

(2001) 02 AP CK 0119
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 705 of 2000

Singareni Collieries Company Limited and Another	APPELLANT
Vs	
B.V.S. Vara Prasad and Others	RESPONDENT

Date of Decision : 09-02-2001

Acts Referred:

Citation : (2001) 2 ALD 435 : (2001) 2 ALT 447

Hon'ble Judges : S.B. Sinha, C.J;N.V. Ramana, J

Bench : Division Bench

Advocate : K. Srinivasa Murthy, for the Appellant; V. Jogaiah Sarma, for the Respondent

Judgement

S.B. Sinha, C.J.—This appeal is directed against the judgment and order dated 1-2-2000 passed by a learned Single Judge of this Court in Writ Petition No. 25133 of 1997 whereby and whereunder the writ petition filed by the respondents herein praying for grant of time bound promotion in terms of alleged policy decision adopted by the appellant herein was allowed.

2. The respondents-writ petitioners originally were appointed in Civil Engineering Department of the first appellant-Company. The writ petitioners 1 to 11 were appointed as Supervisors Grade-A. According to them, in terms of the promotional policy as was existing prior to 1991, there existed a provision for promoting the Diploma Holders from Grade-B to Grade-A on completion of three years of service and from Grade-A to Junior Engineer i.e., Executive Grade-I on completion of two years of service. The said petitioners were promoted to Supervisor Grade-A and thus their case is that the rest of the writ petitioners also ought to have been promoted on the dates specified by them in the Annexure annexed to the writ application. The further case of the writ petitioners is that in terms of the said policy decision itself, they ought to have been further promoted to Executive Grade-I upon completion of two years service. The learned Single Judge in his impugned judgment has himself referred to the said policy decision as would appear from the counter-affidavit filed on behalf of the

appellants herein, wherein it was stated:

"There is a provision in the respondent-Company for promotion of Diploma Holders from Grade-B to Grade-A on completion of three years" service, from Grade-A to Junior Engineer i.e., Executive Grade-I on completion of two years service subject to availability of identified vacancies."

(Underlining is of ours)

3. The learned Single Judge, however, without referring to the question as to whether there were existing identified vacancies or not, proceeded to observe that the statement made in the counter-affidavit was not clear. According to the learned Single Judge, when the promotion was time-bound, the same could not be linked to the existence of any fresh vacancy. It was held:

"What is envisaged by the time-bound promotion policy is that, a Supervisor working in Grade-A, on completion of two years in that Grade will automatically be promoted as Executive Grade-1. That being so, there is no need for a vacancy in Executive Grade-I, for in effect the so-called promotion is nothing but redesignation of the particular Supervisor Grade-A as Executive Grade-1. The said time bound promotional policy was admittedly given effect to earlier, but appears to have been given up in the year 1991."

4. The only question, which arises for consideration in this appeal, is as to whether the learned Single Judge exceeded his jurisdiction in passing the impugned order in so far as the same runs contrary to the policy decision of the appellants herein. The learned Counsel appearing on behalf of the respondents submits that as a matter of fact as some of the writ petitioners had been promoted earlier to the post of Supervisor Grade-A to Junior Engineer i.e., Executive Grade-I, there was absolutely no reason as to why the other petitioners were not so promoted. The learned Counsel would urge that in fact, having regard to the policy as existed prior to 1991, it was not a case of promotion but a redesignation of the posts carrying higher scale of pay. Ex facie, we do not agree to the aforementioned contention. The question as to whether the writ petitioners-respondents had an existing legal right as on the relevant date ought to have been determined by the learned Single Judge as on the day when such a right was claimed.

5. The question as to whether the writ petitioners-respondents had such a right at a point of time when the said policy was in existence is a question of fact, which was required to be determined having regard to the vacancy position as was obtaining thence. Such a finding of fact having not been arrived at by the learned Single Judge, in our opinion a manifest error was committed in holding that there was no need for vacancy in Executive Grade-I.

6. A policy decision adopted by the State may give rise to a legal right in favour of the employees. Such a legal right can be directed to be enforced only in the event the concerned employees fulfill the conditions laid down therein. If the

conditions precedent for exercise of that legal right were not obtaining, the question of enforcement of such policy decision would not arise.

7. For the reasons aforementioned, we are of the opinion that the impugned judgment cannot be sustained. Accordingly, the writ appeal is allowed, the impugned judgment is set aside and the matter is remitted to the appropriate Bench for consideration of the matter afresh. The writ petition may be placed before an appropriate Bench within four weeks from date. The parties shall be at liberty to file additional affidavits annexing therewith other documents, if any, in the meantime.