

HON'BLE SRI JUSTIC SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

W.P Nos.8732, 2210, 8648, 8733, 8734, 8765, 8809, 9732, 9744, 9839,
9840, 9841, 9842, 11448, 11821, 13591 and 13608 of 2017

COMMON ORDER: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

These batch of writ petitions are filed aggrieved by the common order dated 04.08.2016 passed by the learned Andhra Pradesh Administrative Tribunal, Hyderabad (for short "the Tribunal"), in O.A.No.6797 of 2015 and batch, wherein the learned Tribunal allowed the O.As by setting aside the termination proceedings dated 22.11.2015 issued by the Collector and Chairman, Selection Committee, Visakhapatnam Region (for short "Chairman") and directed the respondents therein to reinstate the applicants therein into service i.e, into the posts they were earlier selected and discharged duties.

2) The facts in brief are as follows.

a) The applicants who were working as Extension Officers (Grade-II)/Supervisors in Srikakulam/Visakhapatnam/ Vizianagaram Districts, filed batch of OAs assailing the legality of proceedings dated 22.11.2015 issued by the Chairman, terminating them from service. They sought for a consequential direction to the respondents to continue them in service.

b) The applicants were initially working as Anganwadi workers. Pursuant to the notification issued by 2nd respondent for filling up the posts of Extension Officers (Grade-II)/Supervisors with eligible Anganwadi workers, the applicants and others participated in the selection process by appearing in the written examination and got through successfully. The selections were made on Zonal basis. They were selected and appointed by the Regional Joint Director, Women Development and Child Welfare, Visakhapatnam (for short “RJD, WD & CW”), on 18.01.2014. They have all joined in the selected posts and working without any blemish. They were on probation.

c) While-so, some of the unselected candidates made representations to the Finance Minister of State of Andhra Pradesh complaining that, though they were more meritorious than the selected candidates, they were not selected on the erroneous ground that they were non-locals. He in-turn forwarded the same to the Chairman for examining their grievance. The Chairman had examined the selections earlier conducted and came to a conclusion that the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 vide G.O.Ms.No.674 General Administration (SPF) Department dated 20.10.1975 (for short “Presidential Order”) had no application to the selection of Extension Officers (Grade-II), but it was wrongly applied and the candidates were selected on Zonal basis. On that main ground, he revised the selections and allotted ranks to the candidates who participated in the selection process as per their marks and by applying the Rule of Reservation as provided under Rule 22 of

A.P State and Subordinate Service Rules, 1996, he published the revised merit list and affixed it on the notice boards of various offices where selected candidates are working and called for objections from them within a period of 2/3 days. Some of them have submitted their objections. After considering those objections, he confirmed the revised selection list through the impugned proceedings dt.22.11.2015 and then, through the same proceedings, terminated the services of applicants in OAs, on the ground that they were less meritorious and selected by applying the Presidential Order, though it was not applicable to their selections.

Questioning the same, applicants filed O.As before Tribunal. At the time of admission of O.As, the Tribunal passed an interim order suspending the impugned proceedings dated 22.11.2015.

d) The respondents filed VMAs/counter-affidavits and sought to justify the revision of selection and termination orders issued by the Chairman. It is pleaded that as per G.O.Ms.No.14, Women Development and Child Welfare and Disabled Welfare(Estt) Department, dated 10.05.2000 (for short “G.O.Ms.No.14 dated 10.05.2000”) and amendments thereto issued from time to time, the posts of Extension Officer (Grade-II)/Supervisor have to be filled up as per merit of the candidates by applying Rule of Reservation, as provided in Rule 22 of A.P State and Subordinate Service Rules, 1996 and that the Presidential Order has no application to the selections. It is further pleaded that in other zones selections were not made by following the

