

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

Writ Petition Nos.26877, 26975, 27219 and 27349 of 2017

DATED:18-08-2017

W.P. No.26877 of 2017

Between:

P. Nagarjuna ... Petitioner

And

The State of Andhra Pradesh
Rep. by its Secretary, Home Department
Secretariat, Velagapudi, Guntur District
and others ... Respondents

COUNSEL FOR THE PETITIONERS

in W.P. Nos.26877 and 27219 of 2017 : Mr. V. Maheswar Reddy;
in W.P. No.26975 of 2017 : Mr. R.V. Mallikarjuna Rao

COUNSEL FOR THE RESPONDENTS

in W.P. Nos.26877, 26975 and 27219 of 2017: Government Pleader for
Services (AP)

COUNSEL FOR THE PETITIONERS

in W.P. No.27349 of 2017 : Government Pleader for
Services (AP)

COUNSEL FOR THE RESPONDENTS

in W.P. No.27349 of 2017 : Mr. R.V. Mallikarjuna Rao

THE COURT DELIVERED THE FOLLOWING:

COMMON JUDGMENT: (*per the Hon'ble Sri Justice C.V. Nagarjuna Reddy*)

These cases have a considerable litigious background which needs to be explained in brief. For convenience, the petitioners in W.P. Nos. 26877, 26975 and 27219 of 2017 are referred to as 'the petitioners' and the State and its functionaries are referred to as 'the respondents'.

2. The petitioners are working as Police Constables. In pursuance of the Notification dt.30.12.2008 issued by the respondents inviting applications from eligible candidates *inter alia* for filling up the posts of Stipendiary Cadet Trainee (SCT) Sub-Inspectors of Police (Civil)(Men), Reserve Sub-Inspectors of Police (AR)(Men) and Reserve Sub-Inspectors of Police (APSP)(Men), the petitioners and some others made their applications. The extant rules provided for social reservations and also special reservations in favour of categories of Police Executive (PE), Police Ministerial (PM), Meritorious Sports Person (MSP), Children of Police Personnel (CPP), Children of Police Personnel who died or have been incapacitated on medical invalidation (CDI) and National Cadet Corps (NCC). Assailing the selection process, six unsuccessful candidates have filed six separate O.As., i.e., O.A. No.8346 of 2011 and batch before the Andhra Pradesh Administrative Tribunal (for short, "the Tribunal). The grievance of the applicants therein was that while considering the meritorious candidates falling under social (communal) reserved categories, they were adjusted in the posts earmarked for special category. In other words, the respondents have followed the method of horizontal reservation, instead of following the method of vertical reservation for special category reservations. Following the ratio in *Rajesh*

*Kumar Daria v. Rajasthan Public Service Commission*¹, the Tribunal held that the method of vertical reservation has to be followed in respect of special category reservations, i.e., by filling up the vacancies first with all O.C. category (meritorious candidates), thereafter with the candidates falling under social reservations for Scheduled Castes, Scheduled Tribes and Backward Classes etc., and thereafter the posts falling under special reservations have to be filled up. The Tribunal rendered a specific finding that the respondents have not followed this procedure and that the same is contrary to the extant rules and the judgment of the Supreme Court in *Rajesh Kumar Daria* (1 supra). The Tribunal further held that the respondents contrary to the aforesaid judgment have first filled up the posts with the candidates with higher merit in OC quota and thereafter straightaway filled up the vacancies falling under special reservations and thereafter remaining candidates were appointed in the respective social reservations. The Tribunal accordingly allowed the O.As. directing the respondents to accommodate all the applicants in special reservation quota as per their merit, accommodating the unofficial respondents in their social reservations as per their merit, by recasting the selection list and issue appointment orders to the applicants therein as per their merit. The Tribunal further observed that as already six vacancies were ordered to be kept vacant by way of interim orders, the respondents shall accommodate the applicants in those six vacancies without disturbing the selections and appointments already made.

3. The petitioner in W.P. No.27219 of 2017 filed O.A. No.2367 of 2012 claiming identical relief as in the batch of the six O.As. referred to above.

