

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

WA.Nos.748, 770 and 932 of 2016

WA.No.748 of 2016

Between:

Munja Praveen,

S/o Munja Agaiah and 60 others.

... Appellants

And

The State of Telangana, repled by its
Principal Secretary, Energy Department,
Hyderabad and nine others.

... Respondents

JUDGMENT PRONOUNCED ON 29.8.2016

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE G.SHYAM PRASAD

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

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE G.SHYAM PRASAD

WA.Nos.748, 770 and 932 of 2016

% 29.8.2016

Writ Appeal No.748 of 2016

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> Head Note:

! Counsel for the appellants: Mr. P.Venu Gopal

Senior counsel

for Mr. P.Lakshma Reddy

^ Counsel for respondent No.1: Addl. Advocate General (TS)

^ Counsel for respondent Nos.2 to 4: Mr. R.Vinod Reddy

^ Counsel for respondent Nos.5 to 10: Mr. Vedula Venkatramana

Senior counsel

? Cases Referred:

2014(1) ALD 88 (DB)

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND

HON'BLE SRI JUSTICE G.SHYAM PRASAD

WA.Nos.748, 770 and 932 of 2016

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The State of Telangana, repled by its
Principal Secretary, Energy Department,
Hyderabad and nine others.

....Respondents

Counsel for the appellants: Mr. P.Venu Gopal
Senior counsel
for Mr. P.Lakshma Reddy

Counsel for respondent No.1: Addl. Advocate General (TS)

Counsel for respondent Nos.2 to 4: Mr. R.Vinod Reddy

Counsel for respondent Nos.5 to 10: Mr. Vedula Venkatramana

Senior counsel

WA.No.770 of 2016

Between:

J.Kalyan,

S/o J.Shivaji Ganesh and five others.

..... Appellants

And:

The State of Telangana, repled by its
Principal Secretary, Energy Department,
Hyderabad and seven others.

....Respondents

Counsel for the appellants: Mr. D.Prakash Gopal
Senior counsel
for Mr. Chandraiah Sunkara

Counsel for respondent No.1: Addl. Advocate General (TS)
Counsel for respondent Nos.2 to 4: Mr. R.Vinod Reddy
Counsel for respondent Nos.5 to 8: Mr. Vedula Venkatramana
Senior counsel

AND

Writ Appeal(SR).No.154388 of 2016

Between:

Munja Praveen,
S/o Munja Agaiah and 54 others.

..... Appellants

And:

The State of Telangana, reptd by its
Principal Secretary, Energy Department,
Hyderabad and seven others.

....Respondents

Counsel for the appellants: Mr. P.Venu Gopal
Senior counsel
for Mr. P.Lakshma Reddy

Counsel for respondent No.1: Addl. Advocate General (TS)
Counsel for respondent Nos.2 to 4: Mr. R.Vinod Reddy
Counsel for respondent Nos.5 to 8: Mr. Vedula Venkatramana
Senior counsel

The Court made the following:

COMMON JUDGMENT: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

These three Writ Appeals arise out of common order, dated 11.7.2016, in Writ Petition Nos.17686 and 21729 of 2016.

The facts, in their narrow compass, are as under:

2. Telangana State Transmission Company Limited (TSTRANSCO), Telangana State Northern Power Distribution Company Limited (TSNPDCL) and Telangana State Southern Power Distribution Company Limited (TSSPDCL) (hereinafter referred to as “the Corporations”) have issued separate employment notifications for filling up the posts of Assistant Engineers (Electrical) and Assistant Engineers (Civil) and applications were invited On-line. Jawaharlal Nehru Technological University (for short, ‘JNTU’) was entrusted with the conduct of written examinations. Accordingly, the written examinations were held and the merit lists were prepared. Paragraphs-V and VIII of the notifications, issued by all the three Corporations, which are more or less similar with each other, and the relevant portions thereof read as under:

V. “Important Provisions Governing the Recruitment Process:

- 1.Vacancies: The Recruitment will be made to the vacancies notified before the examination only. There shall be no waiting list as per G.O.Ms.No.81, General Administration (Ser.A) Department, dated 22.02.1997.

2.Recruitment: The Recruitment will be processed as per this notification and also as per the rules and regulations of TSNPDCL existing as on date.

... ..

VIII. Procedure for Selection:

- (i) The selection of candidates for appointment will be made 100% on written examination. The written test comprising of 100 marks consisting of 100 multiple choice questions and each question is carrying "one" mark. The Section-A consisting of 80 questions on core subject of respective discipline; and the Section-B consisting of 20 questions on General awareness and Numerical ability, etc. The duration of Written Examination will be 120 minutes (2 hours). The syllabus for the examination is shown in Annexure-II.
- (ii) Only those candidates who qualify in the written examination by being ranked high, community wise will be called for verification of Original Certificates in 1:1 ratio.
- (iii) The maximum qualifying marks in the written test for the above selection process shall be as follows:
 - OC – 40%
 - BC – 35%
 - SC/ST-30%
 - PH – 30%."

