

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE
OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION No. 17285 OF 2003

Between:

The Commissioner & Principal Secretary to
Government, Finance & Planning Department,
Secretariat Buildings, Hyderabad ... Petitioner

AND

G.Murali Krishna and another ... Respondents

Date of Order Pronounced : 07-09-2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers
May be allowed to see the order? Yes/No
2. Whether the copy of order may
be marked to Law Reporters/Journals? Yes/No
3. Whether Their Lordships wish to see the
Fair copy of the order? Yes/No

C.V.NAGARJUNA REDDY, J.

GUDISEVA SHYAM PRASAD, J.

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

+WRIT PETITION No. 17285 OF 2003

%Dated: 07-09-2017

#The Commissioner & Principal Secretary to Government,
Finance & Planning Department,
Secretariat Buildings, Hyderabad

... Petitioner

VERSUS

\$G.Murali Krishna,
Senior Assistant, O/o the Superintending Engineer,
N.S. Left Canals, Operation & Maintenance Circle,
Tekulapally, Khammam District, and another

... Respondents

!Counsel for the petitioner : G.P. for Services (T.S.)

^Counsel for the respondents : --

<GIST :

>HEAD NOTE :

?Cases referred :

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No. 17285 OF 2003

DATED 07TH SEPTEMBER, 2017

Between:

The Commissioner & Principal Secretary to
Government, Finance & Planning Department,
Secretariat Buildings, Hyderabad

... Petitioner

AND

G.Murali Krishna and another

... Respondents

Counsel for the petitioner

:

G.P. for Services (T.S.)

Counsel for the respondents

:

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THE COURT MADE THE FOLLOWING

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This Writ Petition is filed for *certiorari* to quash order dated 07-08-2002 in O.A.No. 2241 of 1992 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad (for short, 'the Tribunal').

2. Though served, respondent No. 1, who is the contesting respondent, has not entered appearance. We have heard learned Government Pleader for Services (T.S.) appearing for the petitioner and perused the record.

3. Respondent No. 1 was appointed as Junior Assistant on 25-10-1976. He was promoted as Senior Assistant on 06-03-1983. For the purpose of his further promotion, he appeared in Divisional Test Examination (for short, 'D.T.E.'). He secured 242 out of 500 marks *i.e.* an aggregate of 48.4 marks. Respondent No. 1 filed the aforementioned O.A. assailing the validity of G.O.Ms.No. 33, Finance & Planning (FW.WA.I) Department, dated 04-02-1991 insofar as it imposed the condition that a candidate should pass securing 40% in each paper and 45% aggregate in each compartment *i.e.* Part – I and Part – II separately was concerned. The Tribunal has taken the view that G.O.Ms.No. 304 dated 20-11-1979 as amended by G.O.Ms.No. 308 dated 07-12-1981 did not divide the five papers into different parts; that under G.O.Ms.No. 213 dated 14-06-1984, the minimum percentage of marks in each paper was revised from 45 to 40 and the aggregate marks in all papers together were reduced from 50 percent to 45 percent and that respondent No. 1, having secured 48.4%, has satisfied the requirements prescribed under G.O.Ms.No. 304 as amended by G.O.Ms.Nos. 308 and 213. The Tribunal has also held that G.O.Ms.No. 33 impugned before it, which for the first time prescribed two parts, is contrary to the statutory rules framed in G.O.Ms.Nos. 304 and 308.

4. Learned Government Pleader for Services (T.S.) appearing for the petitioner assailed the order of the Tribunal mainly on the ground that it has proceeded on a completely erroneous premise that G.O.Ms.Nos. 304 and 308 laid down statutory rules and that therefore G.O.Ms.No. 33 is contrary to the said rules. He has further submitted that all the G.Os. are only in the nature of executive instructions traceable to Article 162 of the Constitution of India and that in the absence of statutory rules framed under Article 309 of the Constitution of India, the power of the Government to amend the previous executive instructions is not restricted or curtailed.

5. We have carefully considered the submissions of learned Government Pleader with reference to the aforementioned G.Os. The Government issued G.O.Ms.No. 304 dated 20-11-1979 framing exhaustive guidelines for recruitment to the post of Divisional Accountant. Some of the important aspects covered by these guidelines are method of recruitment to the said post, appointing authority, probation and training, minimum qualifications to be possessed by a candidate and also the tests to be passed. As regards the required test to be passed, the G.O. laid down as follows:

"Test: - The absorption of the candidates recruited through the examination in the cadre of Divisional Accounts, Grade-II is possible only after the candidates pass 'Divisional Test'. The examination will ordinarily be held twice a year. The candidates will be allowed to appear for the Divisional Test ordinarily after the training of one year is over. Every recruit to the cadres shall be given a maximum of three chances for passing the 'Divisional Test'. If he does not pass the Test in the third chances, he shall be dealt with as follows:

(a) If he is a departmental candidate he shall be reverted to his substantive post in the parent department.

