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HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition Nos. 4877 and 25528 of 2015

Common Order:

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These two Writ Petitions are being disposed of by this common order as the petitioner in WP No.4877 of 2015 is the fifth respondent in the subsequent WP No.25528 of 2015 and the fifth respondent in WP No.4877 of 2015 is the petitioner in the latter petition.

2. The petitioner in WP No.4877 of 2015 is hereinafter called as the 'petitioner' and the petitioner in WP No.25528 of 2015 is called as the 'fifth respondent' for the sake of convenience.

3. The case of the petitioner is that the first respondent issued a notification on 06.02.2012 calling for applications from eligible candidates for the posts of Principals, Post Graduate Teachers (PGTs) and Trained Graduate Teachers (TGTs) in the Model Schools. The petitioner, having been qualified to the post of PGT (Commerce), applied to the post. The petitioner is a Post Graduate in Commerce and B.Ed (Social Studies). He was issued Hall Ticket No.61632000310. He was successful in the written test and interview, but, when the merit list was published, his name did not find place. On the other hand, the fifth respondent was declared to have been selected. The petitioner further states that in respect of Zone-VI, six (6) posts of PGT (Commerce) were notified for ST community in which two (2) posts were earmarked to women and four (4) posts were earmarked to general candidates. In respect of two (2) posts earmarked for women, two candidates were already selected and for the remaining four (4)

posts, three individuals who got highest merit were selected. The fourth post was filled up with the fifth respondent, though she is ineligible on the ground of lacking requisite qualifications. The petitioner filed the Writ Petition challenging the action of the official respondents in selecting the fifth respondent to the post of Post Graduate Teacher (PGT)-Commerce in Zone-VI under ST General quota though she lacked the requisite qualification and the petitioner possessing the qualifications.

4. Though no counter was filed in the said writ petition, the averments made in the affidavit filed in support of WP No.25528 of 2015, wherein the fifth respondent is the petitioner is taken for the purpose of the case.

5. After receipt of notice in W.P.No.4877 of 2015, the authorities, on their own, by taking into consideration the challenge made by the petitioner in WP No.4877 of 2015, after issuing a show cause notice, terminated the services of the fifth respondent by proceedings dated 30.07.2015. She filed the said Writ Petition challenging the order passed by the third respondent terminating her services. It is the case of the fifth respondent that she belongs to Scheduled Tribe Community and possessed Post-Graduation Degree in Commerce. Though she did not pass B.Ed when the notification was issued, she passed the same in the month of July 2013. Thus, as on the date of issue of order of termination she was fully qualified to hold the post. She was appointed by proceedings dated 21.09.2014 and posted as PG Teacher in Model School, Dharpally, Nizamabad District after verifying her certificates. It is her further case that the cut-off marks prescribed for the post of PGT in ST General category is 36.5 and ST Women category is 34. She got 36.5 marks and

hence she was appointed considering her merit. It is her further case that the petitioner secured only 35 marks, below the cut-off marks prescribed for ST General candidates. Since there is no other candidate who is available above the cut-off marks possessing B.Ed qualification she was selected for the post.

6. As per the counter affidavit filed on behalf of the respondents 1 to 4 in the Writ Petition filed by the fifth respondent, the fifth respondent applied for PGT (Commerce) in Zone-VI and participated in the recruitment process. She secured 36.5 marks and belongs to ST Community. In the 'Note' mentioned in the notification it was clearly stated that in respect of PGT (Commerce) if the candidates with B.Ed are not available, M.Com candidates can be recruited. However, the incumbent will have to acquire B.Ed or equivalent degree from recognized University within a period of two years. The fifth respondent was called for certificate verification on 17.05.2013 at Stanley Girls High School, Gunfoundry, Hyderabad, and attended the same. Her candidature was rejected as she was not having the qualification of B.Ed. Thus, she was not appointed during June 2013. However, the fifth respondent submitted a representation to consider her candidature for the post of PGT (Commerce) on 21.01.2014. The Grievance Committee constituted by the second respondent examined her case and found that since fifth respondent secured 36.5 marks with rank 281 and cut-off marks for ST (W) local is 34 marks, she was considered during the recruitment that took place in September 2014. The petitioner submitted an application on 24.09.2015 stating that the appointment of the fifth respondent was against the notification and he was eligible as he possessed B.Ed qualification well before the notification. In view of the same, the second respondent reviewed the appointment of the fifth

respondent and felt that she was not qualified and accordingly proceedings dated 22.06.2015 were issued directing her to explain. Though the fifth respondent did not submit her explanation, on 06.07.2015 she asked for information. Since the fifth respondent acquired B.Ed qualification subsequent to the date of notification, her services were terminated by proceedings dated 30.07.2015. However, in view of the interim orders passed by this Court on 13.08.2015, the services of the fifth respondent are being continued.

7. The petitioner filed a counter affidavit to the Writ Petition filed by the fifth respondent stating that the cut-off marks for ST candidate was 35 marks and he secured 35 marks. Though the fifth respondent secured 36.5 marks, she was not qualified as on the date of application.

