

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-
WRIT PETITION No.35311 of 2014

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This Writ Petition is preferred against the order passed by the Andhra Pradesh Administrative Tribunal in O.A.No.8650 of 2013 dated 06.03.2014. The first respondent herein was initially appointed as a Kamati and posted at the Government Backward Classes Boys' Hostel, Repalle vide proceedings dated 18.06.2003. While she was working as a Class-IV employee, she submitted a representation that she be promoted as a Hostel Welfare Officer, Grade-II, in the existing vacancy, as she had passed B.A. degree from Magadha University. The first respondent was thereafter promoted as Hostel Welfare Officer Grade-II, and posted at the Government B.C. Girls' Hostel, Atchampet, on exemption being granted to her, in terms of G.O.Ms.No.15, Backward Classes Welfare (A2) Department dated 16.05.2005, by proceedings dated 26.02.2008.

G.O.Ms.No.15 dated 16.05.2005 enabled a graduate, who had crossed 45 years of age, to be exempted from acquiring B.Ed. qualification for promotion to the post of Hostel Welfare Officer Grade-II. However Class-IV employees, who had not crossed 45 years of age, were only entitled to be given promotion, as Grade-II Hostel Welfare Officers, on an *ad hoc* basis subject to the condition that they shall acquire B.Ed. qualification within three years of their promotion. The first respondent was promoted as Hostel Welfare Officer Grade-II on condition that she acquires B.Ed. qualification within three years. On the ground that she failed to acquire B.Ed. qualification, and the three year period had expired by 25.06.2011, a Memo dated 08.07.2013 was issued calling upon her to inform whether she had acquired the requisite qualifications. The first respondent was reverted, to the Class-IV post, vide proceedings dated 04.12.2013. Aggrieved thereby, she invoked the jurisdiction of the Tribunal.

By the order under challenge in this Writ Petition, the Tribunal held that the Government, in the case of employees in the Social Welfare Department, had amended the rules, and had exempted Class-IV employees from acquiring B.Ed. qualification, for promotion to the post of Grade-II Hostel Welfare Officer, vide G.O.Ms.No.20 dated 28.02.2004; G.O.Ms.No.47 dated 22.05.2009 was issued in respect of similar employees in the Tribal Welfare Department; though more than 3½ years had lapsed, the Government had not taken any decision on the proposals sent by the Commissioner of B.C.Welfare to grant a similar exemption for employees in Backward Classes Department; the applicants, who are similarly situated and are performing the same functions as those discharged by their counterparts in the Social Welfare and Tribal Welfare Departments, are being discriminated against; they have not been extended the benefit of promotion to the post of Grade-II Hostel Welfare Officers against the 10% quota; it is not even the case of the Government that some other eligible Class-IV employees are available for promotion and they were, therefore, compelled to revert the applicants; and, as the Commissioner of Backward Class Welfare was convinced that the benefits (which were extended to similarly situated persons in the Social Welfare and Tribal Welfare Departments), needs to be extended to the applicants also, who were occupying the post of Hostel Welfare Officer Grade-II in the Backward Classes Department, the order of reversion was arbitrary and illegal and was, accordingly, set aside.

Learned Government Pleader for Services would submit that, as the applicable provisions for the Social Welfare and Tribal Welfare Departments are distinct and different from those provisions applicable to the Backward Classes Welfare Department, the Tribunal had erred in granting benefits to employees in the Backward Classes Welfare Department, though no such rule is available; the mere fact that a proposal has been sent, by the Commissioner of Social Welfare, would not automatically render Class-IV employees, in the Backward Classes Welfare Department, eligible for promotion without possessing the B.Ed qualification; and the Tribunal had erred in granting the relief sought for.

On the other hand, Sri S.Satyanarayana Rao, learned counsel for the respondents, would submit that, hitherto, there was one common department for social welfare, tribal welfare and backward classes welfare; all the employees, working in the said department, were being treated uniformly; the social welfare department was later trifurcated into social welfare, tribal welfare and backward classes welfare; the exemption which has been granted to employees, in the social welfare and tribal welfare departments, should be extended to employees in the backward classes welfare department also; and, in any event, the first respondent has since crossed 45 years of age and has also acquired B.Ed. qualification. Learned Counsel would rely on a judgment of the Division Bench of this Court in W.P.No.5100 of 2014 dated 24.02.2014 in this regard wherein a similar relief was granted to an employee in the backward classes department itself.

The requirement of G.O.Ms.No.15 dated 16.05.2005, for employees who crossed 45 years of age, is for their promotion as Hostel Welfare Officers Grade-II without having to acquire B.Ed. qualification. However those employees, who did not cross 45 years of age, were still entitled to be promoted as Hostel Welfare Officers Grade-II, provided they possess a bachelor's degree, subject to the further condition that they acquire B.Ed. qualification within three years of their appointment. The first respondent herein was below 45 years of age when she was initially promoted as Hostel Welfare Officer Grade-II, and the promotion was subject to the condition that she should secure B.Ed. qualification within three years of her promotion. It is also not in dispute that she did not acquire the said qualification within three years.

The question whether the first respondent should be treated on par with employees of the tribal welfare and social welfare departments, and be granted exemption from passing B.Ed. qualification, is a matter for the Government to consider, and not for this Court to direct. While the Government cannot deny the said benefit at their mere whim or fancy, that does not mean that Courts or Tribunals would themselves grant

exemption, and direct that the employee concerned should be promoted without even possessing the prescribed qualification. To the extent the Tribunal set aside the order of reversion without leaving it open to the petitioners herein to consider the case of the respondents, the order of the Tribunal necessitates interference and is, accordingly, set aside.

The fact, however, remains that the first respondent has since completed 45 years of age; and she is also said to have acquired B.Ed. qualification. It is also not in dispute that employees in the social welfare and tribal welfare departments have been granted the benefit of promotion as Hostel Welfare Officers Grade-II even though they did not possess B.Ed. qualification. Further, in the light of the order of this Court in W.P.No.5100 of 2014 dated 24.02.2014, an employee similarly situated as that of the first respondent herein, who had also crossed 45 years of age and was reverted thereafter for not possessing B.Ed. qualification, was granted relief and this Court held that, since the Government has the power to exempt the respondent from acquiring B.Ed. qualification on his crossing 45 years of age, he should be granted the said benefits.

Petitioner Nos.1 and 2 herein shall, at the earliest and in any event not later than six weeks from the date of receipt of a copy of this order, consider the case of the first respondent for promotion to the post of Hostel Welfare Officer Grade-II taking into consideration that similar orders of exemption were passed in respect of employees in the social welfare and tribal welfare departments, and the judgment of the Division Bench of this Court in W.P.No.5100 of 2014 dated 24.02.2014.

The Writ Petition is, accordingly, disposed of. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

19th March, 2015.

Note:

Furnish C.C. of the order
Within one week.
B/o
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