

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION (TR) No.343 OF 2017

DATED : 26.07.2017

Between :

A.Goverdhanagiri S/o.A. Yellaiah,
Aged about 43 yrs, working as Lab-Boy,
O/o.I & QC Circle, Sub-Division No.7,
Central Lab, LMD Colony, Karimnagar,
R/o.8-4-384, Ganeshnagar, Karimnagar.

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Petitioner/Applicant

And

The Superintendent Engineer,
I & QC Circle, KC Colony, Hanamkonda,
Warangal- 506001 & others.

..

Respondents



This court made the following :

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ORDER :

Heard.

2. Petitioner is a native of Karimnagar District and belongs to BC-B community. The land of the petitioner was acquired for the purpose of establishing Lower Maneru Dam reservoir. Government formulated a scheme to provide employment to the displaced persons for the purpose of construction of irrigation projects and the scheme was notified in G.O.Ms.No.98 dated 15.04.1986. The scheme envisages preferential treatment for families whose lands as well as houses were acquired compared to persons whose lands or house was acquired. Consequent to the notification of 'The Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern And Pay Structure) Act, 1994' (for short 'Act 2 of 1994') which regulates recruitment to public employment, to bring the employment under the scheme in tune with the mandate of the Act, Government constituted a selection committee at the district level in accordance with Section 4 (1) (b) of the Act 2 of 1994.

3. The selection committee, so constituted found the petitioner as eligible to provide employment under the land displaced persons quota to the post of Junior Assistant. In the merit list drawn on 02.02.2004 the name of the petitioner was shown against Sl.No.21. The petitioner was waiting for provision of employment. While so, petitioner was offered the post of Lab-Boy in June, 2008 and accordingly he was appointed on 18.06.2008. Later petitioner came to know that Sri P.Guruva Reddy-6th respondent was

appointed as Junior Assistant on 17.06.2008 i.e., a day before the petitioner was appointed and on 20.09.2008 Sri A.Srinivasa Reddy (Sri V.Srinivasa Reddy) was appointed as Junior Assistant. Petitioner also came to know that a person by name V.Venkat Reddy was appointed as lab-boy and later appointed as Junior Assistant on 31.03.2010. On verification petitioner noticed that in the selection list drawn on 02.02.2004 Sri Guruva Reddy was shown at Sl.No.44 and A. Srinivasa Reddy (Sri V.Srinivas Reddy) was shown against Sl.No.67. Aggrieved by these developments, petitioner made representation for his appointment as Junior Assistant. As there was no response to his representation, petitioner applied for information under the Right to Information Act, on 09.10.2012 for eliciting the information of how the above persons were appointed.

4. Information sought was furnished on 15.11.2012. The information does not disclose the reasons for ignoring the petitioner and appointing the 6th respondent and others. He was also furnished copy of combined list of persons who were provided employment. In the said list the name of Guruva Reddy is shown against Sl.No.41, whereas name of the petitioner was shown against Sl.No.60. Aggrieved by the same and praying to declare the action of the respondents in not considering him for appointment to the post of junior assistant and consequently to declare that appointing 6th respondent ignoring the petitioner as illegal, petitioner filed O.A.No.1608 of 2013, since transferred to this Court.

5.1 Learned counsel for the petitioner submits that the merit list was drawn on 02.02.2004 after following the due selection process, by duly constituted selection committee and as per entitlement of the petitioner and his performance in the selections, petitioner was shown against Sl.No.21 in the said merit list. Whereas the 6th respondent was shown against Sl.No.44 and A. Srinivasa Reddy (V.Srinivas Reddy) was shown against Sl.No.67. This merit list ought to have been the basis for making appointments and ignoring the merit awarded to the petitioner, Sri Guruva Reddy was appointed as Junior Assistant and petitioner was offered appointment as Laboratory boy. Even though his selection was against the post of Junior Assistant, he was forced to accept the appointment as Laboratory- boy as true facts were not brought to his notice, as to when such appointments were made.

