

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

WRIT PETITION NOs.14276 and 15109 of 2015

W.P.No.14276 of 2015:

Between :

K.Krishna Swamy S/o Posham, 46 years,
Senior Assistant, Singareni Collieries Co.Ltd.,
Kothagudem Collieries, Khammam District
and others.

..... Petitioners

And

Chairman and Managing Director, The Singareni
Collieries Co.Ltd., Kothagudem Collieries,
Khammam District and another.

..... Respondents

DATE OF JUDGMENT PRONOUNCED : 09.02.2016

-
SUBMITTED FOR APPROVAL:

-
-

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

-

-

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

***THE HON'BLE SRI JUSTICE P. NAVEEN RAO**

+ WRIT PETITION NOS.14276 and 15109 of 2015

% Dated 09.02.2016

-

-

W.P.No.14276 of 2015:

.Krishna Swamy S/o Posham, 46 years,
Senior Assistant, Singareni Collieries Co.Ltd.,
Kothagudem Collieries, Khammam District
and others.

.... Petitioner

AND

\$ Chairman and Managing Director, the Singareni
Collieries Co.Ltd., Kothagudem Collieries,
Khammam District and another.

... Respondents

! Counsel for Petitioners : Sri Bathini Papa Rao Goud, counsel for all
petitioners in WP No.14276 of 2015 and for
petitioner nos.2 to 11, 13, 14 & 16 in WP No.
15109 of 2015, and Sri G.Vidyasagar, senior
Counsel for Smt. K.Udaya Sri, counsel for
Petitioner Nos.1, 12 and 15 in W.P.No.15109
of 2015.

^Counsel for Respondents : Sri J.Sreenivasa Rao, standing counsel for
Respondents 1 and 2 in both the writ
Petitions;
Sri S.Laksma Reddy, senior counsel for
Sri S.Rahul Reddy for respondents 3 to 6
in WP No.15109 of 2015

<GIST :

>HEAD NOTE :

? Cases referred :

(1993) 2 SCC 349

(2001) 1 SCC 442

2015 (5) ALD 493

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.14276 and 15109 of 2015

COMMON ORDER:

As the issue raised in these two writ petitions is same, the writ petitions are disposed of by this common order.

2. Petitioners are employees of Singareni Collieries Company Limited (for short, "SCCL"). These two writ petitions are instituted aggrieved by the conditions imposed for consideration for recruitment to the post of Management Trainee (Personnel) in the Notification No.1 of 2015. Particularly petitioners are aggrieved by fixation of two years duration of Post Graduate Degree/Diploma with 60% minimum marks.

3. At the time of admission, this Court granted interim order to receive the applications of the petitioners and permit them to write the examination for selection to the post of Management Trainee (Personnel). Petitioners were accordingly permitted to write written examination held on 01.06.2015. Though the selection process is completed and though this Court has not stayed finalization of the

selections, having regard to the interim directions issued for consideration of the claims of the petitioners, the recruitment is not finalized. Praying to vacate the interim orders granted by this Court, SCCL and candidates who have competed in the selections have filed vacate petitions.

4. Heard Sri G.Vidyasagar, learned senior counsel appearing for petitioners, learned standing counsel for SCCL and Sri S.Laxma Reddy, learned senior counsel appearing for party respondents. With the consent of learned counsels for respective parties, the writ petitions are finally disposed of by this common order.

5. Employment notification No.1 of 2013 was issued to fill up the post of Welfare Officer/Management Trainee (Personnel). However, the selections were not finalized and in super-cession of the same, revised notification no.1 of 2015 was issued. The notification no.1 of 2015 deals with several categories of posts, including Management Trainee (Personnel). To the post of Management Trainee (Personnel), qualifications prescribed in the notification are, Graduate with at least two years full-time Post Graduate Degree / P.G.Diploma / Post-Graduate in Management with Specialization in HR / Industrial Relations and Personnel Management or MHRD or MBA specialization with HR (Major) or Master of Social Work with specialization in HR from recognized Indian University / Institutes with minimum 60% marks. The notification also stipulated maximum age of eligibility as 30 years as on 01.02.2015. As per the advertisement, the last date for submission of the applications Online was 25.02.2015. After successful submission of applications Online, the candidates are required to take print out of filled in Online application, sign the same and by enclosing copies of the certificates in proof of age, qualification, experience, marks memos, etc., should be sent to the General Manager, Recruitment Cell on or before 04.03.2015.

6. Petitioners herein who are employees of the respondent company intended to compete for the direct recruitment. However, as petitioners do not have educational qualifications prescribed in the recruitment notification and age, petitioners did not submit their applications Online and instituted these two writ petitions. The prayer sought in the writ petitions are, to declare the requirement of two years duration of the Degree with 60% minimum marks as illegal and to direct the respondents to receive the applications from the petitioners and to allow them to take examination for the post of Management Trainee without insisting two years duration course and 60% minimum marks.

