

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

WRIT PETITION No.16034 of 2015

ORDER: (per SK,J)

The Andhra Pradesh Public Service Commission filed this writ petition aggrieved by the order dated 24.04.2014 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.No.2968 of 2013. By the said order, the Tribunal directed the Commission to consider the case of the applicant in the O.A., the first respondent herein, for appointment to the post of Assistant Statistical Officer against the vacancy meant for visually handicapped which was still vacant.

By order dated 10.06.2015, this Court granted interim suspension of the order under challenge.

W.V.M.P.No.2494 of 2015 was filed by the first respondent to vacate the aforestated order.

Heard Sri C.Srinivasa Baba, learned counsel for the petitioner-Commission, and Sri Madiraju Srinivasa Rao, learned counsel for the first respondent.

Perusal of the order under challenge reflects that the initial selection of the first respondent herein to the post under the visually handicapped reservation category was revised by the Commission on the ground that another visually handicapped candidate, T.V.V.Satyanarayana, who secured 151 marks as against 122 marks secured by the first respondent, was inadvertently not taken into consideration for the said category. It was on this basis that Corrigendum dated 17.04.2013 was issued by the Commission cancelling the selection of the first respondent and selecting the said T.V.V.Satyanarayana in his

place. The Tribunal however was not persuaded to agree with the contention of the Commission. So much so, the Tribunal went to the extent of categorising the manner in which T.V.V.Satyanarayana was included at a later stage as very fishy. Having found so, the Tribunal took note of the fact that T.V.V.Satyanarayana did not choose to join the post despite belated selection thereto by the Commission and accordingly directed the Commission to appoint the first respondent to the post treating it as a non-joining vacancy.

In the light of the aforesaid facts, we are of the opinion that no interference is called for with the order passed by the Tribunal in so far as it directs accommodation of the first respondent in the post consequent upon T.V.V.Satyanarayana choosing not to join duty. It can hardly be disputed that the vacancy caused by the failure on the part of T.V.V.Satyanarayana to take up the offer of appointment would be a non-joining vacancy, in terms of the judgments laid down by the Supreme Court in *Manoj Manu v. Union of India*¹ and *Gujarat State Deputy Executive Engineers Association v. State of Gujarat*².

The writ petition is therefore devoid of merit and is accordingly dismissed.

We however find that the observation of the Tribunal that the action undertaken by the Commission was fishy is not proper as there is no evidence of the Commission having gone out of its way to favour T.V.V.Satyanarayana. All the more so, as T.V.V.Satyanarayana did not even choose to join the post after his selection thereto. The adverse remarks recorded by the Tribunal against the Commission are therefore expunged from the order.

¹ Civil Appeal No.6707 of 2013

² (1994) 2 Scale 866

Interim order dated 10.06.2015 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE GUDI SEVA SHYAM PRASAD

Date:12.04.2017

PGS/GJ

