

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Writ Petition No.33168 of 2014

Between

G.Veeranna

... Petitioner

and

The Acharya Nagarjuna University,

Rep. by its Registrar,

Nagarjuna Nagar, Guntur

... Respondents

DATE OF JUDGMENT PRONOUNCED: 21-9-2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE R.KANTHA RAO

- 1 Whether Reporters of Local newspapers may be Yes/No
allowed to see the Judgment?
- 2 Whether the copies of judgment may be marked Yes/No
to Law Reports/Journals
- 3 Whether Their Ladyship/Lordship wish to see the Yes/No
fair copy of the Judgment?

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.33168 of 2014

Order:

This writ petition is filed seeking to call for the records pertaining to Notification No.ANU/Estt-TS/Direct Recruitment/Asst. Professor/2014, dated 01-10-2014 issued by the 1st respondent-University and hold the action on the part of the 1st respondent-University and also other respondents in not properly maintaining the Roster Points and altering the Roster Points in violation of the policy decision of the Government as enumerated in the G.Os., issued from time to time, as bad, illegal, arbitrary, discriminatory and unconstitutional; and also to direct the 1st respondent-University to notify 5 fresh vacancies with Roster Point Nos.11 to 15 as determined by the Roster Committee of the very 1st respondent-University and to treat the backlog vacancies separately and not to incorporate ST (Women) Roster Point No.8 in the Notification dated 01-10-2014 and accordingly issue a fresh Notification or issue an errata and make the selections accordingly by issuance of a Writ of *mandamus*.

2. The brief facts of the writ petition are as follows:

(a) It is submitted that for filling up the teaching post/staff in the Universities of Andhra Pradesh, the erstwhile Government of Andhra Pradesh issued G.O.Ms.No.995, dated 16-12-1982, which would show that Rule 22 of A.P. State and Subordinate Service Rules i.e., 100 point roster as mentioned therein shall be adopted. The future vacancies or the vacancies other than backlog vacancies need to be filled up as per Clauses 1 and 2 mentioned therein. A reading of Clauses 1 and 2 would show that the vacancies shall be identified

and arranged in alphabetical order and apply roster point accordingly. As of now the position is that as and when the concerned University choose to fill up the vacancies, they have to assess the available sanctioned posts, arrange them alphabetically in 3 respective groups and take note of the last roster point of the previous Notification and start applying the next roster point on the table prepared as stated above and notify the same. The concerned Universities are indulging in distorting the roster points as in the present case, as explained below.

(b) Nextly, it is submitted that the factual matrix insofar as Engineering Wing (Group-III) is concerned, the last Notification that was issued was in the year 2006 and as per the said Notification, 5 posts were notified in Engineering starting from Roster Point No.6 ending with Roster Point No.10. It would be relevant to note here that Roster Point No.6 which was meant for OC (PH-VHW) and Roster Point No.8 meant for ST (Women) have not been filled up for lack of qualified candidates or whatever may be the reasons and only 3 of the posts have been filled up. In that view of the matter, the said two roster points i.e. Roster Point No.6 (OC PH-VHW) and Roster Point No.8 (ST-Women) were carried forward and they have to be treated as backlog vacancies. In normal course, the 1st respondent-University has to undertake an exercise to fill up the backlog vacancies immediately after regular recruitment is over. This has not been done.

(c) Nextly, it is submitted that the Government (Finance Department) issued G.O.Ms.No.247, dated 05-11-2011, through which certain posts have been sanctioned in the categories of Assistant Professors/ Associate Professors/Professors for Engineering Wing. We are concerned in this writ petition with regard to Assistant Professors.

(d) Nextly, it is submitted that it may be relevant to state here that no steps were taken to fill up the said posts immediately. In the meanwhile, vide G.O.Ms. No.262, dated 30-9-2013, the Government

again sanctioned/gave permission to fill up the vacant posts through direct recruitment in various departments.

In the present case, we are concerned with 5 Assistant Professors sanctioned, which need to be filled up by Engineering subject of the 1st respondent-University.

