

**HON'BLE DR. JUSTICE K. MANMADHA RAO**

**WRIT PETITION Nos.18373 and 18271 of 2021**

**COMMON ORDER :**

Writ Petition No. 18373 of 2021 is filed under Article 226 of the Constitution of India for the following relief:-

*“to issue an order direction or writ more particularly one in the nature of Writ of Mandamus declaring the inaction of the respondents in considering the representation of the petitioner dated 30.12.2020 in extending special increment for attaining additional professional qualification of Mining Mate's Certificate of competency as was given to one D. Sriramulu, Foreman (ME) Emp.No.117976 as unjust, arbitrary and illegal, besides violation of Article 14 and 21 of the Constitution of India and direct the respondents to consider the representation of the petitioner dated 30.12.2020 and pass such other order or orders.....”*

Writ Petition No. 18271 of 2021 is filed under Article 226 of the Constitution of India for the following relief:-

*“to issue an order direction or writ more particularly one in the nature of Writ of Mandamus declaring the inaction of the respondents in effecting the appointment order of the petitioner as Mine Foreman on 24.02.2020 by 3<sup>rd</sup> respondent and continuing him as Chargeman only is arbitrary, unjust and illegal besides violation of Article 14 and 16 of the Constitution of India and direct the respondents to treat the petitioner as Mine Foreman with effect from 24.02.2020 with attendant benefit and pass such other order or orders.....”*

2. Since the facts and issue involved in both the Writ Petitions, I find it expedient to decide these matters by a Common Order. The parties are one and same in both the writ petitions.

3. The precise case of the petitioner is that he was working as Chargeman (ME) having been promoted from Master OCM (ME) in the year 2020. The petitioner appeared for examination conducted by the authorities on

07.03.2012 as per the Mines Act, 1952 and obtained Mining Mate's Certificate of competency. Therefore, the petitioner is entitled for the increment in the salary for attaining additional professional qualification as "Mine Mate". One Mr. D. Sreeramulu, Senior Foreman has also obtained certificate of competency as Mine mate on the same date along with the petitioner. The said Mr. D. Sreeramulu was facilitated with special increment with offence order dated 12.05.2015. Whereas, the case of the petitioner has not considered for the special increment, despite making several request. The petitioner made representation dated 30.12.2020 to the respondents dated 04.12.2020 seeking to consider to grant special increment as was given to one Mr. D. Sriramulu, but in vain. Therefore, W.P.No. 18373 of 2021 came to be filed to question the inaction of the respondents.

4. The petitioner made several representations to the respondents to grant special increment as was given to one D. Sriramulu, though the petitioner was qualified and obtained Mine Foreman's Certificate of Competency issued by the authorities, they did not consider the case of the petitioner is highly illegal and arbitrary. The respondents instead of giving the post of Mine Foreman to the internal employees engaged contract basis for the post, which are vacant by the Notification No. 03/2019/ Fixed Term tenure including the post of Mine Foreman (5 in Nos). The persons who were selected were appointed. Out of them one Sri Jokkoju Rajesham was appointed as Mine Foreman on tenure basis. Therefore, the action of the

respondents in ignoring the internal employees and calling outsiders on tenure basis is arbitrary and illegal. Hence W.P.No.18271 of 2021 came to be filed.

5. Heard Mr. Nuthalapati Krishna Murthy, learned counsel for the petitioner; learned Deputy Solicitor General of India appeared for the 1<sup>st</sup> respondent and Mr.V. Subrahmanyam, learned counsel for the respondents 2 to 5.

6. During hearing learned counsel for the petitioner reiterated the contents urged in the writ petition and mainly contended that the petitioner has qualified the examination and obtained competency certificate from the authorities. Therefore, his case can be considered for special increment on par with one D. Sriramulu, who is his colleague employee. Further, the petitioner is eligible for Mine Foreman, but ignoring the internal employees and calling outsiders on tenure basis is arbitrary and illegal. Therefore, requested to allow both the writ petitions.

7. *Per Contra*, the respondents 2 to 5 have filed counter-affidavit denying all material averments and mainly contended that in fact it was clarified by Mines Department that an employee working in mines department is eligible for one increment under incentive scheme for acquiring professional qualification on acquiring Mines Foreman Certificate of competency subject to his posting in the relevant statutory post. Therefore sanction of that increment to the petitioner shall be considered on holding the statutory post, as per the recommendations of Mines Department. Since the petitioner is not working in

statutory post after acquiring the Mines Foreman Certificate of competency due to which grant of increment was not considered in case of petitioner as per the scheme. The respondents considered the representation dated 30.12.2020 submitted by the petitioner vide letter dated 19.10.2021 and clarified that no discrimination was shown amongst employee by the management. The respondents acted in compliance to Incentive Scheme for acquiring Professional Qualifications and Policy and Rules for promotion of Non Executives. Hence, there is no discrimination or violation of law and that the writ petition is liable to be dismissed.

