

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.6036 OF 2018

ORAL ORDER: (per Hon'ble Sri Justice Suresh Kumar Kait)

1. Vide the present petition, the petitioner has challenged the order dated 01.09.2014 passed by the A.P. Administrative Tribunal, Hyderabad, in O.A.No.2630 of 2012, whereby the application filed by the petitioner under Section 19 of the Administrative Tribunals Act, 1985 praying to quash the proceedings dated 28.11.2012 and to provide employment to the local Scheduled Tribe candidates in terms of G.O.Ms.No.502, dated 4.8.2012, has been dismissed.

2. The petitioner has applied for the post of Village Revenue Assistant of Ippalanavegaon village against 179 notified vacancies of Village Revenue Assistants. Out of the said vacancies, 36 vacancies were earmarked for Scheduled Tribes. The petitioner participated in the written test held on 19.2.2012 and secured 36 marks. Rank No.4 was assigned to him. In the short list that was published by the respondents, his name was not figured whereas the name of unofficial respondent No.6 was figured though he is not a notified Tribal candidate and not entitled for consideration for appointment to the vacancy of Ippalanavegaon village, which is reserved for local Scheduled Tribe candidate.

3. It is not in dispute that till date, the vacancies in question have not been filled up. It is also not in dispute that since respondent No.6 was not the native of Ippalanavegaon village, his candidature was not considered by the respondents and the same has not been challenged either on administrative or judicial side.

4. The aforesaid vacancies were published in terms of G.O.Ms.No.1849 Revenue (VO) dated 28.10.2005. However, the said G.O. was amended vide G.O.Ms.No.502, dated 4.8.2012 stating as under:

“On examination, it is observed by the Government that the term “nativity” means place of birth. In terms of Article 16(2) of the Constitution of India, no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State. In view of this, a candidate cannot be declared ineligible for the post of Village Revenue Assistant, which is a public post under the State, on the ground of nativity (place of birth).”

5. It is stated by the learned Counsel for the petitioner that the official respondents themselves realized their mistake in issuing G.O.Ms.No.1849, dated 28.10.2005, which was contrary to Article 16(2) of the Constitution of India, and therefore, the recruitment in question cannot be executed in terms of G.O.Ms.No.1849 dated 28.10.2005.

6. We note that the learned Tribunal was of the view that G.O.Ms.No.1849 dated 28.10.2005 was contrary to Article 16(2) of the Constitution of India. However, the learned Tribunal opined that G.O.Ms.No.502, dated 4.8.2012 has not given retrospective effect and the notification dated 7.12.2011 was prior to issuance of G.O.Ms.No.502, dated 4.8.2012.

7. After considering this issue, we are of the opinion that the official respondents themselves amended G.O.Ms.No.1849, dated 28.10.2005 by stating that the said G.O. is contrary to Article 16(2) of the Constitution of India, wherein it is provided that no citizen shall, on grounds only of

religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State. When the respondents themselves realized and rightly relied that G.O.Ms.1849 dated 28.10.2005 was contrary to the mandate of the Constitution and the Tribunal was also of the opinion that the said G.O. is against the provisions of the Constitution, then the selection in question cannot be held to be valid under the said G.O.

8. Therefore, we hereby set aside the proceedings dated 28.11.2012 issued by the 2nd respondent. Consequently, the order of the learned Tribunal dated 1.9.2014 in O.A.No.2630 of 2012 is set aside.

9. We hereby declare that the petitioner is entitled for appointment to the post of Village Revenue Assistant of Ippalanavegaon village, and direct the respondents-authorities to give appointment letter to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

10. With the above direction, the Writ Petition is allowed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE SURESH KUMAR KAIT

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 7th June, 2018.
Nn.

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.6036 of 2018

(Oral order delivered by the Hon'ble Sri Justice Suresh Kumar Kait)



07/06/2018

Nn.