

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

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WRIT PETITION Nos.23147 of 2014 and 34976 and 35823 of 2015

BETWEEN

Irugula Subhashini and another.

... PETITIONERS

AND

Union of India, Rep. by Secretary, Ministry of Railways, Railway Bhavan,
New Delhi and others.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 31.12.2015

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | No |
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COMMON ORDER:

These writ petitions are interconnected, hence, they were heard together and are being disposed of by this common order.

2. The present writ petitions relate to appointment of Halt Agent at Gurazala Station under the South Central Railway represented by the Senior Divisional Commercial Manager, Guntur. Petitioners in these writ petitions are aspirants for the said post. To avoid confusion, petitioners herein are referred to by names.

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WP.No.23147 of 2014:

3. Petitioner (hereinafter referred to as 'Irugula Subhashini') in this writ petition states that her husband late Sembi Reddy was appointed as halt agent through a notification given by the South Central Railway in the year 2010. She claims that her husband worked to the utmost satisfaction of the authorities but, unfortunately, he died in an accident on 25.04.2010. It is stated that during the life time of her husband, the South Central Railway issued a notification, which was questioned by him in WP.No.18914 of 2007 and that he died pending the writ petition and she and her children are stated to have filed application to come on record as legal representatives. Subsequently, the Senior Divisional Commercial Manager issued advertisement No.1/2014 inviting applications for filling up of the post of Halt Agent at Gurazala Station. She also states that such appointments are governed by the guidelines issued by the Railway Board under Commercial Circular No.26/2005 dated 24.06.2005. She is stated to be one of the applicants, who was called for interview. She states that as per the requirement under the guidelines it was necessary for the respondent railway officials to conduct lots among the candidates interviewed but without following the said procedure, she is stated to have been forcibly discontinued

and evicted on 09.08.2014.

4. Later, she states that she came to know of the appointment issued to the seventh respondent (hereinafter referred to as 'Gangineni Nayudamma') vide proceedings of the Senior Divisional Commercial Manager, Guntur dated 08.08.2014 wherein Gangineni Nayudamma was appointed as Halt Agent for Gurazala Station. Questioning the same, the present writ petition is filed, primarily, contending that the procedure adopted by the respondents is contrary to the Railway Board's Circular dated 24.06.2005, referred to above.

5. Notice before admission was ordered by this Court on 13.08.2014. Thereafter, counter affidavit was filed by the Senior Divisional Commercial Manager and though Gangineni Nayudamma is represented through her counsel, there is no counter affidavit filed on her behalf.

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WP.No.34976 of 2015:

6. Gangineni Nayudamma is the petitioner herein, who states that she was appointed as Halt Agent under provisional appointment orders dated 05.08.2014 and on 08.08.2014 and she entered into an agreement on 11.09.2014 and since then, continuing as halt agent. She states that the period for which she was appointed was for five years and claims that she has been running the halt agency successfully and without any blemish discharging her duties.

She is, however, aggrieved by the show cause notice issued to her by the Senior Divisional Commercial Manager proposing to terminate her as halt agent and by order dated 19.10.2015 her appointment was cancelled based upon the procedural lapses pointed out by the Railway Board's proceedings in selection of candidates, as the procedure of draw of lots was not followed. The same is, therefore, questioned in this writ petition, *inter alia*, on the ground that her appointment was already *subjudice* and questioned and is pending consideration in WP.No.23147 of 2014 and WP.No.23148 of 2014,

which was already disposed of on 27.07.2015.

7. Respondent railways filed counter affidavit in this writ petition through their standing counsel

WP.No.35823 of 2015:

8. While the above two writ petitions are pending, the respondent railways issued another advertisement No.2/2015 dated 26.10.2015 seeking to appoint Halt Agent at Gurazala Gate and Penumarru Halts. Questioning the said action, Irugula Subhashini, petitioner in WP.No.23147 of 2014, has filed the present writ petition.

9. The main contention raised by Irugula Subhashini in this writ petition is that while WP.Nos.23147 of 2014 and 34976 of 2015 are pending consideration before this Court, initiating fresh process by the impugned advertisement to appoint halt agents would frustrate both the writ petitions inasmuch as that WP.No.23147 of 2014 not only challenges the appointment of Gangineni Nayudamma but also seeks consequential direction to complete the selection process in terms of the Commercial Circular No.26/2005. The respondent railways filed counter affidavit in this writ petition also.

10. It would be evident from the pleadings of the petitioners in these writ petitions that the procedure adopted by the Senior Divisional Commercial Manager, while appointing Gangineni Nayudamma in his proceedings dated 05.08.2014 and further proceedings dated 08.08.2014, is questioned, primarily, on the ground that it is contrary to the circular of the Railway Board. Hence, at this stage, it is relevant to notice the circular of the railway board.

