

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.34592 of 2013, 39243 of 2013 and 6161 of 2014

COMMON ORDER:

Heard Sri Abhinand Kumar Shavili, learned counsel for the petitioner in W.P.No.34592 of 2013, Ms.S.V.Bharatha Lakshmi, learned counsel for the petitioners in W.P.No.39243 of 2013, Sri T.Vijay Hanuman Singh, learned counsel for the petitioners in W.P.No.6161 of 2014 and for respondent Nos.37 to 43 in W.P.No.34592 of 2013, learned Government Pleader for Civil Supplies for the State of Andhra Pradesh, Sri K.Raghu Babu, learned Standing Counsel for A.P. State Civil Supplies Corporation which is 2nd respondent in W.P.No.34592 of 2013, W.P.No.39243 of 2013 and W.P.No.6161 of 2014, Sri A.Jagan, learned Standing Counsel for Telangana State Civil Supplies Corporation Limited (respondent No.45 in W.P.No.34592 of 2013 and 4th respondent in W.P.No.39243 of 2013 and respondent No.32 in W.P.No.6161 of 2014), learned Government Pleader for Civil Supplies for the State of Telangana (respondent No.44 in W.P.No.34592 of 2013 and respondent No.3 in W.P.No.39243 of 2013 and respondent No.31 in W.P.No.6161 of 2014), Sri S.Ramachandra Rao, learned Senior Counsel for Sri K.R.Prabhakar, learned counsel for respondent Nos.14 to 30 in W.P.No.6161 of 2014, Smt. K.Udaya Sree, learned counsel for respondent Nos.3 to 13 in W.P.No.6161 of 2014, Sri K.Chidambaram, learned counsel for respondent Nos.3 to 29 in W.P.No.34592 of 2013, Sri K.Srinivas, learned counsel for respondent Nos.30 to 36 in

W.P.No.34592 of 2013 and Sri Koppula Gopal, learned counsel for respondent No.33 in W.P.No.6161 of 2014.

2. All these Writ Petitions raise common questions of law and fact and therefore they are being disposed of by this common order.

3. The subject matter in these Writ Petitions relates to a recruitment notification No.P.Admn.A2/4679/2012-I dt.16-03-2013 issued by the A.P. State Civil Supplies Corporation (for short 'the Corporation') purporting to fill up alleged carry forward vacancies (62 in number) of Schedule Castes and Schedule Tribes in the said Corporation in the cadres of Senior Officer (Grade-II), Assistant Manager (Accounts), Assistant Manager (Technical), Assistant Manager (General), Accountant (Grade-I), Technical Assistant (Grade-I) and Assistant (Grade-I).

CONTENTIONS OF PETITIONERS IN W.P.No.34592 of 2013

4. The petitioner No.1 in W.P.No.34592 of 2013 belongs to the Schedule Caste community and the Petitioner No.2 therein belongs to the Schedule Tribe community. The 1st petitioner responded to the above notification while the 2nd petitioner did not apply.

5. They contend that the said notification mentions in para-4 that as per G.O.Ms.No.214 General Administration (SER.A) Department dt.08-05-2001, selection shall be made only on the basis

of marks obtained in the qualifying academic examination passed by the candidate; that the said G.O. applies to only Government Employment and exempts candidates/aspirants for backlog vacancies of Schedule Castes and Schedule Tribes from appearing for written examination and interview; that the said G.O. is issued in exercise of the power conferred by proviso to Article 309 of the Constitution of India and the *ad hoc* rule framed thereunder cannot be applied to the above Corporation.

6. They also contend that there was no earlier recruitment to the posts advertised in the above notification issued in 2013 and so the vacancies sought to be filled up cannot be said to be “carry forward vacancies” at all. According to the learned counsel for the petitioners, unless there were earlier attempts to fill up the said vacancies which failed, they cannot be termed as “back log vacancies” or “carry forward vacancies” representing unfilled vacancies which have been carried forward from the earlier notifications.

7. They further contend that experience is prescribed for recruitment to the posts of Assistant Manager (General) and Technical Assistant (Grade-I) in the Staff Regulations of the Corporation, but the respondent Corporation had waived the experience requirement also which is impermissible particularly when G.O.Ms.No.214 dt.08-05-2001 allows waiver of only written test and interview.

