

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 Nos.1236 AND 1608 OF 2017

W.A. No.1236 of 2017:

Between:

%The State of Telangana, Rep. by its
Principal Secretary to Government,
Scheduled Castes Development Dept.,
Secretariat, Hyderabad and others

...Appellants

Vs.

\$ G. Karuna Sree D/o.Srinivasulu,
Aged about 50 years, Occ: HWO Gr.II,
Govt., SCDD Girls Hostel, Deverkonda and others.

...Respondents

W.A. No.1608 of 2017:

Between:

%The District Collector (SCDD)
Nalgonda District and others

...Appellants

Vs.

\$ V.Venkataiah S/o.V. Muthaiah,
Aged about 48 years, working as
Hostel Welfare Officer, Govt. SCDD,
Boys Hostel, VP North, N. Sagar,
P/o.Pangavanikunta, H.No.4-50,
Alwala Post, Anumula Mandal,
Nalgonda District and others

.. Respondents

! Counsel for Appellants : Government Pleader for
Services (TG)

^ Counsel for Respondents : Nayakwadi Ramesh
P. Amarender
Y.V. Satyanarayana

< GIST :

> HEAD NOTE :

? Cases Referred : Nil

HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE SRI JUSTICE M. GANGA RAO

WRIT APPEAL Nos. 1236 AND 1608 OF 2017

COMMON JUDGMENT: (per V. Ramasubramanian, J)

Both these writ appeals are filed by the State of Telangana challenging an order of the learned single Judge passed in a batch of three writ petitions, directing the Government to make necessary amendments to the Rules so as to create a separate category for men and women in the cadre of Hostel Welfare Officers Grade-II and Grade-I, respectively.

2. Heard learned Government Pleader for Services (TG) and Mr. P. Amarender, learned counsel for the respondents.

3. The genesis of the present dispute can be traced to the proceedings of the District Collector, Nalgonda, dated 21.11.2016, by which five persons working as Hostel Welfare Officers Grade-II were promoted as Hostel Welfare Officers Grade-I. All the five persons who were so promoted happened to be male candidates. However, there was no dispute about their entitlement to promotion.

4. But, it appears that when they were sought to be posted to girls hostels, the Director, Scheduled Castes Development Department addressed a communication to the District Collector on 17.12.2016 informing him that under Rule-4(b) of the Andhra Pradesh Social Welfare Subordinate Service Rules (for short 'the Rules'), only women can be appointed to the post of Matrons Grade-I and Grade-II in Girls Hostels. Therefore, the posting of those persons who were granted promotions by the District Collector by order, dated 21.11.2016 were put on hold. Hence, those individuals promoted by the order dated 21.11.2016 filed a

writ petition in WP No.46137 of 2016, challenging the correspondence dated 17.12.2016 between the Director and the District Collector.

5. When the said writ petition was pending, the promoted individuals were also issued with show cause notice dated 12.01.2017 calling upon them as to why they should not be reverted. Challenging the said show cause notice, the promoted individuals filed WP No.2279 of 2017.

6. In the meantime, women employees came up with a writ petition in WP No.6816 of 2017 claiming that only women could be appointed to these posts in terms of Rule 4(b) of the Rules. Therefore, the first writ petition in WP No.46137 of 2016 filed by the promoted individuals, the second writ petition in WP No.2279 of 2017 filed by the promoted individuals and the third writ petition in WP No.6816 of 2017 filed by the women employees, were taken up together by the learned single Judge for disposal.

7. By a common order, dated 15.03.2017, the learned single Judge dismissed WP No.46137 of 2016 on the ground that the same challenged an internal correspondence and that the grievance of the petitioners can be addressed in the subsequent writ petitions arising out of the substantial issue.

8. After having dismissed WP No.46137 of 2016, the learned Judge dismissed WP No.6816 of 2017 filed by the women employees on the ground that the challenge of the women employees to the promotions granted on 21.11.2016, had no legal basis and was destined to fail. Thereafter, the learned Judge allowed WP No.2279 of 2017 with the following directions:

“While allowing W.P.No.2279 of 2017 and setting aside the show cause notice, dated 12.01.2017, having regard to the necessity of posting only women Hostel Welfare Officers in Government Social Welfare Girls

Hostels/ Government Orphanages, I deem it appropriate to issue the following directions:

(i) The authorities concerned shall take immediate steps to create a separate category in the cadres of Hostel Welfare Officer Grade II and Grade I to be filled up exclusively by women employees meant to be posted in Government Social Welfare Girls Hostels/ Government Orphanages, as required by law.

(ii) Till the aforesaid exercise is undertaken and appropriate remedial measures are taken in exercise of powers vested under Article 309 of the Constitution of India, the official respondents are directed to post only women Hostel Welfare Officers in Government Social Welfare Girls Hostels/ Government Orphanages and for this purpose, if sufficient women Hostel Welfare Officers are not available, suitable temporary arrangements shall be made to obviate the shortfall, which can be rectified after appropriate legal resume is introduced.

9. Aggrieved by the directions so granted by the learned single Judge, the Government has come up with the above two writ appeals, primarily contending that the Rules themselves provide for separate categories of posts for women and men and that without taking note of the same, the learned single Judge had issued the directions in question.

10. Thus, the only question that arises for consideration is as to whether the Rules provide for separate categories for men and women, to be posted to the hostels intended for boys and girls or not.

