

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.12482 of 2004

Date: 17.08.2017

Between :

The Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Revenue (Excise) Department, Secretariat,
Hyderabad and others.

... Petitioners

And

Irshad Mohd. Khan

... Respondent

COUNSEL FOR PETITIONERS : G.P. Services-II

COUNSEL FOR THE RESPONDENT :

Sri T. Ramachander Rao
for Sri M. Ramalingeswara Reddy

THE COURT MADE THE FOLLOWING:

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

The State, represented by its Principal Secretary, Revenue (Excise) Department and others have filed this writ petition feeling aggrieved by the order dated 17.02.2003 in O.A.No.1040 of 2003 passed by the A.P. Administrative Tribunal, Hyderabad (for brevity "the Tribunal").

2. The respondent working as Junior Assistant in the Prohibition and Excise Department was promoted as Sub-Inspector of Prohibition and Excise vide proceedings dated 19.05.2001, subject to the condition that he should pass Accounts Test for Executive Officers within one year or in one of the first two examinations held after the Incharge appointment, otherwise he will be reverted as Junior Assistant without notice. As the respondent did not pass the said Test, he was reverted as Junior Assistant. Challenging the said reversion order, the respondent filed O.A.No.1040 of 2003 before the Tribunal. The Tribunal through the impugned order dated 17.02.2003, allowed the said O.A. by holding that for promotion to the post of Sub-Inspector of Excise, there is no need for passing Accounts Test for Executive Officers, as the requirement of passing the said Test is applicable only to the Direct Recruits.

3. The learned Government Pleader for Services appearing for the petitioners has drawn our attention to the Andhra Pradesh Prohibition and Excise Subordinate Service Rules (for

brevity “the Rules”) notified in G.O.Ms.No.950, Revenue (Excise-I) Department, dated 28.11.1998.

4. Rule 5 of the Rules prescribes qualification for appointment to the Categories specified in Col.No.(i) of Annexure appended to the Rules by the methods specified in Col.No.(ii) thereof. As per the Annexure, the post of Prohibition and Excise Sub-Inspector is to be filled up by Direct Recruitment and also by Promotion/Transfer. In Col.No.(iii), qualifications are prescribed for candidates to be appointed by both methods. As regards the method of Promotion/Transfer, a candidate must have passed --

- (i) Excise Departmental Test;
- (ii) Accounts Test for Executive Officers; and
- (iii) Third Class Language Test in any two of the following languages of which one shall be Telugu:
 - (i) Telugu (ii) Urdu (iii) Hindi

5. We also noticed from these rules, Rule 10 thereof also envisages similar requirement for Direct Recruits.

6. In its order, the Tribunal referred to Rule 10 of the Rules and observed that the aforementioned three Tests are applicable to Direct Recruits only. However, we find that the Tribunal has completely overlooked Rule 5 of the Rules read with Annexure, which applies to the Promotees. A combined reading of Rule 5 of the Rules read with Annexure shows that an identical qualification criterion is prescribed for both Direct Recruits and Promotees. Though the appointment order referred to Rule 15 (a) of the A.P. State and Subordinate

Service Rules, 1966 and imposed a condition that the respondent should pass Accounts Test for Executive Officers, it cannot be disputed that in order to be continued as Sub-Inspector, the respondent has to necessarily satisfy the requirement of Rule 5 of the Rules. Even otherwise also, the only Test that the respondent did not pass is Accounts Test for Executive Officers, which is commonly prescribed both in Rule 15 (a) of the A.P. State and Subordinate Service Rules, based on which the appointment order incorporated the condition of the respondent having to pass the said Test, and also Rule 5 of the Andhra Pradesh Prohibition and Excise Subordinate Service Rules. Therefore, the respondent was not entitled to be continued as Sub-Inspector and he was rightly reverted as Junior Assistant. The Tribunal, in our opinion, has committed a serious error in allowing the O.A. on a completely erroneous premise that there was no requirement for the respondent to pass the aforementioned Test.

7. For the aforementioned reasons, the writ petition is allowed setting aside the impugned order dated 17.02.2003 passed by the Tribunal.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

17.08.2017.
Msr

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