¹ AIR 2007 SC 3127

Similarly the petitioner in W.P. No.26877 of 2017 filed O.A. No.10372 of 2011 and the petitioner in W.P. No.26975 of 2017 filed O.A. No.2306 of 2012. O.A. No.10372 of 2011 was allowed by order dt.21.11.2012 by the Tribunal, following the Order in O.A. Nos.8346 of 2011 and batch, dt.10.02.2012; and O.A. No.2367 of 2012 was allowed by order dt.19.3.2014 by the Tribunal, by following the two orders in the aforementioned OAs. While allowing these O.As. the Tribunal directed the respondents therein to accommodate the respective applicants under meritorious sports category for the posts of Stipendiary Cadet Trainee Sub-Inspector of Police (Civil) as per their merit by accommodating the unofficial respondent No.4 in the respective O.As., under BC-E and BC-B categories respectively, as per their merit and by recasting the selection. O.A. No.2306 of 2017 for an identical relief was allowed by the Tribunal by order dt.20.3.2014, following the order dt.19.3.2014 in O.A. No.2367 of 2012 with the direction that a copy of the order passed in the said O.A. shall be enclosed to the order in O.A. No.2306 of 2017. Feeling aggrieved by the orders passed in the aforesaid batch of six OAs and against the order in O.A. No. No.10372 of 2011 and also a similar order in O.A. No.2844 of 2012 filed by one Vavilala Subba Rao, the respondents filed W.P. Nos.9719 of 2012 and batch before this Court. A Division Bench of this Court, on a detailed consideration of the facts and also the case law, dismissed the writ petitions confirming the various orders of the Tribunal. The conclusions of the Division Bench relevant for the present purpose are extracted herein below:

“From the aforesaid judgment rendered by the Hon’ble Supreme Court in Anil Kumar Gupta’s case (2 supra), it is clear that if the candidates claiming reservation under special category come up for selection while filling up the

vacancies vertically, their candidature cannot be counted against social reservations. The unofficial respondents in the O.As., who are selected under various special categories, have secured more marks than the last selected candidates in the respective communal categories. In that view of the matter, there is no reason for appointing such persons in special category in deprivation of the benefit of special reservation to the respondent/applicants. Though a distinction is sought to be drawn with reference to the Rules applicable in Rajesh Kumar Daria's case (1 supra), having regard to the rule position in the rules framed for filling up the posts of Stipendiary Cadet Trainee Sub-Inspectors (Civil) (AR), (APSP) (Men) and the notification issued, it is clear that separate reservations are provided for special categories, in which event, the procedure adopted by the petitioners is not in conformity with the settled position as laid down by the Hon'ble Supreme Court. In that view of the matter, the Tribunal has rightly issued directions in favour of respondent/applicants."

Dealing with the submission of the respondents that all the vacancies were filled up, the Division Bench took exception to such stand and observed that in view of the interim order passed by the Tribunal on 19.12.2011, directing six vacancies to be kept vacant, the respondents, in all fairness, should not have filled up the vacancies without obtaining further orders from the Tribunal. It has further observed that as it was indicated in the affidavit that there will be several vacancies at any given point of time and as the respondents before the Court were deprived of selections illegally by following the procedure contrary to the norms approved by the Supreme Court in similar situations, the respondents/applicants have to be accommodated in the existing or future vacancies.

4. Complaining of non-implementation of the orders of the Tribunal as confirmed by this Court, contempt cases were filed before the Tribunal. Pending the contempt cases, the respondents filed petitions to review judgment dt.18.2.2014 in W.P. No.9719 of 2012 and batch. It was

pleaded before the Division Bench that even after recasting the merit list in terms of the order of the Tribunal and also the Division Bench, the respondents/applicants have not come up within the zone of selection and that the direction issued by the Division Bench that they should be accommodated either in the existing or in future vacancies constitutes an error apparent on the face of the record. In the light of the said plea taken by the respondents, the Division Bench observed that neither the Tribunal nor this Court has considered whether the respondents/applicants come up for selection or not, having regard to their merit in the special categories and therefore they are not entitled for any direction either to accommodate or to appoint them. The Division Bench accordingly allowed the review petitions to the limited extent of setting aside the directions issued by it to accommodate the respondents/applicants in the existing or future vacancies. However, while doing so, the Division Bench took note of the fact that the respondents/applicants and other similarly situated persons have filed fresh O.As. before the Tribunal, and observed that it is open to the latter to examine the claims of the respondents/applicants individually having regard to the merit secured by them and number of vacancies reserved for such categories, and pass appropriate orders.

