

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

WRIT PETITION Nos. 34635 AND 34793 OF 2017

WRIT PETITION No. 34635 OF 2017

Between:

S.A.Abubakar

... Petitioner

AND

The State of Andhra Pradesh,

Rep. by its Principal Secretary,

Revenue (Excise – I) Department,

Secretariat Buildings, Velagapudi,

Guntur District, and others

... Respondents

Date of Order Pronounced : 20-10-2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SMT. JUSTICE K.VIJAYA LAKSHMI

1. Whether Reporters of Local newspapers
May be allowed to see the order? Yes/No
2. Whether the copy of order may
be marked to Law Reporters/Journals? Yes/No
3. Whether Their Lordships wish to see the
Fair copy of the order? Yes/No

C.V.NAGARJUNA REDDY, J.

K.VIJAYA LAKSHMI, J.

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**
AND
THE HON'BLE SMT. JUSTICE K.VIJAYA LAKSHMI

+WRIT PETITION Nos. 34635 AND 34793 OF 2017

+WRIT PETITION No. 34635 OF 2017

%Dated: 20-10-2017

#S.A.Abubakar,

S/o late S.A.Khadar Sab,

57 years, Prohibition & Excise Constable,

O/o Prohibition & Excise Superintendent,

Penugonda, Ananthapuramu District

... Petitioner

VERSUS

\$The State of Andhra Pradesh,

Rep. by its Principal Secretary,

Revenue (Excise – I) Department,

Secretariat Buildings, Velagapudi,

Guntur District, and others

... Respondents

!Counsel for the petitioners : Sri V.Maheswar Reddy

^Counsel for the respondents : G.P. for Services (A.P.)

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THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SMT. JUSTICE K.VIJAYA LAKSHMI

WRIT PETITION Nos. 34635 AND 34793 OF 2017

DATED 20TH OCTOBER, 2017

WRIT PETITION No. 34635 OF 2017

Between:

S.A.Abubakar

... Petitioner

AND

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Revenue (Excise-I) Department,
Secretariat Buildings, Velagapudi,
Guntur District, and others

... Respondents

Counsel for the petitioner : Sri V.Maheswar Reddy

Counsel for the respondents : G.P. for Services (A.P.)

THE COURT MADE THE FOLLOWING

COMMON ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

Feeling aggrieved by common order dated 21-09-2017 in O.A.Nos. 2712 and 2713 of 2017 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad (for short, 'the Tribunal'), the unsuccessful applicants therein filed these Writ Petitions respectively.

2. We have heard Sri V.Maheswar Reddy, learned counsel for the petitioners, and learned Government Pleader for Services (A.P.).

3. The petitioners were holding the substantive post of Helper/Watchman in Prohibition and Excise Department. With the closing of arrack depots, the petitioners were converted into P & E Constables by relaxing the required height of 165 centimeters for the post of Constable. When their turn for promotion to the post of Head Constable fell due, the petitioners were overlooked by the respondents while their juniors were promoted only on the ground that they did not possess the prescribed height of 165 centimeters. Feeling aggrieved by this action, the petitioners filed the aforementioned O.As. As usual, the Tribunal dismissed the O.As. *in limine* by adopting the standard reasoning that if the petitioners were aggrieved, they ought to have filed appeals under Rules 23 and 26 of

the Andhra Pradesh State and Subordinate Service Rules, 1996 (for short, '1996 Rules').

4. Sri V.Maheswar Reddy, learned counsel for the petitioners, submitted that no specific height is prescribed for the post of Head Constable and that the department having already relaxed the minimum height of 165 centimeters prescribed for the post of Constable at the time of their conversion, the action of the respondents in overlooking the claim of the petitioners for promotion to the post of Head Constable is patently illegal and arbitrary. In support of his submission, he has relied on a final order of the Tribunal dated 24-01-2014 in O.A.No. 754 of 2013. He has further submitted that he not only referred to the said order in the O.A. filed by the petitioners before the Tribunal but also the same was specifically brought to the notice of the Tribunal during hearing of the O.As.

5. Learned Government Pleader for Services (A.P.) has fairly conceded that while the minimum height is prescribed for the post of P & E Constable, no such separate prescription of minimum height has been made for the post of Head Constable. She has also

admitted that O.A.No. 754 of 2013 filed with identical grievance was allowed by the Tribunal. She has however submitted that under second proviso to Rule 7 of the Andhra Pradesh Excise Subordinate Service Rules (for short, 'the Rules'), the members of the Andhra Pradesh Ministerial Services working in the Prohibition and Excise Department, Drivers and Attenders shall possess a minimum height of 163 centimeters if they are otherwise qualified to be appointed as Prohibition and Excise Sub-Inspectors and Prohibition and Excise Head Constables. She has also relied on para No. 3 of G.O.Ms.No. 1003 dated 11-10-1993 issued by Government of Andhra Pradesh and submitted that the relaxation made by the said G.O. while converting the surplus staff as Excise Constables was only onetime and that such relaxation would not enable the petitioners to claim for further relaxation if they are considered to be for any promotional post. She has accordingly sought to support the action of the respondents in overlooking the petitioners for promotion to the post of Head Constable.

