

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.31225 OF 2016

DATED : 20.01.2017

Between :

Konatham Prakasa Rao S/o.Vikrama Rao,
Age 44 yrs, Occu : Contract Teacher,
Vinukonda Mandal, Guntur District, A.P.

Petitioner

And

The State of A.P., rep., by its Principal Secretary,
Department of School Education,
A.P.Secretariat, Saifabad, Hyderabad.

Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION No.31225 OF 2016****ORDER :**

Notification was issued for 57 posts of Inclusive Education Resource Teacher (I.E.R.T) in Guntur District by the 1st respondent on contract basis. Petitioner responded to the said notification. In the Written test held in the month of September, 2014 petitioner claims to have secured 35 marks. Petitioner further submits that he belongs to Scheduled Caste category. In the selections conducted, petitioner was found suitable and was accordingly appointed. It appears, two other candidates who have also participated in the selection, represented that though they secured higher marks and liable to be considered for appointment, they were not considered and persons with less merit were selected. Those two persons have also filed W.P.No.23106 of 2016. The said writ petition is pending consideration of this Court. Responding to the representation submitted by those two persons and referring to the writ petition pending before this Court, the order impugned is passed, dismissing the petitioner and another person from service.

2. Heard learned counsel for the petitioner and learned Standing counsel for respondents 2 and 3.

3. Learned counsel for the petitioner submits that the order is passed without prior notice and opportunity and the same is liable to be set aside on that ground alone. He further submits that termination of petitioner was on the ground that he is not eligible to be appointed as he secured less merit and that he was

erroneously appointed ignoring the more meritorious candidates. If an opportunity was afforded to the petitioner he would have explained his eligibility for such appointment and petitioner's appointment could not have been terminated without following the due process.

4. Learned Standing counsel submits that service of the petitioner is governed by contract. The terms of the contract enable the competent authority to terminate the service without prior notice and opportunity. Petitioner having signed the contract and agreed for such action, it is not open to him to challenge the termination on the ground that no prior notice was issued.

5. Though several other contentions are urged by learned counsel for the petitioner and learned standing counsel, at this stage the only issue for consideration is whether the order of termination impugned in the writ petition is vitiated on the ground that it was not preceded by notice and opportunity.

6. A reading of the order itself would make it clear that termination is not based on the terms of contract and is not a termination simplicitor. The termination of service of petitioner was on the ground that two other candidates who have participated in the selection complained that they were not selected though they secured more merit and less meritorious persons are selected. In response to the complaint given by those two persons, it appears merit list was verified and found that those persons are in the immediate merit order and therefore the order of appointment requires revision and on that ground the service of the petitioner was terminated. It is not stated in the order that on

account of such verification an illegality is committed in appointing the petitioner and the petitioner could not have been appointed and those two persons who complained ought to have been appointed. If a notice and opportunity was given to the petitioner, he would have explained his stand of eligibility vis-à-vis the eligibility of other persons. The order is silent as to whether the claim made by those two persons is also against the vacancy reserved for Scheduled Caste and whether petitioner was appointed in a Scheduled caste vacancy and but for the wrong appointment petitioner could not have been appointed when more meritorious candidate was available belonging to the Scheduled Caste. These are the issues which requires consideration and if only notice and opportunity was afforded to the petitioner he would have explained. On account of appointment granted to the petitioner, a right accrued to him and the same could not have been taken away without following the minimum requirements of law i.e., notice and opportunity of hearing.

7. Thus, the order impugned is liable to be set aside on this ground alone and is accordingly set aside. The matter is remitted to the 3rd respondent for causing notice on the petitioner by furnishing all the relevant information required regarding his eligibility or otherwise and after providing due opportunity, it is open to the authority to take appropriate further action as warranted by law.

8. With the above directions, the Writ Petition is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

20th January, 2017
Rds

P.NAVEEN RAO,J

