

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No. 40517 OF 2017

ORDER: (*Per VRS,J*)

Aggrieved by an order passed by the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal'), setting aside the appointment of the second respondent herein at the instance of the first respondent herein, the State has come up with the above writ petition.

2. Heard the learned Government Pleader for Services (Andhra Pradesh) and Mr. B.Krishna, learned counsel takes notice for the first respondent and he is represented by Mr. K.G.Krishna Murthy, learned senior counsel.

3. By a notification dated 21.11.2014, applications were invited for appointment to the post of School Assistant (Social Studies – Telugu) in Vizianagaram district. The first respondent as well as the second respondent applied for the post.

4. Both of them applied under the quota reserved for Ex-servicemen.

5. But the difference between the respondents 1 and 2 was that the first respondent was actually an ex-serviceman having been discharged from army even before the date of the notification. But the

second respondent had his tenure upto 31.01.2016 and was to be discharged from the army only after 31.01.2016.

6. The last date for submission of applications in response to the notification for recruitment, was 22.01.2015. But the second respondent herein claimed the benefit of the explanation under Rule 2(16) of the Andhra Pradesh State and Subordinate Service Rules, 1996, under which a person who was about to complete the term of engagement in the army is also entitled to be counted as an ex-serviceman.

7. Granting him the said benefit, the petitioner herein selected the second respondent for appointment. But his appointment was challenged by the first respondent before the Tribunal and the Tribunal allowed the application setting aside the appointment of the second respondent on the ground that on the date of which he applied for the post, namely 21.01.2015, he had more than one year of service left in the army.

8. Aggrieved by the interpretation so given by the Tribunal to the explanation under Rule 2(16), the State has come up with the above writ petition.

9. Before we go into the contentions of the learned Government Pleader, it is necessary to bring on record the fact that the second respondent whose appointment has been set aside by the Tribunal, has already resigned and has not chosen to challenge the order of the

Tribunal. Therefore, it is clear that the second respondent who was treated as an ex-serviceman within the meaning of expression “Ex-servicemen” under Rule 2(16), by virtue of the explanation thereunder is not interested any more in sustaining his appointment.

10. The explanation under Rule 2(16) by the State and Subordinate Service Rules reads as follows:

“Ex-Servicemen:- “*Ex-Servicemen*” means a person who has served in any rank (whether as a combatant or as a non-combatant) in the Regular Army, Navy and Air Force of the Indian Union but does not include a person who has served in the Defence Security Corps, the General Research Engineering Force, Lok-Sahayak Sena and the para-military forces, i.e., Border Security Force, Central Reserve Police Force, Indo-Tibetan Border Police, Central Industrial Security Force, Central Secretariat Security Force, Assam Rifles & Railway Protection Force, and

(i) who has retired from such service after earning his/her pension; or

(ii) who has been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension; or

(iii) who has been released, otherwise than on his own request, from service as a result of reduction in establishment; or

(iv) who has been released from such service after completing the specific period of engagement, otherwise than at his own request or by way of dismissal or

discharge on account of misconduct, inefficiency and has been given a gratuity and includes personnel of the Territorial Army of the following categories; namely –

(a) pension holders for continuous embodied services;

(b) person with disability attributable to military service; and

(c) gallantry award winners.

Explanation:- The persons serving in the Armed Forces of the Union, who on retirement from service, would come under the category of ex-servicemen, may be permitted to apply for re-employment one year before the completion of the specified terms of engagement and avail themselves of all concessions available to ex-servicemen but shall not be permitted to leave the uniform until they complete the specified term of engagement in the Armed Forces of the Union.”

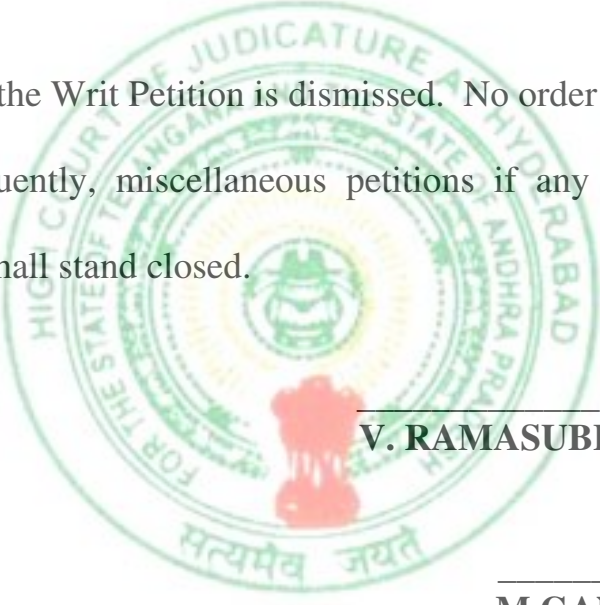
11. In the case on hand, the last date for making applications was 22.01.2015. The date on which the second respondent was to be discharged was 31.01.2016. Therefore, he made an application obviously, before one year and ten days of the date on which his terms of engagement were come to an end in the army.

12. The actual wording in the Rule is “one year before the completion of the specified terms of engagement”. If these words are interpreted literally, a person whose terms of engagement in the army are come to an end on 31.01.2016, will be entitled to apply on any date, month and year before 31.01.2015. The explanation cannot be given such an interpretation to be an open-ended affair on one side

with the other side alone being a close-ended. The Rule should be interpreted in a reasoned manner. A person who is to be discharged from the army within one year from the date on which he makes an application, can alone come within the definition of the word by virtue of the explanation. Therefore, the Tribunal was right in setting aside the order of appointment of the second respondent. The second respondent is not in any case interested in challenging the order of the Tribunal. Therefore, the State need not take cudgels for the second respondent.

13. Hence, the Writ Petition is dismissed. No order as to costs.

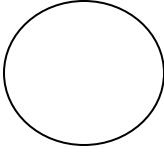
Consequently, miscellaneous petitions if any pending in the writ petition shall stand closed.



V. RAMASUBRAMANIAN, J

M.GANGA RAO, J

4th December, 2017
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