Presidential Order, but in Visakhapatnam Region alone selections were made by following the Presidential Order, and therefore, the Chairman to whom complaint of some of the aggrieved candidates was forwarded by the Finance Minister of the State of Andhra Pradesh, has reviewed the selections in the light of G.O.Ms.No.14 dated 10.05.2000 and other relevant Rules, and then came to a conclusion that less meritorious candidates were selected, ignoring the meritorious candidates, on the ground that they are non-locals. Therefore, he published the revised selection list. It is also pleaded that after publishing the revised selection list on the notice boards of various offices, objections were received from the applicants and other similarly placed persons, and after considering them the impugned orders were issued by the Chairman, and there is nothing wrong in the procedure adopted by him. It is further pleaded that the applicants are less meritorious and they cannot complain against the impugned orders, as they were already given an opportunity to submit objections against the revised merit list. It is also pleaded that against the termination orders, applicants have already preferred appeals to the Appellate Authority i.e, Commissioner, WD & CW Department, Andhra Pradesh on 30.11.2013 and he also asked for remarks of the Regional Joint Director, WD & CW Department, Visakhapatnam. Therefore, the applicants, who ought to have waited for orders in appeals, unduly rushed to the Tribunal. It is also pleaded that the selected candidates have joined in the places of applicants, and therefore, they are necessary parties to these OAs.

3) After hearing both sides, the learned Tribunal allowed the batch of OAs on the following observations:

i) With regard to the applicability of Presidential Order, 1975, it held that the same was not germane for deciding the legality or otherwise of the impugned order in the batch of O.As and the same was open to the authorities to take a decision in that regard after perusing the Presidential Order, G.O.Ms.No.14, dt.10.05.2000 and Rules governing the posts of Extension Officers (Grade-II)/Supervisors in WD & CW Dept.

ii) Then with regard to the termination proceedings dated 22.11.2015 passed by the Chairman, the Tribunal held that the role of District Collector is only as a Chairman of the Selection Committee and when once the selections were over and final select list was submitted to the Appointing Authority, the Selection Committee lost its existence and became *functus officio*. The Tribunal accordingly set-aside the termination proceedings dated 22.11.2015 and directed the respondents therein to reinstate the applicants therein into service.

4) Hence the instant Writ Petitions No.8648, 8732, 8733, 8734, 8765, 8809, 9732, 9744, 9839, 9840, 9841, 9842, 11448, 11821, 13591 and 13608 of 2017 are filed by the petitioners who are selected as per revised order dated 22.11.2015 of the Chairman.

Whereas the Government has filed only one Writ Petition No.2210 of 2017 against the applicant in O.A.No.6875 of 2015 challenging the common order dated 04.08.2016 passed by the Tribunal in O.A.No.6875/2015 and batch.

5) Heard arguments of learned counsel J.Sudheer, D.V.Rao and learned G.P for Services (AP) appearing for different writ petitioners and D.V.Nagarjuna Babu, Taddi Nageswar Rao, M.Srikanth, learned counsel appearing for unofficial respondents and learned Government Pleader for Services (AP) for official respondents in different writ petitions.

6) The point for determination in this batch of Writ Petitions is:

“Whether the impugned Common Order dated 04-08-2016 passed by the Tribunal is legally and factually sustainable?”

7) **POINT:** The argument of learned counsel for different writ petitioners J.Sudheer, D.V.Rao and learned G.P for Services (AP), challenging the impugned common order is more or less the same. They endeavoured to establish that the Presidential order have had no application to the subject posts i.e, Extension Officer (Grade-II)/ Supervisor and selection should not have been made on the basis of locals/non-locals and having realized that an error was crept in the selection process due to applying the locals/non-locals method, the Chairman has remedied the said mistake and passed a revised order dated 22.11.2015.

The nub of their arguments is thus:

