

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

WRIT PETITION No.22190 of 2014

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

The petitioners herein are Assistant City Planners in the Greater Hyderabad Municipal Corporation ('GHMC'). The unofficial respondents are all employees of the Directorate of Town and Country Planning deputed to work in various posts either in the GHMC or in the Warangal Municipal or in the HMDA. The unofficial respondents herein filed O.A.No.6314 of 2013 before the Tribunal. By its order dated 03.01.2014, the Tribunal allowed the O.A. directing the respondents to follow the service rules issued in G.O.Ms.No.197 dated 25.03.1992 as amended in G.O.Ms.No.462 dated 02.07.2008 without applying memo dated 26.08.2006 to the posts of Deputy Director of Town Planning/Deputy City Planner. Aggrieved thereby, the petitioners herein sought leave and filed M.A.S.R.No.1296 of 2014 before the Tribunal. By its order dated 11.07.2014, the Tribunal held that there was no error apparent on the face of the record and dismissed the Review Petition in M.A.S.R.No.1296 of 2014.

Sri G.Vidyasagar, learned Senior Counsel appearing on behalf of the petitioners, would draw attention of this Court to the Special Rules made for employees in the GHMC, as notified in G.O.Ms.No.439 dated 20.10.1995, to contend that appointment to posts in the G.H.MC. can only be made in accordance with these rules. Learned Senior Counsel would submit that, even otherwise, the applicants in the O.A. are ineligible, for being appointed as Deputy Directors even in their service ie in the Department of Town and Country Planning.

Sri M.V.S.Sai Kumar, learned counsel for the unofficial

respondents, would place reliance on the Special Rules made for the A.P.Town Planning Services, as notified in G.O.Ms.No.197 dated 25.03.1992. Learned counsel would submit that 29 posts of Deputy City Planners (Deputy Director of Town Planning) were sanctioned by the Government vide G.O.Ms.No.92 dated 03.04.2013; as the sanctioned posts are the posts of Deputy City Planners/Deputy Director of Town Planning, and not the posts of Additional Town Planners, reliance placed by the petitioners on the Hyderabad Municipal Corporation Town Planning Services Rules, 1995 is misplaced; and it is the rules notified in G.O.Ms.No.197 dated 25.03.1992 which would alone apply, and not the statutory rules notified in G.O.Ms.No.439 dated 20.10.1995.

The rules, notified in G.O.Ms.No.439 dated 21.10.1995 are called the Hyderabad Municipal Corporation (Town Planning Service) Rules, 1995. They were made in the exercise of the powers conferred by Section 505 (1) r/w. Section 139 of the Greater Hyderabad Municipal Corporation Act, 1955 and in supersession of the earlier rules notified in G.O.Ms.No.483 dated 17.06.1978. These rules are statutory in character, and have the force of law. Rule 3 thereof prescribes the method of appointment and, for the category of posts of Additional Town Planners in the Municipal Corporation of Hyderabad, the method of appointment is (a) by promotion from the category of Assistant Town Planner in the Municipal Corporation of Hyderabad; and (b) on deputation from the office of the Directorate of Town and Country planning. The further requirement thereunder is that, if no suitable candidate is available for promotion to the said post in the Municipal Corporation of Hyderabad, suitable candidates in the cadre of Deputy Director, in the office of the Directorate of Town and Country Planning, will be considered.

The rules, notified in G.O.Ms.No.197 dated 25.03.1992, were made by the Government, in the exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Rule 2 thereof

relates to the constitution of the Town Planning Services. Category 3 thereunder relates to the posts of Deputy Directors including Regional Deputy Director and Deputy City Planners in the Municipal Corporation in the State belonging to the Town Planning Directorate. The method of appointment to the post of Deputy Director is by promotion from the category of Assistant Director.

While the counter-affidavit filed by the Government is vague, and it is not clear therefrom as to which of the rules apply for filling up the subject posts, it is wholly unnecessary for this Court to undertake the task of examining which of the rules are applicable for appointment, to the posts sanctioned by G.O.Ms.No.92 dated 03.04.2013, as the Tribunal is the Court of first instance. It is only after it has examined the applicability of the rules notified in G.O.Ms.No.197 dated 25.03.1992, and the rules notified in G.O.Ms.No.439 dated 20.10.1995, and has passed an order, would this Court exercise its power of judicial review under Article 226 of the Constitution of India. The order under challenge in this Writ Petition is set aside, and the matter is remanded to the Tribunal to consider the matter afresh and in accordance with law.

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

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

09th March, 2015.

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