7. Petitioners in W.P.No.15109 of 2015 filed W.P.M.P.No.29707 praying to amend the prayer in the writ petition. The additional prayer now sought by way of amendment is in the form of declaration that the candidates possessing the qualifications specified in Rule 72 of Mines Rules 1955 (for short, "Rules 1955") are eligible to participate in the recruitment to the post of Management Trainee (Personnel) notified vide Notification No.1 of 2015.

8. Learned senior counsel appearing for petitioners made the following submissions:

(i) He has primarily contended that the post of Welfare Officer/Management Trainee (Personnel) is governed by Rule 72 of Mines Rules, 1955. Sub-rule (2) of Rule 72 prescribes the qualifications to hold the post. Persons possessing said qualifications are eligible to be considered and no higher qualification can be prescribed. These posts can be filled up by two modes of recruitment, i.e., internal recruitment and open market recruitment. Insofar as the internal recruitment is concerned, the qualifications prescribed do not require two years Post Graduate Degree/Diploma as well as the 60% minimum percentage of the marks to be secured. When the post is

one and the same and governed by the same Rules, two different qualifications cannot be prescribed merely because the recruitment is made from two different sources. Whatever qualifications prescribed for internal candidates should be equally applied to the open market recruitment also, more so, when Rule 72 prescribes lesser qualification. He, therefore, submitted that prescription of the higher qualification and not allowing the petitioners to participate in the selection is *ex facie* illegal without jurisdiction and competence and is liable to be set aside on that ground alone.

(ii). Learned senior counsel sought to justify in not submitting the applications Online within the time fixed on the ground that unless qualifications prescribed in the notification are fulfilled, the application Online would not be accepted and, therefore, petitioners had no option, but to opt out of submission of the application Online. He further submitted that association and individuals have represented to permit the petitioners and similarly situated persons to participate in the selections without insisting for the qualifications prescribed in the advertisement, but no reply was given and since the written examination was scheduled to be held on 01.06.2015, petitioners had no other remedy except to invoke the extra-ordinary jurisdiction of this Court.

9. Learned senior counsel appearing for party respondents submitted as under:

(i) It is permissible for the employer to make recruitment to a post through different modes and to prescribe different qualifications for different modes of recruitment. In the instant case, the mode of recruitment under challenge is from open market. It is permissible to prescribe higher qualifications when recruitment is sought to be made from open market. The petitioners being in-service candidates, they have no manner of right to insist that they should be permitted to sit for the open market recruitment also without fulfilling the qualifications

prescribed therein. As in-service candidates, they have right for consideration for promotion and such right is preserved by prescribing lesser educational qualification and without restriction on age. They cannot insist, as a matter of course to compete to the open market vacancies even though they do not have the eligibility to compete in direct recruitment. He further submitted that even otherwise petitioners are not eligible since they are not within the age of 30 years and have not applied to the post within the time prescribed.

(ii) In support of his contention that it is permissible to prescribe different qualifications for different modes of recruitment, learned senior counsel placed reliance on the following decisions:

a) **P.Murugesan and others vs. State of Tamil Nadu and others** [\[1\]](#);

b) **K.R.Lakshman and others vs. Karnataka Electricity Board and others** [\[2\]](#)

c) **Kukkala Venkateswarlu and others vs. Acharya Nagarjuna University, Nagarjuna Nagar, Guntur, A.P. and others** [\[3\]](#).

10. Learned standing counsel submitted that the notification no.1 of 2013 was issued to make recruitment to the same post. For some administrative reasons, the recruitment could not be finalized and the present notification was issued. Even in the notification no.1 of 2013, the same qualifications were prescribed. These are the qualifications prescribed for direct recruitment. Insofar as the internal recruitment is concerned, notification vide circular dated 07.10.2014 was issued calling upon eligible serving employees to apply to fill up 12 vacancies. Petitioners were unsuccessful in the said recruitment. Having regard to the fact that the internal candidates have gained sufficient experience and that they need opportunity to advance in service, promotion channel is created to them to become Management Trainee (Personnel) and lesser educational qualifications are

prescribed for them though for direct recruitment higher educational qualifications are prescribed. Learned standing counsel submitted that it is permissible to prescribe different qualifications when mode of recruitment is different, more so when the recruitment is from internal candidates and open market respectively. He submitted that having regard to the interim orders passed by this Court, petitioners were permitted to sit for examination though the last date was over long ago.