a) The Integrated Child Development Scheme (ICDS) came into existence in Andhra Pradesh in the year 1975 under centrally sponsored scheme of the Government of India and started with 2 blocks and expanded to 192 ICDS projects and 1431 sectors in a phased manner with the assistance of World Bank. For effective supervision and monitoring of the scheme at field level, the Government of India had advised the State Government to appoint the experienced Anganwadi Workers as Supervisors on promotion basis. Accordingly, the State Government have constituted empowered committee and on its recommendation, issued guidelines pending issue of AP ICDS Subordinate (Supervisor) Rules 1991 governing the post, to fill up the post of Supervisor Grade-II under ICDS Scheme in two tier system of Supervisor Grade-I & II in the ratio of 1:1 vide G.O.Ms.No.209 dated 28.11.1991. As there was no indication of cycle to be followed to fill up the posts from various categories in the said guidelines, the Government in supersession of G.O.Ms.No.209 dated 28.11.1991, had issued fresh guidelines to fill up the post of Supervisor under ICDS Scheme on the exigencies of two tier system of Extension Officer (Grade I & II)/Supervisor in the ratio of 1:1 vide G.O.Ms.No.14 dated 10.05.2000 for effective monitoring and implementation of Scheme at field level. As per G.O.Ms.No.14 dated 10.05.2000, the Post of Extension Officer (Grade-I & II)/Supervisor is ICDS Scheme post. It is a similar entry to the post under Paragraph 14(e) of Presidential Order, 1975 which automatically get excluded from the purview of localization under paragraph 8 of G.O.P.No.728, General Administration (SPF-A)

Department dt.01.11.1975. Therefore, the local reservation is not made applicable to the post of Extension Officer (Grade-I & II)/Supervisor under ICDS Scheme under paragraph 5 of G.O.P.No.729 of GA (SPF-A) Dept., dt.01.11.1975 unless it is organized into local cadre under Presidential Order, 1975.

b) As per the guidelines issued in G.O.Ms.No.14 dated 10.05.2000, the post of Extension Officer/Supervisor is classified as Category-I, Class-A and Category-II, Class-A in the year 2000, much later than the existence of Presidential Order, 1975 for the purpose of efficient administration for convenience of the Government on exigencies only. Hence the local reservation under Presidential Order has no application to the said post as it was not organized as per Presidential Order.

c) It is further argued, as per G.O.Ms.No.14 dated 10.05.2000 and amendments issued from time to time, the object of the Government is to appoint the in-service experienced categories of Anganwadi Workers, Contract Supervisors and Coordinators and Instructors of AWTCs as Extension Officer (Grade-II)/Supervisors by direct recruitment on zonal basis as per the advice of the Government of India on promotion basis. 100% posts are earmarked to the in-service and experienced categories for the purpose of efficient administration or convenience of the Government on exigencies only, but not on the basis of open competition. As per the aforesaid G.O, 80% posts are earmarked to AWWs; 10% to Instructors & coordinators of AWTCs and 10% to Mobile Creche Teachers. The said ratio was amended and earmarked

95% posts to AWWs & Supervisors on contract basis and 5% to Instructors & coordinators of AWTCs as per G.O.ms.No.15 dated 02.07.2013. Hence the whole scheme under the guidelines would infer, the appointment is from the in-service categories only, as the individuals were initially appointed at the first entry into the Government as Anganwadi Workers, Supervisors on contract basis and coordinators/ Instructors of AWTCs, which become eligible categories for the post of Extension Officer (Grade-II)/Supervisor. The very purpose of conducting limited direct recruitment is to facilitate the departmental candidates for being appointed as Supervisors on experience.

d) Thus following the G.O.Ms.No.14 dated 10.05.2000, notification dated 02.07.2013 was issued by the Commissioner of Women Development and Child Welfare Department (AP) for filling up 237 posts of Supervisors (Grade-II) in Visakhapatnam Region comprising Visakhapatnam, Vizianagaram and Srikakulam Districts. The notification contains details under 7 Sl.Nos. but it is silent as to the reservations under local/non-local category, which infers that the Presidential Order has no application.

e) It is further argued, the zonal committee comprises: i) Collector of Regional Headquarters (District) as the Chairman of the Selection Committee ii) Regional Deputy Director, WD & CW, with the respective zones as Member Convener and iii) District Medical & Health Officer as Member. The Selection Committee conducted common written examination on 27.10.2013 and after evaluation of

