

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO
WRIT APPEAL No. 723 OF 2013

% Dated 11.04.2016

Andhra Pradesh Road Transport Corporation & another

.... Appellants

Vs.

\$ Pitchi Muthu

....Respondent

! Counsel for the Appellants : Sri Aravala Rama Rao

^ Counsel for the Respondent : Sri S.S. Bhatt

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> HEAD NOTE:

? Cases referred

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

WRIT APPEAL No. 723 OF 2013

Andhra Pradesh Road Transport Corporation & another

.... Appellants

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JUDGMENT PRONOUNCED ON : 11.04.2016

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AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

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

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AND**

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WRIT APPEAL No. 723 OF 2013

J U D G M E N T: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The Andhra Pradesh State Road Transport Corporation (APSRTC) is the appellant herein. Aggrieved by the order passed in Writ Petition No. 9028 of 2012 on 30.03.2012 by the learned Single Judge, this Writ Appeal is preferred.

The respondent is the writ petitioner. He has challenged the action of the appellants herein in not considering his candidature for recruitment to the post of Shramik though the recruitment process has been initiated pursuant to the Notification dated 23.12.2011. He has also prayed for a direction to the respondents in the Writ Petition, the appellants herein, to consider his candidature for the post of Shramik by sending him a call letter and process further his application.

It is not in dispute that the writ petitioner has undergone apprenticeship with the APSRTC in the year 1994 as a Diesel Mechanic, as he possesses ITI certificate in Diesel Mechanic Trade. It is also true that on 23.12.2011, Notification has been taken out for filling-up the posts of Shramik on regular basis. As per the said notification, the last date for submission of the applications is set as 10.01.2012 05.00 P.M. The candidates are required to possess the necessary qualifications, which would be reckoned as on 01.07.2011.

The candidates belonging to the open category should not have crossed 30 years of age. The candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Classes would enjoy a further concession of five years and the orthopaedically-challenged and the other challenged category candidates would have the benefit of relaxation of the upper age by about ten years. Equally those who have undergone apprenticeship with the RTC would be granted a relaxation of four years in the upper age limit.

It is true that the writ petitioner belongs to Scheduled Castes and he has also undergone the apprenticeship as a Diesel Mechanic with the RTC. Hence, going by the prescription in the Notification dated 23.12.2011, the upper age limit insofar as the petitioner is concerned has to be reckoned as 39 years as on 01.07.2011. Without submitting any application, the petitioner has approached this Court by instituting the above Writ Petition and that Writ Petition came to be disposed of at the admission stage directing the appellants herein to receive and process the application of the writ petitioner and to consider the same in terms of the orders passed by the State Government contained in their G.O.Ms.No. 1, General Administration (Services.A) Department, dated 02.01.2012.

In this context, it is worth noticing the policy decision taken by the State Government and announced through their G.O.Ms.No. 1 GAD, dated 02.01.2012. Through this G.O., an *ad hoc* rule framed by the Governor of the State, in exercise of the power available to him under the proviso to Article 309 of the Constitution, has been notified. The *ad hoc* rule reads as under:

AD HOC RULE

Notwithstanding anything contained in the Andhra Pradesh State and Subordinate Service Rules or in the Special or Adhoc Rules for any State and subordinate Service, the maximum age limit prescribed in the said rules for appointment

by direct recruitment shall be raised by two years i.e. from 34 to 36 years for the purpose of direct recruitment to the various categories of posts already notified/to be notified between 01.07.2011 to 31.03.2012 by all the recruiting agencies in the State of Andhra Pradesh. The age concession over and above the upper age limit shall also be allowed to the categories as provided under Rule 12 of the Andhra Pradesh State and Subordinate Service Rules, 1996.

Provided that nothing in this rule shall apply for direct recruitment to the posts of uniformed services of Police, Excise, Fire, Prisons and Forest Departments for which physical standards have been prescribed in the State and Subordinate Service Rules or in the relevant special or Adhoc Rules.

Provided further that the above age relaxation of two years shall be applicable for the notifications issued after 01.07.2011 for which the last date of submission of applications is not yet over and also for which the last date of submission of applications was over, but the examinations are not yet commenced as per the schedule.

It is plain from the above *ad hoc* rule that it has statutory enforceability, inasmuch as it has been issued by the Governor of the State, in exercise of the power available to him under the proviso to Article 309 of our Constitution. It is only appropriate to note that such power can be exercised by the Governor to frame any rule, which can regulate the conditions of civil services or services under the State. Such power can be exercised in the absence of any statute regulating the said field being framed by the Legislature. In the instant case, the *ad hoc* rule has been framed obviously as the field is not occupied by an appropriate legislation made by the local legislature. Since the *ad hoc* rule will only have applicability to the posts, which have been organized as civil services under the State or posts in connection with the affairs of the State, it will not have an automatic applicability, so far as the employees to be recruited by a statutory corporation like that of the RTC are concerned. Posts in the RTC's service are not forming part of the civil services of the State nor the post of a Shramik, which is sought to be filled-in now by the Notification dated 23.12.2011, falls

within the expression of 'post connected with the affairs of the State'. For these reasons we are very clear that the *ad hoc* rule notified through G.O.Ms.No. 1, dated 02.01.2012 does not have automatic applicability to the post of Shramik, which is sought to be filled-in, for the writ petitioner to stake a claim to have his case considered by taking the said *ad hoc* rule into account. Therefore, to this extent, the direction issued by the learned Single Judge is clearly unsustainable.

It is now brought to our notice by Sri Aravala Rama Rao, learned Standing Counsel for the APSRTC that notwithstanding the fact that the *ad hoc* rule does not have automatic application to the post of Shramik, but nonetheless, the Corporation has taken into account and consideration the application of the writ petitioner and having noticed that by 01.07.2011, he has already crossed 39 years and as he was more than 41-year-old by the said date, his candidature has been rejected by a separate proceedings, dated 20.06.2012. In that process, it was brought out that the Vice-Chairman and Managing Director of the Corporation, who has applied his mind as to whether a similar rule like the *ad hoc* rule notified through G.O.Ms.No. 1, dated 02.01.2012 should be framed for regulating the recruitment to the services under the Corporation or it should be adopted as it is, has decided not to do so.

We are therefore, of the opinion that the Writ Petition is a misconceived one. Accordingly, the Writ Appeal stands allowed and the Writ Petition stands dismissed. No costs.

Consequently, the miscellaneous applications, if any shall stand disposed of.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

11th April 2016

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