THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

W.P.Nos.12452, 32878, 34236, 34262, 34533, 34777, 35598, 35644, 35675, 35709, 37765 of 2013, 2402, 2462, 2534, 7797, 8784 of 2014, 39979 of 2015, 1224, 33758, 45552, 45951 of 2016 and 1060, 9746, 22162, 24789, 24871, 25181, 25234, 26100, 26101, 28228, 28287, 29009, 29121, 30607, 31754, 32924, 33421 and 34808 of 2017

25.10.2017

W.P.No.12452 of 2013:

Between:

The District Educational Officer,
East Godavari District and others

..Petitioners

and

Y.Indira and others

..Respondents

Counsel for the petitioners: Government Pleader for Services-I (A.P.)

Counsel for the respondents: Mr.G.Vidyasagar, senior counsel

W.P.No.32878 of 2013 and remaining writ petitions:

Between:

K.Ramadevedu and others

..Petitioners

And

The Government of Andhra Pradesh,
represented by its Principal Secretary,
Education Department, and others

..Respondents

Counsel for the petitioners: Mr.S.Ramachandra Rao, senior counsel

Counsel for the respondents: Government Pleader for Services-I (A.P.)

and other Writ Petitions

The Court made the following:

COMMON ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

For convenience, all the private parties are referred to as the successful DSC 1998 candidates, unsuccessful DSC 1998 candidates and the officials as the Government and its recruitment agencies.

2. For adjudication of these writ petitions, relevant background facts need to be stated. The Commissioner and Director of School Education of erstwhile Government of Andhra Pradesh issued notification for recruitment to various posts, including the posts of SGTs/School Assistants/Language Pandits Grade-II/P.E.Ts. The selection was based on direct recruitment and 85 marks were allotted for written test and 15 marks were allotted for oral interview. The minimum qualifying marks of 50 out of 85 marks were prescribed in the written test for O.C. category, 45 marks for B.C. category and 40 marks for S.C. and S.T. categories. The recruitment agencies called all the candidates, who secured minimum qualifying marks, for interview and they were, accordingly, selected. However, before issuing the appointment orders, the Government issued G.O.Rt.No.618, Education (SER.VI) Department, dated 18.05.1998, reducing the qualifying marks by 5% under each category to make them eligible for interview on the ground that the number of eligible candidates is less than the number of vacancies notified. Based on the reduced marks, the unsuccessful DSC 1998 candidates i.e., the applicants in O.A.No.9857 of 2011 and batch were selected. However, appointment orders were not issued to them on the ground that assailing the validity of G.O.Rt.No.618, dated 18.05.1998, W.P.No.15463 of 1998 and batch was filed before this

Court. A Division Bench of this Court in **Muthineni Krishna Rao vs. Union of India**[1] set aside the said G.O. and declared that any action taken by the Government and its recruitment agencies in pursuance thereof is void and nonest. It further declared specifically that all the selections and appointments made pursuant to reduction of marks are not valid and they are, accordingly, set aside. From the record, it appears that as *status quo* orders on operation of the said G.O. were passed in respect of six Districts *viz*., Khammam, Karimnagar, Warangal, Nalgonda, Kadapa and Ananthapur, appointment orders were issued by relaxing eligibility criteria as per G.O.Rt.No.618, dated 18.05.1998, in respect of the remaining seventeen Districts. No such appointments were made with regard to the candidates in the aforementioned six Districts. The Government and its recruitment agencies filed Special Leave Petition before the Supreme Court against **Muthineni Krishna Rao (1 supra)**. Interim stay was granted by the Supreme Court. During the pendency of the case before the Supreme Court, the State Government issued G.O.Ms.No.27, Education Department, dated 19.01.1999, formally amending Rule 13(a) of the Andhra Pradesh School Education Subordinate Service Rules framed in G.O.Ms.No.221, Education (Ser.III) Department, dated 16.07.1994, giving the said amendment retrospective effect from 01.07.1997. By judgment in **B.Ramanjini vs. State of Andhra Pradesh**[2], the Supreme Court allowed the appeals filed by the Government and the recruitment agencies against the judgment in **Muthineni Krishna Rao (1 supra)**

