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THE HON'BLE SRI JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT APPEAL Nos.1332, 1363 and 1364 of 2012

AND

WRIT PETITION Nos.28135, 28270, 29490, 29514

and 30675 of 2012

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COMMON ORDER: (Per Hon'ble Sri Justice A.Ramalingeswara Rao)

These Writ Appeals and Writ Petitions are being disposed of by this common order in view of the common facts and law involved in these cases. We have heard the learned Counsel for the parties at length and they consented for disposal of all these cases by this common order.

The respondents in the Writ Appeals and the present writ petitioners (hereinafter referred to as the respondents) claim benefit of employment under the land oustee category as their lands were taken over by the appellants in the Writ Appeals (hereinafter referred to as the appellants) for the purpose of Simhadri Super Thermal Power Project. The present Writ Appeals were directed against the common order dated 28.08.2012 passed in three Writ Petitions filed by the respondents in the Writ Appeals.

The undisputed facts in this case are the lands of the respondents were acquired for the purpose of construction of Simhadri Super Thermal Power Project at Visakhapatnam. They received compensation for the lands acquired from them. The appellants evolved a scheme for providing employment under the land oustee/land loser category. They issued a notification in the year 2001

notifying 101 vacancies in the posts of Artisan Trainee and Diploma Trainee. Only 51 candidates were appointed as Artisan Trainees and Diploma Trainees. Another notification was issued in the year 2003 for filling up those posts notifying 50 vacancies. But, the selections were not finalized. However, another notification was issued on 01.04.2010 and candidates were called from Employment Exchange for filling up the vacancies of 85 posts of Artisan Trainees and Diploma Trainees. A written examination was conducted on 01.08.2010 and the respondents appeared for the said examination. At that time, the respondents were made to understand that the written examination was for 90 marks and the interview was for 15 marks totaling to 105 marks. They were called for interview during the period 08.09.2010 to 17.09.2010. A final selection list was published on 12.12.2011 selecting 47 candidates as Artisan Trainees and 7 candidates as Diploma Trainees. Challenging their non-selection Writ Petitions were filed by the respondents.

A counter affidavit was filed in those writ petitions admitting that the respondents come under the land oustee category and they were paid compensation amount under a consent award. At the time of payment of compensation, there was a stipulation that no employment would be provided and no scheme was envisaged for providing employment. It was also admitted that a notification was issued to Employment Exchange notifying 101 vacancies in the year 2001 and another notification was issued in the year 2010 for filling up of 110 vacancies. It was further admitted that a written test was conducted on 01.08.2010 and those who were successful in the written test were called for interview. It was stated that though the written test was initially conducted for maximum of 90 marks, it was apportioned to a total of 75 marks and the interview was fixed for 25 marks. A total of 277 candidates appeared for interview for the posts of Artisan Trainees/Diploma Trainees and based on the performance in the written test and interview, the respondents were not recommended by the selection committee for employment. The candidates who were qualified in the written test were called for interview in the ratio of 1:3. Out of 110 vacancies, 54 candidates were selected and out of 54 candidates, 12 candidates belonged to reserved category. Though the respondents were not assured of any employment, efforts were made to engage the Project affected persons to the extent possible. Hence, some jobs

were earmarked for them in the unskilled and semi-skilled category and preference was given to them. The respondents filed reply affidavits challenging the selection process and pointed out several inconsistencies with regard to allocation of marks in terms of minimum qualifying marks in the written examination and change of marks earmarked for interview after completion of the written examination.

Based on the above pleadings, the learned single Judge, noting that through the reply affidavits of the respondents they made out a new case, held that they were entitled to do so as the facts relating to the rejection of their candidature only came to light after the appellants disclosed in their counters the relevant facts in this regard. It appears that an opportunity was given to the appellants to file an additional counter affidavit, wherein it was stated that they have entrusted the task of conducting written test to a professional agency by name 'Merit Trac'. It conducted the test for 864 candidates and allocated them marks for a maximum of 90. The said marks were thereafter reduced to 75 proportionately and those who passed were called for interviews in the ratio of 1:3. The assessment was thus made for a maximum of 100 marks – 75 for written test and 25 for interview. Since the respondents did not secure the minimum qualifying marks in the interview, they were denied employment.

The learned single Judge summoned the records and after perusing the same, noticed several irregularities in the selection process and by relying mainly on **Hemani Malhotra v. High Court of Delhi** and **K.Manjusree v. State of Andhra Pradesh** held that the prescription of minimum qualifying marks for the interview after completion of the written test was patently illegal and thus, rejection of candidature of the respondents was held to be illegal. Learned single Judge directed the appellants to reconsider the cases of the respondents in the light of their performance in the written test and in the event of their qualifying in the written examination, they should be considered for appointment in the available vacancies of the posts to which they aspired for.