Note: Mere securing minimum qualifying marks does not vest any right to a candidate for being called for verification of original certificates.

3. G.O.Ms.No.81, General Administration (Ser.A) Department, dated 22.02.1997, referred to in the aforementioned paragraphs, *inter alia*, laid down that the list of the candidates approved/selected by the Andhra Pradesh Public Service Commission shall be equal to the number of vacancies only including those reserved for communities/categories notified by Unit officers. The fall out vacancies if any due to relinquishment and non-joining of the selected candidates, etc., shall be notified in the next recruitment.

4. It is an admitted position that as against 184 posts notified by TSTRANSCO, appointment orders were issued for 135 posts leaving 49 vacancies in respect of AE/Electrical and that, out of 22 notified posts, 12 posts were filled up leaving 10 vacancies in respect of AE/Civil. As regards TSSPDCL, as against 201 notified posts of AE/Electrical, 128 posts were filled up and 73 vacancies were left unfilled. As regards TSNPDCL, out of three posts of AE/Civil, two posts were filled and one post remained vacant and that, as against two posts of AE/Computer Science & IT, two posts were filled up leaving no vacancy.

5. In this background, the three Corporations appeared to have approached the State Government for relaxation of G.O.Ms.No.81. Accordingly, the Principal Secretary to Government of Telangana, Energy Department, addressed letter,

vide Lr.No.380/HR/A.1/16-2, dated 01.6.2016, to the Chairmen of all the three Corporations, which reads as under:

“I am to invite attention to the above subject and references cited and inform the Government after careful examination of the matter hereby relaxes the provision, as a special case under the circumstances, of calling for the candidates on 1:1 basis for verification of certificates as contained in their notifications as one time option and permits the TS TRANSCO, TS SPDCL and TS NPDCL to fill up the left over notified (advertised) vacancies of Assistant Engineers in their respective utility duly operating the merit list downwards for each category by following other rules prescribed in their respective notifications.”

6. Assailing the said relaxation, the private respondents in these appeals, who also competed with the appellants and figured below them in the merit list, filed the afore-mentioned two Writ Petitions. The learned single Judge, after considering the pleadings of all the parties, allowed the said Writ Petitions by holding that the appellants, who, admittedly, did not figure in the merit list of 1:1, are not entitled to be considered against the posts which were left unfilled and that, such consideration runs contrary to G.O.Ms.No.81, dated 22.02.1997, and the notifications issued by the three Corporations.

7. We have heard Mr. D.Prakash Reddy and Mr. P.Venu Gopal, learned senior counsel appearing for the respective

appellants, Mr. J.Rama Chander Rao, learned Additional Advocate General for the State of Telangana appearing for the State Government of Telangana and Mr. Vedula Venkatramana, learned senior counsel appearing for the private respondents.

8. Learned senior counsel for the appellants have vehemently argued that the situation to fill up the vacancies with the candidates beyond 1 : 1 ratio had arisen on account of the fact that all the three Corporations as well as Telangana Generation Company (TS GENCO) have issued separate notifications almost contemporaneously, as a result of which, many candidates who were selected in more than one Corporation have preferred to join TSGENCO.

9. Mr. D.Prakash Reddy, learned senior counsel, has invited this Court's attention to the lists filed in the Writ Appeals showing that at least 53 such candidates who were selected on 1 : 1 ratio in more than one Corporation have not joined any of the three Corporations, as a result of which, a peculiar situation had arisen, whereby substantial number of vacancies were left unfilled, warranting intervention of the State Government by relaxing the requirements of G.O.Ms.No.81.

Learned senior counsel further submitted that a proper construction of G.O.Ms.No.81 reveals that only in cases, where the candidates to whom appointment orders were issued did not

join duty, such vacancies shall alone be notified again in the next recruitment and that, in the present cases, admittedly, appointment orders were not issued in respect of the vacancies which were sought to be filled up with the candidates who did not figure in the merit list prepared in the ratio of 1:1.

In support of this submission, learned senior counsel placed heavy reliance on the judgment of a Division Bench of this Court in *Government of Andhra Pradesh & Ors Vs. Bhagam Dorasanamma and another*¹.

10. In addition to the above submissions, Mr. P.Venu Gopal, learned senior counsel, submitted that the Writ Petitions themselves were pre-mature for, the relaxation was granted by the State Government only for the purpose of verification of original certificates of the selected candidates and that, unless appointment orders are issued, no cause would arise for the private respondents to file the Writ Petitions and that, therefore, the learned single Judge ought to have dismissed the Writ Petitions *in limini* as pre-mature.

