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

WRIT PETITION NOS.11185 AND 11241 OF 2018

COMMON ORDER
(*Per Hon'ble Sri Justice Sanjay Kumar*)

Denial of interim orders by the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter,* 'the Tribunal'), in O.A.Nos.434 and 435 of 2018 prompted the individual applicants therein to file the present writ petitions. W.P.No.11185 of 2018 pertains to O.A.No.435 of 2018 while W.P.No.11241 of 2018 relates to O.A.No.434 of 2018. By common order dated 19.03.2018, the Tribunal rejected the plea of the two applicants in these O.A.s for interim relief. The Tribunal however observed that selection of candidates from amongst the ten candidates, whose papers were earlier invalidated in the cancelled main examination, would be subject to final orders in the O.A.s.

Both the O.A.s trace their origin to Notification No.15/2011 dated 30.06.2011 and Notification No.18/2011 dated 28.11.2011 issued by the Andhra Pradesh Public Service Commission (APPSC) seeking to fill up various posts in Group-I Services in the erstwhile State of Andhra Pradesh. Tenacious and never-ending, the litigation relating to these two Notifications resulted in the order dated 20.01.2014 of the Supreme Court in I.A.No.4 in Civil Appeal No.9140 of 2013, whereby the APPSC was directed to hold a fresh main examination for all the candidates who were held eligible on the basis of the preliminary examination evaluated in terms of its earlier order. However, the Supreme Court accepted the plea of the APPSC that 7,711 candidates, who had succeeded in the earlier preliminary examination but had chosen not to appear in the main examination conducted pursuant thereto, should not be permitted to take the fresh main examination to be

held pursuant to the direction of the Supreme Court. The Supreme Court observed that these 7,711 candidates had given up their right to participate in the main examination on the earlier occasion and were deemed to have given up their claim to participate in the main examination to be held *de novo*. The said 7,711 candidates were therefore directed to be excluded.

The present O.A.s arise in the context of the main examination held afresh by the APPSC. The petitioners raised various issues in their respective O.A.s, including the aspect of the APPSC re-doing interviews under CC camera surveillance so as to bring transparency and credibility to the selections. This issue was raised only in O.A.No.435 of 2018. The interim orders sought in both the writ petitions were however on the same lines, inasmuch as both the petitioners/applicants sought directions to the APPSC not to finalise the selection list and to stay all consequential actions pursuant to the said selection process, i.e., not to issue appointment orders based on the same. It is this plea of the petitioners that has now been turned down by the Tribunal by the common order dated 19.03.2018.

After holding the main examination again, the APPSC published the select list on 07.03.2018. The petitioners/applicants raised three issues before the Tribunal in support of their challenge to this select list in the context of their interim prayers. The first issue was that in spite of the direction of the Supreme Court to delete 7,711 candidates from the main examination to be held *de novo*, ten such candidates had been allowed. The second issue raised by them was that the APPSC had awarded marks indiscriminately, as candidates who got high marks in the written test got less marks in the interview and *vice versa*. That apart, the petitioners/ applicants were targeted with bias and were awarded fewer marks in the interviews though they fared well in the written test. The third issue raised

before the Tribunal was that the APPSC should have arranged CC cameras during the interviews, as a measure of transparency in the selections.

Para 6 of the common order dated 19.03.2018 records that after the counter-affidavit was filed by the APPSC, the petitioners/applicants voluntarily gave up the first issue raised by them and contended newly that the ten candidates, who had appeared in the earlier main examination in 2012 but whose papers were not valued on the ground that they had used pens of a colour other than that prescribed, were also allowed to write the main examination and of them, four came to be selected - two for the posts of Mandal Parishad Development Officers and two for the posts of Assistant Accounts Officers. The petitioners/applicants therefore assailed the action of the APPSC in not preventing these candidates from appearing in the main examination held afresh. The Tribunal however opined that this issue had been raised for the first time during the course of arguments and the APPSC had no occasion to answer the allegations as to allowing these ten candidates in the present main examination held in October, 2016, though their papers were not valued earlier. The Tribunal concluded that the petitioners/applicants had made out a *prima facie* case for admission of their cases but not for grant of interim orders and accordingly rejected their plea for interim relief as prayed for. However, the selection of those candidates from amongst the ten, whose papers were earlier invalidated in the cancelled main examination, were made subject to final orders in the O.A.s.