8. The fifth respondent filed a reply affidavit in her Writ Petition admitting that the petitioner secured 35 marks, whereas she secured 36.5 marks. The cut-off marks for PGT (Commerce) was shown as 36.5 in ST General under local category, but so far as ST Women is concerned it was shown as 34 marks. It is her further case that since she secured 36.5 marks she was considered under ST General category, even though she was entitled for appointment in ST Women Category. She further states that she acquired B.Ed qualification in July 2013 and she was appointed on 21.09.2014.

9. Learned counsel for the petitioner submitted that the petitioner possessed all the requisite qualifications for being appointed as PGT (Commerce) and in spite of the same the fifth respondent was appointed overlooking the qualifications and merit

of the petitioner. He relied on a decision of the Hon'ble Supreme Court in **Rakesh Kumar Sharma v. State (NCT of Delhi) and others**^[1].

10. Learned Senior Counsel, Sri K.G. Krishna Murthy, appearing for the fifth respondent, submitted that the fifth respondent is also qualified and possessed B.Ed qualification subsequent to her appointment and hence it cannot be held that she is disqualified to hold the post of PGT (Commerce). He further submitted that the impugned order was passed without affording an opportunity to the fifth respondent but treating her request to furnish information as an explanation and hence the impugned order is vitiated. He relied on the decisions of the Hon'ble Supreme Court in **D.K. Yadav v. J.M.A. Industries Limited**^[2], and **Dheerender Singh Paliwal v. UPSC (CA No.4484 of 2016 (arising out of SLP(C) No.35442 of 2010) and SLP (C) Nos.5752, 6380 of 2012, dated 21.04.2016))**.

11. This Court, by an order dated 13.08.2015, granted interim suspension of the order dated 30.07.2015 and now WVMP No.3273 of 2015 is filed by the petitioner and WVMP No.441 of 2016 was filed by the Government. When those petitions were taken for consideration, the learned Counsel on both sides agreed for disposal of the Writ Petitions.

12. The qualifications required for the post of PGT (Commerce) as per the Information Bulletin enclosed to the Notification No.1, dated 06.02.2012, are as follows.

"2) PGT:

Qualifications & Experience:

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j. PGT (Commerce) – Commerce with

Accountancy/Cost Accounting/Financial Accountancy as a major subject of study. Holders of M.Com in Applied/Business Economics are not eligible.

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B. Desirable: Knowledge of computer applications

NOTE: *In case of PGT (Commerce) if the candidates with B.Ed are not available M.Com candidates can be recruited. The incumbent will have to acquire B.Ed or equivalent degree from recognized university within a period of 2 years with his/her own cost."*

13. It is not in dispute that the petitioner and the fifth respondent possessed PG Degree in Commerce. It is also not in dispute that in respect of Zone-VI, six (6) posts of PGT (Commerce) were notified for ST community, out of which two (2) posts were earmarked to women and four (4) posts were earmarked to general candidates. In respect of two (2) posts allotted for women, two women were already selected and in respect of remaining four (4) general posts, three individuals who got highest merit were selected and the fourth post was filled up with the fifth respondent.

14. In the light of the contentions it has to be seen (1) whether the appointment of the fifth respondent by the authorities on 21.09.2014 was proper or not and (2) whether the fifth respondent, if it was held to have been irregularly appointed on 21.09.2014 is entitled for a further opportunity in spite of her failure to submit an explanation and asking for information was *bona fide* in the facts and circumstances of the case.

15. Admittedly, as per the above notification, the candidates possessing M.Com Degree can be recruited only if B.Ed candidates were not available. In such a case, the person had to acquire B.Ed degree within a period of two years. The cut-off

mark in respect of ST General local was 35 and the petitioner got 35 marks, whereas the fifth respondent got 36.5 marks. But, the petitioner possessed M.Com with B.Ed, whereas the fifth respondent was not having B.Ed qualification. In view of the same, there cannot be any doubt with regard to irregularity of appointment of the fifth respondent as she did not possess the requisite qualification as on the date of notification. The decision in **Rakesh Kumar Sharma's** case (1 supra) also supports this view.

16. With regard to the contention of the learned Senior Counsel appearing for the fifth respondent, that, though the fifth respondent asked for some information on 06.07.2015 in order to furnish the reply pursuant to the show cause notice dated 22.06.2015, it was construed as an explanation and the impugned order was passed on 30.07.2015 terminating her services and hence the impugned order has to be set aside, it is to be seen that a perusal of the show cause notice clearly shows that no further information is required as the facts are very clear and the request of the fifth respondent is only intended to drag on the proceedings. The show cause notice as well as the impugned order are self explanatory. In view of the same, this Court is of the opinion that the principles of natural justice are not violated in the instant case as the principles of natural justice cannot be put in a straight jacket formula and applied to each and every case. In view of the same, the decisions relied on by the learned Senior Counsel appearing for the fifth respondent have no application.

17. Accordingly, Writ Petition No.4877 of 2015 is allowed and consequently Writ Petition No.25528 of 2015 is dismissed. There shall be no order as to costs.

18. As a sequel thereto, the miscellaneous petitions, if any, pending in these Writ Petitions, shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 27th June, 2016
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[\[1\]](#) (2013) 11 SCC 58

[\[2\]](#) (1993) 3 SCC 259