

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

Writ Appeal Nos.1074 and 1078 of 2017

DATED:09-08-2017

W.A. No.1074 of 2017

Between:

The State of Telangana
Rep. by its Chief Secretary
Telangana Secretariat
Hyderabad
and others

... Appellants

And

M. Venkata Narasimha Goud
and others

... Respondents

COUNSEL FOR THE APPELLANTS: Advocate General (TS)

COUNSEL FOR RESPONDENT NO.1: Mr. Ramesh Bura

COUNSEL FOR RESPONDENT NO.2: -

COUNSEL FOR RESPONDENT NO.3: -

W.A. No.1078 of 2017

Between:

The State of Telangana
Rep. by its Principal Secretary to Government
Higher Education Department
Telangana Secretariat
Hyderabad
and others

... Appellants

And

K. Satyanarayana
and others

... Respondents

COUNSEL FOR THE APPELLANTS: Advocate General (TS)

COUNSEL FOR RESPONDENT NOS.1 and 2: Mr. S. Satyam Reddy,
for Smt. K.V. Rajasree

THE COURT DELVIERED THE FOLLOWING:

COMMON JUDGMENT: (*per the Hon'ble Sri Justice C.V. Nagarjuna Reddy*)

The State of Telangana filed these writ appeals against separate but identical orders passed by the learned single Judge whereby he has stayed the selection process for filling up the teaching and non-teaching posts in Telangana Social Welfare Residential Educational Institutions Society, Telanganana State Backward Classes Welfare Residential Educational Institutions Society, Telanana State Tribal Welfare Residential Educational Institutions Society, and Telangana State Minority Welfare Residential Educational Institutions Society, pending further orders.

2. We have heard the learned Advocate General for the State of Telangna appearing for the appellants, and Mr. S. Satyam Reddy, learned Senior Counsel appearing for respondent Nos.1 and 2 in W.A. No.1078 of 2017 and Mr. Ramesh Bura, learned counsel for respondent No.1 in W.A. No.1074 of 2017 and perused the record.

3. The appellants have issued G.O. Rt. No.1274, General Administration (Ser-B) Department, dt.4.6.2016, issuing guidelines *inter alia* for recruitment of women staff in cadres of all posts in the schools/institutions meant for girls in terms of sub-rule (3) of rule 22-A of the Telangana State and Subordinate Service Rules, 1996 (for shrot, "the Rules"). Respondent Nos.1 and 2 in W.A. No.1078 of 2017 filed W.P. No.23837 of 2017 assailing the said G.O. on the ground that it violates the constitutional mandate of Articles 14 and 16 of the Constitution of India, besides being in violation of the law declared by the Supreme Court in *M.R. Balaji v. State of Mysore*¹. Respondent No.1 in W.A. No.1074 of 2017 filed W.P. No.23543 of 2017 assailing Notification No.22/2017, dt.02.06.2017 issued by the Telangana Public Service Commission, based

¹ AIR 1963 SC 649 = 1962 SCR Supp (1) 439

on the aforesaid G.O. The learned single Judge granted interim orders staying further process of the recruitment in pursuance of the impugned G.O. *prima facie* opining that reservation for all the posts in the institutions violates Articles 14 and 16 of the Constitution of India.

4. In these appeals filed by the State, it is stated that in its wisdom the State felt that reserving all the posts in the institutions which are exclusively created for girls/women is necessary and that such a measure is permissible under Article 15(3) of the Constitution of India and also Rule 22-A(3) of the Rules.

5. At the hearing, the learned Advocate General (TS) has placed heavy reliance on the judgment of the Supreme Court in *Vijay Lakshmi v. Punjab University*² and submitted that the Supreme Court following the dicta in the previous judgments held that providing 100% reservation for women in order to give opportunities for them is sanctioned by Article 15(3) of the Constitution of India and that this power is not whittled down in any manner by Article 16.

6. Mr. S. Satyam Reddy, learned Senior Counsel, and Mr. Ramesh Bura, learned counsel, appearing for the respective respondents in the writ appeals, however, submitted that the Government has issued the impugned G.O. contrary to the ratio laid down in *M.R. Balaji* (1 supra) and various other subsequent decisions and that therefore the learned single Judge rightly granted stay.

7. We have given our earnest consideration to the submissions of the learned counsel for the parties. Since the writ petitions are pending before the learned single Judge, it is neither appropriate nor desirable to render our conclusive findings on the merits of the case. We would only

² AIR 2003 SC 3331

consider whether elements of *prima facie* case, balance of convenience, irreparable injury and public interest lie in favour of the writ petitioners for granting interim order.