8. Perused the record.

9. The petitioner in his reply affidavit stated that once he has been authorized as Mine Foreman by virtue of appointment to that effect, it is for the respondents to assign whatever the duties of Mine Foreman and he obliged to perform the same. The petitioner being utilized as operator, but not as Mine Foreman even after acquiring Mines Foreman Certificate of Competency by the petitioner, due to which grant of increment was not considered as per scheme is not tenable plea as one increment sanctioned in case of one Sriramulu, who served at par with him. The petitioner is authorized to act as Mine Foreman in addition to existing duties as Chargeman (W)-ME is not correct on perusal of authorization appointing him as Mine Foreman. It is mainly contended by the petitioner that having possessed Mining Mate's Certificate of Competency, the petitioner is eligible to entitle incentive. The said D. Sriramulu did not possess Mine's Foreman Certificate of Competency

which the petitioner possessed. Therefore, basing on the Mining Mate's Certificate of Competency, incentive was given to said D. Sriramulu.

10. Whereas, in the additional counter affidavit filed by the respondents the petitioner presently working as Chargeman (W)-ME, has been authorized to act as Mine Foreman in addition to his existing duties as Chargeman(W) - ME. Hence, the petitioner has never performed the duties of Mine Foreman. Hence, the said point not affecting the order does not arise. It is further contended that with effect from 26.11.2008, RINL Incentive Scheme for acquiring qualification with reference to executives and non-unionized supervisors was regulated in terms of PP Circular No. 18/2010, dated 22.11.2010. An administrative decision was taken during December-2011 regulating the sanction of benefit under Incentive Scheme for acquiring qualifications in case of non- executives. Considering his seniority Mr. D. Sriramulu was granted one increment with an intention to utilize his services as Mining Mate in case of exigencies, as an administrative decision by the management of RINL-VSP. However, in the case of the petitioner, it was clarified by the Mines Department that he is not working in statutory post after acquiring the Mines Foreman Certificate of Competency due to which grant of increment was not considered as per the scheme of the Company.

11. It is further contended by learned counsel for the respondents that though the petitioner was authorized to work as Mine Foreman, he has not worked in the capacity of Mine Foreman as required in The Metalliferous Mines Regulations 1961. The petitioner is working as Chargeman (S) – ME as

on date. The authorization provided to the petitioner is no longer valid as the Mines Manager who had released during June-2021 on transfer to Garbham Manganese Mine, Garbham, as required under Regulation 39 of Metalliferous Mines Regulations 1961; the authorization issued earlier is neither countersigned nor issued afresh. Thus, the authorization is invalid. It is evident from the records that the petitioner is not holding any statutory post as on date. There are different posts namely Manager, Assistant Manager etc., are made under the provisions of the Mines Act are statutory posts and their duties and responsibilities are provided from regulations 412 to 59 of the Metalliferous Mines Regulations, 1961. As per notification No. 3/2019/ Fixed Term Tenure was issued and engaged Mine Foreman on tenure/ contract basis for a period of 3 years at Madharam Dolomite Mine and Jaggayyapeta Limestone Mine. There is no policy for appointing the internal regular employees of the Company as Mine Foreman/ Mining Mate on tenure/ contract basis. The above said posts shall cease to exist after three years.

12. No doubt, the petitioner is authorized as competent person to work as Mine Foreman-cum-operation of HEMM and the petitioner also accept authorization as Mine Foreman and the same was acknowledged the same on 06.10.2023 as per Form of Appointment of Competent Person. Whereas, the petitioner is not working in statutory post after acquiring the Mines Foreman Certificate of Competency due to which grant of increment was not considered in the case of the petitioner as per the Scheme as contended by the respondents. Further, based on seniority having more than 22 years of service

in the mine as on date of sanction of increment Mr. D. Sri Ramulu was granted one increment as per administrative decision by the Management. But the Department is being utilized as operator and not working in statutory post, therefore his request is not considered by the respondents.

13. Though, the petitioner is having mines Foreman Certificate of Competency issued by the respondents, but he is not working in statutory post. Further Mr. Sri Ramulu was granted one increment as per administrative decision by taking into consideration of his seniority. Therefore, the petitioner cannot be questioned the same.

14. Having regard to the facts and circumstances of the case and upon perusal of the material on record and considering the submissions of both the counsel, this Court finds that the petitioner is not entitled to claim any relief in this writ petitions at this stage, in the light of discussions stated supra.

15. Accordingly, this Writ Petitions are dismissed by a Common Order. There shall be no order as to costs.

The miscellaneous applications pending, if any, shall also stand closed.

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**DR. JUSTICE K. MANMADHA RAO**

Date: 26.07.2024

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**26.07.2024**

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