11. Opposing the above submissions, Mr. Vedula Venkatramana, learned senior counsel appearing for the private respondents, submitted that the purport of G.O.Ms.No.81 read as a whole would, without any ambiguity, reveal that the State

¹ 2014(1) ALD 88 (DB)

shall not prepare a waiting list and that, if any vacancies arise either on account of relinquishment or non-joining, etc, by the selected candidates, the left over vacancies shall be notified in the next recruitment. He has further submitted that if at all G.O.Ms.No.81 contains any ambiguity, the same is cleared by the notifications issued by the three Corporations, which clearly spelt out that there shall be no waiting list as per G.O.Ms.No.81 and also that, only those candidates who are qualified in the written examination by being ranked high community wise will be called for verification of the original certificates in 1:1 ratio.

12. We have carefully considered the respective submissions of the learned counsel for the parties.

(a) Paragraph-8 of G.O.Ms.No.81 referred to the procedure being followed by the High Court of Andhra Pradesh for recruitment to the posts of District Munsifs, as per which, in a recruitment year, selection of candidates shall be made only to the equal number of posts notified and that there shall be no waiting list.

Paragraph-9 of G.O.Ms.No.81 reads as under:

“Therefore the Government after careful examination has agreed with the proposal of the Andhra Pradesh Public Service Commission and accordingly, direct that hence forth, **the list of the candidates approved/selected by the Andhra Pradesh Public Service Commission shall be equal to the**

number of vacancies only including those for reserved communities/categories notified by the unit officers. The fall out vacancies if any due to relinquishment and non-joining etc, of selected candidates shall be notified in the next recruitment.”
(emphasis added)

(b) As we understand, the purport of G.O.Ms.No.81 is that the list of the approved/selected candidates shall be equal to the number of vacancies only, including those for reserved communities/categories, notified by the Unit Officers. If there be any vacancies left unfilled, such vacancies treated as “fall out vacancies” shall be notified in the next recruitment.

(c) Learned senior counsel laid emphasis on the words “the fall out vacancies if any due to relinquishment and non-joining of the selected candidates shall be notified in the next recruitment” and submitted that the contingency of fall out vacancies would arise only in a case, where a candidate who was issued appointment order relinquishes or does not join the duty after issue of such appointment order.

(d) Indeed, the stand taken by the learned Senior Counsel appearing for the appellants is not reflected in the pleadings of the official respondents. In paragraphs 5 and 8 of the counter affidavit filed by the Assistant Secretary to Government, Energy Department, Telangana, it is averred as under:

“It is submitted that, all the Power Utilities in Telangana State have issued Notifications for recruitment to the posts of Asst. Engineers during the same period and conducted written examinations/certificate verification during the same period. Majority of the candidates applied in all four Power Utilities since the posts and eligibility criteria is same. They also figured in the merit list of more than one power utility. The selected candidates were required to produce the original certificates for verification only in one power utility and on the same day, they would be issued with the posting orders. Since, the candidates figured in the merit list of more than one Power Utility, it resulted in unfilled vacancies in the other power utilities.

It is submitted that, the State Government after examining the details furnished by the TS Power Utilities issued Letter No.380/HR.A1/2016-2, dated 01.6.2016, relaxing the provisions contained in the notification as a one time option and permitted the TS TRANSCO, TS SPDCL and TS NPDCL to fill up the left over notified (advertised) vacancies of Assistant Engineers in their respective utility duly operating the merit list downwards for each category by following other rules prescribed in their respective notifications. The decision of the State Government in relaxing the conditions for filling up of notified vacancies is perfectly justified and well within the powers vested in the State Government. The State Government is competent to relax any rule as and when the necessity arises in the welfare of the State and public.”

(e) From the averments in the above reproduced portion of the counter affidavit, it is manifest that no attempt was made by the State Government to plead that the exigencies envisaged in

G.O. Ms. No.81 leading to vacancies not being filled up do not exist in the cases on hand. On the Contrary, it has justified relaxation of the provisions contained in the notification which necessary implies that the notification issued in tune with G.O. Ms. No.81 does not permit filling up of the vacancies to the persons who fall outside the 1:1 ratio.

13. In our opinion, the soul of G.O. Ms. No.81 lies in paragraph -9 thereof. It mandates that the list of the candidates approved/selected shall be equal to the number of vacancies only. It therefore necessarily follows that the candidates who are in excess of the number of notified vacancies, but included in the merit list cannot be treated as approved or selected candidates. That the Corporations have understood this G.O. in the manner as we have explained above is clearly evident from paragraphs 8 and 9 of the TSNPDCL notification which *inter alia* envisage that only those candidates who qualify in the written examination will be called for verification of the original certificates in 1 : 1 ratio. This read in conjunction with G.O.Ms.No.81 would leave us in no doubt that it is only those candidates, who are equal in number to the notified posts, qualified in the written examination in the ratio of 1:1 are entitled to be considered. In other words, any person who could

not come within the ratio of 1:1 is not entitled to be considered, whatever may be the reason.

