

* 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.NO.20737 of 2016

% Date: 08-11-2017

Between:

1. The State of Telangana, rep. by its Principal Secretary, School Education Department, Secretariat, Hyderabad.
2. The Director of School Education, Telangana, Hyderabad.
3. The District Collector, Ranga Reddy District.
4. The District Educational Officer, Ranga Reddy District.

.... Petitioners

And

1. C. Muralidhar, S/o. C. Sriramulu, (HT.No.421501011363), R/o. 4-4-102, Gandhi Colony, Vikarabad, Ranga Reddy District.
2. D. Malleshwari D/o. Narsireddy, H.T.No.42150101268, Barkatpally (Village), Post Naskal, Parigi Mandal, Ranga Reddy District.
3. The Hon'ble A.P. Administrative Tribunal, rep. by its Registrar, Purani Haveli, Hyderabad.

... Respondents

! Counsel for the Petitioner : Mr. K. R. Srinivas

^ Counsel for Respondent No.1 : G.P. for MA & UD (A.P)

^ Counsel for Respondent No.2 : G.P. for Services-I (AP)

< LIST:

> HEAD NOTE:

? Cases referred

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

WRIT PETITION No.20737 of 2016

ORDER: (Per VRS,J)

Aggrieved by an order passed by the A.P. Administrative Tribunal allowing an application filed by the 1st respondent seeking appointment to the post of School Assistant (Mathematics), the State has come up with the above writ petition.

2. Heard learned Government Pleader for Services, Telangana and Mr. R. Satyanarayana Murthy, learned counsel appearing for the 1st respondent.

3. A direct recruitment drive to the posts of School Assistants, was undertaken in DSC-2012, in the district of Ranga Reddy. The written examination was conducted in August, 2012, in which the 1st respondent was found to have secured 66.20 marks. In the order of merit, the 1st respondent was at Rank No.72.

4. Another candidate by name D. Malleshwari, who was declared to have secured 66.83 marks, who secured 57th rank, was declared as selected. It is relevant to point out that both the 1st respondent as well as the selected candidate, viz., D. Malleshwari belong to the unreserved categories. Therefore, they competed as against the vacancies available for the open categories.

5. Subsequent to the selection, it was found out that the selected candidate by name D. Malleshwari had adopted fraudulent methods in the examination, by making her husband to write the examination. Therefore, the selection of D. Malleshwari was cancelled by proceedings dated 09.12.2013.

6. Thereafter, the 1st respondent filed an application in O.A.No.5245 of 2014 contending *inter alia* that after the selection of D. Malleshwari got set aside, the 1st respondent, being next in the order of merit, under the open category, should have been appointed.

7. The said application was resisted by the State on the ground that in between D. Malleshwari and the 1st respondent, there were two other candidates with 66.40 and 66.30 marks, belonging to the unreserved categories, and that therefore in any case, the 1st respondent cannot seek appointment.

8. The Tribunal took up O.A.No.5245 of 2014 for consideration and primarily addressed the issue as to whether the vacancy created due to the cancellation of appointment of someone, could be filled up from among the persons next in the order of merit, when the rules prohibit preparation of a reserve/waiting list. After analyzing the decisions of this Court and the Supreme Court, the Tribunal came to the conclusion that in spite of a prohibition for keeping a reserve/waiting list, a person, who questions the correctness of the appointment of another person, is entitled to go to that post, provided he succeeds in his challenge to the appointment of the third party. Accordingly, the Tribunal allowed the application forcing the State to come up with the above writ petition.

9. As we have pointed out earlier, two issues actually arose for consideration before the Tribunal. They are – (1) as to whether in the light of a rule prohibiting the preparation of a reserve/waiting list, an unselected candidate can claim a right to be considered as against the vacancy created due to the cancellation of appointment of another person; and (2) as to whether the case of the 1st respondent could be

considered, despite there being two more candidates in between him and the selected candidates.

10. Unfortunately, the Tribunal addressed itself only to the 1st question and not to the second question. The first question was answered in favour of the 1st respondent, and the same was followed in two other cases. Those two cases where the Tribunal took the same view on the first issue, are already before us.

11. Insofar as the case on hand is concerned, we need not go into the first question, for the reason that even if we answer the first in favour of the 1st respondent, the journey of the 1st respondent will not get completed.

12. There is no dispute about the fact that the 1st respondent belongs to the unreserved category and that he secured 66.20 marks. The selected candidate D. Malleshwari got 66.83 marks. Two other candidates have secured 66.30 and 66.40 marks. Therefore, even if the 1st respondent succeeded on the 1st question, it is only those two candidates, who are above the 1st respondent in terms of merit, will get appointed.

13. It is the contention of the learned counsel for the 1st respondent that two candidates, who have secured higher marks than the petitioner, belong to the backward communities. The vacancy created due to the termination of D. Malleshwari was as against a roster point available for unreserved category. Therefore, the contention of the learned counsel for the 1st respondent is that a vacancy created in a open category, can be filled up only by a open category candidate, who is next in the order of merit.

14. There is no dispute about the said proposition. But there is something wrong in the understanding of the 1st respondent as to who constitutes open category. All persons, who have secured good marks and merit, are entitled to come under the open category. There is no separate category called open category. Therefore, if a person, belonging to Backward Class or Scheduled Caste or Scheduled Tribe, has secured a higher mark, he or she is entitled to be accommodated against the roster point available for unreserved category candidates, if they have secured sufficiently higher marks.

15. What has happened in this case is that two persons, who secured more marks than the 1st respondent, were already accommodated as against the B.C. vacancies. But once the order of appointment of D. Malleshwari is set aside that vacancy should be filled up by the next meritorious candidate in the order of merit without reference to the community. In other words, roster will get adjusted. Therefore, a more meritorious candidate accommodated as against a B.C. vacancy, on account of the appointment of D. Malleshwari, will go up to the roster point as against which D. Malleshwari was appointed, which will result in the consequence of one B.C. vacancy getting created paving the way for the next in the order of merit among B.C. getting accommodated. But, the Tribunal failed to appreciate the second issue, focusing the attention only on the first issue. Therefore, the order of the Tribunal deserves to be set aside.

16. Hence the writ petition is allowed and the impugned order is set aside only on the ground that on the second issue, the 1st respondent cannot succeed, even if he succeeded on the first issue. We have not

pronounced our opinion on the 1st issue as it is the subject matter of two other writ petitions.

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

V. RAMASUBRAMANIAN, J.

M. GANGA RAO, J.

8th November, 2017
Js.



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

WRIT PETITION No.20737 of 2016



8th November, 2017

Js.