11. The said Commercial Circular No.26/2005 issued by the Ministry of Railways dated 24.06.2005 states that under previous letters of the Railway

Board various guidelines for opening of halt station, closure of uneconomic halt stations, appointment of halt contractors etc. were issued. A committee was constituted by the Ministry of Railways to review the guidelines pertaining to award of contract of halt stations and based on the recommendations of the committee and with the approval of the competent authority following amendments are made. So far as appointment of halt contractors is concerned, the following para is relevant:

"IV. Appointment of Halt Contractors:

Para IV(a)(1) of Board's letter No.99/TGIV/Halts/Policy dated 17.5.99 – No Change.

In continuation to **Para IV(a)(2)** of Board's letter No.99/TGIV/Halts/Policy dated 17.5.99 the following may be added.

Minimum educational qualification should be at least 10th standard pass for new contractors.

Para IV(a)(3) of Board's letter No.99/TGIV/Halts/Policy dated 17.5.99 which was modified vide Board's letter of even number dated 8.6.99 may now read as under:

A Selection Committee of Sr. Scale Officers from Commercial, Finance and Operating Deptts shall scrutinize and shortlist the eligible offers. Selection will be by a draw of lots, drawn by any child if there is more than one suitable candidate.

- All the eligible candidates should be advised the date, time and venue of the draw through Courier/Regd. AD so that they may attend the draw if they so desire."

12. Respondent railways through their counter affidavit in WP.No.23147 of 2014 have defended the order of appointment of Gangineni Nayudamma as Halt Agent under their proceedings dated 08.08.2014. It is stated that 14 applicants including Irugula Subhashini were called for interview, which was fixed on 23.07.2014 and signatures of 13 applicants, who had attended the interview, were obtained. The Divisional Operations Manager (Co-ordination) had conducted the interview and there was no violation of rules and regulations. The committee after scrutinizing/short listing the applications recommended the name of Gangineni Nayudamma as halt agent at Gurazala Gate Halt and the recommendation was accepted by the Divisional Railway Manager. The proceedings of the said committee is also annexed to

the counter affidavit, which shows that total 19 applications were received and on finding that 5 applicants are not eligible, the committee, therefore, invited 13 candidates and had adopted realistic and scientific method for short listing and awarding the marks and as only one suitable candidate secured highest marks and fulfilled all the parameters, the committee was of the opinion that the application of Gangineni Nayudamma be recommended for consideration for appointment as Halt Agent at Gurazala Gate Halt. Accordingly, the competent authority accepted the recommendation and appointed Gangineni Nayudamma as halt agent.

13. Curiously, however, the said Gangineni Nayudamma's appointment is terminated as per the impugned order in WP.No.34976 of 2015. The respondent railways filed a counter affidavit in that writ petition also.

14. The counter affidavit states that on the complaint of the petitioner in WP.No.23147 of 2014, a Vigilance Enquiry was ordered and the procedure adopted by the committee in awarding marks while conducting interview instead of selecting the candidate by draw of lots was found to be in deviation of the Railway Board's Circular.

Hence, as per the recommendations of the Vigilance Department, a show cause notice was given to Gangineni Nayudamma on 15.06.2015. Gangineni Nayudamma made a representation to the said show cause notice on 22.06.2015 and after duly considering the same, the appointment of Gangineni Nayudamma was terminated under the impugned proceedings dated 19.10.2015. It is stated that Gangineni Nayudamma ceases to be halt agent from 23/24.10.2014 and halt agency is being operated departmentally with effect from 24.10.2015.

15. It would, thus, be evident that the very same respondents, who defended their action in appointing Gangineni Nayudamma in WP.No.23147 of 2014, have also contended in the counter affidavits filed in the subsequent two writ petitions justifying their action in terminating

Gangineni Nayudamma. Hence, learned standing counsel appearing for the respondent railways was required to obtain the records and explain the contradiction in the stand of the railways.

16. Learned counsel appearing for Gangineni Nayudamma contends that her appointment as halt agent was in accordance with the circular inasmuch the respondents have followed the circular and question of draw of lots did not arise, as Gangineni Nayudamma was alone found to have secured the highest marks. Learned counsel submits that the criteria adopted by the committee cannot be said to be arbitrary inasmuch they have interviewed the shortlisted candidates and on the basis of general parameters adopted by the committee, they awarded marks wherein Gangineni Nayudamma, who had secured highest marks, was, accordingly, recommended and appointed. Learned counsel, therefore, submits that the circular of the Railway Board is not violated and the recommendations of the Vigilance Department, which are followed by the respondents in issuing the show cause notice and terminating Gangineni Nayudamma is equally vitiated and contends that Gangineni Nayudamma, having been appointed as per circular, is entitled to continue for five years.

