

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

+ Writ Petition Nos.12187 and 12621 of 2014

% Date: 29-11-2017

W.P.No.12187 of 2014:

- # 1. The Commissioner and Director of School Education,
A.P., Hyderabad-500 004
2. Govt. of AP, Rep. by its Prl. Secretary,
School Edn. Dept., Secretariat, Hyderabad-22
3. The District Educational Officer, Nalgonda
4. The District Collector & Chairman, DSC 2012,
Nalgonda
- ... Petitioners
- Vs.

- \$ 1. Dongara Srinivasa Reddy, S/o Venkata Reddy,
Aged about 34 years, Unemployee, R/o H.No.3-47,
Lakkaram (V), Huzurnagar (M), Nalgonda District;
2. J.Sheshamma, Unemployee
3. Nukala Venkat Reddy, Unemployee
4. Md. Abdul Hameed, Selected S.G. Teacher
5. N.Nirmala, Selected S.G. Teacher
- ... Respondents/Applicants
6. The Hon'ble A.P. Administrative Tribunal,
Hyderabad, Rep. by its Registrar
- ... Respondent

W.P.No.12621 of 2014:

- # 1. The Commissioner and Director of School Education,
A.P., Hyderabad-500 004
2. Govt. of AP, Rep. by its Prl. Secretary,
School Edn. Dept., Secretariat, Hyderabad-22
3. The District Educational Officer, Nalgonda
4. The District Collector & Chairman, DSC 2012,
Nalgonda
- ... Petitioners
- Vs.

- \$ 1. A.Karunakar Reddy, S/o Venkat Reddy,
Unemployee, R/o Plot No.28, New Venkata
Ramana Colony, Vanasthalipuram, R.R. District;
2. Bolla Sravya, Unemployee
3. Kammaganti Udayasri, Selected S.G.T.
... Respondents/Applicants
6. The Hon'ble A.P. Administrative Tribunal,
Hyderabad, Rep. by its Registrar
... Respondent

! Counsel for Petitioners: Govt. Pleader for Services-II (AP)

Counsel for Respondent No.1: Mr. A.Rajendra Babu
Counsel for Respondent No.2: ---

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> Head Note:

? Cases referred:

1. AIR 2016 SC 5265
2. (2010) 3 SCC 119

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

Writ Petition Nos.12187 and 12621 of 2014

Common Order: (per V.Ramasubramanian, J.)

The State of Telangana has come up with the above writ petitions challenging a common order passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, holding that the persons who are declared to have passed Teacher Eligibility Test (TET) with a relaxed eligibility criteria, are not entitled to compete along with the General category candidates as against the vacancies available for unreserved category candidates.

2. Heard Mr. A.Sanjeev Kumar, learned Special Government Pleader attached to the office of the learned Advocate General for the State of Telangana, and Mr. P.Narasimha, learned counsel appearing for the respondents/applicants.

3. After the issue of the Amended Regulations of the National Council for Teacher Education (NCTE), a pass in the National Eligibility Test (NET), is a must for appointment to the post of teachers in all the States throughout the country. But in a set of Guidelines issued by the NCTE, in exercise of the powers conferred by Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009, the NCTE clarified that though the qualifying marks for a pass in the TET examination would be 60% it would be open to the

appropriate Governments, local bodies and Government aided institutions, to consider the grant of concessions to persons belonging to SC/ST, OBC and differently abled persons, in accordance with their extant reservation policy.

4. The relevant Guideline issued by NCTE reads as follows:

“QUALIFYING MARKS

9. A person who scores 60% or more in the TET exam will be considered as TET pass. School managements (Government, local bodies, government aided and unaided)

(a) may consider giving concessions to persons belonging to SC/ST, OBC, differently abled persons, etc., in accordance with their extant reservation policy;

(b) should give weightage to the TET scores in the recruitment process; however, qualifying the TET would not confer a right on any person for recruitment/employment as it is only one of the eligibility criteria for appointment.”

5. In accordance with the leverage given to them, the composite State of Andhra Pradesh incorporated a rule in a set of rules known as Andhra Pradesh Direct Recruitment for the Posts of Teachers (Scheme of Selection) Rules, 2012. These set of rules were issued by the State of Andhra Pradesh under G.O.Ms.No.4, Education, dated 09-01-2012, in exercise of the powers conferred by the proviso to Article 309, read with various enactments including Right of Children to Free and Compulsory Education Act, 2009. Rule 4(1)(a) of these Rules reads as follows:

“4. QUALIFICATIONS

(1) A candidate for selection to the posts of Teachers shall possess the academic and professional/training qualifications as follows:-

(a) Must possess APTET (Paper-I) Pass Certificate/ Memorandum of marks in respect of SGT and APTET (Paper-II) with any optional subject) Pass Certificate/ Memorandum of marks in respect of School Assistant and Language Pandit, with 60% and above score in respect of General candidates, 50% and above score in respect of B.C candidates, 40% and above score in respect of SC/ST candidates and differently abled (at least 40% handicap in respect of Orthopedic/Visually Impaired and 75% handicap in respect of Hearing Impaired).”