5. In the fresh batch of the O.As. filed by the unsuccessful candidates, including the petitioners, questioning the method adopted by the respondents in applying the reservations, divergent opinions were expressed by the learned Judicial and Administrative Members. The Administrative Member in his opinion held that reservation for special categories are not vertical reservation and that they have to be operated

horizontally, and accordingly upheld the exercise of recasting of the merit list undertaken by the respondents,. The learned Judicial Member by a separate opinion has placed heavy reliance on the Division Bench judgment in holding that the special reservations are vertical reservations and concluded that the re-exercise done by the respondents by applying the horizontal reservation is in utter violation of the quota prescribed for special reservation in the rules as well as the notification and that the claims of the applicants before it were not considered as per the terms of the notification in the vacancies meant for special reservation categories. The learned Judicial Member accordingly set aside the proceedings impugned before the Tribunal. A further direction was issued that the cases of the applicants before it shall be considered in the available vacancies.

6. In view of the conflicting opinions of the two members, the matter was taken up by the Chairman. After copious reference to the judgment of the Division Bench of this Court, the Chairman has rapped the State Level Police Recruitment Board for adding the phrase “in a horizontal manner” ingeniously in its proceedings. The Chairman also observed that both the Administrative and Judicial Members have unnecessarily gone into the issues as to whether the special reservation must be followed vertically or horizontally, as the said issue was finally decided in the previous round and that the decision of the High Court confirming the order of the Tribunal has become final. The Chairman has accordingly held that in the face of the decisions of the Tribunal as well as this Court in the previous round of litigation, it does not lie in the mouth of the Recruitment Board to turn round and stick to its previous stand that the

selection list relating to special categories must be finalized in horizontal manner. In his concluding opinion, the Chairman agreed with the view expressed by the learned Judicial Member by holding that the said view was in accordance with the decisions of the Tribunal and this Court in the previous round of litigation. In paragraph 10 of his opinion, the Chairman allowed all the nine O.As., including that of the petitioners herein, and directed the Recruitment Board to recast the selection list relating to the special category posts as per the judgment in the previous rounds of litigation. However, while doing so, the Chairman gave the following directions.

“This exercise should be made without disturbing the selections and appointments already made and shall be limited to only six vacancies ordered to be kept vacant. It should be completed within a period of six weeks from the date of receipt of copy of this order.”

7. As the Chairman has concurred with the opinion of the Judicial Member, his opinion was challenged by the respondents in W.P. No.21604 of 2016. Incidentally, the writ petition came up before this Division Bench. The Bench identified the short issue as under:

“The short issue that engaged the attention of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, ‘the tribunal’) was whether the 15% quota earmarked for special categories, such as Police Executives (PE) - 5%, Police Ministerial (PM) - 1%, Meritorious Sports Person (MSP) – 2%, Children of Police Personnel (CPP) – 2%, Children of Police Personnel of A.P. Police who died due to violence of extremists in duty and who were incapacitated/medical invalidation due to violence while on duty (CDI) – 2% and National Cadet Corps (NCC) – 3%, is a separate category by itself to be treated as a vertical reservation or a horizontal reservation among the social/communal reserved categories in the matter of promotion to the posts of Sub-Inspectors.”

After discussing the relevant rules, the Court opined as under:

“In our opinion, when a separate quota of 15% is created for special categories, such quota stands on its own legs vertically and it will be wholly irrational to follow such quota horizontally among the other categories. Therefore, the majority members of the Tribunal have come to a right conclusion that the 15% quota must be followed vertically and not horizontally for such categories.”

On the above analysis, this Court has dismissed the writ petition.

