

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No.759 OF 2017
AND
CONTEMPT CASE (TR) No.134 OF 2017

Dated:20.07.2017

W.P.(TR).No.759 OF 2017

Between:

S. Rajasekhar Reddy, S/o Yellareddy,
Aged about 41 years, Unemployee,
R/o.Porandla Village, Timmapur
Mandal, Karimnagar District

.. Petitioner

And

The Administrator-cum-Chief
Engineer, Selection Committee,
S.R.S. Project, M.J. Road,
Hyderabad and others

... Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No.759 OF 2017
AND
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COMMON ORDER:

Petitioner claims to be native of Cherlapoor Village of Thimmapur Mandal, Karimnagar District. According to him, he owned land and house in the said village. Entire village was submerged into Sriramsagar Project. The land of the petitioner was acquired for the purpose of establishment of the project. After submergence of the village, family of the petitioner was declared as displaced. By taking advantage of the scheme formulated by the Government as notified by G.O.Ms.No.98, dated 15.04.1986, petitioner applied for provision of employment. Petitioner claims to have passed S.S.C. According to him, notification was issued for recruitment to various posts including the post of Attender to be filled up by the members belonging to the displaced persons. Petitioner was declared qualified in the written test and accordingly his name was included in the eligibility list at Serial No.2 drawn by the 1st respondent vide proceedings dated 15.02.2002. Appointments were issued, depending on the availability of the vacancies, from out of the candidates included in the said list. Petitioner came to know that the persons, who are included below in the list drawn up by the 1st respondent, were appointed ignoring the claim of the petitioner. According to petitioner, another list of candidates was prepared on 25.03.2008, wherein also the name of the petitioner was shown at Serial No.4. Even in this list persons shown below the petitioner were appointed ignoring the petitioner. Aggrieved thereby, earlier petitioner filed O.A.No.10609 of 2009.

The said O.A. was disposed of on 13.04.2012 directing respondents 1 and 2 to include the name of the petitioner in the integrated seniority list prepared by the District Collector, Karimnagar, on 25.03.2008 or any subsequent list for appointment to any suitable post as per his qualification, eligibility in the existing/future vacancies. Alleging violation of the said directions, petitioner filed O.A.No.1858 of 2012. On 22.06.2012, proceedings were issued rejecting the claim of the petitioner. The reason assigned for rejection of the claim of the petitioner for appointment was that the family of the petitioner was paid more than Rs.25,000/- as compensation and therefore he is not entitled to seek employment. Challenging the same, he instituted O.A.No.5518 of 2013 before the Andhra Pradesh Administrative Tribunal, Hyderabad, which is now transferred to this Court and numbered as W.P.(TR).No.759 of 2017.

2. Heard learned counsel for the petitioner and learned Government Pleader for Services – II.

3. Learned counsel for the petitioner submits that the scheme formulated by the Government to provide land to displaced persons as notified by the Government in G.O.Ms.No.98, dated 15.04.1986 does not prescribe any restriction to provide employment on the ground that the family of the displaced persons were paid more than Rs.25,000/- as compensation. When the said G.O. does not envisage such prescription, by referring to a Government Memo, the claim of the petitioner could not have been rejected.

4. Learned counsel further submits that in many O.As. instituted before the Tribunal, the same issue had fallen for

consideration and the Tribunal by following the decision of this Court in W.P.No.14931 of 1993 declared such decision as illegal and issued consequential directions. He therefore submits that rejection of the claim of the petitioner on the said ground and denying employment for a long time amounts to arbitrary exercise of power and therefore impugned decision is liable to be set aside.

5. Learned Government Pleader for Services – II submits that though the said G.O. does not envisage any such restriction, having regard to the fact that there are large number of claims as compared to the availability of the vacancies, the criteria of ceiling limit with regard to amount of compensation paid was evolved to short list the candidates eligible to provide employment and persons with lesser compensation require to be preferred as compared to persons with higher compensation. He therefore tries to justify the impugned decision rejecting the claim of the petitioner on the ground of securing more than Rs.25,000/- as compensation for acquiring the property of the family of the petitioner.

