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**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3603]

WEDNESDAY, THE 8th DAY OF JULY 2026

PRESENT

THE HONOURABLE SRI JUSTICE D RAMESH

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

WRIT APPEAL NO: 79/2026

Between:

1.P MAHAMMAD RAFEEQ, S/O P. CHAND BASHA, AGED ABOUT 51 YEARS, WORKING AS JUNIOR ASSISTANT, PRESENTLY POSTED IN THE OFFICE OF THE DEPUTY EXECUTIVE ENGINEER, HNSS SUB-DIVISION NO. 1, DIVISION-6, ANANTAPUR, O/O THE SUPERINTENDING ENGINEER, HNSS CIRCLE NO.II, ANANTAPURAMU DISTRICT.

...APPELLANT

AND

1.THE STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY, IRRIGATION DEPARTMENT, SECRETARIAT, AMARAVATI, GUNTUR DISTRICT.

2.THE SUPERINTENDING ENGINEER, HNSS CIRCLE NO.II,ANANTAPURAMU, ANANTAPURAMU DISTRICT..

...RESPONDENT(S):

Counsel for the Appellant:

1.D SUDHARSHAN

Counsel for the Respondent(S):

1.GP FOR SERVICES II

The Court made the following:

THE HONOURABLE SRI JUSTICE D.RAMESH
THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR
WRIT APPEAL No.79 of 2026

JUDGMENT: *(Per Hon'ble Sri Justice D.Ramesh)*

The present writ appeal is filed assailing the order dated 16.12.2025 passed by the learned Single Judge in W.P.No.34910 of 2025. By the impugned order, the writ petition filed by the appellant, seeking consideration for promotion to the post of Senior Assistant without reference to the pendency of C.C.No.100450 of 2019, was disposed of.

2. Heard learned counsel for the appellant and learned Government Pleader for Services-II appearing for the respondents.

3. The appellant was initially appointed as Junior Assistant in HNSS Circle-II, Anantapuramu District in the year 2000 and his probation was declared on 07.12.2002. While so, a case in Crime No.380 of 2017 dated 25.12.2017 was registered against the appellant and thereafter, a charge sheet was filed, which was numbered as C.C.No.100450 of 2019 on the file of Special Judicial First Class Magistrate for trial of cases under PCR Act-

cum-II Additional Junior Civil Judge, Anantapuramu. The appellant was placed under suspension due to the pendency of the criminal case against him and subsequently, he was reinstated into service on 26.07.2019. However, there is no progress in the criminal case though eight years have been elapsed. It is stated that the respondents are not considering the case of the appellant for promotion, though he is eligible to be considered for promotion to the post of Senior Assistant. Therefore, he filed W.P.No.34910 of 2025 seeking a direction to the respondents to consider his case for promotion to the post of Senior Assistant without reference to the pendency of the above said criminal case. By the impugned order, the writ petition was disposed of, leaving it open to the appellant to re-agitate his claim after disposal of the criminal case. Aggrieved by the same, the present writ appeal is filed.

4. Learned counsel for the appellant has made his submissions based on Rule 5(b)(i) of the Andhra Pradesh State and Subordinate Service Rules, 1996. The said provision reads as follows:

“5(b) Non-selection posts:- No non-gazetted post should be treated as selection post. Promotion and

appointment by transfer to higher posts other than those mentioned in sub-rule (a) shall be made in accordance with seniority-cum-fitness, unless:

- (i) such promotion or appointment by transfer of a member has been withheld as a penalty.”

5. He further placed reliance on the judgment passed by the Division Bench of this Court in W.A.No.550 of 2022, dated 06.09.2022, wherein it was held as follows:

“7. In the Division Bench judgment in **State of Andhra Pradesh rep., by its Secretary, Home Department vs. Motupalli Narasimha Raju (W.P.No.3099 of 2017)**, dated 27.08.2021, a Coordinate Bench has held that the post of Head Constable is a non-selection post for the purposes of promotion and therefore, in view of Rule 5(b)(i) of the Rules, 1996, the promotion can be deferred only upon imposition of penalty and not otherwise. It has also been held that the additional embargo, if any created under a G.O., which is not issued in exercise of powers under Article 309 of the Constitution of India, would not override Rule 5(b)(i) of the Rules, which clearly states that promotion to a non-selection post may be denied only if the incumbent is subjected to a penalty and not otherwise. Thus, neither G.O.Ms.No.424, GA (Ser.C) department, dated 25.05.1976 nor G.O.Ms.No.66, General Administration (Services.C) department, dated 30.01.1991 would come in the way of the writ petitioner to claim relief of promotion as has been held by the learned single Judge ...”

6. Considering the above rule position as well as the observations made by the Division Bench, this Court has disposed of several writ petitions, including W.P.No.3906 of 2026.

7. In view of the above, the Writ Appeal is allowed setting aside the order dated 16.12.2025 passed by the learned Single Judge in W.P.No.34910 of 2025. The respondents are directed to consider the case of the appellant for promotion to the post of Senior Assistant, if he is in the zone of consideration, in terms of Rule 5(b) of the Andhra Pradesh State and Subordinate Service Rules, 1996, without reference to C.C.No.100450 of 2019. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE D.RAMESH

JUSTICE ALAPATI GIRIDHAR

Date: 08.07.2026

Ivd

Whether the order is:

Speaking	Yes	Reasoned	No
Reportable	No	Non-reportable	Yes

THE HONOURABLE SRI JUSTICE D.RAMESH
THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

WRIT APPEAL No.79 of 2026

Dated: 08.07.2026

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