8. They also point out that the qualifying examination being Post Graduation in any field for the post of Senior Officer Grade-II

and Post Graduates are shown to be preferred for the post of Assistant Manager (General); since marks in the said examination would be the basis of selection as per clause (1) of para-IV of the impugned notification, persons with post graduation in mathematics or science subjects would have an advantage over others who have obtained post graduation in Arts or Commerce subjects since traditionally lesser marks are awarded in Arts or Commerce subjects. Learned counsel for the petitioner pointed out that certain persons selected as Assistant Manager (General) pursuant to the impugned notification secured in Post Graduation above 90% and thus the 1st petitioner who had done M.Com., and secured 60.58% in the Post Graduate examination stood eliminated. They contend that this action of the Corporation is discriminatory.

CONTENTIONS OF PETITIONERS IN W.P.No.39243 of 2013

9. In W.P.No.39243 of 2013, petitioners contend that they are in-service candidates in the said Corporation belonging to the Schedule Tribe community; that they are eligible for promotion to the posts of Assistant Manager advertised in the impugned notification; that the said posts can be filled up either by direct recruitment or by promotion; that the qualifications prescribed for the posts of Assistant Manager (Accounts) in the impugned notification is M.B.A., (Finance)/M.Com., from any recognized University with minimum 60% aggregate and above marks; that this is contrary to the service regulations which prescribed minimum educational qualification as

first or second class graduates with three years experience. They also contend that for Assistant Manager (Technical) and (General), qualifications of B.Sc., (Agriculture) with minimum 60% marks and Post Graduation with minimum 60% marks respectively are prescribed which are contrary to the Staff Regulations prescribing three years experience. They also contend that after bifurcation on 02-06-2014 of the State of Andhra Pradesh into the State of Telangana and the residuary State of Andhra Pradesh from 2.6.2014, no appointment now can be made on the basis of the impugned Notification. They also contend that the vacancies advertised in the impugned notification are not carry forward vacancies at all.

10. In W.P.M.P.No.43389 of 2013 in W.P.No.34592 of 2013, there was a stay granted by this Court of the said notification on 03-12-2013. W.V.M.P.Nos.4090 & 4091 of 2013 are filed by the private respondents to vacate the said order.

11. In W.P.M.P.No.48574 of 2013 in W.P.No.39243 of 2013, on 02-01-2014, this Court granted interim stay of the above notification.

12. Likewise in W.P.M.P.No.7663 of 2014 in W.P.No.6161 of 2014, interim suspension of the impugned notification was granted. W.V.M.P.No.3589 of 2014 is filed by respondent Nos.3 to 13 in the said Writ Petition and W.V.M.P.No.3709 of 2014 is filed by respondent Nos.14 to 30 to vacate the said order.

CONTENTIONS OF RESPONDENTS

13. Sri K.Raghu Babu, learned Standing Counsel, appearing for A.P. State Civil Supplies Corporation, filed counter affidavit and additional counter affidavit. He placed reliance on G.O.Ms.No.214 dt.08-05-2001 and stated that the impugned notification was issued to fill up back log vacancies only and that the said G.O. is made applicable to the Corporation. It is claimed that the Board of the Corporation is entitled to relax any condition relating to age, qualification and experience as per Rule 6 of the Corporation's Employees Recruitment and Service Regulations and it has thus waived written and interview as well as experience requirement for some posts. It is also sought to be justified that there was a dire necessity to fill up the posts since it is the body which executes the policies of the Government under the Public Distribution System.

14. Additional counter is filed by the said Corporation stating that there was no recruitment taken up by the Corporation for filling up of vacancies of posts in the cadre of Senior Officer (Grade-II) and Assistant Managers directly. It is stated that the Corporation decided to recruit persons directly by prescribing higher qualification and higher percentage of marks since there were no officers eligible for promotion to some of the posts available.

15. Sri S.Ramachandra Rao, learned Senior Counsel, appearing for some of the respondents who were appointed pursuant to the impugned notification, contended that the Writ Petitioners in

W.P.No.6161 of 2014 are over aged and hence they cannot have any locus to file the Writ Petition and the Writ Petition therefore should be dismissed.

16. Smt. K.Udaya Sree, learned counsel appearing for some of the respondents relied on Rule 22 of the A.P. State Subordinate Service Rules which permits limited recruitment to be done for the S.Cs and S.Ts if in any general recruitment, qualified candidates of the said categories are not available. Certain information obtained under the Right to Information Act, 2005 is sought to be relied upon by her which refers to prior recruitment in the year 2010 which was entrusted to the Institute of Public Enterprise, Osmania University in which some posts were allegedly left unfilled. It is contended by her that the vacancies are carry forward vacancies only and not regular vacancies.

