

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

WRIT APPEAL No.1320 OF 2016

JUDGMENT: (*Per Hon'ble Dr. Justice Shameem Akther*)

This Appeal, under clause 15 of Letter Patent, is preferred against the dismissal order dated 10.08.2016 passed by the learned Single Judge in Writ Petition No.27836 of 2014.

2. The parties hereinafter are referred to as arrayed in Writ Petition No.27836 of 2014.

3. The Writ Petition was filed under Article 226 of the Constitution of India to declare the action of the respondents in not considering the case of the petitioner in vacancies left unfilled due to disqualification and deletion of provisionally selected candidates under BC-E category in respect of posts of Junior Plant Attendant in Kothagudem Thermal Power Project (KTPP), as violative of Articles 14 and 16 of the Constitution of India; and also to direct the respondents to appoint the writ petitioner in the leftover vacancies of post of Junior Plant Attendant with seniority and salaries, on par with the candidates selected earlier as per notification No.01/CGM(HR)/2010, dated 05.01.2011 and supplementary notification No.01/CGM(HR)/2011, dated 17.10.2011.

4. The case of the appellant-writ petitioner is that he passed SSC and ITI (Electrician) and belongs to BC-E community; when the respondents issued a notification on 05.01.2011 followed by a supplemental notification dated 17.10.2011 notifying 12 vacancies in BC-E

category in KTPP, he applied and underwent the process of selection and got 65.99 marks, he was not selected as the cut-off marks was 66.01, five candidates were selected, three candidates did not qualify due to various reasons, so his case should have been considered in one of the vacancies, therefore, he filed the writ petition seeking a direction to the respondents to consider his case in one of the unfilled vacancies.

5. Learned Single Judge, by order dated 20.09.2014 in W.P.M.P. No.34856 of 2014 in W.P. No.27836 of 2014, directed the respondents to consider the case of the appellant-writ petitioner for appointment to the post of Junior Plant Attendant in place of disqualified and deleted candidates and when the same is not considered by the respondents, he filed C.C. No.2047 of 2014 and the same was also taken up for consideration along with the writ petition.

6. Counter affidavit was filed by the respondents admitting the issuance of notification on 05.01.2011 inviting applications from eligible candidates for filling up of 1086 posts of Junior Plant Attendants and stated that a supplemental notification was also issued on 17.10.2011 duly adding 669 new vacancies in addition to 1086 posts already notified, thus the total vacancies notified were 1755 including backlog vacancies, 50% of those vacancies were reserved for land losers/displaced persons, the post of Junior Plant Attendant is categorized as "District Cadre Post" vide G.O.O. No.276/JS(Per.)/2008, dated 02.09.2008; the process of selection comprises of 30 marks allocated against marks obtained in the qualifying examination, weightage of 10 marks at the rate of 2 marks for each completed year of passing after passing the qualifying examination, but

before the date of notification, and service weightage, the total marks secured by the petitioner in all categories is 65.99 and the cut-off marks for BC-E group was 66.01 marks, therefore, the name of the petitioner did not find place in the provisional selection list of 1:1; and in view of the orders dated 20.09.2014, an order was passed on 27.09.2014 rejecting the request of the petitioner, the fallout vacancies, due to any reason, shall be notified in the next recruitment only.

7. In the Contempt Case also, the respondents filed a counter affidavit denying that there are three vacancies unfilled due to the disqualification incurred by the selected candidates and stated that though they were found to have been disqualified for various reasons, in a subsequent development on final verification of records, all the three were given approval for appointment and accordingly, they reported for work.

8. After hearing both sides, the learned single Judge dismissed both the writ petition and the contempt case, vide common order dated 10.08.2017, observing that as on the date of the filing of the writ petition, no post remained unfilled and all the posts were filled; the petitioner got less marks than the cut-off marks arrived at for the BC-E candidates and hence his name did not figure in the selection list; as per G.O.Ms. No.81 dated 22.02.1997, adopted by the erstwhile APSEB vide B.P(P&G-Per.) Mr.No.100 dated 23.07.1997, the recruitment to the notified vacancies shall be made by equal number of candidates and there cannot be any waiting list, and since all the posts were filled up, the petitioner cannot claim consideration of his case in respect of unfilled vacancies, if any. Challenging the said order, the writ petitioner preferred this writ appeal.

