

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

The Hon'ble Sri Justice V. RAMASUBRAMANIAN
and
The Hon'ble Sri Justice M. GANGA RAO

WRIT APPEAL No.1625 OF 2017

Between:

Telangana State Public Service Commission,
Rep. by its Secretary, Hyderabad,
Telangana State.

...Appellant

Vs.

Banoth Bharadwaj Naik S/o.Banoth Bhadru Naik,
Aged about 24 years, Unemployee, R/o.11-9-66,
Road No.2, Laxmi Nagar Colony, Kothapet,
Saroornagar, Hyderabad and others.

... Respondents

For Appellant : Sri D. Balakishan Rao

For Respondents : G.P. for Municipal Administration and
Urban Development (TG)
Sri M. Janardhana Rao



HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE SRI JUSTICE M. GANGA RAO

WRIT APPEAL No.1625 OF 2017

JUDGMENT: (per V. Ramasubramanian, J)

Aggrieved by the refusal of the learned single Judge to vacate an interim order earlier passed by him, the Telangana State Public Service Commission has come up with the above writ appeal.

2. The 1st respondent in this case appeared for selection to the post of Assistant Engineer/ Technical Officer. He claimed to be considered under the quota reserved for Physically Handicapped (Hearing Impaired). The 1st respondent produced a certificate of hearing disability issued by the Government ENT Hospital, which indicated that the percentage of disability was 69%. But, unfortunately the same certificate placed the 1st respondent under the second category, relating to "Moderate" disability.

3. The Service Commission took advantage of a Government Order which indicated that only those who have severe hearing impairment falling under category-II (b), were entitled to be considered under the quota for physically disabled and that a person whose case falls under the category of "moderate hearing" falling under category-II (a), is not eligible for being considered.

4. Challenging the action of the Public Service Commission, the 1st respondent filed a writ petition and secured an interim order to the following effect:

"Petitioner's case is that he had been considered and interviewed for the post of Assistant Engineer/ Technical Officer in the vacancies reserved for Physically Handicapped (Hearing

Impaired) category in the Office of the 3rd respondent, that the Appellate Medical Authority at ENT Hospital, Koti, Hyderabad had examined the petitioner and assessed his Hearing Impairment at 69% and on the ground that such impairment was considered to be "Moderate" hearing impairment, the petitioner had been denied employment by the respondents.

The Standing Counsel, Sri D.Bala Kishan Rao, does not dispute the assessment made by the Appellate Medical Authority i.e., ENT Hospital, Koti that the petitioner's hearing impairment is 69% and that impairment to this degree as per the annexure-I to G.O.Ms.No.31, WD,CW&DW(DW) Dept, dt.01.12.2009 has to be treated as "Severe Hearing" Impairment.

Merely because the ENT Hospital while assessing the petitioner's impairment as 69% wrongly treated his impairment as "Moderate" and not "severe", petitioner cannot be denied employment when the percentage of the impairment at 69% is not disputed.

Therefore, there shall be interim direction as prayed for."

5. Thereafter, the Service Commission filed an application for vacating the interim order. The learned Judge dismissed the vacate stay petition forcing the Service Commission to come up with the above writ appeal.

6. The contention of Mr. M. Janardhana Rao, learned Standing Counsel for the Public Service Commission is that when the disability of the 1st respondent is classified as "moderate" by the Medical Board itself and when the Government orders are clear to the effect that only those with severe hearing impairment could be considered under the quota reserved for physically challenged, it was not open to the learned Judge to grant an interim order.

7. We have carefully considered the above submissions.

8. A careful look at the certificate of hearing disability issued by the Medical Board would show that the percentage of the disability was

assessed at 69% But, the Medical Board also stated that the 1st respondent belonged to category-II, of moderate hearing disability.

9. But, the placement of the 1st respondent in the category of moderate disability, is not in tune with the percentage of disability assessed by the Medical Board. In the Audio Gram sketch, annexed to the certificate of disability issued by the Medical Board, the Medical Board has recorded audiological findings, indicating that the impairment is 65 dB in the right ear and 98.3 dB in the left ear.

10. As per the Government Order, relied upon by the Public Service Commission, the impairment in the range of 61 to 70 dB in the better ear, would classify as severe hearing impairment. The Table given in the Government order relied upon by the Public service Commission can be extracted usefully as follows:

Category	Type of Impairment	DB Level	Speech discrimination	% age of impairment
I	Mild hearing Impairment	DB 26 to 40 dB in better ear	80 to 100%in better ear	Less than 40%to 50%
II (a)	Moderate Hearing	41 to 60 dB in better ear	50 to 80%in Better ear	40%to 50%
II (b)	Severe hearing Impairment	61 to 70 db Hearing impairment in better ear	40%to 50%in better ear	51%to 70%
III	a) Profound hearing Impairment	71 to 90 db	Less than 40% in better ear	71%to 100%
	c) Total deafness	91 db and above/ in better ear/ to hearing	Very Poor discrimination	100%

11. Therefore, it is clear that once the percentage of disability is indicated as 69% what is recorded as moderate is actually wrong, even as per the Government Order relied upon by the Service Commission. If the hearing impairment in the better ear is above 61 dB, it is a case of severe hearing impairment and not moderate. Hence, the learned single

Judge was right in refusing to vacate the interim order. We find no justification in interfering with the same.

12. Hence, the Writ Appeal is dismissed. However, since the time for implementation of the learned single Judge's order has now expired and the Service Commission is facing the threat of contempt, we give time to the Service Commission to implement the interim order of the learned single Judge, up to 20.11.2017.

13. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

November 03, 2017

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