

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

WRIT PETITION No.35063 of 2017

24.10.2017

Between:

The State of Telangana,
represented by its Principal Secretary,
Secondary Education Department,
Hyderabad and another

..Petitioners

and

Dr.S.Ravinder and others

..Respondents

Counsel for the petitioners: Government Pleader for Services (T.S.).

Counsel for the respondents: --

The Court made the following:



ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed by the State of Telangana, represented by its Principal Secretary, Secondary Education Department and the Director of Intermediate Education, feeling aggrieved by order, dated 15.03.2016, in O.A.No.5298 of 2013 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal').

2. We have heard the learned Government Pleader for Services (T.S.) appearing for the petitioners and perused the record.

3. The respondents have been working as Physical Directors Grade-II in School Education Department. They possessed post-graduation in Physical Education. The erstwhile Government of Andhra Pradesh issued G.O.Ms.No.79, Higher Education (IE.1) Department, dated 25.11.2002, notifying the Andhra Pradesh Intermediate Education Subordinate Service Rules, 2002. Rule 3 thereof deals with the method of appointment and appointing authority. The post of Physical Director, Government Junior College is included in Class-A. The said Rule prescribed two methods of appointment, *viz.*, (i) by direct recruitment and (ii) by appointment by transfer of Physical Director Grade-II of School Education Subordinate Service. Under Note-1 (a) and (b) thereof, it is indicated that 70% of the total number of vacancies of Physical Director shall be filled by appointment by transfer of Physical Director Grade-II of School Education Subordinate Service and 30% of the total number of vacancies shall be filled by direct recruitment. As the respondents have not been considered against 70%

quota of Physical Directors of Government Junior Colleges, they filed the aforementioned O.A. The petitioners filed a counter-affidavit before the Tribunal, wherein it was pleaded that following the judgment of the Apex Court in **V.Jagannadha Rao vs. State of Andhra Pradesh**¹ holding that Article 371-D(10) of the Constitution unequivocally indicates that the said Article and any order made by the President thereunder shall have effect notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force and therefore, it has to be construed and held that the presidential order prohibits consideration of the employees for promotion from the feeder category of one unit in another unit and that as the respondents belong to the School Education Department, a separate and distinct unit from the College Education Department, they are not entitled to be considered for being appointed as Physical Directors of Government Junior Colleges belonging to the latter department. The Tribunal, however, rejected this plea on the simple ground that the Rules notified under G.O.Ms.No.79, dated 25.11.2002, are in force and that mere proposals stated to have been pending before the Government for rescinding the Rules would not deprive the respondents of their right for consideration under the existing Rules.

4. At the hearing, the learned Government Pleader has reiterated the aforementioned plea of the petitioners advanced before the Tribunal. As rightly observed by the Tribunal, so long as the Rules are in force, the respondents cannot be denied of their right of consideration under the

¹ Appeal (Civil) No.9643-9644 of 1995, dated 07.11.2001

Rules. So far, the Rules are not rescinded and the proposals therefor are stated to be pending before the Government. It is ironical, while the petitioners plead that the Rules notified under G.O.Ms.No.79, dated 25.11.2002, are contrary to the ratio laid down in **Jagannadha Rao** (supra), it is noticed from the record that while the judgment in **Jagannadha Rao** (supra) was rendered on 07.11.2001, the Rules were notified on 25.11.2002 i.e., more than one year after the judgment was rendered by the Apex Court. Moreover, though more than fifteen years had elapsed after the judgment in **Jagannadha Rao** (supra) was rendered, the petitioners have not rescinded the Rules.

5. In the above facts and circumstances of the case, we do not find any reason to interfere with the order of the Tribunal and the Writ Petition is, accordingly, dismissed.

6. As a sequel to dismissal of the Writ Petition, W.P.M.P.No.43571 of 2017 filed by the petitioners for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

KONGARA VIJAYA LAKSHMI, J

24th October, 2017
GHN