6. We shall first consider the ground on which the Tribunal rejected the O.As. *in limine*. The Tribunal placed reliance on Rules 23 and 26 of 1996 Rules. Rule 23 vests power in appellate authority to

revise an order appointing a member of a service or class of service or category to a higher post by transfer or by promotion either *suo motu* or on an appeal filed by the aggrieved member. Under Rule 26, an appeal is provided against an order fixing the seniority of a person or affecting any conditions of service passed by the appointing authority. We failed to understand as to how the dispute of the nature which was raised by the petitioners before the Tribunal, namely; overlooking their case for promotion on the ground of their not possessing a particular height would fall under either Rule 23 or Rule 26. Not only that the issue raised by the petitioners is not amenable to the remedies provided under Rules 23 and 26 but also the same has been already adjudicated by the Tribunal in a previous order passed in O.A.No. 754 of 2013. In our opinion, the Tribunal has fallen into a serious error in dismissing the applications *in limine* on the ground of availability of alternative remedies.

7. As regards the merits of the case, a perusal of G.O.Ms.No. 1003 dated 11-10-1993 shows that the same was issued in the context of absorption of surplus staff for various Government Departments. To facilitate such absorption in the post of Prohibition and Excise Constable, the Government accepted the suggestion made by the

Commissioner of Prohibition and Excise relaxing the educational qualifications and also the minimum height of 160 centimeters and accordingly issued the aforementioned G.O. However, it is clarified in the said G.O. that such relaxation was only one time relaxation and this would not enable the beneficiaries therein to claim such a further relaxation if they are to be considered for any promotional post. The Tribunal in O.A.No. 754 of 2013, while conclusively rejecting a similar plea of the respondents on the reasoning that for the post of Prohibition and Excise Head Constable, no standards are prescribed under the Rules and that therefore the question of further relaxation does not arise, held as under:-

"It is noticed that the standards were already relaxed in case of the applicants at the time of absorption in Excise department as Prohibition and Excise Constable. The stand of the respondents is that it was one time relaxation and no further relaxation will be given for future promotions.

The present case is filed for promotion to the post of Head Constable for which no standards are prescribed under the Rules. Therefore, there is no question of further relaxation. Thus, this Court is of the view that the contentions raised by the respondents are not tenable.

Under the facts and circumstances of the case, the balance of convenience does lie in favour of the applicants. Therefore, the O.A. is allowed directing the respondents to consider the case of the applicants for promotion to the post of

Prohibition and Excise Head Constable as no relaxation is required in this category. This process should be completed within a period of four weeks from the date of receipt of a copy of this order. No costs."

We also find from para No. 6 (e) of the respective applications filed by the petitioners before the Tribunal that a specific reference to order dated 24-01-2014 in O.A.No. 754 of 2013 has been made. In our opinion, the Tribunal made a patently wrong approach in dismissing the O.A. *in limine* on the purported ground of availability of alternative remedies. Learned Government Pleader has informed us that this order attained finality.

8. As regards second proviso to Rule 7 of the Rules on which reliance has been placed by learned Government Pleader, Rule 7 prescribes physical requirements. According to it, every candidate for appointment by direct recruitment or by transfer or by promotion to the post of Prohibition and Excise Sub-Inspector and Prohibition and Excise Constable shall possess the physical standards as prescribed therein. As rightly observed by the Tribunal in O.A.No. 754 of 2013, no specific physical standards have been prescribed for the post of Prohibition and Excise Head Constable. The second proviso on which learned Government Pleader has

placed reliance deals with appointment of members of A.P. Ministerial Services working in Prohibition and Excise Department, Drivers, Attenders, as Prohibition and Excise Sub-Inspectors and Prohibition and Excise Head Constables and in that context, it prescribed minimum height of 163 centimeters. Admittedly, the petitioners neither belonged to A.P. Ministerial Services nor have been working as Drivers and Attenders. In our view, Rule 3 (iii) of the Rules made a distinction between promotion from category IV (P & E Constable) and appointment by transfer of Drivers (Heavy Vehicles/Light Vehicles) working in the Excise Department to the post of Prohibition and Excise Head Constable. The second proviso to Rule 7 applies to the latter category, namely; Drivers (Heavy Vehicles/Light Vehicles) and also Attenders for their appointment by transfer as Prohibition and Excise Head Constable. As noted hereinbefore, the petitioners were appointed as Constables and are seeking further promotion to the post of Head Constable. Except this proviso, there is no other provision under which minimum height is prescribed for the post of Prohibition and Excise Head Constable.

9. We are therefore in agreement with the view taken by the Tribunal in O.A.No. 754 of 2013 that in the absence of prescription of minimum height for further promotion from the post of Prohibition and Excise Constable to the post of Excise Head Constable, the question of further relaxation does not arise. The situation perhaps would be different if the petitioners claim further promotion to the post of Sub Inspector for which minimum height is prescribed.

10. In the light of the above discussion, we have no hesitation to hold that denial of promotion to the petitioners only on the ground that they did not possess the minimum height prescribed for the post of Prohibition and Excise Constable at the time of their entry and that relaxation already granted to them does not enure to their benefit for being considered for the post of Head Constable cannot be sustained. Therefore, the impugned order of the Tribunal is set aside directing the respondents to consider the case of the petitioners for promotion to the post of Head Constable without insisting on the purported minimum height subject to their satisfying eligibility criteria in respect of all other aspects.

11. The Writ Petitions are accordingly allowed.

12. As a sequel to disposal of the Writ Petitions, W.P.M.P.Nos. 43059 and 43232 of 2017 shall stand closed as infructuous.

C.V.NAGARJUNA REDDY, J.

K.VIJAYA LAKSHMI, J.

Date: 20-10-2017.

Note:

L.R. Copies to be marked.

B/O

JSK

