

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition Nos.32938 and 33090 of 2015

Common Order: (per V.Ramasubramanian, J.)

Both these writ petitions arise out of a common order passed by the Andhra Pradesh Administrative Tribunal, at Hyderabad, rejecting a challenge made by the petitioners to a direct recruitment to the post of Librarian in the Department of Intermediate Education of the erstwhile combined State of Andhra Pradesh.

2. Heard Mr. K.Suresh Reddy, learned Senior Counsel appearing for the petitioners, Mr. C.Srinivasa Baba, learned Standing Counsel for the Andhra Pradesh Public Service Commission (APPSC) and the learned Government Pleader for Services I of the State of Telangana.

3. The APPSC issued a Notification on 30-12-2008 for direct recruitment to 116 posts of Librarians in the Andhra Pradesh Intermediate Education Subordinate Services. The petitioners herein applied in response to the said Notification. As per the original Notification, these 116 vacancies were distributed among Zones-I to VI as well as the city of Hyderabad, in the following manner:

Zone-I	20 vacancies
Zone-II	15 vacancies
Zone-III	13 vacancies
Zone-IV	17 vacancies
Zone-V	28 vacancies
Zone-VI	22 vacancies
City	01 vacancy
Total	116 vacancies

4. As per the information originally furnished by the Director of Intermediate Education, the roster point up to which vacancies had been filled up in the previous Notification was roster point No.9 in Zone-V and it was roster point No.10 in Zone-VI. Therefore, the Director of Intermediate Education indicated by his communication dated 03-12-2008 (sent to the APPSC before the Notification), that the recruitment was for 28 vacancies in Zone-V, commencing from roster point No.10 and ending with roster point No.37. Similarly, the recruitment to 22 vacancies in Zone-VI was to commence from roster point No.11 and to end with roster point No.32, since the roster point up to which vacancies had been filled up in the previous selection in Zone-VI was roster point No.10.

5. Finding that their names were not included in the seniority list of about 133 persons and also finding that the total number of candidates selected was increased from 116 to 133, the petitioners herein who either appeared for selection in Zone-V or appeared for selection in Zone-VI, approached the Tribunal and filed O.A.Nos.1030 and 1376 of 2012. Their main contention was that the direction issued by the Government by the proceedings dated 03-6-2008 was actually for filling up 2923 vacancies by way of direct recruitment to various categories of posts and that out of them, 146 posts were in the category of Librarian. In other

words, the petitioners contended before the Tribunal that when the Government directed the APPSC to conduct a direct recruitment drive for 146 posts, the APPSC unilaterally issued a Notification only for filling up 116 posts. Subsequently, the APPSC selected additional selected candidates for about 17 additional vacancies, after the process of recruitment had almost completed.

6. The Tribunal dismissed the applications primarily on two grounds, namely, (a) that candidates who were selected against the 17 additional vacancies were not impleaded as parties and (b) that in any case those 17 candidates had secured higher marks than the petitioners before the Tribunal. Therefore, the petitioners are before us.

7. As we have pointed out earlier, the original instruction issued by the Director of Intermediate Education was to fill up 28 vacancies in Zone-V, commencing from roster point No.10 and ending with roster point No.37. Similarly, the original direction of the Director of Intermediate Education was to fill up 22 posts in Zone-VI, for filling up roster point Nos.11 to 32. A doubt was raised as to whether the additional vacancies continued from the last roster point or not. But this aspect was not addressed to by the Tribunal at all.

8. Therefore, on 28-12-2016 when we heard the writ petitions, we passed an interim direction for furnishing of correct particulars. The order reads as follows:

“By an order dated 03.06.2008 the Government directed the Public Service Commission to undertake the exercise of filling up of 2923 vacancies by way of direct recruitment to various categories of posts. Out of them, 146 posts were intended to be filled up in the category of Librarian.