5.2 Learned counsel further submits that the justification given by the respondents in appointing the 6th respondent ahead of the petitioner is on the ground that an integrated seniority list was drawn in the year 2008 and in the said list name of the 6th respondent is shown against Sl.No.65, whereas name of the petitioner is shown against Sl.No.98. He submits that no reasons are forthcoming as to how petitioner name is pushed down vis-à-vis the 6th respondent, when in the selections conducted in 2004, petitioner secured higher merit. Similarly how A. Srinivasa Reddy (V.Srinivas Reddy) was appointed when he secured far less merit. He further submits that in the integrated seniority list, A. Srinivasa Reddy (V.Srinivas Reddy) does not even figure and therefore, such appointment is *ex-facie* illegal.

6. Learned Government pleader submits that determination of integrated seniority list in the year 2008 was made by following due process and this integrated seniority list shall be the basis for appointment and 6th respondent was appointed after this list was drawn, based on the placement assigned to him and as petitioner was assigned lower placement in the merit list, he was appointed as Lab-boy only after the appointment of 6th respondent.

7. Though notice is served, no appearance is entered on behalf of the 6th respondent and no counter affidavit is filed.

8. The merit list drawn in 2004 was by duly constituted selection committee, in accordance with Section 4(1) (b) of the Act 2 of 1994. Therefore, the selections made by the said committee are in accordance with the provisions of the Act 2 of 1994.

9. The counter affidavit is silent as to what happened to the said selection list. Apparently, the selection list was not annulled and was in force, when another list was drawn in the year 2008. It is not stated in the counter as to why there was revision of list in the year 2008 and how petitioner is pushed down. More so, when 6th respondent and petitioner have participated in the same selections in the year 2004 and petitioner was assigned higher rank.

10. It appears, from the material papers enclosed to the counter affidavit, the District Collector, simply forwarded a combined list of displaced persons to Government vide his letter dated 25.03.2008 and the said list was approved by the Government. It appears the competent authority waited for approval of the said list and basing on the entries shown in the said list, 6th respondent was appointed as Junior Assistant ignoring the petitioner.

11. The record would disclose that while 2004 list was prepared in accordance with the mandate of Act 2 of 1994, no such exercise seem to have been undertaken in the year 2008.

12. Since the merit list was drawn in accordance with the mandate of Act 2 of 1994, in the year 2004, and as no justification is given in the counter affidavit for ignoring the said merit list, I am of the considered opinion that ignoring the petitioner for appointment to the post of Junior Assistant which post was available when he was considered for the lower post of Laboratory Boy, is *ex-facie* illegal. Similarly, it appears, there was another post of Junior Assistant also available, which was offered to Srinivasa Reddy who was assigned lower rank in the merit list drawn on 02.02.2004 and whose name does not figure in the combined merit list drawn in 2008.

13. It is pertinent to note at this stage that by virtue of the merit list drawn on 02.02.2004, a right is accrued to the petitioner for provision of employment under the displaced persons quota, in accordance with the scheme formulated in G.O.Ms.No.98 and as per the placement assigned in the said merit list. If there is any change of ranking in the merit list, so determined in 2004, the basic and elementary principle of law requires that affected person must be put on notice and be granted due opportunity before altering the merit rank as it has direct impact on appointment to public employment. Apparently no such notice was issued to the petitioner before changing his ranking, vis-à-vis 6th respondent and A. Srinivasa Reddy (V.Srinivas Reddy).

14. Thus, on this ground also the list of 2008 and the appointment as Laboratory-boy granted to the petitioner and appointment granted to 6th respondent as Junior Assistant are not sustainable in law and the petitioner is entitled to the relief claimed in the writ petition. Writ petition is accordingly, allowed.

15. Respondents 1 to 5 are directed to appoint petitioner as Junior Assistant from the date of appointment of 6th respondent i.e., 17.06.2008 and with all consequential benefits flowing there from. In the event if there is no vacancy available, on that day, it is open to the respondent authorities to adjust 6th respondent to any other post, as per his entitlement including the post of Laboratory boy which was occupied by the petitioner or in the post of Junior Assistant that may have arisen after 17.06.2008. Petitioner is entitled to notional pay fixation from the date of appointment of 6th respondent i.e., 17.06.2008. The entire exercise shall be completed within a period of two (2) months from the date of receipt of copy of this order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition (Tr) shall stand closed.

26th July, 2017
Rds

P.NAVEEN RAO,J