(e) Next, it is submitted that it is stated in the letter dated 19-10-2013 addressed by the 1st respondent-University to the 3rd respondent-Social Welfare Department that the 1st respondent-University is taking steps to fill up the said posts and fix the roster points and the same was communicated to the 3rd respondent-Department and requested for approval of such fixation of roster points and permit the 1st respondent-University to issue a Notification to that effect. In pursuance of the 2006 Notification, 2 posts at Roster Point Nos.6 and 8 were not filled up and therefore, it is incumbent on the part of the 1st respondent-University to inform about the same in the said letter. It is informed by the

1st respondent-University as if there is only one backlog vacancy i.e., Roster Point No.8 (ST-Women). In the said letter dated 04-02-2014, the 3rd respondent-Department noticed and brought out the fact that there are

2 vacancies of Computer Science Assistant Professors which have not filled up in pursuance of the earlier Notification of 2006 i.e., Roster Point No.8 and also Roster Point No.6. In other words, though the

1st respondent-University brought to the notice of the

3rd respondent-Department only about one vacancy (Roster Point No.8), the 3rd respondent-Department rightly dug out the mischief and specifically mentioned that the two vacancies need to be notified i.e., Roster Points 6 and 8 meant for OC (PH VHW) and ST (Women) respectively.

(f) Next, it is submitted that while issuing special drive recruitment for SC/ST/PH backlog vacancies dated 10-5-2014, only one vacancy of Assistant Professor in Computer Science was

notified. It is curious to note that what is notified is a post which was identified by the

3rd respondent-Department i.e., Roster Point No.6 and curiously, Roster Point No.8 post meant for ST (Women) which was identified by the 1st respondent-University was suppressed/not notified.

(g) Nextly, it is submitted that accordingly, the roster points were correctly shown on 28-02-2014 and as stated above, 5 vacancies of Assistant Professors were correctly shown meant for Engineering Department. Insofar as the Engineering Group (Group-III) is concerned, it is mentioned specifically in a table showing the 5 vacancies for 5 different disciplines starting from Roster Points 11 to 15. As per the said Roster Points, one Assistant Professor vacancy of Electrical and Electronics Engineering to which the petitioner is eligible is notified for OC i.e., Roster Point No.13. Though the petitioner belongs to ST, he can apply for the same and compete as an open candidate. If only the normal process has to go on without any illegality, the petitioner would have had an opportunity to apply for the said post. It is necessary to state here that the concerned Deputy Director of the 3rd respondent-Department was alleged to be suspended and therefore, the matter was referred to the 2nd respondent-District Collector.

(h) Nextly, it is submitted that insofar as Roster Point No.11, which was allotted to Civil Department for OC, the 2nd respondent-District Collector informed in the remarks column that there is one backlog post meant for Roster Point No.8 (ST-Women) and therefore, the said vacancy has to be thrown up for Civil.

(i) Nextly, it is submitted that the 1st respondent-University issued impugned Notification dated 01-10-2014 calling for applications to fill up the post of Assistant Professors and various other teaching staff for all the three groups. It is surprising to note that the post of Assistant Professor for Civil was allotted to ST-Women (Roster Point No.8) instead of OC (Roster Point

No.11) and accordingly, the remaining 4 disciplines roster points were also changed. However, by introduction of ST-Women Roster Point, which was a carried forward vacancy, the whole roster points were changed. It would be relevant to state that the ST-Women i.e., Roster Point No.8 was not supposed to be part of the regular Notification in the first place. It would have been part of the Notification that was issued on 10-5-2014 which was meant for backlog vacancies (Special Drive Notification). The ST-Women vacancy has to be shown separately as a backlog vacancy. The best course would have been to issue an errata to the earlier Notification dated 10-5-2014 incorporating ST-Women (Roster Point No.8) also. Secondly, assuming that they can incorporate in the present Notification dated 01-10-2014, the said ST-Women Roster Point is meant for Computer Science and it is understandable as to how the same could be changed to Civil.

(j) Next, it is submitted that it has become a practice to many Universities to incorporate one unwanted vacancy or to delete one existing vacancy which will change whole roster system so that it will have a cascading effect. Further, it is undisputed that there are 2 backlog vacancies and 5 freshly sanctioned posts (7 in all). Hence, the present writ petition.

