

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra
Pradesh

Writ Petition No.10586 of 2016

Between:

J.Kiran Kumar Jakkula and 2 others

... Petitioners

and

–
The Union of India
rep. by its Secretary
Ministry of Micro, Small & Medium
Enterprises,
New Delhi and 3 others.

...Respondents

Date of Judgment Pronounced: 01-04-2016

Submitted for Approval:

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and

The Hon'ble Sri Justice M.S.K.Jaiswal

1. Whether Reporters of Local newspapers
Yes/No
may be allowed to see the judgments ?

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2. Whether the copies of judgment may be
Yes/No
marked to Law Reporters/Journals

3. Whether Their Ladyship/Lordships wish to
Yes/No
see the fair copy of the Judgment ?

(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

* The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and
The Hon'ble Sri Justice M.S.K.Jaiswal

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! Counsel for the Petitioners : Sri
G.Vidyasagar

^ Counsel for respondent No.1: Mr.B.Narayana
Reddy,

Asst. Solicitor

General

^ Counsel for respondent Nos.2 & 3: Mr.Mehar Chand
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NIL

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Counsel for the petitioner :

Mr.G.Vidyasagar

Counsel for respondent No.1:

Mr.B.Narayana Reddy,

Asst. Solicitor General

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Counsel for respondent Nos.2 & 3:

Mr.Mehar Chand

Nori

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The Court made the following:

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Order : (Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Writ Petition is filed feeling aggrieved by Order, dated 02-03-2016, in OA.No.1399 of 2014, on the file of the Central Administrative Tribunal at Hyderabad (for short 'the Tribunal') whereby it has rejected the relief claimed by the petitioners for a direction to respondent No.2 to appoint them in pursuance of its proceedings in Memorandum No.3(8)/2/2010-Estt./Vol.I/429, dated 14-12-2013.

We have heard Mr.G.Vidyasagar, learned Senior Counsel appearing for the petitioners, and Mr.Mehar Chand Noori, learned Counsel for respondent Nos.2 and 3.

At the hearing, it is not disputed that in pursuance of the employment notification issued for the posts of Junior Administrative Assistants in respondent No.2- Organization, the petitioners have appeared for written test and interview and emerged

as successful candidates. Consequently, the Chief Administrative Officer of respondent No.3 has issued an offer for appointment to the petitioners *vide* separate but identical Memorandum, dated 14-12-2013, which contains as many as 20 conditions.

Condition Nos.1 to 3, 12, 13 and 20 read as under:

1. Initial pay of Rs.5,830/- per month in the Pay Band of Rs.5,200/- - Rs.20,200/- with Grade Pay of Rs.1,900/-;
2. The post is temporary but is likely to continue for an indefinite period;
3. He will be on probation for a period of two years. The said period of probation is liable to be extended or curtailed at the discretion of the appointing authority.

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12. He shall be required to contribute to Employees' Provident Fund as per the rules in force (a copy of the CPF Rules of the Institute is available in the Library for reference purpose).

13. He will be entitled to draw dearness, house rent and other allowances on the same rates as are admissible for Government of India employees of equivalent status under the Rules in force from time to time.

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20. If Shri Kiran Kumar Jakkula accepts the offer on the above terms, he should communicate his acceptance to the undersigned by the 30.12.2013. If no reply is received or the appointee fails to

report for the duty on or before 30.12.2013
the offer will be treated as cancelled.”

It is not in dispute that the petitioners have complied with their part of obligations under the aforesaid Memoranda and have even undergone medical tests. The Tribunal has dismissed the OA only on the ground that after the aforementioned appointment offers were issued, respondent No.3 has taken a decision not to fill up five out of eight vacancies and that as the petitioners were only selectees, they have no right to insist on their appointment.

In our opinion, the view taken by the Tribunal on the facts of the case is not correct. The petitioners were not only subjected to a full-fledged selection process involving written test and interview but were also issued offer of appointment subject to certain conditions, which were admittedly complied with by them. Therefore, a right came to be vested in the petitioners for being employed by respondent Nos.3 and 4 and such a right cannot be taken away without valid reasons. The only reason put forth by respondent No.3 was that in pursuance of the Government of India policy, which had been

in existence from 2007, it has decided to engage personnel for five out of eight posts, for which selection process was held and candidates were selected on contract basis. In our opinion, the decision to restrict the appointments only to three posts, is not supported by any valid reason. It is not the pleaded case of respondent No.3 that after issue of offer letters, need to employ personnel ceased to exist. The fact that respondent No.3 is justifying his action based on Government of India policy of 2007 permitting engagement of personnel on contract basis shows, the need exists and he prefers contract employees to regular employees. If the decision was taken in pursuance of a policy, which had been in force from the year 2007, there is no reason for respondent Nos.2 and 3 to embark upon the selection process for eight posts. It is not as if there was a change in policy after the appointment offers were made on 14-12-2013. In the absence of any such changed policy, the decision of respondent No.3 not to employ the petitioners is arbitrary and the same cannot be sustained. Further, the offer letters were not withdrawn by respondent No.3 at any point of time.

While the law is well settled that a selected candidate has no indefeasible right for appointment, this legal proposition has no application to the present case as respondent No.3 has travelled beyond the stage of selection by issuing offers of appointment under which the petitioners were required to report to duty after fulfilling the conditions stipulated therein, on or before 30-12-2013 *vide* Condition No.20 of the offer letter. Respondent No.3 has not reserved in appointment letters his right to withdraw the offer even after the petitioners complied with the conditions of offer. On the contrary, it is implied from Condition No.20 of the offer letter that if they report to duty on or before 30-12-2013, the offers cannot be cancelled. Moreover, respondent No.3 has not explained on what basis he allowed three of the eight selectees to join duty. Even if he had to choose only three selectees, he has to select them based on merit. Respondent No.3 cannot indulge in pick and choose method without following *inter se* merit.

Reliance on condition No.5 of the offer letters by respondent No.3 cannot justify denial of employment to the petitioners. This condition

pertains to termination of probation by one month notice. This condition does not enable respondent No.3 to deprive the petitioners of their right to join the employment in pursuance of the offer letters.

In the above facts and circumstances of the case, the order of the Tribunal is set aside. The Writ Petition is allowed and as a consequence thereof, the OA is allowed as prayed for.

As a sequel, WPMP.No.13334 of 2016, filed by the petitioners for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

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(M.S.K.Jaiswal, J)

Dt: 1st April, 2016

Note:

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to be marked.**

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