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[1] 1998(6) ALD 378
[2] (2002) 5 SCC 533

and rescinded the direction issued by this Court. Following the said judgment, the State Government constituted a Committee for studying future course of action and the fate of the successful DSC 1998 candidates as per G.O.Rt.No.583, Education (SE-SER.VII) Department, dated 21.06.2004. On the basis of the recommendations of the committee, the Government issued memo, dated 23.05.2005, directing the Director of School Education, Andhra Pradesh to give preference to successful DSC 1998 candidates in their getting selection as Vidya Volunteers as the question of preparing waiting list and operating the same and providing employment for waiting list candidates does not arise at that distance of time. Challenging the said memo, the candidates, who qualified in DSC 1998 under the relaxed eligibility criteria specified in G.O.Rt.No.618, dated 18.05.1998, as ratified by amendment in G.O.Ms.No.27, dated 19.01.1999, filed several O.As. By order, dated 18.07.2008, the learned Single Member of the Tribunal dismissed three O.As. *viz*., O.A.Nos.8391 of 2005, 587 and 146 of 2006 on the ground of delay and laches. The aggrieved applicants filed W.P.Nos.24416 of 2009, 4287 and 17730 of 2010 against the said order. Some other O.As., which were referred to the Division Bench, were allowed by the Tribunal by its order, dated 14.12.2009. The Government and its recruitment agencies filed five writ petitions *viz*., W.P.Nos.23253 to 23257 of 2010 against the said order. All those writ petitions were dismissed by the Division Bench of this Court by its common judgment, dated 08.11.2011. The Division Bench affirmed order, dated 04.12.2009, allowing O.A.No.355 of 2006 and batch, by holding that it finds no

infirmity in the judgment of the Tribunal holding that the candidates, who succeeded before the Supreme Court in getting G.O.Rt.No.618, dated 18.05.1998, upheld, are entitled for being considered for selection and appointment based on the reduced qualifying marks. This Court also allowed the writ petitions filed by those applicants whose O.As. were dismissed by the learned Single Member of the Tribunal. The Division Bench further directed that the applicants, who became qualified and eligible for appointment pursuant to the relaxed criteria *qua* G.O.Rt.No.618, dated 18.05.1998, as sanctified in G.O.Ms.No.27, dated 19.01.1999, did not litigate but were awaiting the judgment of the Supreme Court, are also entitled to be considered. Accordingly, follow up action was taken and recruitment process was completed by the recruitment agencies by issuing appropriate proceedings.

3. Coming to the present litigation, the respondents in W.P.No.12452 of 2013 i.e., successful DSC 1998 candidates filed O.A.No.3408 of 2011 assailing the proceedings in Rc.No.131-A1/2007, dated 29.10.2010. Without seeking quashing of the said proceedings, they sought for a consequential direction to the Government and its recruitment agencies to appoint them as Secondary Grade Teachers (SGTs) strictly as per their merit and eligibility in their respective communal reservation pursuant to District Selection Committee (DSC) 1998 notification, by recasting the selection list as per judgment, dated 03.02.2010, in O.A.No.2722 of 2007, with all service and monetary benefits. The petitioners in all other writ petitions i.e., unsuccessful DSC 1998 candidates filed various O.As. *viz.*, O.A.No.9857 of 2011 and batch

seeking to declare that they are entitled for selection and appointment to the posts of SGTs in DSC-1998 on par with similarly situated persons in terms of judgment, dated 04.12.2009, of the Tribunal in O.A.No.355 of 2006 and batch, which was upheld by this Court, *vide* its order, dated 18.11.2011, in W.P.No.23253 of 2010 and batch, with all consequential benefits. O.A.No.3408 of 2011 was allowed by the Tribunal, by order, dated 06.09.2012, whereby it set aside proceedings in Rc.No.131/A1/2007, dated 29.10.2010, on the finding that the said proceedings suffer from several irregularities and deficiencies. The Tribunal directed the Government and its recruitment agencies to consider the cases of the successful DSC 1998 candidates *viz.*, applicants in O.A.No.3408 of 2011 for appointment as SGTs strictly as per their merit and eligibility in their respective communal reservation pursuant to DSC-1998 recruitment notification by recasting the selection list as per order, 03.02.2010, in O.A.No.2722 of 2007 within eight weeks from the date of receipt of the said order. Feeling aggrieved thereby, the Government and its recruitment agencies filed W.P.No.12452 of 2013. However, the other batch of O.As. *viz.*, O.A.No.9857 of 2011 and batch was dismissed by the Tribunal, *vide* its order, dated 30.08.2013. Feeling aggrieved thereby, the unsuccessful DSC 1998 candidates filed all other writ petitions.

