

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE SMT. JUSTICE ANIS

WRIT PETITION No.22762 OF 2015

JUDGMENT: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This writ petition is preferred by the State of Andhra Pradesh, its Commissioner and Director of School Education and the District Educational Officer, Visakhapatnam District calling in question the correctness of the order passed by the Andhra Pradesh Administrative Tribunal in O.A.No.1272 of 2012 on 25.03.2014.

O.A.No.1272 of 2012 was instituted by the respondent Nos.1 and 2 herein questioning the correctness of the proceedings dated 16.08.2012 of the District Educational Officer, Visakhapatnam rejecting the request of the respondent Nos.1 and 2 for consideration of their case for appointment as Language Pandit (Hindi).

Respondent Nos.1 and 2 are local candidates of Visakhapatnam District. They appeared for selection and appointment as Language Pandit (Hindi) pursuant to the District Selection Commission notification, 2008. However, the 2nd respondent again appeared for similar selections in DSC, 2012 and he was selected. Hence, he has not pursued the O.A.No.1272 of 2012.

In fact, respondent Nos.1 and 2 herein each secured 73.50 marks and hence they are ranked at 20 and 21 in the merit list. A provisional selection list was prepared for 47 posts of Language Pandit (Hindi) in Visakhapatnam District. Thereafter, counselling for issuing posting orders was conducted on 19.10.2009. A running cycle of 100 points is operated for ensuring candidates belonging to all segments such as Open Competition, Backward Classes, Schedule Castes, Schedule Tribes, Ex-servicemen, challenged categories and women get a fair and equitable opportunity to get recruited. Roster point No.13 and 37 are notified for O.C. (General – Ex-servicemen)

category. But however, since qualified Ex-servicemen are not available for selection, no candidate was selected for appointment against Roster point No.13 and 37. When the matter is taken up with the State Government, the State Government passed orders through their G.O.Ms.No.26 School Education (PE.SER.II) Department dated 21.06.2010, permitting the Commissioner and Director of School Education to fill up School Assistants/Physical Education Teachers/ Language Pandits in accordance with the notification issued for recruitment of teachers – 2008 published on 06.12.2008. The Government authorised the selected candidates to be initially appointed as apprentice Teachers purely on adhoc basis in the existing or anticipated vacancies. The Government has constituted the District Selection Committee under the chairmanship of the District Collector, Joint Collector as a Member and the District Educational Officer as a Member Secretary thereof. Detailed guidelines for working out the selections have been furnished in Annexure – I to the said G.O.

Paragraph No.3 (A) dealt with the selection of Ex-servicemen and it reads as under:

“3 (A) Ex-servicemen:

As per G.O.Ms.No.310 General Administration (Ser.D) Department dated 19.07.2005 that the appointments to a post referred to in sub-rule (c) the 13th and 37th turn in each unit of hundred vacancies shall be reserved for ex-servicemen. Out of 13th and 37th roster points, preference to one of the two points for women can be given if women candidates are not available, both the points with men shall be considered. Further, appoint the eligible candidates of DSC-2008 as per merit under OC (G) category in the resultant vacancies meant for Ex-Servicemen which could not be filled up due to non-availability of Ex-Servicemen candidates and it shall be made applicable to the candidates of DSC-2008 only, as per Govt.Memo.No.19738/PE.SER-11/A1/2010, dated.04.06.2010.”

