

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

* HON'BLE SRI JUSTICE M. GANGA RAO

+ W.P.NOs.21715, 21738, 22915 & 22944 of 2017

% Date: 15-11-2017

W.P.No.21715/ 2017

Between:

K. Sankara Rao, S/o. K. Rama Rao,
Occ: Home Guard, O/o. The Superintendent of Police,
Vikarabad, Working on deputation at
Secunderabad Railway Station, Hyderabad
Permanent R/o. H.No.13-50-243, Compost colony,
Near ZP Back Side, Srikakulam District.

.... Petitioner

And

1. State Level Police Recruitment Board Andhra Pradesh, presently situated at the O/o. DGP, Lakdi-ka-pool, Hyderabad, rep. by its Chairman.
2. The State of Andhra Pradesh, rep. by its Principal Secretary, Home Department, A.P. Secretariat, Velagapudi, Guntur District, A.P.
3. The Director General of Police State of A.P., Lakdi-ka-pool, Hyderabad, Camp Office.
4. The Superintendent of Police Srikakulam, Srikakulam District.
5. A.P. Administrative Tribunal Hyderabad. Rep. by its Registrar.

... Respondents

W.P.No.21738/ 2017

Between:

K. Giri Babu, S/o. China Naga Lingam,
Occ: Home Guard, O/o. the Superintendent of Police,
Vikarabad, working on deputation at Secunderabad
Railway Station, Hyderabad, permanent resident of
H.No.2-88/H/1, Payalakurthy, Kodumur Mandal,
Kurnool District.

.... Petitioner

And

1. State Level Police Recruitment Board Andhra Pradesh, presently situated at the O/o. DGP, Lakdi-ka-pool, Hyderabad, rep. by its Chairman.
2. The State of Andhra Pradesh, rep. by its Principal Secretary, Home Department, A.P. Secretariat, Velagapudi, Guntur District, A.P.
3. The Director General of Police State of A.P., Lakdi-ka-pool, Hyderabad, Camp Office.
4. The Superintendent of Police Kurnool, Kurnool District.
5. A.P. Administrative Tribunal Hyderabad. Rep. by its Registrar.

... Respondents

W.P.No.22915/ 2017# Between:

A. Sankar, S/o. Rama Murty,
HMDA, Enforcement Cell, Tarnaka,
Hyderabad, permanent resident of
H.No.7-205/3, Kotta Boddam,
Vepada Mandal, Vizianagaram District.

.... Petitioner

And

1. State Level Police Recruitment Board Andhra Pradesh, presently situated at the O/o. DGP, Lakdi-ka-pool, Hyderabad, rep. by its Chairman.
2. The State of Andhra Pradesh, rep. by its Principal Secretary, Home Department, A.P. Secretariat, Velagapudi, Guntur District, A.P.
3. The Director General of Police State of A.P., Lakdi-ka-pool, Hyderabad, Camp Office.
4. The Superintendent of Police Vizianagaram, Vizianagaram District.

... Respondents

W.P.No.22944/ 2017# Between:

T. Tulasi Ramaiah, S/o. Polaiah,
O/o. The Home Guards Office, Hyderabad,
Permanent resident of H.No.6-1-109, Siva Nagar
Badvel Post & Town, Gopavaram Mandal,
YSR Kadapa District.

.... Petitioner

And

1. State Level Police Recruitment Board Andhra Pradesh, presently situated at the O/o. DGP, Lakdi-ka-pool, Hyderabad, rep. by its Chairman.
2. The State of Andhra Pradesh, rep. by its Principal Secretary, Home Department, A.P. Secretariat, Velagapudi, Guntur District, A.P.
3. The Director General of Police State of A.P., Lakdi-ka-pool, Hyderabad, Camp Office.
4. The Superintendent of Police YSR Kadapa, YSR Kadapa District.

... Respondents

! Counsel for the Petitioner

: Mr. G. Vidya Sagar Sr. Counsel
Mrs. K. Udaya Sri`

^ Counsel for Respondents

: G.P. for Services-I (A.P.)

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> HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION Nos.21715, 21738, 22915 & 22944 of 2017

COMMON ORDER: (Per VRS,J)

Aggrieved by an order of the A.P. Administrative Tribunal directing the State Police Recruitment Board to consider their cases only under general category, and not to extend the benefit of special reservation for the category of Home Guards, the persons serving as Home Guards have come up with the above writ petitions.

2. Heard Mr. G. Vidya Sagar, learned Senior Counsel appearing for the petitioners and the learned Special Government Pleader for Services (A.P).

3. On 22.07.2016, a notification was issued by the State Level Police Recruitment Board, Andhra Pradesh for recruitment to the post of Police Constables (Civil), Police Constables (Armed Reserve), Warders (Male) in Prisons and Warders (Female) in Prisons.