4. The learned Government Pleader for Services (A.P.) appearing for the Government and its recruitment agencies has informed that after the disposal of the aforementioned writ petitions, the exercise was redone with respect to only six Districts in respect of which the selection list

could not be finalized and that in respect of the balance seventeen Districts, exercise was already done and the entire recruitment process was completed in the year 2011. While allowing O.A.No.3408 of 2011, a learned Single Member of the Tribunal pointed out that with reference to each category, persons with lesser marks were selected ignoring the persons, who secured higher marks. However, all other O.As. *viz.*, O.A.No.9857 of 2011 and batch, which came up before a two-Member Bench of the Tribunal, came to be dismissed. The Bench formulated the following points:

> "(1) POINT NO.1: Whether the applicants are entitled for appointment as Secondary Grade Teachers/School Assistants/Language Pandits Gr-II/P.E.Ts, by virtue of the order of the Tribunal in O.A.No.355/2006 and Batch dated 14.12.2009, read with judgment of the Honourable High Court of Andhra Pradesh in W.P.No.23253/2010 and Batch dated 8-11-2011, by way of filling up the existing/non-joining vacancies in Karimnagar, Khammam, Warangal, Nalgonda, Kadapa and Anantapur Districts; and
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> POINT NO.2: Whether the applicants in the O.As., belonging to 17 Districts, in which the selections were finalized and appointment orders were issued, before stay orders of the High Court of Andhra Pradesh, are entitled to be selected and appointed in the alleged existing/non-joining vacancies of DSC-1998 for the posts of Secondary Grade Teachers/School Assistants/Language Pandits/Physical Education Teachers.
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> POINT NO.3: Whether the applicants are entitled for the relief as prayed for."

Under point No.1, the Tribunal, after a detailed discussion of the judgments of this Court and that of the Supreme Court and various subsequent events, observed that the unsuccessful DSC 1998 candidates

i.e., applicants therein are not parties to the earlier proceedings; that by virtue of order, dated 04.12.2009, in O.A.No.355 of 2006 and batch, which was made extended to the applicants in O.A.No.8391 of 2005 and batch, they made representations for the first time in 2011 claiming that they are entitled to the same benefits as that of the applicants in O.A.No.355 of 2006 and that when the applicants in O.A.No.8391 of 2010 and batch approached the Tribunal for extension of the benefits of the order in O.A.No.355 of 2006, the said batch was dismissed, but, subsequently, W.P.No.24416 of 2009 and batch filed against the said order were allowed. The Tribunal also referred to the fact of its perusing the selection list of two Districts *viz.*, East Godavari and Prakasam and furnishing those lists to the counsel for the unsuccessful DSC 1998 candidates i.e., the applicants therein with a request to point out whether any less meritorious candidates were selected and the counsel not pointing out such defect on perusal of such list. The Tribunal in conclusion on point No.1 observed as under:

> "57. The applicants are contending that there are still remaining vacancies of 1998. The Respondents are contending that as per the orders of the Government in G.O.Ms.No.95, dated 19-3-1999, the unfilled vacancies of 1998 DSC have been filled in 1999 itself and whatever vacancies that remained unfilled, they were carried forward to subsequent DSCs., and, as on today, there are no vacancies of DSC 1998 remained unfilled.
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> 58. The applicants have kept quiet for a period of 13 years and now, they came forward with these O.As., claiming that they are entitled to the same benefit, which was extended to the applicants in O.A.No.355/2006 and Batch.