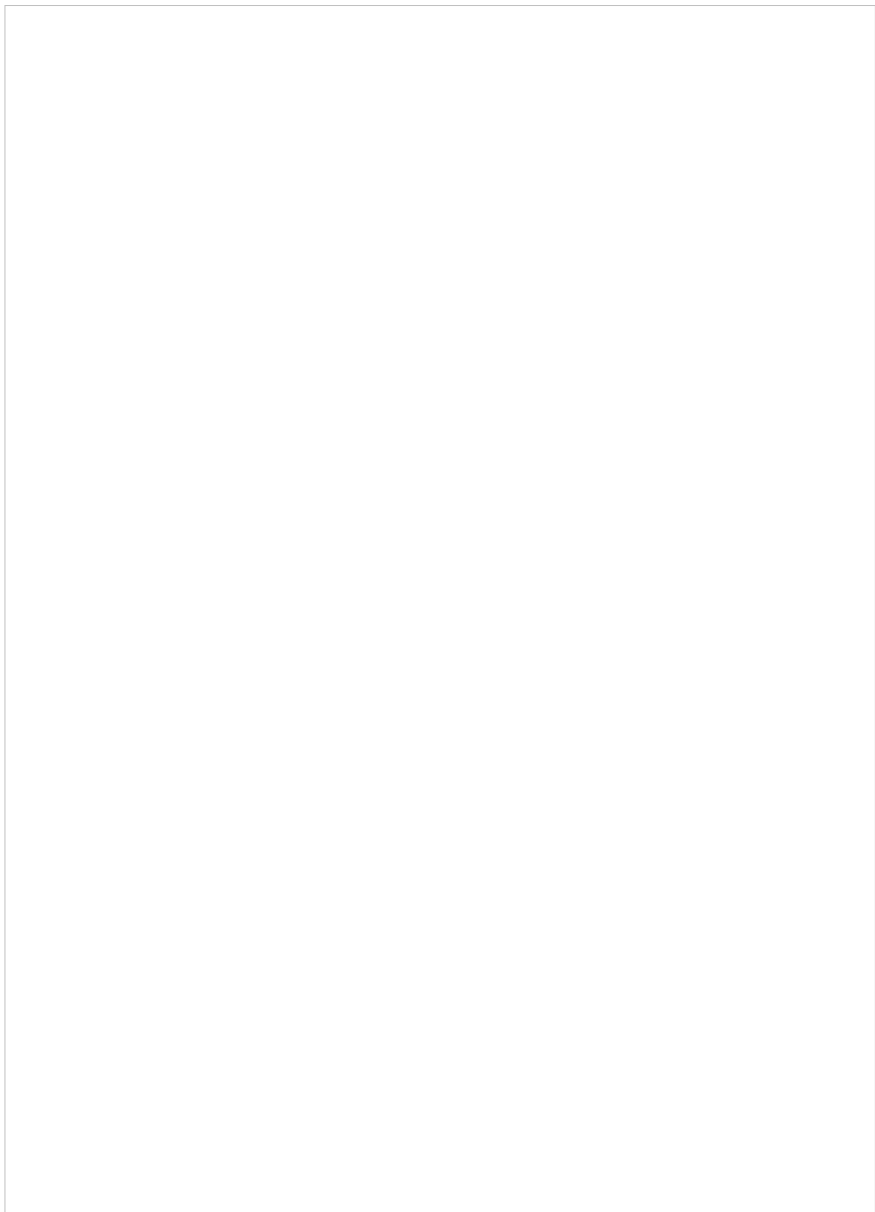
Above guidelines clearly bring out that the roster point Nos.13 and 37 are reserved for Ex-servicemen and at least one of them shall be filled in with a woman candidate, if available. If no woman

candidate is available, both the roster points be filled up with Ex-servicemen. Further, if these roster points could not be filled up for want of availability of Ex-servicemen, they may be filled up with O.C. (General) category. Thus, implying that Open Competition candidates, both men and women may be considered. The plea of respondent Nos.1 and 2 herein is that they are the next meritorious candidates standing at rank Nos.20 and 21 respectively and in spite of non availability of Ex-servicemen to fill up the roster points 13 and 37, they are not selected.

It is now brought out that 36 posts available in schools run by the Government and Zilla Parishad are notified and 12 posts are notified in schools run by the Municipal Administration Department. It is further pointed out that out of 36 posts notified in Government and Z.P. schools, 34 posts have been filled up and 2 posts i.e. one meant for O.C. (General) and one post meant for O.C. – woman candidate could not be filled up. The 2 roster points meant for Ex-servicemen are also not filled up. But in spite of the same, the case of the respondent Nos.1 and 2 herein was not taken up for consideration. The Andhra Pradesh Administrative Tribunal by its order dated 25.03.2014 found the order passed by the District Educational Officer on 16.08.2012 rejecting to consider the cases of respondent Nos.1 and 2 herein is contrary to the orders passed by the State Government and contained in their G.O.Ms.No.26 School Education dated 21.06.2010 and hence directed the petitioners herein to appoint the 1st respondent to the Post of Language Pandit (Hindi) as per the rank obtained by him in DSC-2008 in Visakhapatnam District within a period of eight (8) weeks. It is challenging this order dated 25.03.2014, the present writ petition is instituted.

