

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

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AND

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THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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WRIT PETITION No. 20178 of 2006

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ORDER: (per Hon'ble Sri Justice G. Chandraiah)

The petitioner questions the orders dated 24.03.2006 in O.A.No.1741 of 2005 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. The petitioner herein is the 2nd respondent; and the 2nd respondent herein is the applicant in the said O.A.

2. Pursuant to the notification for the posts of Attenders (earmarked for disabled persons) in the 1st respondent's office, the petitioner herein as well the 2nd respondent herein/applicant in the O.A. applied for the post. The petitioner stood successful and was appointed as Attender. Aggrieved thereby, the 2nd respondent approached the Tribunal by way of filing the aforesaid O.A. contending that he is 100% visually disabled (totally blind), as such his disability is higher than that of the petitioner herein and hence he should have been appointed as Attender, in view of G.O.Ms.No.56 dated 02.12.2002 and therefore selecting the petitioner herein for the said post is illegal and in violation of G.O.Ms.No.56 dated 02.12.2002. The Tribunal, vide orders impugned in this writ petition, held that the applicant's case is covered by the earlier

orders of the Tribunal in O.A.No.8162 of 2003 and Batch, dated 03.11.2004, and directed the 1st respondent to review the appointments and consider the applicant for appointment. Contending that the Tribunal erred in holding that the subject matter is covered by the earlier orders passed by it in O.A.No.8162 of 2003 and Batch, and apprehending an adverse action against him, the petitioner is before us with this writ petition.

3. Heard learned counsel for the petitioner and the learned counsel for the 2nd respondent/applicant.

4. Learned counsel for the petitioner contends that G.O.Ms.No.56 dated 02.12.2002 clearly stipulates that *"if all the relevant factors are equal, then preference shall be given to the person suffering from higher degree of disability"*. In view of that, he submits that the petitioner herein secured 12 marks in the selection process whereas the 2nd respondent/applicant in the O.A. got only 9.5 marks and therefore the very first condition of equivalence of all the relevant factors is itself not satisfied and hence the question of going into the degree of disability does not arise. It is also his submission that the Tribunal erroneously held that the subject matter of the O.A. is covered by the earlier orders of the Tribunal viz., Orders dated 03.11.2004 in O.A.No.8162 of 2003 and Batch. He further submits that by virtue of the impugned orders, the rights of the petitioner are likely to be adversely affected and therefore the impugned order is bad in

law.

5. The operative portion of the impugned order reads as under:

“3. Heard learned Counsel for the Applicant and the learned Government Pleader and perused the material placed on record.

The subject matter of this O.A., is squarely covered by the Orders of this Tribunal granted in O.A.No.8162 of 2003 and batch, dated 03.11.2004. In view of this, the present O.A., is allowed in terms of the said Orders of the Tribunal in O.A.No.8162/2003 and batch. The Respondents shall review appointments made in terms of these orders and consider the case of Applicant for appointment within a period of eight weeks from the date of receipt of a copy of this Order. VMAs stand dismissed. M.A., stands disposed of.

The Registry is directed to enclose a copy of the Order dated 03.11.2004 in O.A.No.8162/2003 and batch to the present Order.”

6. This writ petition is of the year 2006. Till date, no counter is filed. And there is no interim direction of this Court in the case. Under these circumstances, the only point that arises for consideration is whether the impugned order necessitates interference of this Court under Article 226 of the Constitution of India.

7. To recapitulate, the petitioner herein has been appointed as Attender under the visually handicapped category, consequent to a notification in the 1st respondent's office. The 2nd respondent herein, contending that he is 100% visually handicapped, and therefore is more entitled for selection to the

post of Attender, approached the Tribunal. The Tribunal, vide impugned orders, while holding that the subject matter is covered by its earlier orders dated 03.11.2004 in O.A.No.8162 of 2003, directed the 1st respondent to consider the candidature of the 2nd respondent for appointment as Attender, within eight weeks.

8. The finding of the Tribunal is that the relief sought for by the 2nd respondent herein/applicant in the O.A.No.1741 of 2005 is squarely covered by the orders passed by it in O.A.No.8162 of 2003 and Batch. Though the contention of the petitioner herein is that the subject matter is not covered by the orders in O.A.No.8162 of 2003, the petitioner has not taken any steps seeking review of the impugned orders at relevant point of time. It was the contention of the 2nd respondent/applicant before the Tribunal that in G.O.Ms.109, Women Development Child Welfare, & Labour (WH) Department, dated 15.06.1992 and G.O.Ms.No.9 dated 26.02.2002, the Government has envisaged various benefits to handicap persons who are suffering 40% and above disability, and that the 2nd respondent is a 100% visually disabled person. Further, the Tribunal vide the impugned orders has only directed the respondents to review the appointments and also consider the case of the applicant within eight weeks. And hence, it is not desirable, at this juncture, to look into the aspect as to whether the case of the 2nd respondent herein/applicant in O.A.No.1741 of 2005 is

covered by the earlier orders of the Tribunal in O.A.No.8162 of 2003.

9. Hence, to meet the ends of justice, we deem it appropriate to dispose of the writ petition with a direction to the 1st respondent to consider the candidature of both the petitioner herein as well as the 2nd respondent herein for appointment as Attender, keeping in view the relevant G.Os., and pass appropriate orders, in accordance with law, if not already passed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

U. DURGA PRASAD RAO, J

05th November, 2015
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THE HON'BLE SRI JUSTICE G. CHANDRAIAH

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