8. Even after the second round of litigation, the three petitioners were not selected and appointed as Sub-Inspectors. Therefore, they were constrained to file contempt cases. Evidently, the respondents have taken the stand in the contempt cases that the claims of all the applicants before the Tribunal were considered against six vacancies in view of the order of the Chairman directing that the exercise of recasting the selection list relating to special category posts shall be limited to only six vacancies which were ordered to be kept vacant. That out of the six vacancies, four vacancies fell to the State of Telangana and two fell to the State of Andhra Pradesh and that out of the two vacancies, one vacancy was allotted to a person with superior merit in the special category and the remaining vacancy will be allotted to Mr. Vavilala Subba Rao, the applicant in O.A. No.2844 of 2012. The learned Judicial Member to whom the contempt cases were allotted did not agree with the stand taken by the respondents that consideration will be confined to only six vacancies. He has therefore passed order on 14.7.2017 for revising the selection list. It is submitted by the learned counsel for the petitioners and is also admitted by the learned Government Pleader that on the directions issued by the learned Judicial Member, the Chairman of the Recruitment Board has recasted the merit list zone-wise and that on such recasting, all the

three petitioners herein will come up within the zone of consideration. However, as noted above, they were denied appointments only on the ground that the Chairman in his opinion has directed to confine the consideration only to six vacancies. It is in this situation that the petitioners have filed these three writ petitions assailing the direction issued by the Chairman that consideration must be limited only to six vacancies which were ordered to be kept vacant.

9. The respondents filed W.P. No.27349 of 2017 against order dt.14.7.2017 passed by the learned Judicial Member in contempt applications filed by the petitioners whereby while placing on record the statement of the Chairman of the Recruitment Board that after revisiting the order vide proceedings dt.06.03.2017 pertaining to revised select list, it was found that certain inadvertent mistakes have crept in and that he has undertaken to issue fresh orders of revised selections strictly in conformity with the orders of the Tribunal and that on his request three weeks' time was granted for revising the selection lists with respect to the petitioners.

10. During the hearing of the cases, the learned counsel for the petitioners submitted that the matter went before the Chairman of the Tribunal in view of difference of opinion between the two members and that having concurred with the opinion of the learned Judicial Member, the Chairman has exceeded his jurisdiction by directing that consideration must be confined only to six posts. The counsel have urged that having succeeded in the two rounds of litigation, it would be arbitrary, unjust and inequitable for the respondents to deprive them of the posts of Sub-Inspectors only on the ground that consideration must be confined only to

six vacancies. Once this principle is decided in favour of the petitioners, argued the learned counsel, they must be treated on par with the six applicants who filed the first batch of O.As and that no discrimination could be shown between them and the petitioners.

11. The learned Government Pleader for Services (AP) while opposing the above submissions, argued that filing of the writ petitions by the petitioners is an afterthought, as they approached this Court much after dismissal of W.P. No.21604 of 2016 filed by the respondents and also after their filing contempt cases before the Tribunal. She has further submitted that though initially the Division Bench while disposing of the writ petitions has directed to consider the cases of all the applicants against existing/future vacancies, in the review it has deleted the said direction on the ground that a person has only a right to be considered and not a right to be appointed, and that as only six posts were kept vacant, all the applicants must rest content with those vacancies.

12. We have carefully considered the respective submissions of the learned counsel for the parties. We need to observe at the outset that the Recruitment Board has acted in an unfair manner by following horizontal method while recasting the selection list, contrary to the order of the Tribunal dt.10.2.2012 in O.A. No.8346 of 2011 and batch and the Division Bench judgment dt.18.2.2014 in W.P. No.9719 of 2012 and batch. In both these orders, the Tribunal as well as this Court in unequivocal terms held that the special category reservations have to be applied vertically and not horizontally. Indeed, not stopping by stating so, adopting the ratio in *Rajesh Kumar Daria* (1 supra), the Tribunal in paragraph 11 of the order even indicated the step by step procedure for

filling up the posts among different categories commencing from open competition vacancies. This judgment of the Tribunal received the seal of approval of the Division Bench of this Court based on various judicial precedents of the Apex Court.