> 59. The selections were made as per the revised criteria in Six (6) Districts but appointment orders could not be issued by virtue of the orders of the Honourable High Court, subsequent to the interim orders of the Honourable Supreme Court and G.O.Ms.No.27, dated 19-1-1999. The selections were finalized in the above six Districts and appointment orders were also issued between 1999 and 2002. The appointments were also issued to the qualified candidates of DSC 1998 in the non-joining vacancies.
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> 60. When it is asserted by the learned Government Pleader that no vacancies of DSC 1998 remained, a direction to the respondents to consider the cases of the applicants in the remaining vacancies/non-joining vacancies of DSC-1998, at this length of time, is nothing but giving false hope to the applicants and making them to move round the Courts, at this length of time. This point is answered accordingly against the applicants."

5. On the basis of findings on point No.1, the Tribunal, after undertaking further discussion, held point Nos.2 and 3 against the unsuccessful DSC 1998 candidates.

6. When the present writ petitions came up for hearing, we felt that non-suiting the petitioners merely on the ground of delay may be iniquitous and unjust. Therefore, we permitted the learned counsel appearing in the respective writ petitions to prepare tabular statements in order to know whether the exercise undertaken by the Government and its recruitment agencies, based on which, they selected and appointed the candidates, is strictly in accordance with G.O.Rt.No.618, dated 18.05.1998, statutory Rules, and the recruitment notification.

7. Accordingly, Mr.S.Ramachandra Rao, learned senior counsel, has prepared tabular statements in respect of two Districts i.e., East

Godavari and Prakasam. W.P.No.32878 of 2013 relates to East Godavari District and W.P.No.7797 of 2014 pertains to Prakasam District. In these writ petitions, the learned senior counsel has filed comparative merit list with reference to each of the categories *viz*., O.C., B.C.-A, B.C.-B, B.C.-C., B.C.-D and S.C. He has pointed out many instances where majority unsuccessful DSC 1998 candidates securing higher marks than some of the selected candidates with reference to each of the aforementioned categories. In reply to these statements, the learned Government Pleader has prepared a brief statement by taking the stand that the unsuccessful DSC 1998 candidates compared themselves with the women candidates belonging to different categories *viz*., O.C., B.C.-B, B.C.-C, B.C.-D and S.C. She has argued that as under Section 22-A of the Andhra Pradesh State and Subordinate Services Rules, 1996, reservations for women are required to be provided among all social categories, the merit list was prepared by following this requirement and that the unsuccessful DSC 1998 candidates who are all male candidates cannot compare their marks with those obtained by the female candidates in the respective categories. She has further stated that none of the male candidates, who got lesser marks, in any of the categories to which, the unsuccessful DSC 1998 candidates belong, have been selected and appointed as SGTs.

8. Mr.S.Ramachandra Rao, learned senior counsel, has not disputed the submission of the learned Government Pleader that no male candidate with lesser merit has been appointed. However, his only submission in this regard is that notification did not specify women

reservation. We are afraid, we cannot accept this submission. When a statutory provision is made providing for reservation for women, it is incumbent on the Government and its recruitment agencies to provide reservation whether the same is notified or not.

9. None of the other learned counsel who appeared for the unsuccessful DSC 1998 candidates in their respective writ petitions have also disputed the claim of the learned Government Pleader that no male candidate with lesser merit than the unsuccessful DSC 1998 candidates in their respective categories has been appointed in any of the Districts to which they belong. In its order, dated 06.09.2012, in O.A.No.3408 of 2009, the Tribunal has appeared to have overlooked the distinction between the male and female candidates appeared while comparing the marks. In our opinion, the Tribunal has committed a serious error in not noticing this distinction and holding that the selection suffers from the vice of the candidates with superior merit not being considered for selection and appointment.

10. For the aforementioned reasons, we are of the opinion that the selections pertaining to DSC 1998 do not suffer from any illegality or irregularity as pleaded by the unsuccessful DSC 1998 candidates.

11. Accordingly, order in O.A.No.3408 of 2011 is set aside. W.P.No.12452 of 2013 is allowed and all other Writ Petitions are dismissed.

12. As a sequel to disposal of all these Writ Petitions, miscellaneous petitions pending therein shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

KONGARA VIJAYA LAKSHMI, J

25th October, 2017
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