4. It was indicated in the said notification that the post of Police Constables (Civil) was assigned Post Code No.21 and the post of Police Constables (AR) was assigned Post Code No.22. Paragraph-3(a) of the notification stipulated that recruitment to the posts mentioned in Post Code Nos.21 and 22 will be made as per the provisions of the Andhra Pradesh Police (Stipendiary Cadet Trainee) Rules, issued by the Government of Andhra Pradesh in G.O.Ms.No.315 Home (Pol.C) Department, dated 13.10.1999. Paragraph-6 of the said notification stipulated that there will be a reservation for certain sub-categories, such

as, (1) Meritorious Sports Personnel; (2) National Cadet Corps; (3) Children of Police Personnel; (4) Children of deceased and Incapacitated Police Personnel; and (5) Home Guards, as per the details given in paragraph-20 of the notification.

5. Paragraph-20 (A) of the notification indicated that there was a reservation of 8% of the posts for Home Guards for Post Code No.21 and there was a reservation of 5% for Home Guards for Post Code No.22.

6. Paragraph-20 (B) of the notification indicated the conditions to be satisfied by candidates who claimed the benefit of reservation under the special categories. Insofar as the Home Guards are concerned, paragraph-20 (B) of the notification indicated the following as the conditions to be fulfilled by the candidates seeking the benefit of reservation. This sub-paragraph relating to Home Guards under paragraph-20 (B) of the recruitment notification reads as follows:

“(iii) Home Guard – Persons who, as on the date of notification, have been on duty as Home Guards in the State of Andhra Pradesh for a minimum duration of 360 days within a period of two years and who are still continuing their service as Home Guards come under this category.”

7. It is pertinent to note that in the aforesaid paragraph the notification did not use the words “immediately preceding the date of notification”. Therefore, it is obvious that the persons, who claimed the benefit of reservation under the category of Home Guards, should have been on duty as Home Guards in the State of Andhra Pradesh for minimum duration of 360 days within a period of two years, and should also be continuing their services as Home Guards. The above paragraph did not also use the words “continuing in the State of Andhra Pradesh at the time of notification”.

8. Paragraph-19 of the recruitment notification also indicated reservation to local candidates, insofar as Post Code Nos.21 and 22 are concerned. The said paragraph quoted the amended Presidential Order, issued under G.S.R No.591 (E), by the President in exercise of the power conferred by clauses (1) and (2) of Article 371-D of the Constitution. By this Government Order the Presidential Order, 1975 was amended. One of the significant amendments to the Presidential Order of 1975, under G.S.R.No.591(E) dated 09.06.2016 was the insertion of sub-paragraph (3) under paragraph-7. This newly inserted sub-paragraph (3) of paragraph-7 of the Presidential Order reads as follows:

“(3) Notwithstanding anything contained in sub-paragraph (1) or (2), candidates who migrate to any part of the State of Andhra Pradesh from the State of Telangana within a period of three years from the 2nd day of June, 2014 shall be regarded as the local candidate in the State of Andhra Pradesh at the place of his residence with such guidelines as may be issued by the Government of Andhra Pradesh for the purpose of employment.”

9. The definition of the word “local candidate” under the Presidential Order was also incorporated in paragraph-19 of the recruitment notification and it reads as follows:

“(i) “Local Candidate” means a candidate for direct recruitment to any post in relation to that Local area where he/she has studied in Educational Institution(s) for not less than four consecutive academic years prior to and including the year in which he/she appeared for SSC or its equivalent examination. If however, he/she has not studied in any educational institution during the above four years period, it is enough if he/she has resided in that area which is claimed as his/her local area during the above said period.”

10. Pursuant to the aforesaid notification, dated 22.07.2016, the petitioners in these writ petitions along with few others, who were performing duties as Home Guards on the date of the notification, made applications. All of them claimed the benefit of special reservation under

the category of Home Guards as provided in paragraph-6 read with paragraph-20 of the recruitment notification.

11. But the applications of the writ petitioners were not treated, under the reserved categories, on the ground that at the time of notification, they were performing duties as Home Guards, in the State of Telangana and that therefore they did not fulfill the conditions prescribed in paragraph-20 of the recruitment notification. Therefore, the petitioners herein as well as the other candidates, approached the Tribunal by filing a batch of Original Applications in O.A.Nos.3619 of 2016 and batch. The said batch of applications were disposed of by the Tribunal by a common order dated 12.09.2016, directing the State Level Recruitment Board to receive the applications of all the 44 candidates, who had approached the Tribunal and to permit them to participate in the selection process. The Tribunal also directed that if any final selection of any of these candidates was made, the same shall be kept in the withheld list, with liberty to the applicants to approach the Tribunal for a final decision on the relevant clause in the notification, dated 22.07.2016.

12. Out of the 44 candidates, who filed the first batch of cases, only 9 candidates ultimately reached the shore. The other candidates did not survive in the selection process.