6. As part of the social security measures, consequent to acquiring the properties of individuals including the land and houses for irrigation projects, the Government envisaged provision of public employment in the same Irrigation Projects for which the land and houses of the individuals were acquired. The scheme was formulated for the purpose of provision of employment and was notified vide G.O.Ms.No.98, dated 15.04.1986.

7. It is appropriate to note at this stage, having realized that large number of illegal appointments were made to public posts

without following due process and such illegal appointments were continued for long time, the State made 'the Andhra Pradesh (Regularization of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994' (Act 2 of 1994) to regulate recruitment to public posts. In terms thereof, no appointment can be made without following due process. Having realized that the original scheme envisaged in G.O.Ms.No.98, dated 15.04.1986 may not meet the parameters of the Act 2 of 1994, remedial measures were taken and vide G.O.Ms.No.266, dated 19.09.1994, Government constituted Selection Committee headed by the District Collector as Chairman, Joint Collector as Member and Chief Engineer of the concerned project as Member - Convenor in conformity with Section 4 (2) of Act 2 of 1994.

8. The duly constituted Selection Committee assessed the suitability of the petitioner and in the initial selection his name was included at Serial No.2. In the integrated seniority list finalized after following due process, the name of the petitioner is shown at Serial No.4 out of 393 displaced persons. The fact of including the petitioner in the integrated seniority list at Serial No.4 is accepted by the respondents in the counter affidavit. The only reason assigned for rejection of the claim of the petitioner is that his family has drawn compensation of more than Rs.25,000/- and therefore he is not entitled to claim employment. In support of the decision impugned in the Writ Petition, reliance is placed on Memo No.1830-LAR(2)/87-2, dated 07.10.1987. In the said Memo, it appears, Government imposed ceiling of Rs.25,000/- as

compensation to consider the claim of displaced persons for employment under G.O.Ms.No.98 scheme.

9. It is not in dispute that the very issue has fallen for consideration before the Tribunal in several cases and the Tribunal has rendered judgments holding rejection of the claim on the ground of quantum of compensation paid, as illegal. The Tribunal consistently placed reliance on the decision of this Court concerning the very same G.O. in W.P.No.14931 of 1993.

10. In the said Writ Petition, claim of the petitioner was rejected by referring to the Government decisions contained in several memos referred to in the judgment, wherein restriction was imposed for consideration of the claims of the persons displaced under Telugu Ganga Project. One of the contentions urged against rejection of the claim was that it is illegal to place reliance on Government Memos contrary to G.O.Ms.No.98. Learned single Judge of this Court held as under:

“Admittedly, under paragraph 4(1) of G.O.Ms.No98 dated 15.04.1986, it is only displaced families/or their dependants of a respective project are entitled to be considered for the purpose of appointment in the 50% of the vacancies. It is not disputed that the petitioner is a displaced person and his lands were acquired for the purpose of Telugu Ganga Project. If the Government intends to treat Somasila Project as part of Telugu Ganga Project, it can only do so by amending G.O.Ms.No.98 dated 15.04.1986 already issued. It cannot amend the G.O.Ms.No.98 by using a memo. Therefore, the memo cannot have a over-riding effect on the G.O. issued under Article 162 read with Articles 166 of the Constitution. Therefore, the petitioner is entitled to be considered for appointment pursuant to G.O.Ms.No.98, 15.04.1986 without any reference to Memo No.1502 dated 22.08.1987 and Memo

No.188 dated 19.04.1990. Accordingly, the respondents are directed to consider the case of the petitioner for the purpose of appointment pursuant to paragraph 4 (1) of G.O.Ms.No.98 dated 15.04.1986.”