17. Per contra, learned counsel for petitioner, Irugula Subhashini, in WP.Nos.23147 of 2014 and 35823 of 2015, contends that the Railway Board's circular does not leave any room for doubt and clearly stipulates that the selection committee shall select the candidate among the shortlisted candidates by draw of lots. Hence, the procedure of awarding marks to the eligible candidates by adopting any criteria is clearly violative of the said circular.

18. Learned standing counsel for the railways, however, had on onerous task of justifying the contrary counter affidavits on behalf of railways in these writ petitions, as referred to above. Learned counsel, however, fairly contended that the examination of the record and the procedure followed by the committee has clearly shown that the criteria adopted by the committee

in awarding marks was clearly unscientific inasmuch as the committee awarded marks on educational qualification, nativity, police clearance, financial status, age factor, physical fitness, appearance, behavior mannerism and general knowledge, which, in any case, was not provided for by the circular of the Railway Board and there was no other method available to the committee except conducting draw of lots among the eligible candidates. Learned standing counsel, therefore, submitted that since this was noticed only after the vigilance report and recommendations, appropriate steps were taken by the respondent railways to rectify the mistake and in that regard, show cause notice was given to Gangineni Nayudamma and after considering her representation, the appointment of Gangineni Nayudamma was terminated.

Learned standing counsel also justified the subsequent action of the railways in issuing a further advertisement No.2/2015 dated 29.10.2015 for appointing new halt agent.

19. During hearing of these writ petitions, this Court was of the opinion that the result in WP.No.23147 of 2014 and WP.No.35823 of 2015 would have a bearing on the appointment of Gangineni Nayudamma as halt agent viz. either her appointment would be confirmed or termination would be upheld and in either situation, fresh notification issued under advertisement No.2/2015 cannot be sustained, as that would frustrate both the aforesaid writ petitions.

20. Faced with the aforesaid situation, therefore, learned standing counsel has taken fresh instructions and submitted that the respondent railways would not press and not proceed further with reference to advertisement No.2/2015 so far as Gurazala Halt Station is concerned and offered to commence the process of appointing halt agent for Gurazala Station from the stage at which the error was committed by the committee. Learned standing counsel, therefore, fairly submitted that the South Central Railway would cancel the advertisement No.2/2015 and would proceed from the

stage onwards where the committee awarded marked on criteria referred to above.

21. The Senior Divisional Commercial Manager, Guntur, specifically states in para 10 of the counter affidavit in WP.No.35823 of 2015, as follows:

“10. I submit that however, at the time of arguments on 04.11.2015, when the matters were argued in W.P.No.23147/2014, W.P.No.23148/2014, W.P.No.34036/2015 and W.P.No.35823/2015 and another matter the Hon'ble court clearly observed that the procedure followed earlier is contrary to guidelines and the counter affidavit filed earlier is contra to present stand taken by Respondent 3 s now prepared to follow the earlier and the present policy of drawing lots among the applicants by lottery and finalize the same. The notification issued now i.e. 26.10.2015 will not be given effect to.”

22. Learned counsel appearing for Irugula Subhashini, however, expressed no objection for the aforesaid course to be followed, while Gangineni Nayudamma, through her counsel, defended her appointment.

23. I have considered the contentions on behalf of the contesting petitioners as well as the respondent railways. It is well settled that the directions given by the Railway Board are general in nature and are binding on all the Railways in India. The Railway Board's circular, extracted above, therefore, is inviolable and is required to be followed by all the railways. Applying the mandate in the said circular, which is highlighted, as above, it is evident that awarding of marks on the basis of physical appearance, mannerism, financial status etc. is clearly not envisaged under the circular and all eligible shortlisted candidates were required to be put to the procedure of draw of lots and no other criteria to eliminate any one of them is permissible under the said circular. In view of that, therefore, in my view, it would be just and appropriate to adopt the said course and direct the respondent railways to conduct draw of lots among all eligible 13 candidates whose candidature was considered in pursuance of advertisement No.1/2014 including the contesting petitioners herein viz. Irugula Subhashini

as well as Gangineni Nayudamma by draw of lots and complete the selection process and appoint the successful candidate as halt agent at Gurazala station. Subsequent advertisement No.2/2015, issued by the respondent railways, shall not be proceeded with any further and shall stand cancelled to the extent of Gurazala Station.

In the result, WP.No.23147 of 2014 is allowed; WP.No.34976 of 2015 is dismissed and WP.No.35823 of 2015 is disposed of.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

December 31, 2015/DSK