

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.355 of 2018

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The writ petitioner is the fifth respondent in O.A.No.3451 of 2016 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. The said O.A. was filed by the fifth respondent herein assailing the Memo dated 25.07.2016 issued by the Director, Tribal Welfare, Andhra Pradesh, whereby the case of the writ petitioner was directed to be considered for promotion to the post of Hostel Welfare Officer Grade-I, by treating his M.A. (Education) Degree as equivalent to B.Ed. Degree. He also sought a consequential declaration that he was entitled for promotion to the post of Hostel Welfare Officer Grade-I with all consequential benefits. By order dated 14.09.2017, the Tribunal disposed of the O.A. holding that the fifth respondent/applicant was fully eligible and qualified to be considered for promotion to the post of Hostel Welfare Officer Grade-I but the authorities ignored his case and promoted the writ petitioner/fifth respondent, who did not possess B.Ed. qualification prescribed under the Rules, basing on G.Os. issued by the Education Department with regard to equivalence of M.A.(Education) Degree with B.Ed. Degree. The Memo dated 25.07.2016 was accordingly set aside by the Tribunal and the authorities were directed to consider the case of the fifth respondent/applicant for promotion to the post of Hostel Welfare Officer Grade-I from the date on which the writ petitioner/fifth respondent was promoted, with all consequential benefits.

By order dated 24.01.2018, this Court granted interim suspension of the order under challenge.

Heard Sri M.Bharat Shah, learned counsel for the writ petitioner/fifth respondent, and Sri D.Bala Kishan Rao, learned counsel for the fifth respondent/applicant.

It is not in dispute that promotion to the subject post of Hostel Welfare Officer Grade-I is governed by the Andhra Pradesh Tribal Welfare Subordinate Service Rules, promulgated *vide* G.O.Ms.No.45, Social Welfare (TW.SER.III/A1) Department, dated 28.06.2011. The post of Hostel Welfare Officer Grade-I figures in Category (2) of Class-E of the categories of posts mentioned in Annexure-I to the said G.O. Promotion to this post is from the category of Hostel Welfare Officer Grade-II, to which the writ petitioner and the fifth respondent/applicant belong. Annexure-II to the said G.O. details the qualifications prescribed for each category of posts. In so far as the post of Hostel Welfare Officer Grade-I is concerned, the qualification prescribed is as under:

“Must have passed Graduation in any University of India established or incorporated by or under a Central Act Provincial Act or an institution recognized by the University Grants Commission or an equivalent qualification, and with Bachelor of Education.”

It is significant to note that though an equivalent qualification was mentioned in the context of Graduation, there was no such mention of an equivalent qualification with regard to Bachelor of Education. In the event the rule making authority contemplated that an equivalent qualification in this regard should also be taken into account, it would not have failed to mention so when it specifically detailed that an equivalent qualification could be taken into account in so far as Graduation is concerned. Therefore, notwithstanding the fact that the Education Department of the State deemed it appropriate to treat an M.A. (Education) Degree as

equivalent to B.Ed., the same would be of no avail to the writ petitioner to seek appointment by promotion to the post of Hostel Welfare Officer Grade-I.

The Rule must necessarily be interpreted by giving full effect to the clear language thereof and as there is no ambiguity with regard to any equivalent qualification being mentioned therein in so far as Bachelor of Education is concerned, it was not open for the Director of Tribal Welfare, State of Andhra Pradesh, to issue a clarification under the Memo dated 25.07.2016 contrary to the rule position. We therefore find no grounds to interfere with the order of the Tribunal holding to this effect and setting aside the said Memo.

Though Sri M.Bharat Shah, learned counsel, would point out that the fifth respondent/applicant did not choose to challenge the promotion order dated 15.09.2016 of the writ petitioner/fifth respondent, we are of the opinion that when the very basis for the promotion order, being the Memo dated 25.07.2016, was held to be illegal and consequently set aside, the superstructure of the promotion granted to the writ petitioner on the strength thereof cannot be sustained. Further, the fifth respondent/applicant also sought a consequential direction in his own favour, which was duly accepted by the Tribunal. Therefore, the absence of a challenge to the promotion order dated 15.09.2016 is of no consequence.

It may also be noted that the writ petitioner/fifth respondent, despite service of notice in the O.A. as long back as on 10.09.2016, did not choose to enter appearance before the Tribunal and allowed the order under challenge to be passed on merits. Be it viewed from any angle, we find no grounds to interfere with the order passed by the Tribunal.

The writ petition is devoid of merit and is accordingly dismissed.

Interim order dated 24.01.2018 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

M. GANGA RAO, J

Date: 21.03.2018
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