

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.28531 OF 2017

ORDER:

This writ petition is filed to declare the action of the respondents in filling up of the existing vacancies of District Vocational Education Officer without there being any common seniority list prepared and communicated to the Principals in Government Junior Colleges and Deputy District Vocational Education Officers (D.V.E.Os) in terms of Rule 3 and Note 3 under Rule 3 of rules issued in G.O.Ms.No.302, Education (I.E-I) dated 30-12-1993 as illegal and arbitrary.

Heard learned Counsel for the petitioner, who reiterated the contentions raised in the writ petition. When the Court wanted to grant time for filing counter on the request of Government Pleader, learned counsel for the petitioner opposed the same wanted orders to be passed in the writ petition. In the writ instructions produced by Government Pleader, it is stated that petitioner was trapped by the officials of Anti Corruption Bureau, Karimnagar on 27-06-2011 and remanded to judicial custody and case was registered in Cr.No.10/ACB-KNR/2011, under Section-7 and 13(2) of P.C.Act and he was placed under suspension with effect from 27-06-2011 and therefore, the same was revoked. Disciplinary

proceedings have been initiated vide C.I.E's Proceedings Rc.No.Ser.I-2/14958/2011, dated 15-07-2014 and the case is still pending. It is also stated seniority list of Principals of Government Junior Colleges have been communicated vide C.I.E's Proc.Rc.No.Ser.I-2/350/2012, dated 18-08-2015 and the petitioner's name figured at Sl.No.54. It is also stated that no Dy.D.V.E.O. is working in the Department after formation of the State of Telangana and the question of integrating the seniority of Dy.D.V.E.Os and the Principals of Government Junior Colleges does not arise. The Posts of D.V.E.Os are now re-designated as District Intermediate Education Officers vide G.O.Ms.No.324, Higher Education (IE) Department, dated 11-10-2016. The petitioner was shown at Sl.No.11 of the eligible list for the post of District Intermediate Education Officer. The petitioner is not eligible for promotion till conclusion of ACB case. The petitioner suppressed that he is involved in a criminal case in ACB trap and the same is also not mentioned in the writ affidavit. There is suppression of fact on the part of the petitioner. In the written instructions it is stated that no candidate is working as Dy.D.V.E.O. as such, the question of preparing integrated seniority list does not arise. The writ petition is also liable to be dismissed for suppressing the fact of registration of crime. In **K.D.Sharma v. Steel**

Authority of India Limited, (Civil Appeal No.4270 of 2008 arising out of Special Leave Petition (Civil) No.17005 of 2006), the Apex Court held in para Nos 24 to 29 as follows:

24. “ The jurisdiction of the Supreme Court under [Article 32](#) and of the High Court under [Article 226](#) of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

25. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of [R. v. Kensington Income Tax Commissioners](#), (1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136 in the following words:

"[I]t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- it says facts, not law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement".

(emphasis supplied)

26. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it.

27. In Kensington Income Tax Commissioner, Viscount Reading, C.J. observed:

"Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the applicant was not candid and did not fairly state the facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that this Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit".

(emphasis supplied)

28. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under [Article 32](#) or of a High Court under [Article 226](#) of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play 'hide and seek' or to 'pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts".

29. If the primary object as highlighted in Kensington Income Tax Commissioners is kept in mind, an applicant who does not come with candid facts and 'clean breast' cannot hold a writ of the Court with 'soiled hands'. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court."

In view of the above facts and circumstances, this Court is not inclined to extend the interim order granted

on 28-08-2017 and also entertain the writ petition and accordingly, the same is dismissed. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

31-08-2017

Nvl



