

APHC010181482026



IN THE HIGH COURT OF ANDHRA PRADESH

AT AMARAVATI

[3208]

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE D RAMESH

WRIT PETITION NO: 10267/2026**Between:**

1.D. SANDEEP KUMAR, S/O D. YESOPU, AGED 36 YEARS,
OCC SENIOR ASSISTANT, O/O DISTRICT MINES AND
GEOLOGY, CHITTOOR CHITTOOR DISTRICT, ANDHRA
PRADESH

...PETITIONER**AND**

1.THE STATE OF ANDHRA PRADESH, REP.BY ITS,
PRINCIPAL SECRETARY INDUSTRIES AND COMMERCE
DEPARTMENT (MINES), A.P. SECRETARIAT,
VELAGAPUDI, AMARAVATI, GUNTUR DISTRICT 522238

2.THE DIRECTOR OF MINES AND GEOLOGY,
IBRAHIMPATNAM, VIJAYAWADA, N.T.R. DISTRICT,
ANDHRA PRADESH-521456

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of a writ of mandamus, declaring the action of the respondents in not considering the case of petitioner

for promotion to the post of Office Superintendent without reference to the charge memo vide proceedings No. 2846789/E1/ACB/2019-5 dated 14-07-2021 of the 2nd respondent is illegal, arbitrary, unjust, contrary to Rule 5 (b) (i) of A.P. State and Subordinate Service Rules, 1996 and violation of Article 14, 16 and 21 of the Constitution of India and consequently direct the respondents to consider the case of petitioner for promotion to the post of Office Superintendent in the ensuing promotions without reference to pendency of disciplinary proceedings initiated vide proceedings No. 2846789/E1/ACB/2019-5 dated 14-07-2021 of the 2nd respondent in terms of Rule 5 (b) (i) of A.P. State and Subordinate Service Rules, 1996, and pass such

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Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to direct the respondents to consider the case of petitioner for promotion to the post of Office Superintendent in the ensuing promotions without reference to pendency of disciplinary proceedings initiated vide proceedings No. 2846789/E1/ACB/2019-5 dated 14-07-2021 of the 2nd respondent in terms of Rule 5 (b) (i) of A.P. State and Subordinate Service Rules, 1996, pending disposal of the above writ petition and pass such

Counsel for the Petitioner:

1.KAVITHA GOTTIPATI

Counsel for the Respondent(S):

1.GP FOR MINES AND GEOLOGY

The Court made the following:

ORDER:

1. This Writ Petition is filed under Article 226 of the Constitution of India seeking to declare the action of the respondents in not considering the case of the petitioner for promotion to the post of Office Superintendent without reference to the charge memo vide proceedings of the 2nd respondent dated 14.07.2021, as illegal and arbitrary.
2. Heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.
3. The case of the petitioner is that the 2nd respondent has not considered the case of the petitioner for promotion to the post of Office Superintendent, though the petitioner is fully eligible and qualified to hold the said promotional post. It is contended that the claim of the petitioner for promotion falls under Rule 5(b)(i) of the State and Subordinate Service Rules, 1996 and the action of the 2nd respondent in not considering the case of the petitioner is illegal and arbitrary.
4. The learned counsel for the petitioner submits that the subject matter of the present writ petition is squarely covered by the order

passed by this Court in W.P.No.3873 of 2026, dated 10.02.2026, and seeks similar relief in the present case.

5. The issue involved in the present case has already been considered by a Division Bench of this Court in W.A. No.550 of 2022 (State of A.P. vs. Ch. Venkata Rao), wherein it was held as follows:

“4. On the other hand, the learned Government Pleader for Services I has referred to G.O.Ms.No.66 General Administration (Services.C) Department, dated 30.01.1991 to contend that when charges of misconduct are framed by the competent authority and served on the concerned delinquent officer, or a charge sheet has been filed against him in criminal court, his case for promotion is required to be deferred.

5. We have heard Mr. Aswartha Narayana, learned Government Pleader for Services I appearing for the appellants and Mr. G. Seena Kumar, learned counsel for the respondent/writ petitioner, and perused the material available on record. The learned single Judge has referred to the Judgment rendered by the Division Bench of this Court in the case of State of Andhra Pradesh rep., by its Secretary, Home Department vs. Motupalli Narasimha Raju (W.P.No.3099 of 2017), dated 27.08.2021, to hold that G.O.Ms.No.424 GA (Ser.C) department, dated 25.05.1976 is not applicable in the case of the petitioner, who is a constable and it is applicable to the selection post falling under Rule 5(a) and Rule 6 of the Rules, 1996, and the said G.O., does not come in the way of the petitioner to claim promotion during pendency of the departmental proceedings and therefore, the petitioner is entitled to the relief claimed for.

7. In the Division Bench judgment in Motupalli Narasimha Raju (supra), 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. The writ appeal has no substance and it deserves to be dismissed.

6. Following the ratio laid down by the Division Bench, a Coordinate Bench of this Court in W.P. No.21608 of 2024 disposed of a similar writ petition on identical terms. The said legal position is not disputed by the learned Government Pleader.

7. Accordingly, the present writ petition is disposed of, without going into the merits of the case, with a direction to the respondent authorities to consider the case of the petitioner for promotion, 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 the Articles of Charge, dated 14.07.2021, issued by the 2nd respondent. There shall be no order as to costs.

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

JUSTICE D.RAMESH

Date:21.04.2026
GK

THE HONOURABLE SRI JUSTICE D.RAMESH

WRIT PETITION NO: 10267 of 2026

Dated:21.04.2026

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