

*THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI*

WRIT PETITION No.34313 of 2016

ORDER: (per SK,J)

This writ petition was filed by a third party to O.A.No.577 of 2016 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad, which was disposed of vide order dated 11.08.2016.

After seeking leave, the petitioner canvassed before this Court that the aforestated order passed by the Tribunal was not in accordance with the Andhra Pradesh Last Grade Service Rules, 1992 (for short, 'the Rules of 1992'), and G.O.Ms.No.282, General Administration (Ser.A) Department, dated 20.09.2003.

By order dated 13.10.2016, this Court opined that the primacy sought to be given to the marks secured by the candidates in VIII Class examination required review as the requisite qualification under the Rules is only a pass in VII Class and not VIII Class and accordingly granted interim suspension of the order passed by the Tribunal.

W.V.M.P.No.4377 of 2016 was filed by the first respondent, the applicant in the O.A., to vacate the aforestated order.

Heard Sri K.Rama Subba Rao, learned counsel for the petitioner, and Sri Harinath Reddy Somagutta, learned counsel for the first respondent.

With the consent of the learned counsel, the main writ petition is taken up for disposal.

A notification inviting applications for filling up SC/ST Backlog vacancies in the posts of Office Subordinate and Watchman in the District Grandhalaya Samstha, Y.S.R. District, was issued by the Zilla Grandhalaya

Samstha, Y.S.R. District, on 01.02.2014. Therein, the minimum educational qualification was prescribed as a pass in VIII Class from a recognised school.

G.O.Ms.No.214, General Administration (Ser.A) Department, dated 08.05.2001, was issued by the Government of Andhra Pradesh introducing an ad hoc rule which states to the effect that for direct recruitment to fill up backlog vacancies of Scheduled Castes and Scheduled Tribes in all categories of posts, the requirement of written examinations and interviews (oral tests) should be relaxed and the backlog vacancies should be filled up on the basis of the marks obtained in the qualifying academic examination.

O.A.No.577 of 2016 was filed by the first respondent herein seeking finalisation of the selection process pursuant to the notification dated 01.02.2014 by following G.O.Ms.No.214 dated 08.05.2001. By order dated 11.08.2016, the Tribunal accepted this plea and directed the authorities to adhere to the orders issued in G.O.Ms.No.214 dated 08.05.2001 and consider the cases of all the candidates based on the marks secured by them in VIII Class examination and in case candidates secured equal highest marks, it was left open to the respondent authorities to fix their own parameters for selection taking into consideration the merit of the candidates.

Sri K.Rama Subba Rao, learned counsel, would however place reliance on G.O.Ms.No.282 dated 20.09.2003, which introduced an ad hoc rule stating to the effect that notwithstanding anything contained in the Andhra Pradesh State and Subordinate Service Rules, 1996, or any other Special Rules governing the post for direct recruitment, a candidate who possesses higher qualification than the prescribed qualification and a

candidate with higher qualification without the prescribed qualification shall also be considered for selection along with the candidates who have the prescribed qualification. Learned counsel would therefore contend that his client, who has a higher qualification than that prescribed for the post, should be given primacy and priority in the selection process. However, we find that this is not the import of G.O.Ms.No.282 dated 20.09.2003. The said G.O. merely states to the effect that candidates with a higher qualification than that prescribed for the post are also eligible to aspire therefor and their candidature should be considered along with the candidates who have the prescribed qualification only. The G.O. does not envisage that candidates with higher qualification should be given priority over candidates with the bare prescribed qualification.

That apart, the ad hoc rule introduced under G.O.Ms.No.214 dated 08.05.2001 was promulgated with specific reference to the backlog vacancies of Schedule Caste and Scheduled Tribe in all categories of posts. Therefore, this G.O. would prevail over the general G.O. insofar as such backlog vacancies are concerned. The import of G.O.Ms.No.214 dated 08.05.2001 is clear as it states to the effect that while filling up such backlog vacancies by direct recruitment, the process of written examinations and interviews (oral tests) should be waived and such vacancies should be filled up on the basis of the marks obtained in the qualifying academic examination. We therefore find no merit in the submission made by Sri K.Rama Subba Rao, learned counsel.

The second contention urged by Sri K.Rama Subba Rao, learned counsel, is that the notification dated 01.02.2014 prescribed a minimum qualification which is at variance with that prescribed in the Rules of 1992. It is no doubt true that under the aforestated Rules, the minimum

qualification prescribed for a last grade service post, and more particularly the post of Office Subordinate, is a pass in VII Class. However, it is relevant to note that, be it for whatever reason, the Zilla Grandhalaya Samstha, Y.S.R. District, prescribed a higher qualification than that prescribed under the Rules of 1992 in its notification dated 01.02.2014, viz., a pass in VIII Class. Sri K.Rama Subba Rao, learned counsel, does not dispute the fact that his client accepted the aforesaid notification as it stood and responded thereto without raising any protest as to the minimum educational qualification prescribed therein. It is therefore too late in the day for him to now turn around and lay a challenge to the minimum educational qualification prescribed in the said notification by indirect means. We therefore hold that this challenge to the prescription of a higher minimum educational qualification in the notification at this late stage cannot be accepted. On both grounds, we find no merit in the contentions urged by the learned counsel and see no reason to interfere with the order passed by the Tribunal.

The writ petition is devoid of merit and is accordingly dismissed. Interim order dated 13.10.2016 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE N.BALAYOGI

Date:20.01.2017

GJ