6. By a Notification dated 30-01-2012, the combined State of Andhra Pradesh invited applications for recruitment of about 12,000 teachers. As per the Notification, the process of recruitment comprised of a written examination followed by the award of weightage to the TET score.

7. Rule 15 of the 2012 Statutory Rules indicated the process of selection as follows:

“15. SELECTION:

Candidates shall be selected on the basis of combined marks secured in the Written Test (80%) and TET (20%) in all categories of posts except SA (Physical Education) and PET for which selection shall be on the basis of written test (100%) only, duly following the provisions of Rule 16.”

8. The respondents herein who belong to the General category, approached the A.P. Administrative Tribunal with two applications in O.A.Nos.6850 and 9799 of 2012, contending that reserved category candidates who were declared to have passed TET on the basis of the relaxed criteria, cannot be allowed to compete with the General category candidates as against the vacancies available for

unreserved categories. The said contention was accepted by the Tribunal, on the basis of a decision in **L.I.C. of India v. E.Praveen Kumar** [1990 (2) ALT 316 (DB)]. The original applications were accordingly allowed by the Tribunal with a direction to the Government to prepare a selection list in the General category, by taking the same standards of eligibility viz., 60% in the TET examination for the purpose of preparation of the merit list. Aggrieved by the said order, the State is before us.

9. The only issue that arises for consideration in these writ petitions is as to whether the reserved category candidates who were declared to have passed TET on the basis of the relaxed criteria, are entitled to compete with General category candidates in the process of selection for direct recruitment or not.

10. The answer to this question is found directly in a recent decision of the Supreme Court in **Vikas Sankhala v. Vikar Kumar Agarwal**¹. What happened in that case was that the State of Rajasthan, like the erstwhile State of Andhra Pradesh, prescribed relaxed criteria for reserved category candidates, to be declared pass in the TET examination. While a score of 60% was prescribed for General category candidates, the reserved category candidates were prescribed a lesser score for being declared to have passed TET examination.

¹ AIR 2016 SC 5265

11. Several writ petitions came to be filed challenging the selection to the post of teachers and the matter landed up before the Supreme Court in **Vikas Sankhala**. As seen from paragraph-21 of the decision in **Vikas Sankhala**, the question that arose before the Supreme Court was just the same as has now arisen in the present case. Para-21 reads as follows:

“21. It so happened that many candidates who belonged to reserved category got higher marks than the last candidates from the general category who was selected for the appointment in the said recruitment process. In terms of its various circulars, which we shall refer to at the appropriate stage, such reserved category candidates who emerged more meritorious than the general category candidates were allowed to migrate in general category. Effect thereof was that these candidates though belonging to reserved category occupied the post meant for general category. According to the writ petitioners (respondents herein), it was impermissible as these reserved category candidates got selected after availing certain concessions and, therefore, there was no reason to allow them to shift to general category. The High Court has accepted this plea treating the relaxation in pass marks in TET as concession availed by the reserved category candidates in the selection process.”

12. Three issues were framed by the Supreme Court in **Vikas Sankhala**, the last of which found in para-27 is as follows:

“iii) Whether reserved category candidates, who secured better than general category candidates in recruitment examination, can be denied migration to general seats on the basis that they had availed relaxation in TET?”

13. The discussion on the aforesaid issue starts from para-56 onwards. Paragraph-56 is reproduced as follows:

“56. The policy decision was contained in letter dated May 11, 2011 issued by the State Government thereby allowing migration of reserved category candidates to general category who had secured better than general category candidates in recruitment examinations. This has been criticised by the High Court and held to be invalid on the ground that this was done by circular dated February 11, 2011 which was issued after the recruitment process started with the issuance of advertisement dated March 30, 2011 and, therefore, it was impermissible to change the norms after the recruitment process had been initiated.”

14. The third issue that arose before the Supreme Court was answered by the Supreme Court in para-60 in no uncertain terms. Para-60 reads as follows:

“60. Having regard to the respective submissions noted above, first aspect that needs consideration is as to whether relaxation in TET pass marks would amount to concession in the recruitment process. The High Court has held to be so on the premise that para 9(a) dealing with such relaxation in TET marks forms part of the document which relates to the recruitment procedure. It is difficult to accept this rationale or analogy. Passing of TET examination is a condition of eligibility for appointment as a teacher. It is a necessary qualification without which a candidate is not eligible to be considered for appointment. This was clearly mentioned in guidelines/notification dated February 11, 2011. These guidelines pertain to conducting of TET. Basic features whereof have already been pointed out above. Even para 9 which provides for concessions that can be given to certain reserved categories deals with ‘qualifying marks’ that is to be obtained in TET examination. Thus, a person who passes TET examination becomes eligible to participate in the selection process as and when such selection process for filling up of the posts of primary teachers is to be undertaken by the State.