13. Therefore, these 9 candidates, who survived selection process, geared up for the next round of litigation and they filed a fresh batch of 9 cases in O.A.Nos.3727 of 2016 and batch, before the Tribunal. The Tribunal disposed of the applications holding that the petitioners are not entitled to the benefit of special reservation under paragraph-20 of the notification and that they may be considered only as candidates belonging

to the general category. Aggrieved by the said order, 4 out of 9 candidates, who approached the Tribunal, have come up with the above writ petitions.

14. The short question that arises for consideration is as to whether the petitioners fulfill the eligibility criteria for being considered under the quota reserved for Home Guards, in the notification dated 22.07.2016.

15. On facts, there is no dispute about the fact that the writ petitioners hailed from the composite State of Andhra Pradesh and were enrolled as Home Guards in the composite State of Andhra Pradesh. The petitioners have pleaded in both rounds of litigation that they hailed from the Districts which now form part of the State of Andhra Pradesh. In other words the petitioners claim to be the natives of the State of Andhra Pradesh, appointed as Home Guards in the composite State of Andhra Pradesh, and who continued as Home Guards in the Districts which now form part of the State of Telangana after bifurcation on 02.06.2014.

16. In the light of the above circumstances, it has to be seen whether the petitioners fulfill the eligibility criteria for being considered under the special quota reserved for Home Guards. For finding an answer to this question, we have to refer to (1) the amended Presidential Order; and (2) paragraph-20 of the notification. While the amended Presidential Order will throw light upon who qualifies as a local candidate, the recruitment notification will throw light upon the conditions to be fulfilled for claiming the benefit of special reservation.

17. We have already extracted the definition of the expression "local candidate" under the Presidential Order and we have also extracted the newly inserted sub-paragraph (3) of paragraph-7 of the Presidential

Order. There is no dispute on facts that the petitioners herein satisfy the definition of the expression “local candidate”, within the meaning of the expression, by virtue of their study. Therefore, we take it that no controversy has been particularly raised by the respondents with respect to the eligibility of the petitioners to be treated as local candidates.

18. What is focused by the respondents is only paragraph-20 (B)(iii) of the recruitment notification. We have already extracted the above paragraph. The above paragraph stipulates that persons who, as on the date of notification, have been on duty as Home Guards in the State of Andhra Pradesh for a minimum duration of 360 days, within a period of two years, and who are still continuing their service as Home Guards, come under this category. As we have pointed out earlier, paragraph-20 (B) (iii) does not use the words “within a period of two years immediately preceding the date of notification”. Today, the respondents want to read something more into paragraph-20 (B) (iii) to deprive the petitioners of the benefit of this special reservation.

19. Another interesting aspect is that the fact that the petitioners qualified as local candidates, within the meaning of the Presidential Order, has not been seriously disputed today. To say on the one hand that the petitioners are local candidates within the meaning of the Presidential Order and to say on the other hand that they did not qualify because of being non-locals insofar as Home Guards is concerned, is a complete contradiction in terms, on the part of the respondents. As a matter of fact, Section 97(b) of the A.P. Reorganization Act, 2014 has amended clause (1) of Article 371-D of the Constitution. It is only thereafter, that G.S.R.No.591(E), dated 09.06.2016 was issued by the President, amending the original Presidential Order, 1975. Even as per the amended

Presidential Order, the petitioners qualify as local candidates. Therefore, to say that the petitioners are local candidates, but they are out side Home Guards, is something which we are not able to comprehend at all.

20. Reliance is placed upon the newly inserted paragraph-7(3) of the Presidential Order. The newly inserted paragraph 7(3) is an enabling provision. It enables the persons to migrate within three years. In other words, even persons, who did not qualify as local candidates as per the original Presidential Order, were invited by the newly inserted paragraph-7(3) to become local candidate. It does not mean that those who did not fulfill the original definition were kept out, unless they opted to migrate.

21. In view of the above we are of the considered view that the petitioners satisfy the criteria of local candidates as well as the conditions prescribed by the paragraph-20 (B) (iii) of the recruitment notification, dated 22.07.2016 and their cases deserve to be considered under special reservation.

22. It was brought to our notice that by a press release dated 12.05.2017, the Chairman of the State Level Police Recruitment Board informed the press and the public that the vacancies as notified on 22.07.2016, have been filled up. In paragraph-11 of the said press release it was specifically mentioned that the candidates pertaining to Home Guards quota whose cases are pending before the Hon'ble Courts are withheld in the selection list till the disposal of the cases. Therefore it appears that all the vacancies have not been filled up and four vacancies are now withheld. In view of the above, the writ petitions are allowed, the impugned order of the Tribunal is set aside and there will be a direction to the respondents to consider the case of the petitioners under the special

reservation available for Home Guards and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order.

23. As a sequel, miscellaneous petitions pending in these writ petitions, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

M. GANGA RAO, J.

15th November, 2017
Js.



HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION Nos.21715, 21738, 22915
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(Per VRS.J)



15th November, 2017

Js.