11. Points for consideration in these writ petitions are,

- (1) Whether it is permissible for the employer to prescribe two different qualifications to a post even if recruitment is made from two different modes? and
- (2) Whether petitioners are otherwise eligible for consideration for recruitment?

12. Before appreciating rival contentions, it is to be noted that the notification No.1 of 2015 and the recruitment rules of the respondent company prescribing higher educational qualifications and other conditions for direct recruitment are not under challenge. It is also to be noted that three important ingredients of the recruitment notification No.1 of 2015 are,

- 1) (a) Course of study of two years duration for the P.G. Degree /Diploma or equivalent;
- (b) with 60% minimum marks;
- 2) Must be within the age of 30 years as on 01.02.2015; and
- 3) Applications should be submitted Online on or before 25.02.2015.

POINT NO.1:

-

13. If a mine is having workforce of 500 or more, the owner is required to appoint a Welfare Officer to look after the welfare of workers. In terms of the mandate of the Mines Act, 1952 (for short, 'Act, 1952') and the Rules made there under, the respondent company

created the cadre of Welfare Officer/ Management Trainee (Personnel). The respondent company notified rules regulating recruitment to various cadres called as “the Singareni Collieries Company Limited Executive Cadre Recruitment Rules” (hereinafter referred to as Recruitment Rules). The post of Management Trainee (Personnel) is governed by these recruitment rules. The vacancies in the cadre of the Management Trainee (Personnel) are intended to be filled up by in-service employees to the extent of 33¹/₃% and balance by direct recruitment from open market. The recruitment rules prescribe different eligibility criteria for two streams of recruitment to the post of Management Trainee (Personnel). For open market recruitment higher educational qualifications are stipulated and imposed age restriction. The respondent company enables serving employees to compete in open market recruitment subject to fulfilling the qualifications prescribed for direct recruitment. This facility is subject to their eligibility to compete in open market recruitment.

14. When two different modes of recruitment are prescribed to fill up a post, it is permissible for the employer to prescribe different qualifications/ eligibility criteria to different streams of recruitment. The principle of law is well settled and needs no reiteration. The principle laid down in the case of **Murugesan** and followed in **K.R.Lakshman**, holds the field.

15. Learned senior counsel for the petitioners strenuously contended that Rule 72 of Mines Rules prescribes particular qualifications to be possessed for the post of Welfare Officer/ Management Trainee (Personnel). Those are the qualifications of lesser standard and when those are the qualifications prescribed for the post of Welfare Officer/Management Trainee (Personnel), in the Rules made in exercise of power under Section 58(q) of the Act, 1952, the same is sacrosanct and not to be breached. In substance, the

submission of learned senior counsel was that it is not permissible to prescribe higher qualifications than the qualifications stipulated in Rule 72.

16. It is settled principle of law requiring no reiteration that it is permissible for the employer to insist possessing of higher qualifications. The Rule 72(2) opens with words, "No person shall act as Welfare Officer of a mine unless he possess ...". This clearly implies the intendment of the rule making authority that those are the minimum qualifications a person must possess to function as Welfare Officer. Provision does not impose fetters on the discretion of employer to prescribe higher qualifications. It only acts as guide to employer to prescribe appropriate qualifications. In the instant case, higher qualifications are prescribed for direct recruitment. If the employer is of the view that the person with higher qualifications should be recruited in the exigency of the service, the Court in exercise of power of judicial review under Article 226 of the Constitution of India, cannot hold such prescription as illegal, more particularly when the Rules concerning the post do not impose such mandate on the employer. The primary aim of Rule 72 is that there must be a Welfare Officer if the workforce in a mine exceeds 500, to attend to the welfare of the workers. It cannot be said that a person with higher qualifications in the field of management is not suitable to hold the post. On the contrary, a highly qualified Management Trainee is more suitable to deal with the personnel. Thus, if higher qualified persons can be sourced from open market to work as Management Trainee (Personnel) the same cannot be faulted and Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India cannot invalidate such prescription.

17. It is also settled principle of law that what qualifications are required to be prescribed and how to make selections and recruitment are within the exclusive domain of the employer. Unless the

qualifications prescribed are found to be irrational, having no nexus to the object sought to be achieved and *ex facie* discriminatory, the Court cannot upset prescription of such higher qualification and direct consideration of persons with lesser qualifications.