Though Sri J.Sudheer, learned counsel for the petitioner in W.P.No.11185 of 2018, and Sri Siva, learned counsel for the petitioner in W.P.No.11241 of 2018, would contend that the list of disqualified candidates in the fresh main examination, which was published by the APPSC, clearly indicated that as many as 89 candidates, who failed to appear in the earlier

main examination, were allowed to write the fresh main examination, thereby violating the direction of the Supreme Court that 7,711 candidates, who had failed to appear for the earlier main examination, should not be permitted to appear for the fresh one, the learned counsel do not dispute the fact that this aspect was not argued before the Tribunal and was given up. The order under challenge also states to this effect. This Court is therefore bound to go by the same. If the petitioners have any grievance with regard to the observation in para 6 of the order under challenge to the effect that the petitioners/applicants had jettisoned the first issue raised by them, they necessarily have to seek review of the order to that extent. Having failed to do so, it is not open to the petitioners/applicants to now raise this issue before this Court after giving it up before the Tribunal.

As regards the contention of the petitioners/applicants that the ten candidates, who stood disqualified in the earlier main examination for having used pens of colours other than the prescribed colours, ought not to have been permitted to write the fresh main examination, we are of the opinion that this aspect would have to be looked into by the Tribunal in the main O.A.s. Significantly, as pointed out by the Tribunal in the common order under challenge, this aspect was not raised in the pleadings in clear terms and therefore, the APPSC did not have an opportunity to address it head-on. It would be premature for this Court to venture any opinion on this issue when the Tribunal, the Court of the first instance, is still seized of it. This Court therefore desists from doing so.

It may be noted that several hundreds of posts were sought to be filled up under the subject Notifications and the Supreme Court, *vide* its order dated 29.06.2016 in Civil Appeal Nos.9140, 9142 and 9143 of 2013, directed the fresh main examination to be held, in terms of its earlier orders,

within three months from that day. Despite this direction, the selection process is yet to conclude. It would therefore not be in the interest of either of the States to stall the selections at this stage. All the more so, when the grievance of the petitioners/applicants seems to focus only on four candidates.

Significantly, though the details of the ten candidates, whose appearance in the fresh main examination was the cause for grievance, were very much available, inasmuch as the list of the said ten candidates has been filed in W.P.No.11185 of 2018, none of them have been made parties to the O.A.s filed before the Tribunal. More so, the four candidates, out of these ten, who were selected for appointment to the posts of Mandal Parishad Development Officers and Assistant Accounts Officers, though their names have been individually tick-marked in the said list. Therefore, no orders adverse to their interest could have been passed by the Tribunal behind their back.

Be it viewed from any angle, this Court finds no grounds to interfere with the refusal on the part of the Tribunal to grant interim relief in the form of staying finalisation of the selections at this stage. Sufficient protection has been afforded to the petitioners/applicants by making the selection of the four candidates out of the ten, whose appearance in the fresh main examination is sought to be called in question, subject to final orders in the O.A.s.

The writ petitions are accordingly dismissed. However, before parting with these cases, this Court must take note of the fact that though the subject O.A.s are of recent origin, they only constitute fresh chapters in a tortuous ongoing litigation dating back to the year 2011. As we are informed that the pleadings in the O.A.s are complete, it would be open to the

petitioners/ applicants to seek expeditious hearing of the O.A.s and in the event such a request is made, we are certain that the Tribunal would, subject to its own time constraints, accede to and accept such request and take steps accordingly.

Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

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SANJAY KUMAR, J

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M. GANGA RAO, J

12th APRIL, 2018
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