17. It is important to note that the State of Telangana as well as the Telangana State Civil Supplies Corporation have been impleaded as parties to these cases after the bifurcation of the erstwhile composite State of Andhra Pradesh on 02-06-2014 into the new State of Telangana and the residuary State of Andhra Pradesh. Thereafter, no counter affidavit has been filed by the State of Telangana or the Telangana State Civil Supplies Corporation Limited. In fact time was granted to Sri A.Jagan, learned Standing Counsel of the Telangana State Civil Supplies Corporation Limited to file counter affidavit on 16-11-2016, 22-12-2016 and 02-01-2017 up to 20-01-

2017. But no counter affidavit has been filed. In the order dt.02-01-2017, it was mentioned that if no counter affidavit is filed by the said Corporation on 20-01-2017, the matter would be proceeded *ex parte* and its right to file counter affidavit would stand forfeited. So therefore even though time was again sought by him on 18-07-2017, it was not granted and the matter was heard and orders were reserved.

18. None of the other respondent counsel appeared and advanced any arguments.

REPLY AFFIDAVIT OF PETITIONERS IN W.P.NO.34592 OF 2013

19. Reply affidavit is filed by the 1st petitioner in W.P.No.34592 of 2013 stating that the posts notified in the impugned notification are not back log vacancies and when they are not such vacancies/carry forward vacancies, the question of applying G.O.Ms.No.214 dt.08-05-2001 does not arise. It is contended that the said G.O. cannot be applied to posts which are liable to be filled by the A.P. Public Service Commission particularly when the posts notified by the Corporation are equivalent posts to Assistant Supply Officer and District Supply Officer in the A.P. Civil Service Department and the pay scales of the Government are adopted by the Corporation. It is also contended that Assistant Manager post in the Corporation is in the cadre of Assistant Supply Officer in the State Government by comparing pay scales.

20. I have noted the contentions of both sides.

21. Admittedly the impugned notification purports to fill 62 posts in various grades prescribing them as “back log vacancies”. The concept of “back log vacancies”/ “carry forward” rule is that, certain quota is fixed annually for certain class of persons like S.Cs. and S.Ts. If such vacancies reserved for them are not filled up for a particular year, these vacancies are carried forward to the subsequent year and if in the subsequent year also the said vacancies are not filled up, they would be carried forward to the next and so on.

22. Clause (4-B) of Article 16 of the Constitution of India deals with such vacancies and states:

“(4-B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4-A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.”

23. The Supreme Court upheld the validity of the above constitutional provision in **M.Nagaraju Vs. Union of India**¹.

24. So for vacancies to be called “back log vacancies” or “carry forward vacancies”, there has to be a prior attempt to fill up such vacancies which failed.

¹ (2006) 8 S.C.C. 212

25. In the present cases, there is no pleading by the Corporation that there were earlier attempts to fill up the posts mentioned in the impugned notification which failed and so the posts are in fact “back log vacancies”. Therefore it is inexplicable how the Corporation termed the said vacancies as back log vacancies and applied G.O.Ms.No.214 dt.08-05-2001.

26. The material on which Smt. K.Udaya Sree, learned counsel for some of the respondents, sought to rely does not show that in the recruitment attempted in 2010, the posts now sought to be filled up remained unfilled. Therefore there is no merit in her contention that the posts now sought to be filled up under the impugned notification are “back log vacancies.”

27. Learned counsel for the Corporation is unable to explain how the posts advertised in the impugned notification can be termed to be “back log vacancies”.

28. Since there is no pleading by the A.P. State Civil Supplies Corporation that it had earlier attempted to fill up the posts advertised in the impugned notification issued on 16-03-2013 and failed in more than one such attempt, it could not have classified the 62 posts in various grades in the said Corporation sought to be filled up under the impugned notification as “back log vacancies” and then waived the requirements of written test, interview as well as experience and modify even the qualification prescribed for some of the posts from that mentioned in its Staff Regulations.

29. Having regard to the view taken by me, mentioned above, that the vacancies advertised in the said impugned notification cannot be said to be “back log vacancies” at all and G.O.Ms.No.214 dt.08-05-2001 therefore could not have been applied by the Corporation, the Writ Petitions are allowed and impugned notification dt.16-03-2013 as well as all appointments made consequent thereto to the posts advertised therein are declared illegal and violative of Article 14 and 16 of the Constitution of India and are accordingly set aside.

30. Consequently, all the above W.V.M.Ps. are dismissed.
No costs.

31. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16-08-2017
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