11. I am in respectful agreement with the view taken by learned Single Judge. It is settled principle of law that in exercise of power under Article 162 of the Constitution of India, the Executive can take decisions and formulate policies on various issues concerning governance. The policy notified by the Government in G.O.Ms.No.98 is traceable to the power under Article 162 of the Constitution of India. The scheme of employment as notified in G.O.Ms.No.98 also meets the parameters of recruitment to public employment as regulated by Act 2 of 1994, in view of the fact that a Selection Committee was constituted in terms of Section 4 (2) of the Act 2 of 1994 and petitioner was subject to selection process in terms thereof. Thus, the scheme formulated in G.O.Ms.No.98 and selection made thereunder also stand the scrutiny of Act 2 of 1994. The policy framework notified in G.O.Ms.No.98 can be changed/alterd/modified/withdrawn only by another decision in terms of the power vested under Article 162 of the Constitution of India. No memo issued by an officer of the Government supersede/alter the scheme formulated. The memo issued in 1987 prescribing a ceiling of Rs.25,000/- for consideration of employment is not in tune with the policy decision envisaged and notified by G.O.Ms.No.98 and therefore based on that memo the claim of the petitioner could not have been rejected.

12. On a bare perusal of the scheme notified in G.O.Ms.No.98, it is clear that Government intends to provide succor to the family of

the displaced persons in the form of public employment in the same irrigation projects for which such acquisition was resorted to. It is not in dispute that in the villages the villagers eke out their living by cultivating small extents of lands vested in them. Cultivation is only source of their livelihood, irrespective of the amount of compensation paid would not be commensurate to the nature of hardship caused to the family after they are dislodged from their only source of livelihood. The hardship would be further aggravated if their dwelling houses are also acquired. Thus, having realized the hardship caused to the families which are displaced to construct projects though construction of such projects is in larger interest of people, the Government formulated scheme of providing employment under G.O.Ms.No.98. Thus, in matters of this nature, the amount of compensation paid, more so in those days it was very meager, cannot be the basis for depriving employment only on that ground, more particularly when on an assessment, petitioner was found suitable for such employment. It is also appropriate to note that while formulating the scheme, Government was clearly aware and prescribed the parameters of selection in G.O.Ms.No.98. Having conscious of amount of hardship caused to persons who lost not only their land but also their dwelling houses, the scheme envisages granting of preference to persons who lost their houses and land as compared to persons who lost their houses or land. Thus, the scheme also takes note of all the contingencies to provide employment. Therefore, the subsequent decisions introduced by state authority without taking recourse to re-evaluating the terms of the scheme of provision of employment cannot be sustained and on that ground rejection of

the claim of the petitioner for provision of employment is not valid and the same is liable to be set aside.

13. It is seen from the record that having found merit in the contention of the petitioner, Tribunal by order dated 18.07.2013 suspended the impugned decision and issued direction to the 1st respondent to appoint the petitioner in a suitable post commensurate with his qualification. As the order is not complied with, compelling the petitioner to file C.C.No.134 of 2017 (C.A.No.768 of 2014) vacate petition is moved on 16.12.2015 praying to vacate the said order.

14. Having regard to the fact that the petitioner's name was shown at Serial No.4 in the list drawn on 25.03.2008 and that many of the persons were shown below to him, the impugned order is set aside and the 1st respondent is directed to provide employment to the petitioner from the date when a vacancy arose after the interim orders dated 18.07.2013 were passed by the Tribunal and at any rate before providing employment to any other person whose name is shown in the list dated 25.03.2008 or in other subsequent list, with all consequential benefits including notional fixation of pay and to give all other service benefits. However, this order shall not result in displacement of any other person after the interim order. The entire exercise shall be completed within a period of two months from the date of receipt of a copy of this order. It is made clear that all other issues including the claim of the petitioner for appointment on retrospective basis are left open to the petitioner to be agitated.

15. The W.P.(TR).No.759 of 2017 is accordingly allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in the Writ Petition (TR) shall stand closed.

16. Since the W.P.(TR).No.759 of 2017 itself is taken up and suitable directions are issued allowing the Writ Petition including for compliance of the interim orders, the C.C.(TR).No.134 of 2017 is closed. However, liberty is granted to the petitioner to work out his remedies in terms of the final orders passed in the Writ Petition.

Date:20.07.2017

KH

P. NAVEEN RAO, J