11. The Andhra Pradesh Social Welfare Subordinate Service Rules, originally issued under G.O.Ms.No.189 Social Welfare, dated 31.12.1997 in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, divides the classes of posts in the department into Classes - A, B, C and D. There are several categories of posts within each class.

12. Rule-2 of the Special Rules as they were originally issued on 31.12.1997, divided the posts falling under class-A into '5' categories as follows:

CLASS-A

Category (1)	:	Social Welfare Inspector.
Category (2)	:	Assistant Social Welfare Officer.
Category (3)	:	(a) Warden, Grade-I. (b) Matron, Grade-I.
Category (4)	:	(a) Warden, Grade-II. (b) Matron, Grade-II.
Category (5)	:	Social Welfare Organizer.

13. In other words, by adopting a particular special nomenclature such as Warden and Matron, the Rules gave an indication that there were separate channels for women and men.

14. Rule – 3 of the Special Rules as they were originally issued, also maintained the distinction between the two different channels, by providing separate methods of appointment. The Table under Rule - 3 of the Special Rules as they originally stood, provided for promotion to the post of Warden Grade-I from the post of Warden Grade-II and promotion to the post of Matron Grade-I from the post of Matron Grade-II. Complimenting such a distinction, Rule – 4 (b) of the Special Rules as they were originally issued made it clear that only women shall be appointed to the post of Matron Grade-I and Matron Grade-II. Therefore, the distinction sought to be made between men and women, by using a specific nomenclature in the categories of posts listed in Rule - 2, was reiterated and confirmed by Rule – 4 (b).

15. But unfortunately, the Andhra Pradesh Warden/ Matrons' Association, as well as Telangana Wardens/ Matrons' Association made representations for re-designation of categories of Wardens and Matrons. Accepting the demand, the Government issued G.O.Ms.No.13 Social Welfare, dated 07.02.2002, for re-designating the posts of Wardens/ Matrons as Hostel Welfare Officers.

16. However, the consequential amendments to the Special Rules were issued only after more than one year and ten months under G.O.Ms.No.123 Social Welfare dated 16.12.2003. While issuing the

consequential amendments, the original distinction sought to be maintained between wardens and matrons was completely erased. The amended Rule - 2 of the Special Rules describing the categories of posts under Class-A of the service, reads as follows:

CLASS-A

Category (1)	: Social Welfare Inspector.
Category (2)	: Assistant Social Welfare Officer.
Category (3)	: (a) [Hostel Welfare Officer, Grade-I]
Category (4)	: (a) [Hostel Welfare Officer, Grade-II]
Category (5)	: Social Welfare Organizer.

17. A comparison of the amended Rule - 2 with the original Rule would disclose that the posts of Warden Grade-I and Matron Grade-I in Category - 3 of Class - A has now become a unified category of Hostel Welfare Officer Grade-I. Similarly, the distinct categories of Warden Grade-II and Matron Grade-II in Category - 4 of Class - A have now become unified into one single category of Hostel Welfare Officer Grade - II. In other words, the distinction from the year 1997, between men and women in the form of appointing men as Wardens and women as Matrons, got obliterated by the amendment made in the year 2003. But unfortunately, no consequential amendment was made to Rule – 4 (b). Therefore, the Rule – 4 (b) continues to read as follows:

“Only women shall be appointed to the post of Matron Grade-I and Matron Grade-II.”

18. This is despite the fact that the method of appointment prescribed in the table under Rule - 3 has undergone a change. The method of appointment originally prescribed under the 1997 Rules, was as follows:

(3). METHOD OF APPOINTMENT AND APPOINTING AUTHORITY :

Subject to the other provisions in these rules, the method of appointment and appointing authority for the various classes and categories shall be as follows:

Class and Category	Method of appointment	Appointing Authority
CLASS-A		
1. ...		
2. ...		
3. ...		
4.(a) Warden, Grade-I (b) Matron, Grade-II	(i) By Direct recruitment. (ii) by promotion from the category of Class IV employees of Social Welfare Hostels. (iii) By transfer from any other Department / Service.	Collector
5. ...		

19. The method of appointment now prescribed after the amendment is as follows:

(3). METHOD OF APPOINTMENT AND APPOINTING AUTHORITY :

Subject to the other provisions in these rules, the method of appointment and appointing authority for the various classes and categories shall be as follows:

Class and Category	Method of appointment	Appointing Authority
CLASS-A		
1. ...		
2. ...		
3.[Hostel Welfare Officer, Grade-I]	By promotion of [H.W.O., Grade-II]	Collector
4.H.W.O.Grade-II	(i) By Direct recruitment. [(ii) by promotion from the category of Class IV employees of Social Welfare Hostels and Class-IV employees of Social Welfare Department]. (iii) By transfer from any other Department / Service.	Collector
5. ...		

20. Therefore, Rule - 4 (b) actually becomes a dead letter. In other words Rule - 4 (b) cannot be implemented today, in the light of the amendment to Rules 2 and 3. Hence, the learned single Judge was right in concluding that as on date there are no separate channels for women and men. The potential dangers of appointing men as Hostel Welfare Officers in Girls hostels need not be emphasized. Therefore, we find nothing wrong in the order of the learned single Judge.

21. Hence, the Writ Appeals are dismissed. 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 07, 2017
KTL

Note:
L.R. copy to be marked.
B/O.KTL

