

THE HON'BLE SRI JUSTICE SANJAY KUMAR
and
THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.42346 of 2015

ORDER: (per SK, J)

The petitioners are the applicants in O.A.No.987 of 2011 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. Therein, they challenged G.O.Ms.No.414 dated 24.06.2008 issued by the State of Andhra Pradesh in exercise of executive powers under Article 162 of the Constitution on the ground that by such an order, the Government could not set at naught the special rules framed in exercise of power under the proviso to Article 309 of the Constitution vide G.O.Ms.No.168 dated 01.04.2002.

Prior to promulgation of G.O.Ms.No.168 dated 01.04.2002, the Government also issued G.O.Ms.No.289 dated 06.07.2001 recognizing the posts of Drivers as Technical Category posts. By common order dated 27.05.2015 passed in O.A.No.987 of 2011 and two other similar O.As., the Tribunal closed all the three O.As. as infructuous. Aggrieved thereby, the petitioners in O.A.No.987 of 2011 filed this Writ Petition.

Sri P. Amarender, learned counsel for the petitioners, would contend that after recognition of drivers as holders of Technical Category posts, G.O.Ms.No.168 dated 01.04.2002 was issued notifying the Andhra Pradesh Government Drivers (Technical Category) Subordinate Service Rules. While so, the Government issued G.O.Ms.No.414 dated 24.06.2008 in exercise of executive powers under Article 162 of the Constitution whereby it decided to treat the category of Drivers as one of the categories in the Andhra Pradesh General Subordinate Services Rules. In effect, the Government restored the position to the status obtaining prior to promulgation of the special rules framed under G.O.Ms.No.168 dated 01.04.2002. Aggrieved by this action, the petitioners filed O.A.No.987 of 2011.

While the matter stood thus, it appears that the Government of Andhra Pradesh issued G.O.Ms.No.485 dated 04.08.2008 in exercise of power under the proviso to Article 309 of the Constitution making amendments to the Andhra Pradesh General Subordinate Service Rules, 1995, whereby the category of Drivers was again brought within the fold of the General Subordinate Services. G.O.Ms.No.486 dated 04.08.2008 was also issued making an amendment to Rule 3 of the Andhra Pradesh Ministerial Services Rules, 1998, making Drivers eligible for

appointment to the post of Junior Assistant in the Ministerial Services. Taking note of the promulgation of G.O.Ms.Nos.485 and 486 both dated 04.08.2008, the Tribunal opined that though the authorities could not amend the Rules issued under the proviso to Article 309 of the Constitution through an executive order, the later amendments to the Andhra Pradesh General Subordinate Service Rules effected under G.O.Ms.No.485 dated 04.08.2008 cured the defect and therefore no cause survived in the O.As., rendering them infructuous.

On a conspectus of the aforestated factual position, we are in agreement with the Tribunal that challenge to G.O.Ms.No.414 dated 24.06.2008 no longer survived for independent consideration after the advent of G.O.Ms.Nos.485 and 486 dated 04.08.2008. Significantly, no challenge was laid to the aforestated G.Os though the O.As. were taken up for disposal only in 2015. We therefore find no reason to interfere with the order passed by the Tribunal.

The Writ Petition is devoid of merit and is accordingly dismissed.

Sri P. Amarender, learned counsel, would however seek leave to enable his clients to challenge G.O.Ms.Nos.485 and 486 dated 04.08.2008.

As the validity of the aforestated G.Os. was never the subject matter of O.A.No.987 of 2011 and the other O.As. which were dismissed by order dated 27.05.2015, we grant liberty to the petitioners to lay a challenge, if they so choose, to the aforestated G.Os. Challenge, if any, in this regard shall be considered on its own merits and in accordance with law without being influenced by any of the observations made in the order dated 27.05.2015 passed in O.A.No.987 of 2011 and batch or this Court in the present order.

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

13th MARCH, 2017.

**SANJAY KUMAR, J**

N. BALAYOGI, J

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