9. Heard both the learned counsels for the appellant-writ petitioner and the respondents, apart from perusing the material available on record.

10. Learned counsel, appearing on behalf of the appellant-writ petitioner, would submit that 13 vacancies were notified for appointment of Junior Plant Attendant in BC-E category; out of which, 5 vacancies are reserved for women, provisional selection list was published, wherein the candidate at serial No.94 secured 70.96 marks, he did not report for verification of original certificates and was disqualified; the candidate at serial No.144 secured 70.26 marks, his study certificate found fake and was disqualified and his name stands deleted; the candidate at serial No.169 secured 67 marks, his certificate also found fake, he was disqualified and his name stands deleted; the writ petitioner secured 65.99 marks and was not selected on the ground that the cut-off marks is 66.01, though three candidates got disqualification, the cut-off marks being 66.01, which is indicated at serial No.194, where Sadik Pasha Mohammed secured 66.01 marks, qualified; and naturally, the writ petitioner having secured 65.99 marks, is entitled for appointment. He would further submit that two candidates at serial Nos.144 and 169 were disqualified on the ground of submitting fake certificates and the candidate shown at serial No.94, in BC-E category, has also not reported for verification and his appointment was kept in abeyance, after publication of provisional selection list, final selection list has to be issued, but no such final selection list is issued by the respondents; therefore, had the final selection list is prepared, the writ petitioner will find a place for the appointment in the

category of BC-E; and the learned Single Judge has not considered the said aspects. The learned counsel would further submit that the respondents are relying on G.O.Ms. No.81 dated 22.02.1997, as adopted by the erstwhile APSEB (presently TSGENCO), vide B.P.Ms. No.100 dated 23.07.1997, wherein the Government directed the list of candidates approved shall be equal to the number of vacancies and there shall not be any vacancies and the fall out vacancies if any, due to relinquishment of posts or otherwise and it cannot be said that in respect of those three vacancies, the candidate next in the merit list are not required to be appointed, as per the said G.O.Ms. No.81 and so, the above vacancies cannot be carried forward to the next recruitment; the respondents cannot claim that the candidates placed in the provisional selection list or appointed thereby; G.O.Ms. No.81 has no application and the vacancies remained unfilled have to be carried forward to the next recruitment, more so, when the candidates placed in provisional selection list, who have not reported for verification or who were disqualified, were never issued any appointment order in substantive posts; and ultimately, direct the respondents to issue appointment as prayed for. In support of his submissions, he relied on the following decisions:

- (1) The State of Andhra Pradesh, represented by its Secretary to Education Department and others v. Samiulla Shareff and others¹;**
- (2) The Government of Andhra Pradesh and others v. Bhagam Dorasanamma and another²; and**
- (3) The Government Andhra Pradesh, represented by the Principal Secretary, Forest, and other v. M.Bhuvaneswari³**

¹ 2013(6) ALD 241 (DB)

² 2014(1) ALD 88 (DB)

11. On the other hand, learned Standing Counsel, appearing on behalf of the respondents, reiterated the contentions raised in the counter affidavit and submits that there is no mention of the name of the writ petitioner in the provisional list and no post in the BC-E category is left unfilled, all the candidates after verification of the certificates joined the duty, pursuant to the orders of the learned Single Judge dated 20.09.2014, the case of the writ petitioner for the post of Junior Plant Attendant is thoroughly examined and speaking orders were issued, vide Lr.No.CGM(HR)/AS(O&M)/PO/W.P.No.27836/2014 dated 27.09.2014, duly rejecting his request, as there are no posts left unfilled, the writ petitioner is not entitled for appointment and further contended that the learned Single Judge has thoroughly dealt with all the issues in this case; the findings of the learned Single Judge are based on record and there is no infirmity; and ultimately, prayed to confirm the said order of the learned Single Judge.