OMR sheets, the Commissioner, WD & CW, AP, Hyderabad had communicated the merit list on 30.10.2013. The Selection Committee prepared the provisional selection list on 09.11.2013 by following the Six Point Formula (SPF) Rule. As per the provisional selection list, the applicants in batch of OAs have been selected though they were less meritorious because of following the Presidential order. After publication of provisional selection list, some of the aggrieved candidates have approached the Tribunal and obtained interim orders in O.A.No. 8494/2017 and 47/2014. As the matter stood, on the request of Regional Deputy Director, WD & CW, regarding following of SPF Rule, the Commissioner, WD & CW, (AP), Hyderabad issued clarification that since the eligibility for recruitment of AWWs & AWHs is that the candidate should be a local married woman of the village, the issue of non-local candidates does not arise. Further, for selection of Extension Officer (Grade-II)/Supervisor, the AWWs should have a continuous 10 years of service as AWW, hence they are expected to be from the same zone vide Memo No.281/C1/2011 dated 07.01.2014. When the matter stood thus, pending the two OAs, the Regional Deputy Director, WD & CW, Visakhapatnam issued appointment orders to the selected candidates without bringing the clarification issued by the Commissioner, WD & CW, Hyderabad to the notice of the Chairman. The applicants in the batch of OAs. have thus joined in service.

f) It is further argued that the Selection Committee received complaint on 30.07.2014 from 5 individuals stating that though they

secured more marks and stood meritorious than the selected candidates, they were eliminated in the provisional selection list on the ground that they were non-locals, contrary to the provisions and guidelines of the notification. The Chairman of the Selection Committee instructed Regional Deputy Director and Convener to verify whether local/non-local reservation was followed in other Districts and to circulate the file. After getting the information, the Chairman reviewed the entire material and issued revised order under Proceedings No.660/2013/A-126 (1)/ter. dated 22.11.2015. In his proceedings, he observed that the ICDS scheme in Andhra Pradesh has come into existence in 1975 starting with two erstwhile blocks and expanded from time to time and in the exigencies, the Government issued guidelines for recruitment of Supervisor (Grade-II) from eligible AWWs, pending issue of Special Rules of A.P Child Development Subordinate Service (Supervisors) Rules, 1991. Candidates were selected in the year 1997 irrespective of local or non-local as per merit and rule of reservation in force. The Chairman thus observed that the Post of Supervisor in ICDS Scheme was not in existence at the time of enforcement of Presidential Order. He further observed that the guidelines were issued in terms of G.O.Ms.No.14 dated 10.05.2000 and its amendments as per which, the Department has prescribed format for application with 10 columns without providing local reservation and directed all concerned to follow the same. He noticed, in other zones, they have followed the criteria and conducted selection strictly as per merit and rule of reservation irrespective of local and non-local. However, in deviation of the above

and without the approval from the Commissioner, WD & CW (AP), Hyderabad or from the Chairman, 14 columned application with local and non-local details was prepared and the Presidential Order was applied in the selection in Visakhapatnam zone. The Chairman ultimately opined that the following of local reservation in Visakhapatnam zone alone was not appropriate. Thus while initiating the disciplinary action against the concerned, the Chairman issued directions for preparing a revised selection list for 3010 candidates, who have secured eligible marks out of 3024 candidates who appeared for the examination. Accordingly, the revised merit list was prepared assigning the ranks in the order of merit as per the criteria of date of birth, date of entry into service of the department and higher qualifications. Objections were invited from the concerned within three days i.e, on or before 5 P.M. on 18.09.2015. About 183 candidates submitted their objections and on scrutiny, they were found to be not against the ranks assigned. In the final tally, writ petitioners were found to be more meritorious than the unofficial respondents (applicants in the batch of OAs). Hence as per the proceedings dated 22.11.2015, the Chairman Selection Committee terminated the services of about 18 ineligible candidates and issued appointment orders to the eligible candidates.

g) Thus elaborating the entire procedure, learned counsel would vehemently argue that the Presidential Order had no application and therefore, the earlier appointments made on local/non-local basis was

found to be incorrect and the same was rectified through the revised proceedings.

