

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

-

WRIT PETITION No.20781 of 2003

Date:26.11.2015

Between:

Smt. V. Sailaja

... Petitioner.

AND

Osmania University rep by its
Registrar, Hyderabad and others.

...Respondents.

The Court made the following:

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

-

WRIT PETITION No.20781 of 2003

ORDER:

This writ petition is filed to declare the action of authorities in not considering petitioner's appointment to the post of Assistant Professor in the Department of Linguistics, Osmania University, Hyderabad as arbitrary, illegal, discriminative and violative of fundamental rights guaranteed under Articles 14 & 16 of the Constitution of India.

2. Petitioner contended that pursuant to the notification under Advertisement Nos.2 & 3/1996, dated 25-3-1996, issued by Osmania University, Hyderabad calling for applications for filling up of the posts of Readers and Lecturers in various subjects including Linguistics, she applied for appointment to the post of Lecturer in Linguistics and she was called for interview on 22-08-1997. She further asserted that she was selected for the said post under Women's quota and empanelled as first candidate by the Selection Committee for appointment to the post of Lecturer in Linguistics, however, the Executive Council of the Osmania University has not approved the recommendations of the Selection Committee for filling up of the post and no appointment order was given to her and also to the respondent No.3. Then both filed writ petitions bearing W.P.No.15889/1998 by the petitioner and W.P.No.5241/1998 by third respondent and both the writ petitions were heard together. She further asserted that Osmania University has filed counter stating that the Executive Council has not approved the recommendations of the Selection Committee and for that reason, they were not appointed to the post. She further stated that this Court through order dated 16-10-1998 has disposed of both the writ petitions by a common order holding that decision shall be taken considering the recommendations sent by the Osmania University under Section 19 of A.P. Universities Act, 1991 within six weeks, but the Government has not communicated their decision in spite of several representations by the petitioners. She further asserted that when she approached the Head of Department, he was always giving answer saying that they already addressed to the Government and Court's decision regarding filling up of the posts of Lecturers and Professors, is awaited. She further asserted that in spite of representations, no action is taken, but latter on, she came to know that Government accorded permission to fill up the posts and pursuant to the said permission, the third respondent was appointed as Assistant Professor in the

Department of Linguistics, Osmania University, Hyderabad through an order dated 18-09-2003 and her case is also similarly situated and she was at Serial No.1 in the panel, but the Government, without considering her case first, considered the case of third respondent and the said action is illegal, arbitrary, malafide and discriminative.

3. First respondent filed counter disputing the affidavit averments of the petitioner and contended that University advertised for one post of Professor in Open Category and two posts of Lecturers (one reserved for woman and other reserved for BC-D), following the roster and the rule of reservation.

Sri Mohd. Ansari, who belongs to BC-B group, applied for the post of Lecturer, meant for BC-D group and he was called for interview, as there was no candidate of BC-D and BC-A groups in terms of condition No.5 of the advertisement. It is further contended that Selection Committee interviewed the candidates on 22-08-1997 and recommended the names of the candidates viz., Dr. A. Usha Devi for the post of Linguistics and Ms V. Sailaja & Sri Mohd. Ansari (BC-B) in place of BC-D as there was no candidate from BC-D and BC-A groups for the post of Lecturer in Linguistics. It is further contended that the Executive Council in its meeting held on 23-09-1997 & 27-09-1997 keeping in view of the opinion expressed by the Finance Secretary, Government of Andhra Pradesh and Director of Collegiate Education, Andhra Pradesh decided not to approve the selection of fresh candidates in the Department of Linguistics and Philosophy and that no appointment shall be made where there is no work load. It is further stated that Sri Mohd. Ansari filed W.P.No.5241 of 1998 before the Hon'ble High Court and the Hon'ble High Court disposed of the Writ Petition on 16-10-1998, directing the Secretary, Higher Education to take appropriate decision in the matter and communicate the same to the University within a period of six weeks. It is further stated that the statement of the petitioner that her writ petition and writ petition of third respondent are disposed of by a common order dated 16-10-1998 is not correct and on the contrary, the Hon'le High Court disposed of the writ petition filed by the third respondent only on 16-09-1998. It is further contended that Government of Andhra Pradesh issued G.O.Ms.No.1140, dated 05-11-1999 to the effect that Government in the light of