12. In view of the contentions putforth by both sides, the following points have come up for determination:

- (1) Whether a direction can be issued to the respondents to appoint the writ petitioner as Junior Plant Attendant?
- (2) Whether the order under appeal suffers from infirmity and liable to be set aside?
- (3) To what result?

13. The learned counsel for the respondents has submitted that subsequently on verification of the record, the candidates were found suitable and those vacancies are filled up. It is also contended that vide

³ Decided on 13.03.2013 by a Division Bench of this Court in W.P. No.5622 of 2013

letter 27.09.2014, the case of the writ petitioner was examined in detail and the same was not considered basing on the G.O.Ms. No.81 dated 22.02.1997, as adopted by the erstwhile APSEB in BP (P&G-Per) Ms.No.100 dated 28.07.1997, and stated that in a recruitment year against number of notified vacancies selection shall be made only to the equal number of posts notified and there shall be no waiting list, in other words in a recruitment year after selection if the candidate fails to join duty within the stipulated period that vacancy shall be notified again in the next recruitment year, and no waiting list of candidates is required to be prepared, and as such, the case of the writ petitioner was not considered and as he is not entitled for appointment as Junior Plant Attendant. It is also contended by the learned counsel for the respondents that list of candidates provisionally selected for the post of Junior Plant Attendant was communicated to the concerned station heads and the station heads issued appointment orders and after verification of the certificates, they will admit the candidates to duty. The provisional selection list is placed before the Court. On perusal of the serial No.94, it reveals that it relates to roster point No.94, by name Shaik Rahmath Pasha, candidate required to be appointed under BC-E category did not report for verification of the original certificates as called for and hence disqualified. Serial No.144 reveals that it relates to roster point No.144, the candidate-Md. Nayeem Baig is required to be appointed in BC-E category, wherein the said candidate was disqualified and his name is deleted on the ground that his study certificates were found fake. Serial No.169 reveals that it relates roster point No.169, the candidate-Md. Abdul Nabi is required to be appointed in BC-E category, wherein his candidature is disqualified and his name is

deleted on the ground that his study certificates were found to be fake. As per the aforesaid list submitted before the Court, it goes to show that three candidates belonging to BC-E category were disqualified, wherein the name of one candidate was deleted for non-submission of the original certificate and the two other candidates were disqualified and deleted on the ground of filing false study certificates. It is stated by respondents that after verification of the records, the study certificates were found genuine and all candidates have joined duty. Further, one candidate, shown at serial No.94 by name Shaik Rehmath Pasha did not report yet and the said candidate did not appear for verification of certificates. Though, his provisional selection was indicated against roster point No.94 in BC-E category as he did not report for verification of original certificates and declared disqualified. Admittedly, this candidate did not join service. It goes to show that the roster point relating to serial No.94 BC-E category has not been filled up. Though the respondents contended that after verification of the certificates, the other candidates have joined duty and those details are not placed either before the learned Single Judge or before the Division Bench. As seen from the entire record placed and the list of provisionally selected candidates furnished before the learned Single Judge, no final appointment order has been issued in respect of roster point No.94. Had there been a final appointment order as per G.O.Ms. No.81 dated 22.02.1997, adopted by erstwhile APSEB vide B.P(P&G-Per.) Mr.No.100 dated 23.07.1997, the vacancy for non-joining ought to have been carried forward in the next recruitment process.

