

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No. 8138 OF 2017

ORDER: (*Per VRS,J*)

Aggrieved by the rejection of her claim for absorption into the School Education department, the petitioner has come up with the above writ petition challenging the dismissal of her Original Application by the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal').

2. Heard Sri P.V.Krishnaiah, learned counsel for the petitioner and the learned Government Pleader for Services.

3. The petitioner was originally appointed as a School Assistant in the Zilla Parishad Secondary School, Narasampet, Warangal District in the year 1987. In the year 2005, the petitioner was sent on deputation to the Department of Juvenile Welfare Correctional Services and posted at Hyderabad by the proceedings dated 24.03.2005.

4. By proceedings dated 02.07.2007, the Government ordered all deputations to be cancelled and the petitioner got relieved on 12.07.2007.

5. Challenging the relieving order, the petitioner filed two Original Applications before the Tribunal in O.A.No.3953 and 4023

of 2007. On 26.07.2007, O.A.No.4023 of 2007 was dismissed on the ground that a second application on the same cause of action was not maintainable. However, the Tribunal granted an interim order in the first Original Application, namely, O.A.No.3953 of 2007.

6. Pursuant to the interim order so granted, the petitioner was again posted back at Hyderabad to the place where she was sent on deputation. This happened on 11.04.2008. Subsequently, the Original Application was disposed of with certain directions.

7. Thereafter, the petitioner made a representation on 14.10.2009 for absorption into the department of Juvenile Welfare Correctional Services, so that she could continue in Hyderabad. The representation was also duly recommended by the Superintendent by his proceedings dated 24.10.2009.

8. The Government sought information, in response to the said recommendation, by a memo dated 26.11.2011, on what is known as “Fair Share Principle”. This was to find out whether persons working in the districts, are being given equitable distribution to the posts in the head office. But we do not know as to how the said principle would have application in cases where a person was appointed in one department and he was seeking absorption in another department in the head office. “Fair share principle” provides equality to the persons working in different localities, within the same department.

However, the Government sought clarification by their proceedings dated 26.11.2011.

9. In the meantime, the petitioner filed one more application in O.A.No.6109 of 2011 seeking a direction to the respondents to consider her case for absorption. The said application was disposed of by order dated 25.07.2011 by a two member bench of the Tribunal. In the said order, the Tribunal did not go into the question as to whether the petitioner was entitled as of right with reference to the service rules to claim absorption. But the Tribunal merely stated that the case of the petitioner may be considered on par with similarly placed persons working in the department.

10. Pursuant to the direction so issued in O.A.No.6109 of 2011 dated 25.07.2011, the Government considered the request and rejected the same by order dated 25.07.2011 despite the Commissioner recommending the same. Based upon the orders of Government, the Director communicated the order of rejection by proceedings dated 28.06.2012. Challenging the rejection dated 28.06.2012, the petitioner filed another application in O.A.No.5797 of 2012 on the file of the Tribunal. But, this application was dismissed by the Tribunal, on the ground that the rules do not provide for absorption. Challenging the said order, the petitioner is before us.

11. The main grounds of attack of the learned counsel for the petitioner are:

- a) that the impugned order in O.A.No.5797 of 2012 passed by the learned Chairman of the Tribunal sitting singly was contrary to the order passed by a two member Bench of the Tribunal to which the Chairman was also a party in O.A.No.6109 of 2011; and
- b) that the petitioner has not been afforded equitable treatment on par with other persons who were absorbed.

12. We have carefully considered both the grounds.

13. As we have pointed out earlier, the order passed by a two member Bench of the Tribunal in O.A.No.6109 of 2011 dated 25.07.2011, was not a considered order on merits. The said order contains four paragraphs. The first paragraph indicates the prayer with which the petitioner went before the Tribunal. The second paragraph gives a brief narration of facts. The third paragraph of the order of the Tribunal in O.A.No.6109 of 2011, merely referred to the fact that the petitioner was working on deputation and that on her representations, duly recommended by the second respondent, no order has been passed till that date.

14. Thereafter, a direction was issued by the Tribunal in the last, namely, in the fourth paragraph of its order, without going into the question whether as per the service rules, the petitioner's claim for absorption was justified or not. The operative portion of the order of

the Tribunal in O.A.No.6109 of 2011, which is contained in para 4 is reproduced as follows:

“In view of the above facts and circumstances of the case, the first respondent is directed to pass appropriate orders on the letter dated 10.3.2010 in Lr.No.EA3/127/2005 of the 2nd respondent regarding the absorption of the applicant, by taking into consideration the absorption of similarly situated persons to 2nd respondent department, namely B.Neelakantadhar and A.Vijayalaxmi, within a period of four weeks from the date of receipt of a copy of this order. The O.A., is disposed of accordingly.”

15. It can be seen from the above part of the judgment of the Tribunal that it was not an order pronounced on merits. Therefore, there was neither an opportunity of rebuttal for the department nor was there a contradiction in terms between the order impugned in the present writ petition and the earlier order passed by the Tribunal. It is a fundamental premise that no Court or Tribunal can pass an order directing the department to do something positively, especially if what is sought is not provided for by the rules. Therefore, the first contention of the learned counsel for the petitioner cannot be accepted.

16. Insofar as second contention is concerned, it may be true that the petitioner has not come to be treated in the same manner as her colleagues had been treated. But a claim on the basis of equality of treatment cannot have its foundation upon an illegality. There is no

equality in illegality. The Tribunal has pointed out that the special rules in the department of Juvenile Welfare Correctional Services do not provide for recruitment from other sources. If that is so, at the most the Court could have directed the cancellation of absorption of the other people but not take the same as a precedent. Therefore, the Tribunal was right in dismissing the Original Application. We find no reasons to interfere with that order.

17. The learned counsel for the petitioner placed heavy reliance on G.O.Ms.No.103, Department for Women, Children, Disabled and Senior Citizens, dated 20.05.2017, whereby a candidate by name Smt. C.Amulya, Selection Grade Teacher, MPES, Kothapally Village, Kurnool District, who was working on deputation basis as teacher in category 6 class A, in the Juvenile Welfare department under the administrative control of the same department was absorbed and appointed as a teacher. Therefore, the learned counsel for the petitioner contended that the same treatment may have to be extended to the petitioner also.

18. But in the Government order, there is no reference to the special rules for the School Education department and special rules for recruitment to the Juvenile Welfare department. The Government Order does not even indicate that the said order was passed by the Governor in exercise of the power of relaxation. Therefore, we doubt the legality of G.O.Rt.No.103, dated 20.05.2017.

19. When an order on which reliance is placed, does not appear to be a legally valid order, no other person can claim parity of treatment on the basis of the said order.

20. Therefore, the Writ Petition is dismissed. No order as to costs.

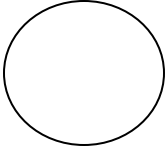
Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed.

V. RAMASUBRAMANIAN, J

27th November, 2017
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M.GANGA RAO J





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