the orders of the Hon'ble High Court in W.P.Nos.9107 & 5241 of 1998 and with the concurrence of Finance Department, permitted the University to make appointments in the Department of Linguistics and in pursuant to the notification No.3/96, dated 25-03-1996 in respect of the candidates, who were selected in the interview, the said G.O.Ms.No.1140, dated 05-11-1999 was issued even without a request made by the University. It is further stated that the Selection Committee did not provide any ranking and the Selection Committee selected the petitioner under OC (W) category, whereas Md. Ansari was selected under BC-B category and as such, there was no first and second candidate and the panel system. It is further stated that University has to follow the directions of the State Government particularly in terms of Section 49 of A.P. Universities Act, 1991 and all the appointments shall have financial implications and the State Government is the funding institution. In view of the same, the petitioner has no right to seek mandamus against the first respondent for issuing the appointment order and that the writ is liable to be dismissed.

4. Third respondent filed separate counter contending that the petitioner has not placed the correct facts before the Court and the post in the University is to be filled by following roster as mentioned in G.O.No.420 and the roster point No.89 is earmarked and reserved for BC community and the next point in the roster was also allotted to the Linguistics Department and this roster point No.90 is earmarked for the Women in OC category. It is further stated that the post in 89th roster point is to be filled first and the post earmarked for the 90th roster point is to be filled later and there is no common merit list for both the posts. It is further contended that the Government has decided to fill one post in Linguistics, after considering various issues including the necessity, due to retirement of one reader and one professor going on long leave in which case, first roster point is to be filled first. It is stated that there is no common panel as contended by the petitioner. It is also contended that the petitioner without challenging Government Order No.1140 through which the third respondent was appointed cannot question the appointment and that the writ petition is misconceived and liable to be dismissed.

5. Heard both sides.

6. Both Advocate for petitioner and Advocate for respondents submitted their arguments supporting respective contentions of their clients raised in the affidavit and counter affidavits.

7. Though petitioner contended that there was a panel prepared on the basis of interviews conducted on 22-08-1997, the University disputed the same so also the third respondent. According to petitioner, she is at Serial No.1 in the panel and without considering her candidature, candidature of third respondent who is second in the panel cannot be accepted, but there is absolutely no material to support the version of the petitioner that a panel was prepared on the basis of interviews conducted on 22-08-1997. As seen from the counters of the University and third respondent, there is no such panel and the names of these candidates were considered individually as per roster points. Third respondent raised a plea that roster point No.89 is meant for BC and roster point No.90 is for O.C-Women and in that way, the third respondent would stand first and only after his appointment, the filling up of next roster point i.e., roster point No.90 would arise. Admittedly, claim of petitioner is under OC-Women and she would only come under roster point No.90. When such roster rule is pleaded and stated, no objection is raised by the petitioner by way of any reply affidavit challenging the correctness of facts stated by the University and third respondent.

8. There is no dispute that both petitioner and third respondent filed separate writ petitions before this Court and a direction was given in the writ petition filed by third respondent to the Government to consider the candidature of third respondent. Petitioner specifically stated in her affidavit that her writ petition and the writ petition filed by third respondent were disposed of by a common order dated 16-10-1998, but this statement is apparently incorrect when the orders in the W.P.Nos.5241/98 & 15889/98 are perused.

9. Learned Advocate for petitioner today produced a copy of the order in

W.P.No.15889 of 1998 and as seen from that order, the Writ Petition filed by petitioner herein was disposed of by holding that her writ petition was covered by direction in W.P.No.5241/1998 dated 16-10-1998. In W.P.No.5241/1998, a specific direction was given to the Government to consider the candidature of third respondent herein who is the writ petitioner in W.P.No.5241 of 1998 no such direction was given in respect of petitioner in her W.P.No.15889 of 1998. Therefore, the petitioner cannot be allowed to contend that the relief extended to the third respondent in W.P.No.5241 of 1998 is also to be extended to her. As seen from the material, the Executive Council of the Osmania University took a decision not to approve the selection keeping in view of the opinion expressed by Finance Secretary and Director of Collegiate Education, Government of A.P., but the candidature of third respondent was considered only on account of direction given by this Court in W.P.No.5241/1998, therefore, the action of the first respondent in appointing third respondent cannot be held as arbitrary, illegal, discriminative and malafied. The petitioner has miserably failed in showing that she is entitled for appointment before appointing third respondent.

10. For these reasons, I am of the view that the writ petition is liable to be dismissed as devoid of merits.

11. Accordingly, writ petition is dismissed as devoid of merits. No costs.

12. As a sequel, miscellaneous petitions, if any, pending in this writ petition, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:26.11.2015

mrh