Against the said order of the learned single Judge, the present Writ Appeals were filed by the appellants. The other candidates, who were denied

employment, filed the present Writ Petitions, which are clubbed along with these Writ Appeals.

Learned Senior Counsel for the appellants relied on Recruitment Policy and Procedures of the appellants and submitted that it enables them to fix minimum qualifying marks for the written test as well as interview. It is also submitted that nowhere it was indicated with regard to the maximum marks allocated to the written test and interview.

It is an admitted case of the parties that the written test was held for 90 marks and the marks were awarded to the candidates accordingly. Thereafter, for the inexplicable reasons, a decision was taken on 03.09.2010, though before the commencement of interview, to earmark 25 marks for interview and fix the minimum qualifying marks of 12.5 for general and 9 marks for OBC/SC/ST candidates and proportionately change the marks of the written test to 75. No reasonable explanation was given by the learned Counsel for the appellants for this change of policy of the selection process. Learned Counsel for the appellants could not support the decision of the management to fix the marks of 25 marks for interview and further fixing the minimum marks for general candidates and reserved candidates in the midst of selection process. The ratio of the decisions of the Supreme Court in **Hemani Malhotra's** case and **K.Manjusree's** case (supra), on which reliance was placed by the learned single Judge, does not support the case of the appellants and hence, we are of the opinion that the learned single Judge has rightly held that it is impermissible for the appellants to change the rules of the game while the game is in progress. Learned Counsel for the appellants could not show any provision in the Recruitment Policy and Procedures in support of such a decision.

Learned single Judge had taken pains to go through the record and after going through the same, observed as follows:

“It is also to be noticed that the qualifying mark for the written test ranged between 34.44% and 46.66% for general category candidates; 30% and

40% for OBC candidates; 32.22% and 45.55% for SC candidates; 27.77% and 32.22% for ST candidates. However, when it came to the interview, the qualifying mark was 50% for general category candidates and 36% for reservation category candidates. This disparity in the qualifying mark for the written test and the interview is also not explained. Perusal of the actual record of selection reflects that some of the candidates who were found suitable and were provided employment did not secure the reduced qualifying mark in the written test. Yet, they were selected on the basis of the qualifying mark in the interview alone. Further, a cursory glance at the Selection Committee proceedings reflects that the candidates with roll numbers 1203259, 1203099, 1203276, 1203075, 1203195 and 1203004, who had all aspired for the posts of Artisan Trainee (Mechanical) in the OBC category, secured 25 marks in the written test. However, except for the candidate with roll number 1203259, who was given 14 out of 25 marks for the interview, all the others were given marks of 7 and 8 only, whereby they were excluded from the zone of consideration. Similar such instances abound in the Selection Committee proceedings. For instance, the candidate with roll number 1203309 secured 25.83 marks in the written test but was found suitable as he secured 13.5 marks in the interview. However, the candidate with roll number 2203476 who secured 35 marks in the written test failed to attain suitability as he was awarded only 7 marks in the interview. The scope for manipulation and arbitrariness in the interviews is therefore writ large.”

In view of the above, the learned single Judge directed the appellants to consider the respondents for appointment in the available vacancies of the posts to which they aspired for based on their performance in the written test, and we do not find any error in such finding.

We are conscious of the fact that all the respondents belong to land oustee category and they have been waiting for employment for the last fifteen years and they came out successful in the written test. They were denied employment due to fixing of minimum qualifying marks in interview after completion of the written test without notifying the same either in the call letter given to them for interview or earlier. Though the learned Counsel for the appellants submitted that they would consider the cases of respondents for employment, provided they undergo the process of interview, in the facts and circumstances of the case, in view of the sudden change in the policy of fixing of higher marks in the interview and fixing minimum marks giving rise to

arbitrariness, we think that such a course of action is not warranted. Since the respondents underwent the process of written test for 90 marks, the direction given by the learned single Judge is proper in the facts of the case.

In view of the above, the Writ Appeals deserve to be dismissed. Writ Appeal Nos.1332, 1363 and 1364 of 2012 are, accordingly, dismissed. In view of allowing of the earlier Writ Petitions by the learned single Judge and dismissal of the present Writ Appeals by us, the present Writ Petitions, being Writ Petition Nos.28135, 28270, 29490, 29514 and 30675 of 2012, deserve to be allowed and they are, accordingly, allowed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(DILIP B. BHOSALE, J)

(A.RAMALINGESWARA RAO, J)

25.03.2015

vs

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