(a) As rightly argued by learned senior counsel for the private respondents, a condition contained in the executive order cannot be relaxed by a letter. Further, once the selection process is commenced, unless a right is reserved, the employer or the statutory agency cannot change the rules.

14. The Supreme Court in its judgment, dated 15.02.2008, in Civil Appeal No.1313 of 2008, (*K.Manjusree Vs. State of A.P. and An*), observed that rules shall not be changed, once the game is played. The following observations made therein are apposite:-

“But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would

amount to changing the rules of the game after the game was played which is clearly impermissible.”

15. We are unable to accept the submission of the learned Senior Counsel that unless the appointment order is issued and the appointed candidate has not joined, the contingency of relinquishment or non-joining does not arise. This submission is mainly based on the judgment of the Division Bench in ***Bhagam Dorasanamma*** (1 supra). In that case, the Division Bench has construed G.O.Ms.No.81 based on the facts arising thereunder which reveal that a person who was selected for a particular post has opted to join a higher post, *i.e.*, the post of Thanadar. Based on those facts, the Division Bench observed that the process of recruitment starts from the date of notifying vacancies and attains finality with the act of issuing appointment order and that, in the absence of the recruitment reaching finality with the issue of appointment orders in respect of “subject vacancy”, the question of either relinquishment or non-filling up of the same does not arise. However, we find that the Division Bench has not considered the effect of the ratio of 1:1 as we do not find any discussion on this aspect. In our opinion, the said judgment, appeared to have been rendered on the facts of that case, is of no help to the appellants.

16. Even if we assign restricted meaning to the words “relinquishment” and “non-joining” as in *Bhagam Dorasanamma* (1 supra), the word “etc.”, following the words “due to relinquishment and non-joining”, in paragraph-9 of G.O.Ms.No.81 assumes significance. In our opinion, the expression “etc” takes within its fold any situation other than relinquishment and non-joining. Whatever may be the reason for non-filling up of the posts, unless the notification permits a candidate who does not fall within the 1:1 ratio being called for verification of original certificates, consideration of his candidature does not arise.

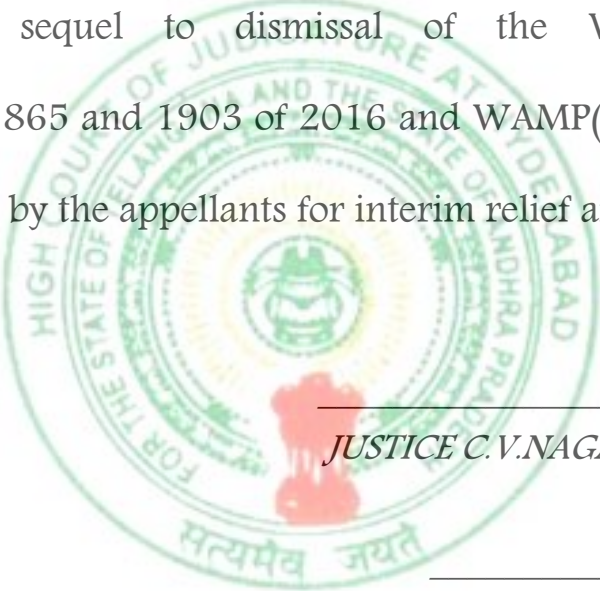
17. If the Government has not understood G.O.Ms.No.81 in the manner we have construed, there was no necessity for it to issue relaxation order, as it has done. From the very contents of the relaxation letter, which is reproduced herein before, it is evident that it has relaxed the condition of calling of the candidates in 1:1 ratio basis as one time option and permitted the Chairmen of all the three Corporations to fill up the left over notified vacancies of Assistant Engineers in their respective utility duly operating the merit list downwards for each category by following other rules. This procedure would make it very clear that as there is a restriction on consideration of the candidates in the ratio of 1:1, the Principal Secretary to

Government has relaxed the said condition in his afore-mentioned letter.

18. Considering the facts and circumstances of the case in their entirety, and the legal position as discussed above, we are of the opinion that the learned single Judge was justified in allowing the Writ Petitions. We do not, therefore, find any reason to interfere with the impugned order.

19. The writ appeals are accordingly dismissed.

As a sequel to dismissal of the Writ Appeals, WAMP.Nos.1865 and 1903 of 2016 and WAMP(SR)No.154390 of 2016 filed by the appellants for interim relief are dismissed as infructuous.



JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

29th August 2016

Note:

LR copies to be marked.

B/o

DR