h) Additionally, learned counsel J.Sudheer would argue that the Tribunal erroneously held as if the Chairman of Selection Committee had no right to revise the earlier selection order as the Selection Committee lost its existence and became *functus officio* after selection procedure was over. He would argue that the role of the committee would not come to an end immediately after the selection procedure was over. On the other hand, the committee is competent to set right any anomaly occurred in the selection procedure. He further argued that the unofficial respondents (applicants in OAs) have no right of audience as they were less meritorious and indeed not eligible. In such circumstances, personal notice to them by the Chairman would be of futile exercise and not violation of principles of natural justice. He relied upon the following decisions:

(i) *Ashok Kumar Sonkar vs. Union of India and others*¹

(ii) *Dharampal Satyapal limited vs. Deputy Commissioner of Central Excise, Gauhati and others*²

Even otherwise, general objections were called for after issuing revised selection list and that would serve the purpose. He, however, admitted that since the unofficial respondents were selected on the basis of applying Presidential Order, 1975 and served for some time before

¹ (2007) 4 SCC 54

² (2015) 8 SCC 519

terminated, the writ petitioners have no objection if they too are accommodated by the Government.

8) Opposing the writ petitions, learned counsel for respondents would argue that the Presidential Order would very much apply to the present posts in as much as in G.O.Ms.No.14 dated 10.05.2000, while providing guidelines, it was observed that the appointment to the posts of Extension Officers (Grade-II)/Supervisor shall be made by selection on zonal basis. In the G.O, the erstwhile State of A.P was divided into 6 zones by placing Srikakulam, Vizianagaram and Visakhapatnam Districts in Zone-I. Thus the G.O itself was indicative of the selection being made on the basis of locals/non-locals. Further, in the notification dated 02.07.2013 issued by the Chairman, though it was not specifically mentioned that posts were to be filled up on the basis of local reservation, still it was clearly mentioned that 237 posts pertaining to Visakhapatnam region were going to be filled. The candidates who were working as AWWs, AWTCs and Creche teachers in those Districts were only eligible to participate in the selection process. Therefore, it is futile to argue that the Presidential order had no application. They further argued that the entire selection was made on the local/non-local basis wherein the unofficial respondents were selected and they were appointed as Extension Officers (Grade-II)/Supervisors. There was absolutely no illegality or irregularity in the first selection process made. The Chairman and other members on a wrong assumption that the Presidential Order had no application, issued a revised selection list and illegally terminated the unofficial respondents from service. The

Tribunal has rightly held that the Collector had no right to revise the selection list after selection procedure was over and set aside the said order. The writ petitioners who have not challenged the validity of G.O.Ms.No.14 dated 10.05.2000, cannot question the common order in OAs. It is also argued that the Government who filed its counter before the Tribunal in O.A.No.8494/2013 contending that the Presidential Order is applicable to the selection procedure, cannot now turn round and contend otherwise in the present writ petitions. Thus the respondents prayed to dismiss the writ petitions.

9) We gave our anxious consideration to the above respective arguments. It is needless to emphasize that if Presidential Order were to be applied to the selection of Extension Officers (Grade-II)/Supervisors, the writ petitioners who are admittedly non-locals of Zone-I would become non-suited. On other hand, if the Presidential Order were not to be applied, their selection as per the revised list would stand valid. It is to be noted, the Tribunal has not gone into the issue of the applicability of Presidential Order to the subject posts. It only held that the said issue was not germane for deciding the legality or otherwise of the order of the Chairman impugned. It ultimately held that the selection committee became *functus officio* after selection procedure was over and therefore, the Collector had no jurisdiction/authority to issue the impugned orders revising the selection list and terminating the services of the applicants in the O.As. Therefore, in these writ petitions, we are deprived of the finding of the Tribunal on applicability/non-applicability of the Presidential Order. Hence we made an honest attempt to ascertain the

truth on this crucial aspect. However, we are constrained to note, the facts, particularly the dubious pleadings of the Government i.e, the official respondents before the Tribunal as well as before us, compounded the issue rather than resolving the same.