14. It is appropriate to refer the decisions relied on by the learned counsel for the writ petitioner. In **Samiulla Shareff's** case (supra 1), the candidates in the waiting list sought direction for appointments of posts of Secondary Grade Teacher, when the appointment of 16 candidates were terminated on the ground of possessing fake certificates and the Tribunal considered their case and directed the Government to appoint those candidates, aggrieved by the said order of the Tribunal, the Government of Andhra Pradesh approached the High Court and the High Court, while dealing with the matter, in view of the Rule 13 of the Andhra Pradesh Direct Recruitment of Teachers (Scheme of Selection) Rules, 2000, held that unless there is a waiting list, no candidate can claim for appointment, as a matter of right, only on the ground that appointment of a candidate is subsequently set aside for one reason or the other, in that view of the matter, it held that the respondents 1 and 2 (applicants) are not entitled to seek for any direction to consider their case for appointment in the vacancies which arose on account of the termination of the services of 16 candidates and finally, allowed the writ petition setting aside the order of the Tribunal. In **Bhagam Dorasanamma's** case (supra 2), the Division Bench of this Court held that where posts of Thanedar were notified by the Government of Andhra Pradesh, one of the candidates is selected in two posts and he opted to join in the post of Assistant Beat Officer, and in view of his non-joining in the post of Assistant Beat Officer, a vacancy in the post of Thanedar had arisen and a claim is made by the next meritorious candidate for selection in the vacancy in the post of Thanedar, the Government of Andhra Pradesh contended that the candidate is not entitled for the fallout vacancy, in view of the similar application of the

Rules even the vacancy arose on relinquishment or non-joining of selected candidate, the contention of the Government was that as per the recruitment regulations, it is required to be carried forward to the future recruitment and the vacancy of Thanedar cannot be filled up by a candidate next in merit. While dealing this issue, the Division Bench of this Court held in a writ petition filed by the Government of Andhra Pradesh challenging the order passed by the Administrative Tribunal, directing the Government to fill up the vacancy of Thanedar with the candidate, who is next meritorious in the merit list, which the authorized Forest Department declined to fill up the vacancy, pursuant to the G.O.Ms. No.81 issued by the Government of Andhra Pradesh and G.O.Ms. No.544 dated 04.12.1998, instruction No.8(4) issued by the Principal Chief Conservator of Forest, Andhra Pradesh, vide notification dated 26.03.2002. In **M.Bhuvaneswari's** case (supra 3), when a candidate is selected to two posts, one is higher among them and he joins the higher post, it amounts to relinquishment of lower post, it will not cover under the above Regulations, it is deemed that the lower post is vacant and a suitable person from the list is required to be appointed. Similar finding is given in **Samiulla Shareff's** case (supra 1) and **Bhagam Dorasanamma's** case (supra 2).

15. As seen from the record, with regard to the status of the candidate at serial No.94 and Roster Point No.94-Sk.Rahmath Pasha, he did not attend for the verification of certificates, his vacancy is not filled up, the same is clearly mentioned by the respondents in the counter affidavit in paragraph No.18 and the same is abstracted as hereunder:

"I respectfully submit that no posts in the category of BC-E left unfilled, all the three (3) candidates have already been appointed to the post of JPA in their respective slots and all of them have joined at KTPP, Warangal. Sri Sk.Rahmath Pasha (RP.No.94) is not reported yet."

16. The candidates relating to BC-E category, whose school certificates said to have been found forged, on subsequent development and on final verification of the records were given approval for appointment and they have joined duty and working at KTPP. The learned Single Judge also while dealing with the issue, determined that all vacancies are filled up, failed to notice the averment mentioned in paragraph No.18 of the counter affidavit filed on behalf of the respondents, as indicated in the above paragraph No.15. In view of the same, it can be safely concluded that the appointment order relating to BC-E category vacancy, shown in the provisional selection list at serial No.94 and Roster Point No.94, has not been issued and no candidate joined in that vacancy. The impugned G.O. has no application and this vacancy cannot be notified in next recruitment notification. Under these circumstances, a *mandamus* can be issued to fill up that vacancy by a suitable candidate next in the merit list.

17. In the result, the Writ Appeal is allowed, setting aside the impugned order dated 10.08.2016 passed in W.P. No.27836 of 2014, consequently, directing the respondents to fill up the vacancy, relating to BC-E category, shown at serial No.94 and Roster Point No.94 in the provisional selection list, with a suitable candidate next in the merit list, within a period of two months from the date of receipt of a copy of the

order, and on such appointment, his seniority shall be reckoned on par with the candidates appointed pursuant to the impugned notifications.

18. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J.)

Date:15-03-2017

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