But for reasons with which we are not now concerned, the Service Commission notified 116 vacancies in the category of Librarian, by the proceedings dated 30.12.2008. These 116 vacancies were distributed among Zones-I to VI and to the city of Hyderabad. 28 out of 116 vacancies were allotted to Zone-V and 22 out of those 116 vacancies were allotted to Zone-VI. The last roster point in the 100 point roster, up to which recruitments had already taken place in Zone-V, was roster point No.9. Therefore, the 28 vacancies sought to be filled up in Zone-V, were indicated by the Director of Intermediate Education as commencing from roster point No.10 and ending at roster point No.37.

Similarly, the last roster point, up to which appointments have been made in Zone-VI, was roster point No.10. Therefore, the 22 vacancies allotted for Zone-VI were to be filled up from roster point No.11 up to roster point No.32.

But it appears that apart from the 116 vacancies sought to be filled up under the notification dated 30.12.2008, 17 more vacancies were also filled up after the process of recruitment commenced. Out of those 17 vacancies seven got allotted to Zone-V. Once these additional vacancies are sought to be filled up under the same recruitment, these vacancies, both by law and logic, should be filled up from roster point No.38, up to roster point No.44. But it appears that the respondents have conceded before the Tribunal that the additional vacancies were not filled up as against the roster points 38 to 44.

Therefore, on this aspect, the learned Standing Counsel for the Service Commission shall get clarification.

Post on 02.01.2017 immediately after fresh matters.”

9. Today, the learned Standing Counsel for the Public Service Commission produced the copies of two

communications, one dated 27-01-2011 sent by the Director of Intermediate Education to the Public Service Commission and another by the Secretary to Government dated 25-8-2011 issued to the Commissioner of Intermediate Education.

10. From both these communications, it appears that the vacancies sought to be filled up in Zone-V were increased from 28 to 35. The roster points which were originally fixed in Zone-V from roster point Nos.10 to 37 for filling up 28 posts, was changed to roster point Nos.92 to 19. But the additional 7 vacancies which ought to have continued from roster point Nos.20 to 26, in Zone-V did not continue.

11. The stand taken by the respondents is that due to the request made by the candidates belonging to different communities who could not get appointed, the respondents decided to fill up 17 additional vacancies in various Zones and that out of those 17 vacancies, 7 vacancies were allotted to Zone-V. But these 7 vacancies ought to have been filled up by continuing from the last roster point. Obviously it was not done.

12. It is true that the selected candidates were not made parties. But the petitioners were not seeking to set aside the selection of anyone. If 7 additional vacancies in Zone-V had not been filled up from the last roster point, namely, 20 to 26 and if the selected candidates were fitted against other roster points, the Service Commission is obliged to fill up the gaps. Filling up the gaps would not result in throwing out the

selected candidates. Therefore, the Tribunal was obviously in error in putting against the petitioners, the non-impleadment of the selected candidates.

13. We are now confronted with two writ petitions, one from candidates who compete in Zone-V and another from candidates who compete in Zone-VI. In Zone-VI this problem has not arisen. The learned Senior Counsel submitted that if all 146 vacancies as directed by the Government had been filled up, the applicant in Zone-VI would have also selected. But on this aspect, the law is very clear that it is not necessary to fill up all the posts. The Notification itself was confined only to 116 posts. If 17 additional vacancies were filled up, the only right that the petitioners get is to make respondents to exhaust all roster points from the one filled up in the previous selection, without leaving any gap. Therefore, inasmuch no additional vacancy was filled up in Zone-VI, no relief can be granted to the petitioners who applied in Zone-VI.

14. But insofar as the candidates who appeared in Zone-V are concerned, the non-filling up of those additional vacancies from roster point Nos.20 to 26, is contrary to law.

15. Therefore, the writ petitions are allowed partly modifying the order of the Tribunal and directing the Service Commission as well as the Government to fill up the intermediary roster points that were left unfilled, while creating additional vacancies. If the petitioners who applied in

Zone-VI fall within those intermediary roster points, on the basis of their own merits they shall be appointed without disturbing the already appointed candidates. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

02nd January, 2017.
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