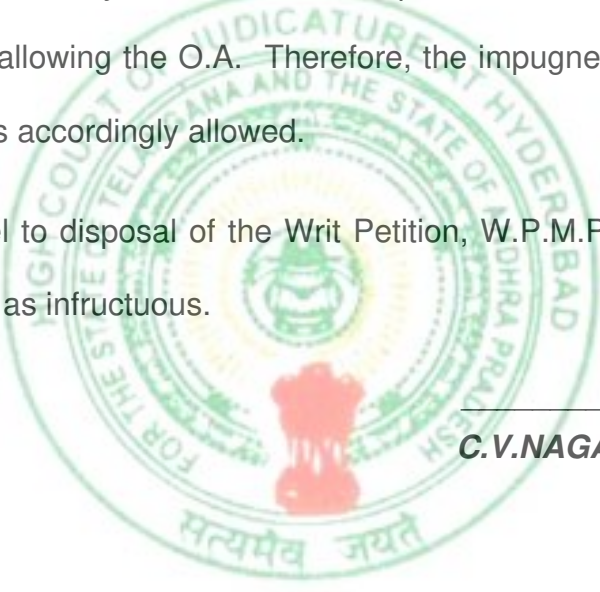
- (b) *If he is a direct recruit from the open market, he shall be discharged from service. If his record of service as Divisional Accountants Trainee is outstanding, the appointing authority may at his discretion recommend his appointment as Upper Division Clerk in any division."*

After issue of G.O.Ms.No. 304, the posts of Divisional Accountants Grade – I and Grade – II were re-designated as Divisional Accounts Officers (Works) Grade – I and Grade – II under G.O.Ms.No. 147 dated 23-06-1981. Consequent thereupon, the Government of Andhra Pradesh issued G.O.Ms.No. 308 dated 07-12-1981 framing rules and syllabus for D.T.E. It prescribed minimum qualifying marks for five subjects at 45% and aggregate at 50% for a pass in the examination. By G.O.Ms.No. 213, Finance & Planning (FW.WA.I) Department, dated 14-06-1984, the Government reduced 45% marks in each paper and 50% aggregate for a pass to 40% and 45% respectively. The G.O. also grouped five papers into two compartments with two out of five papers being included in Part – I and the last three papers under Part – II which are treated as independent to enable the candidates to pass the divisional test compartmentally. Subsequently, the Government issued G.O.Ms.No. 33 dated 04-02-1991 amending G.O.Ms.No. 213. This G.O. was issued in pursuance of the judgment of this Court in W.A.No. 584 of 1987. It is clarified by the said G.O. that candidates must get aggregate of 45% marks in each compartment i.e. Part – I and Part – II separately in addition to the requirement of getting a minimum marks of 40% in each paper. It is significant to note that nowhere in these G.Os. it is stated that they were issued in exercise of the rule making power of the State and Article 309 of the Constitution of India. In the absence of the same, these G.Os. are only traceable to the executive power of the State under Article 162 of the Constitution of India to frame rules which legislature of the State has

power to make. Therefore, as all the G.Os. including G.O.Ms.No. 33 are traceable to the State's executive power, there is no bar on the Government in issuing G.O.Ms.No. 33 to amend the previous G.Os. issued by it. The Tribunal therefore has fallen to a serious error in holding that G.O.Ms.No. 33 is inconsistent with G.O.Ms.Nos. 304 and 308. On the contrary, G.O.Ms.No. 33 was issued in order to amend G.O.Ms.No. 213 dated 14-06-1984 to the extent it pertains to the requirement of candidates securing minimum marks and aggregate marks in each of the two Parts.

6. On the above analysis, we are of the opinion that the Tribunal committed a serious error in allowing the O.A. Therefore, the impugned order is set aside. The Writ Petition is accordingly allowed.

7. As a sequel to disposal of the Writ Petition, W.P.M.P.No. 21488 of 2013 shall stand closed as infructuous.



C.V.NAGARJUNA REDDY, J.

GUDISEVA SHYAM PRASAD, J.

Date: 07-09-2017.

Note:

L.R. Copies to be marked.

B/O

JSK