8. With regard to the *prima facie* case, as noted hereinbefore, it is the pleaded case of the respondents – writ petitioners that providing 100% reservation to women violates Articles 14 to 16 of the Constitution of India. In *Government of Andhra Pradesh v. P.B. Vijay Kumar*³, the Supreme Court repelled the submission that under Article 15(3) job opportunity for women cannot be created, by holding that such argument would be to cut at the very root of the underlying inspiration behind the said Article. The Supreme Court further held that making a special provision for women in respect of employment or posts under the State is an integral part of Article 15(3), and that this power conferred under the said Article is not whittled down in any manner by Article 16.

9. In *Toguru Sudhakar Reddy v. Government of Andhra Pradesh*⁴ the Supreme Court did not agree with the plea that reservation beyond 50% for the women is not permissible in view of the ratio in *M.R. Balaji* (1 supra). The Supreme Court held that the ratio in the said case was only confined to the reservation under Articles 15(4) and 16(4) of the Constitution of India. In *Vijaya Lakshim* (2 supra), the question as to whether a single post in women's college could be reserved for women, fell for consideration and, the Supreme Court, while upholding the action of the State in reserving the single post of Principal for women, made certain seminal observations, some of which we find relevant for the present case are reproduced herein below.

³ (1995) 4 SCC 520

⁴ 1993 Supp (4) SCC 439

"In the light of the aforesaid principles, on the concept of equality enshrined in the Constitution, it can be stated that there could be classification between male and female for certain posts. Such classification cannot be said to be arbitrary or unjustified. If separate colleges or schools for girls are justifiable, rules providing appointment of lady principal or teacher would also be justified. The object sought to be achieved is a precautionary, preventive and protective measure based on public morals and particularly in view of the young age of the girl students to be taught. One may believe in absolute freedom, one may not believe in such freedom but in such case when a policy decision is taken by the State and rules are framed accordingly, it cannot be termed to be arbitrary or unjustified. Hence, it would be difficult to hold that rules empowering the authority to appoint only a lady Principal or a lady teacher or a lady doctor or a woman Superintendent are violative of Articles 14 or 16 of the Constitution.

The Supreme Court also extracted a portion of the judgment of the Gujarath High Court in *B.P. Acharya v. State of Gujarat*⁵ which reads as under:

"The institutions which are headed by Lady Superintendents are exclusively for women, and it is for the Government to decide as a matter of policy whether or not such institutions should be headed by only lady officers. Merely because at some stage there is a common cadre in which the officers of both the sexes are appointed, does not mean that all posts in the higher cadre must also be filled in by persons belonging to both the sexes. Having regard to the nature of duties to be performed, it is open to the State Government to decide that the institutions which are exclusively meant for women should be headed by only women or lady officers. The Government cannot be compelled to appoint male officers to head such institutions, if it does not consider it advisable to do so. If a special provision is made for women, the petitioners cannot made grievance that they have been discriminated against. Incidentally it may be pointed out that Article 15 of the Constitution of India prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Clause (3) of the said Article however, provides "Nothing in this article shall prevent the State from making any special provision for women and children." I, therefore, do not find any substance in the petitioners' contention that they should be considered to be eligible for promotion to the post of Lady Superintendent."

⁵ 1988 Lab IC 1465

10. In our opinion, the aforementioned judgments support the stand of the State that provision of reservation for women under Article 15(3) of the Constitution of India stands on a separate footing from those made under Articles 15(4) and 16(4) of the Constitution of India. Therefore, we are of the *prima facie* opinion that if the State in its wisdom has provided for filling up of all the posts in the institutions being run exclusively for girls/women, such an action may not fall foul of the equality provisions enshrined in Articles 14 to 16 of the Constitution of India.

11. As regards the elements of balance of convenience, irreparable injury and public interest, the learned Advocate General has submitted that in anticipation of recruitment of the posts in various schools and colleges being run by the aforementioned societies, students have been admitted and that if stay of such recruitment is granted, the interests of the students will be severely affected. He has further submitted that if the writ petitioners succeed in the writ petitions, equities can be worked out.

12. It needs to be noted that only three individuals have filed the writ petitions questioning the policy of the Government. Public interest must always yield to individual interest. If at the behest of a small number of individuals, the recruitment is stayed, it may severely jeopardise the interests of thousands of students. On the contrary, if the State is permitted to make recruitment and in the event the writ petitioners succeed, their interests can be protected by directing that a separate test be conducted for them, and if they are selected they can be appointed by granting notional seniority. Viewed from this angle, we do not find elements of balance of convenience, irreparable injury and public interest in their favour.

13. Subject to the above observations, the writ appeals are allowed and the impugned orders of the learned single Judge are set aside.

As a sequel to disposal of the writ appeals, W.A.M.P. Nos.2058 and 2064 of 2017 filed in the respective writ petitions shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

09-8-2017

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