18. The observations made by the Supreme Court in **K.R.Lakshman** (supra) are apt to the case on hand. The relevant portion in paragraph-4 of the judgment reads as under:

“4. So long as the classification is based on a rational basis and so long as all persons falling in the same class are treated alike, there can be no question of violating the equality clause. If there is equality and uniformity within each group, the law cannot be condemned as discriminatory, though due to some fortuitous circumstances arising out of a peculiar situation, some included in the class get an advantage over others, so long as they are not singled out for special treatment. When a provision is challenged as violative of Article 14, it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it and having ascertained the policy and object of the Act, the court has to apply a dual test namely whether the classification is rational and based upon an intelligible differentia which distinguished persons or things that are grouped together from others that are left out of the group and whether the basis of differentiation has any rational nexus or relation with its avowed policy and objects. The power to make classification can be exercised not only by the legislature but also by the administrative bodies acting under an Act.”

-

19. As long as there is valid classification with intelligible differentia between two categories of persons, such classification stands the rigors of Articles 14 and 16 of the Constitution of India. The equality clause enshrined in Article 14 read with Article 16 of the Constitution of India is applicable only when there is discrimination among same class of people. In the instant case, the higher qualifications are prescribed for direct recruitment as against lesser qualifications for internal recruitment. Direct recruitment being independent stream as against in-service recruitment, it is permissible to prescribe different qualifications. Candidates appearing in direct recruitment form as one

homogenous group and merely because incidentally some of them are serving the same employer cannot give them a separate status. What is canvassed, if accepted would amount to classifying the persons competing in the open market recruitment into two groups, one belonging to in-service category and other from open market. It would amount to creating a mini-classification/sub-classification among same group i.e., open market candidates. Such claim falls foul of the mandate of Article 14 of the Constitution of India.

20. Petitioners are serving employees of the respondent company. Company has earmarked 33 1/3% of vacancies in the cadre to serving employees. In addition, the respondent company enables the serving employees to compete in the direct recruitment. The rules do not envisage relaxation of qualifications/ eligibility criteria to serving employees while they compete in the direct recruitment. They are asked to stand in the queue on par with other open market candidates. Thus, I do not see any illegality in prescribing different qualifications for direct recruitment and internal recruitment. As petitioners were intending to compete in direct recruitment, they must fulfill the qualifications prescribed in the recruitment notification.

-

POINT NO.2:

21. The petitioners have more serious hurdles to cross. As noticed above, the prayer sought and the limited grievance ventilated by the petitioners in these two writ petitions is confined to educational qualifications prescribed in the notification. The petitioners are above age of 30 years as on the cutoff date prescribed in the notification. The recruitment notification mandated submission of application online and within the time stipulated therein. None of the petitioners have submitted their applications online, within the time stipulated. The writ petitions are instituted just before the date fixed for holding the written examination. Their applications were received and were permitted to

write the examination in compliance of the directions issued by this Court on 29.05.2015.

22. The prescription of age and time line stipulated in the open advertisement is sacrosanct to any recruitment notification. Unless these conditions are fulfilled, candidates cannot be permitted to participate in the recruitment. Insofar as direct recruitment is concerned, all candidates intending to compete stand on par and no distinction can be made based on their present status. Depending on the Human Resources Policy of employer, he may permit his employee to compete in any open market recruitment, be it in the same organization or in any other organization. What all is required by a serving employee is to seek permission of his employer to compete in direct recruitment. The respondent company permits serving employees to compete in direct recruitment. However, all persons, including serving employees are required to fulfill the eligibility as prescribed in the notification.

23. The rules governing the post and the recruitment notification has not provided relaxation to serving employees, with reference to age and educational qualification. Thus, even assuming that there is merit in the contention of the petitioners that prescription of two different qualifications for two different modes of recruitment are not permissible, the petitioners are not entitled to compete since they are not within the age prescribed and have not applied for the post within the time stipulated. These being two essential requirements for participation in the direct recruitment, the petitioners have to be non-suited on this ground alone. Though learned senior counsel sought to persuade the Court not to consider the aspect of age of eligibility on the ground that the employer has not raised such an objection, the same is stated to be rejected. On behalf of party respondents learned senior counsel has raised this objection. Having regard to averments made in paragraphs – 5, 6 and 7 of the counter affidavit deposed by

Bikki Ramesh Kumar on behalf of respondent company, it is not valid to contend that the respondent company has not raised the plea of ineligibility of petitioners as with reference to age. Furthermore, this Court in exercise of equity jurisdiction need not grant relief sought for by petitioners, even if a case is made out and even if no objection is raised, when it comes to the notice of the Court that they are not eligible for consideration on other parameters.

24. For all the reasons stated above, the writ petitions fail and are accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions if any pending in these writ petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 09.02.2016

Note: L.R. copy to be marked : Yes

(B/o) kkm

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.14276 & 15109 of 2015

Date: 09.02.2016

kkm

[\[1\]](#) (1993) 2 SCC 349

[\[2\]](#) (2001) 1 SCC 442

[\[3\]](#) 2015 (5) ALD 493