions, the Court dealt with the provisions of the RR prior the amendment of RR 2005 holding that RR existed prior to the amendment of the RR 2005 holds the field.

14. Consequent upon the aforesaid judgment and order passed by this Court by orders dated 03.12.2008 and 04.06.2009 the promotional order of private respondent Nos. 2 and 3 were cancelled by the authority by reverting both of them to the posts of JE. It has also been brought on record whereof the respondent Nos. 2 and 3 have admitted in their counter affidavit that the judgments rendered by the Courts in WP(C) (AP) No. 65/2008 and WP(C) (AP) No.432/2008 dealt with the earlier RR 2005 before its amendment.

15. A glance of pleaded facts of the State respondent makes it abundantly clear that the ad hoc promotion made vide order No. PHE/SECP-10/2001 dated 25.08.2009 were not in order of merit and seniority in case of respondent Nos. 2 and 3. The functional charge to hold the post of AE/ASW made in favour of respondent Nos.4, 5 and 6 do not hold good as the same has been passed ignoring the provision of RR. Moreover, the observation made in WP(C) No. 3266 of 2006 would amply demonstrate that the respondent No. 2 herein as writ petitioner claimed consideration of his case for promotion as per RR 2005 existed prior to the amendment of the RR 2005.

16. In view of settled position in service jurisprudence as held by the court in WP(C) No. 428(AP) 2008 that the vacancies occurred prior to the amended RR must be filled up as per the provisions of earlier RR as the amended rules would not apply retrospectively, the ad hoc promotional order dated 25.08.2009 of the private respondents Nos.2 and 3 cannot stand in the eye of law. In case of functional charge to hold the post of AE/ASW by the private respondent Nos. 4, 5 and 6 dated 25.08.2009 is equally bad in view of infraction of the provisions of RR violating Article 14 of the Constitution of India.

17. For the foregoing reasons and discussions and keeping in view the decision rendered by the Division Bench of this Court in WP(C) No.428(AP)/2008, the Court has no other option but to allow the writ petition by setting aside and quashing the impugned orders issued on 25.08.2009 by the Secretary (PHE & WSD), Government of Arunachal Pradesh promoting the respondent Nos. 2 and 3 on ad hoc basis to officiate as AE/ASW and allowing respondent Nos.4, 5 and 6 to hold charge of the post of AE/ASW on functional basis.

18. The writ petition is, accordingly, allowed by setting aside the impugned orders dated 25.8.2009 (Annexures 5 and 6 to the writ petition) as indicated hereinabove. The parties are left to bear their own costs.

JUDGE

Mdb/gunajit