In the affidavit filed in support of this writ petition in paragraph No.5, the merit list has been furnished and in which list the name of the 1st respondent herein was shown at Sl.No.(rank) No.20 as he has secured 73.5 marks. In fact, candidates who have secured same 73.5

marks have been ranked at Sl.Nos.17, 18, 19 and 20, depending upon the Date of Birth of each of them, the older being ranked above the younger. That is how the 1st respondent herein being the youngest amongst all the 4 candidates has been placed at rank No.20. It is admitted that 36 posts in Government and Z.P. schools and 12 posts in schools run by Municipal Administration and 4 posts under scheduled area, all put together 52 posts of Language Pandit (Hindi) have been notified in DSC – 2008. Out of them, 2 posts in Government Zilla Parishad schools were notified for Ex-servicemen. It is stated that barring the 2 Ex-servicemen posts, the remaining 50 posts were filled up duly following the counselling procedure. It is stated that only 8 posts are meant to be filled in Open Competition (General) category candidates. The last O.C. candidate selected has secured 77 marks and standing at Sl.No.6 in the over all merit list. 2 open competition vacancies to be filled in with Ex-servicemen could not be filled up. There are '6' more candidates awaiting their turn in the Open Competition (General) who got higher marks than the 1st respondent herein and hence he cannot be considered for appointment as per the direction issued by the Andhra Pradesh Administrative Tribunal.



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pressed the learned Government Pleader to place before us the break-up of all the 52 posts of Language Pandit (Hindi), notified for recruitment, learned Government Pleader has placed the same in a tabulated statement, which reads as under:

The correctness of this statement is not doubted before us. The above statement would disclose very clearly that a total of 52 total vacancies only 5 vacancies in Z.P./Government Schools and 3 vacancies in schools run by the Municipal Administration Department are meant to be filled in with O.C. (General) category candidates. Similarly '8' Open Competition vacancies to be filled-in with women candidates are also notified. Again out of these 8; 2 vacancies in ZP/Government schools are thrown to Open competition, thus implying even those O.C. women candidates who may not answer the description of local candidate, as per the Andhra Pradesh Presidential Order, 1975, are also eligible to apply. As per paragraph No.8 (1) of the said order, 80% of the posts of Language Pandits have to be filled in exclusively with those candidates, who answer the description of local candidates. While the remaining 20% vacancies can be filled in by candidates belonging to both local category and those who may not fall within the local category depending upon their merit ranking. Therefore, we need to now examine the merit ranking list and find out as to how many candidates are liable to be selected. The first 16 candidates in the merit list referred to in paragraph No.5 of the counter affidavit are thus eligible as some of them are female candidates and out of the 16, the candidate at merit list No.8 is a non-local candidate. She being a woman candidate, she could not be appointed within the '8' vacancies set apart for 80% local candidates (General), of which 5 fall in Z.P./ Government schools and 3 fall within the Municipal Administration. But however, 2 vacancies in Z.P./Government schools are set apart for O.C. (Women) category employees. Since 8th ranker, being a non local candidate of Visakhapatnam District, she can

compete against 20% vacancies and hence by virtue of her merit rank No.8, she is entitled to be fitted against one of the 2 vacancies left open for 20% Open competition women category candidates. Therefore, her selection can not be faulted. Though the candidate standing at Sl.No.18 is also a non-local candidate, she cannot get selected against the 2nd vacancy meant for 20% open category, as even the local candidates are also entitled for selection. The petitioner being a male candidate cannot stake his claim for selection against Open Competition vacancies meant to be filled in exclusively with female candidates. He can only stake his claim against Open Competition (General) vacancies and the 2 vacancies, which remained un-filled for want of availability of Ex-servicemen, thus putting altogether the total number of 10 posts, against which he can compete. The respondent No.1 secured Rank No.20. Though, within the first 10 ranks, since there is one candidate (8th ranker), who does not answer the description of local candidate, is taken out, even then the candidate at Sl.No.11 being a local candidate and also more meritorious candidate than the respondent No.1, it is he who can get selected but not the petitioner. Further, as was noticed supra, there are several local candidates ranked above him who are waiting for their turn of selection amongst O.C. (General) category.

The Andhra Pradesh Administrative Tribunal has grossly erred in not noticing as to the total number of Open Competition (General) category vacancies against which the petitioner can compete. Therefore, the order and the Judgment of the Andhra Pradesh Administrative Tribunal is not sustainable and it is accordingly set aside.

Accordingly, the writ petition stands allowed. No costs.

Consequently, the miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

31.03.2016
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