3. The 1st respondent-University filed counter contending, *inter alia*, as follows:

(a) It is submitted that 2 vacancies of OC (PH-VH-W) and ST (W) were shown as backlog vacancies and a Notification in the year 2007 was issued calling for eligible candidates but due to non-availability of eligible candidates, the said OC (PH-VH-W) with Roster Point No.6 and with ST (W) with Roster Point No.8 remained unfilled. It is further submitted that the Government permitted the 1st respondent-University to fill the teaching positions totalling 88 in number, out of which 5 posts have been allocated to Engineering Group in Assistant

Professor Category.

(b) Nextly, it is submitted that the 1st respondent-University has appointed Roster Committee and prepared roster and roster points that were arrived, were sent for approval to the District Social Welfare Officer. More than 88 Teaching positions were being filled up as per the approval of the roster points which were placed before the 2nd respondent-District Collector, who, on noticing the vacancy of Roster Point No.8 meant for ST (W) in Engineering Group Assistant Professor Category, directed the 1st respondent-University to show the first vacancy in Engineering Group Assistant Professor Category as

ST (W). Other roster points had been modified accordingly. It is incumbent upon the 1st respondent-University to take all suitable steps to fill up the posts that were meant for SC and STs and the action of the

1st respondent-University in taking steps in such direction could not be found fault with.

(c) Nextly, it is submitted that the present writ petition was filed by the petitioner on erroneous facts and modalities of fixing roster points. The action of the

2nd respondent-District Collector in directing the

1st respondent-University to show the unfilled Roster Point No.8 (ST (W) in the present Notification is not bad and moreover, it is in furtherance of the Constitutional objectives.

Contending as above, the 1st respondent-University prayed to dismiss the writ petition as devoid of merit.

4. It is argued on behalf of the 1st respondent-University that the petitioner has no *locus standi* to file the present writ petition.

Therefore, before proceeding to examine the issue as to whether the roster has been correctly arranged in the notification, I would like to address the question of maintainability. If I arrive at the conclusion that the petitioner has no *locus standi* to file the present writ petition, it is absolutely unnecessary to go into the other questions.

5. According to the petitioner, he completed B.Tech., and M.Tech., in Electronics and he is fully eligible for appointment as Assistant Professor and he deserves to apply in the 1st respondent-University for the post of Assistant Professor as and when such post arises. His grievance is that though the impugned notification is issued, it is in violation of the roster and therefore, he filed the present writ petition seeking directions from the Court to issue errata to the notification by correcting the roster points.

6. It is crucial to notice that the petitioner does not even apply for any of the posts of Assistant Professors pursuant to the impugned notification. Without applying for any post, he contends that the notification is not in accordance with the rules as the roster is violated. Therefore, it has to be seen whether any legal right of the petitioner is violated so as to enable this Court to invoke the jurisdiction under Article 226 of the Constitution of India. Obviously, the present writ petition is not in the nature of public interest litigation but in the nature of complaining about infringement of the legal right of the petitioner. The petitioner contends that the roster points have not been properly maintained while issuing the notification. Whereas, the 1st respondent-University contends that there is no violation of roster points and the petitioner with false and untenable grounds filed the writ petition and that he has no *locus standi* to challenge the notification issued by the University.

7. For invoking the jurisdiction of this Court under Article 226 of the

Constitution of India seeking judicial redress, a person has to necessarily establish that he has suffered a legal injury by reason of violation of legal right by the impugned action of the State or public authority. Therefore, the existence of a legal right is the foundation for exercise of jurisdiction under Article 226 of the Constitution of India.

8. In exercise of writ jurisdiction, this Court is not supposed to investigate into disputed questions of fact.

If a person fails to establish that his legal right is infringed, the discretionary relief under this Article has to be refused. A person belonging to a particular status cannot make a general complaint against the

1st respondent-University on the ground that if the roster was in a particular way, he being a person belonging to a particular social status would have been eligible to apply for the post. As already stated, he did not even apply for the post. He is challenging the notification in his individual capacity. He is not able to lay any foundation to show that his legal right has been infringed. Therefore, I am of the considered view that the petitioner has no *locus standi* to file the present writ petition and the relief prayed for cannot be granted to the petitioner.

9. For the aforesaid reasons, the writ petition is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

R.KANTHA RAO, J.

21st September, 2015.

Ak/Ccm

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.33168 of 2014

21st September, 2015.

(Ak)