10) The facts which give an impression about the applicability of Presidential Order are that in G.O.Ms.No.14 dated 10.05.2000 and in its subsequent amendments, it was mentioned that the appointment to the posts of Extension Officers (Grade-II)/Supervisor shall be made by selection on zonal basis. In the said G.O, the erstwhile State of Andhra Pradesh was divided into 6 zones, placing Srikakulam, Vizianagaram and Visakhapatnam in Zone-I. Further, in the notification dated 02.07.2013 it was mentioned that 237 posts of Supervisor (Grade-II) pertaining to Visakhapatnam region i.e, Visakhapatnam, Vizianagaram and Srikakulam Districts will be filled by recruitment. Added to it, in the counter affidavits filed in O.A.No.8494/2013, the Regional Joint Director, WD & CW, Visakhapatnam has taken a plea that the post of Extension Officers (Grade-II)/Supervisor is a zonal cadre as per rules issued in G.O.Ms.No.14 dated 10.05.2000 and since the applicant in that O.A had studied Classes VII to X in East Godavari District, she was a non-local candidate and not eligible for appointment (vide Para 12 of the impugned common order in O.A.No.6797/2015 & batch). All these facts, would, give a *prima facie* impression that the posts are to be filled up on the basis of local/non-local reservation. However, that is not the end of the matter. There are other set of facts, as we note below, which give a different connotation.

11) In the notification dated 02.07.2013 which was issued pursuant to the guidelines given under G.O.Ms.No.14 dated 10.05.2000, though it was mentioned that the said notification was issued for recruitment of 237 posts in Visakhapatnam region, there is no specific mention that the posts would be filled up following the local reservation as contended by the writ petitioners. Therefore, on a first blush of notification, one cannot conclude that Presidential Order would, invariably applicable to the said recruitment. There is another ambiguity regarding the applicability of local reservation. In the application form for recruitment of Extension Officer (Grade-II)/Supervisor annexed to the guidelines, 10 columns were prescribed for extracting the information from the candidate. However, none of the columns contain a question relating to the local/non-local status of the candidate. Be that as it may, in the proceedings dated 22.11.2015, the Chairman mentioned as if a different application form with 14 columns was issued to the candidates without his knowledge and said application form contained columns regarding the local and non-local status of the candidates. Copy of the said application form is not produced for our verification. Therefore, there is any amount of confusion in view of the two formats of the application forms. Be that as it may, in the order dated 22.11.2015, the Chairman mentioned that during the year 1997, selections were made as per merit and rule of reservation irrespective of local and non-local status. He further mentioned that in the present selection, in other zones, they have followed the criteria and conducted selections strictly as per merit and rule of reservation irrespective of local and non-local status.

Added to above, before the Tribunal as well as this Court, the official respondent took a different plea than the one taken in O.A.No.8494/2013 contending that Presidential order has no application to the present posts. These set of facts give an indication that the Presidential Order has no application.

12) The above facts, particularly the conduct of the official respondents has created an impasse. The writ petitioners are the meritorious candidates and they are to get posts if the Presidential Order has no application. On the other hand, the unofficial respondents who are less meritorious candidates, are to be reinstated into service if the Presidential Order is to be applied. They served the jobs for some period and were terminated. In these circumstances, we are of the considered view that both the sets of candidates shall not be made to suffer on account of lack of clarity in the procedure on one hand and divergent pleas put-forth by the official respondents on the other.

13) Therefore, in the interest of justice, while setting aside the impugned common order dated 04.08.2016 passed by the Tribunal in O.A.No.6797/2015 and batch, following order is passed:

- (i) Writ Petition No.2210 of 2017 filed by the Government is dismissed.
- (ii) Writ Petitions No.8648, 8732, 8733, 8734, 8765, 8809, 9732, 9744, 9839, 9840, 9841, 9842, 11448, 11821, 13591 and 13608 of 2017 are allowed and the petitioners who are

working as Extension Officers (Grade-II)/Supervisors shall be continued in their posts and the unofficial respondents shall be reinstated into service w.e.f. 22.11.2015 with back wages. The *inter se* seniority of these writ petitioners and the unofficial respondents shall be fixed basing on the common merit list.

(iii) It is made clear that this order is confined only to the present batch of Writ Petitions.

(iv) No order as to costs.

As a sequel, miscellaneous applications pending in these writ petitions, if any, shall stand closed.



SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Date: 04.10.2017

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