On the other hand, when it comes to recruitment of teachers, the method for appointment of teachers is altogether different. Here, merit list of successful candidates is to be prepared on the basis of marks obtained under different heads. One of the heads is marks in TET. So far as this head is concerned, 20% of the marks obtained in TET are to be assigned to each candidate. Therefore, those reserved category candidates who secured lesser marks in TET would naturally get less marks under this head. We like to demonstrate it with an example. Suppose a reserved category candidate obtains 53 marks in TET, he is treated as having qualified TET. However, when he is considered for selection to the post of primary teacher, in respect of allocation of marks he will get 20% marks for TET. As against him, a general candidate who secures 70 marks in TET shall be awarded 14 marks in recruitment process. Thus, on the basis of TET marks reserved category candidate has not got any advantage while considering his candidature for the post. On the contrary, “level playing field” is maintained whereby a person securing higher marks in TET, whether belonging to general category or reserved category, is allocated higher marks in respect of 20% of TET marks. Thus, in recruitment process no weightage or concession is given and allocation of 20% of TET marks is applied across the board. Therefore, the High Court is not correct in observing that concession was given in the recruitment process on the basis of relaxation in TET.”

15. Relying upon the decision of the Supreme Court in ***Jitender Kumar Singh v. State of U.P.***², the learned counsel for the respondents argued that the reserved category candidates are now allowed a second concession by allowing them to participate in the vacancies available for Open Category candidates. But the said contention has also been

² (2010) 3 SCC 119

repelled in para-62 itself. The relevant portion of para-62 of the decision in **Vikas Sankhala** reads as follows:

“62.

It is stated at the cost of repetition that provision of giving 20% marks of TET score was applied to all candidates irrespective of the category to which he/she belongs and, therefore, no concession or relaxation or advantage or benefit was given in this behalf which could disturb the level playing field and tilt advantage in respect of reserved category candidate. On the contrary, the reserved category candidates who had secured less marks in TET examination are given lesser marks in the recruitment process on the application of the formula of allocating 20% marks of TET score. Question No.3 is answered accordingly.”

16. Eventually, the answer to the question raised by the respondents herein, was also given by the Supreme Court itself in para-63(b), which reads as follows:

“(b) Migration from reserved category to general category shall be admissible to those reserved category candidates who secured more marks obtained by the last unreserved category candidates who are selected, subject to the condition that such reserved category candidates did not avail any other special concession. It is clarified that concession of passing marks in TET would not be treated as concession falling in the aforesaid category.”

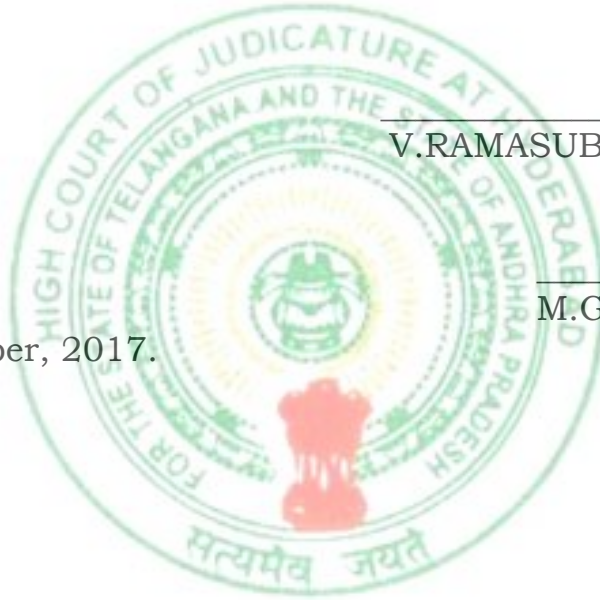
17. Therefore, the Tribunal was wrong in allowing the applications. The prescription of different pass percentage for different categories of candidates in TET, related to a qualifying examination. Once a person is declared to have passed the qualifying examination, the level playing field is restored by the State by granting only 20% of the score secured in TET, as part of the selection process. In other

words, a reserved category candidate who merely secured 40% marks in TET, will get only 8 marks (20% of 40), whereas General category candidate who secured 60% marks in TET would get 12 marks in the recruitment process. Thus a level playing field, as pointed out by the Supreme Court, is restored and the issue was not properly appreciated by the Tribunal. Therefore, the writ petitions are allowed and the impugned orders are set aside. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

M.GANGA RAO, J.

29th November, 2017.
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AND
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(per VRS, J.)



29th November, 2017.
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