13. We are indeed perplexed at the audacity of the Recruitment Board in turning a blind eye to the decisions of the Tribunal and this Court which are not even challenged in the Supreme Court and in sticking to their original stand, by adopting the horizontal method while purporting to recast the merit list. We are equally surprised that the learned Administrative Member ignored the earlier decision of the Tribunal and this Court to the extent of declaring that special reservation must be operated horizontally and by saying so he sought to nullify the judgments in the previous rounds of litigation. However, the learned Judicial Member has saved the situation by reiterating the view taken by the Tribunal in the previous round of litigation. The Chairman on his part while concurring with the view of the Judicial Member, however, directed the fresh exercise to be limited only to six vacancies.

14. As rightly argued by the learned counsel for the petitioners, when on a difference of opinion between two members the issue was placed before a third member (in this case, he happened to be the Chairman), such third member can only concur with either of the members. In our considered opinion he cannot issue any direction which did not fall for consideration before the two members. Being candid in expressing his agreement with the view expressed by the learned Judicial Member and having allowed all the original applications, including that of the petitioners', there was absolutely no warrant for the learned Chairman to

limit the exercise only to six vacancies. In other words, what was given with one hand to the petitioners by allowing their original applications, was taken away by him with the other hand. There can be no reason to deny the petitioners their due quota merely because they were not as fortunate as the six original applicants in the first round of litigation in securing an interim order. The fortunes of the litigant ought not to depend upon the fortuitous circumstance of securing an interim order in his favour during the pendency of the main case. What needs to be ultimately considered is whether he succeeded on the merits of the case or not. Filling up of vacancies was not in the hands of the litigant and his fate must not hinge on something which is not in his hands. Except for the fact that the applicants in the six OAs secured an interim order, all the three petitioners stand on par with the said six applicants in whose cases interim orders were granted. But, once the petitioners succeed in their O.As, in much same way as the other six applicants have succeeded, there is no reason why the former must be treated differently.

15. The learned Government Pleader has laid much emphasis on the review order and submitted that the Division Bench has consciously deleted the direction that all the respondents - applicants must be accommodated either in existing or future vacancies. This submission of the learned Government Pleader overlooked the concluding observation of the Division Bench wherein it has left the exercise of examining the claims of the respondents – applicants individually having regard to the merit secured by them and the number of vacancies reserved for such categories. What is significant from these observations is that the Division Bench did not merely go by the available vacancies, but it has referred to

the “vacancies reserved for such categories”. This certainly means that regardless of the availability of vacancies, the respondents must consider the number of vacancies which are reserved for special categories. It therefore follows that if “X” number of posts are reserved for special categories, the candidates falling in that category are entitled for all those vacancies and their entitlement does not depend upon the act of the respondents in filling up those vacancies during the pendency of the litigation. By filling up such vacancies without waiting for the result of the litigation, the respondents have taken a calculated risk. Therefore, they cannot be allowed to plead their inability to accommodate all the qualified candidates under special category merely on account of purported non-availability of vacancies. As the learned Government Pleader has fairly conceded that all the three petitioners would come up for selection if the exercise is not limited to six vacancies only, it would be a travesty of justice if they are denied the posts only based on a direction issued by the learned Chairman which lacks any rationale.

16. For all the aforementioned reasons, the petitioners must succeed and W.P. Nos.26877, 26975 and 27219 of 2017 are accordingly allowed. The direction of the Tribunal that recasting of selection list shall be limited to only six vacancies is set aside. The respondents must recast the selection list in respect of special category posts without confining the consideration only to six vacancies and consider appointment of the petitioners, as, concededly they have come up in the zone of consideration for appointment as Stipendiary Cadre Trainee Sub-Inspectors of Police (Civil).

17. As regards W.P. No.27349 of 2017, we find no reason whatsoever for the respondents to feel aggrieved by the order passed by the learned Judicial Member which is based on the concession made by the Chairman of the Recruitment Board. Even otherwise also, in the light of the observations made and the findings rendered by us in this order, no exception can be taken to the impugned order passed by the learned Judicial Member. Hence, this writ petition is dismissed.

As a sequel to disposal of the writ petitions, W.P.M.P. Nos.33380, 33516, 33811 and 33987 of 2017 filed in the respective writ petitions shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

18-8-2017

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Note: LR copies to be marked.

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