

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

* * * *

WRIT PETITION NO.12381 OF 2018

Between:

The Andhra Pradesh Public Service
Commission Rep. by its Secretary ... Petitioner

and

R. Shreedevi and others ... Respondents

Date of Judgment Pronouncement: 19th APRIL, 2018

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers
may be allowed to see the judgment?

Yes/No
2. Whether copies of the judgment may be
marked to Law Reporters/Journals

Yes/No
3. Whether His Lordship wishes to
see the fair copy of the judgment?

Yes/No

SANJAY KUMAR, J

M. GANGA RAO, J

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> Head Note:

! Counsel for petitioner : Sri C.Srinivasa Baba

^ Counsel for respondent 1 : Sri Kasa Jaganmohan Reddy

^ Counsel for respondents 2 and 3 : --

? CASES REFERRED:

1. (2017) 12 SCC 680
2. (2010) 3 SCC 119
3. (2013) 11 SCC 122 = 2013 SCC OnLine SC 515



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

WRIT PETITION No.12381 OF 2018

O R D E R

(per Hon'ble Sri Justice Sanjay Kumar)

Memo dated 30.12.2017 was addressed by the Andhra Pradesh Public Service Commission (APPSC) to the first respondent herein stating that though she was called for interview for selection to the post of Lecturer in Hindi pursuant to the Notification No.26 of 2016, detailed verification had revealed that she was 42 years 1 month and 18 days of age as on 01.07.2016, while the age limit for open category candidates was only 42 years. She was therefore informed that she was not eligible and that her candidature was rejected.

Assailing this Memo and seeking a consequential direction to consider her candidature for selection to the post of Lecturer in Hindi and to appoint her as per merit, the first respondent herein filed O.A.No.64 of 2018 before the Andhra Pradesh Administrative Tribunal, Hyderabad. By order dated 09.03.2018 passed therein, the Tribunal allowed the O.A. and directed the APPSC to consider her case for selection to the post of Lecturer in Hindi as per her merit in the vacancies meant for open category candidates and to finalize her selection based on her merit/rank. Aggrieved thereby, the APPSC filed this writ petition.

Heard Sri C.Srinivasa Baba, learned counsel for the APPSC, and Sri Kasa Jaganmohan Reddy, learned counsel on caveat for the first respondent-applicant.

Notification No.26 of 2016 dated 27.12.2016 was issued by the APPSC for direct recruitment to various posts of Lecturers in Government Degree Colleges, including the posts of Lecturers in Hindi in Zones II, III

and IV. None of the notified posts of Lecturers in Hindi were reserved for BC-D candidates. As per the Notification, the maximum age prescribed was 42 years as on 01.07.2016. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Classes, relaxation of five years was permitted, whereby such candidates could be considered up to the age of 47 years.

The first respondent-applicant belongs to BC-D community. She was one of the candidates who applied for the post of Lecturer in Hindi. The APPSC conducted a computer-based test on 06.06.2017 and basing on her performance therein, the first respondent-applicant was called for interview under open category. She topped the merit list with a total of 355.67 marks (311.67 in the computer test + 44 marks in the interview). The next meritorious candidate secured only 297 marks. However, the APPSC was of the opinion that as the first respondent-applicant was being considered for a post in open category, she was not eligible to avail age relaxation and accordingly disqualified her on that ground, constraining her to approach the Tribunal leading to the order under challenge.

Therein, the Tribunal rightly found that reliance placed by the APPSC upon the judgment of the Supreme Court in *DEEPA E.V. V/ s. UNION OF INDIA*¹ was misplaced as that was a case where specific instructions had been issued stipulating that reservation category candidates who claimed age relaxation could be considered only for reserved vacancies and the said instructions were not even subjected to challenge. However, there was no such bar stipulated either by the State or by the APPSC in relation to Notification No.26 of 2016 dated 27.12.2016. The Tribunal relied upon *JITENDRA KUMAR SINGH V/ s.*

¹ (2017) 12 SCC 680

STATE OF UTTAR PRADESH², wherein the Supreme Court held that when the statute does not bar reservation category candidates from being considered against general category vacancies, there could be no legitimate dispute with reserved category candidates being considered against open category posts. The Tribunal therefore concluded that the impugned Memo was contrary to the settled principles of law and accordingly set it aside. In consequence, the APPSC was directed to consider the case of the first respondent-applicant on her own merit.

Notably, reservation category candidates, be they within the prescribed age limit or beyond, form a homogeneous class in their own individual category. In the event a reservation category candidate who does not need to avail age relaxation and another candidate in the same reservation category does so but both do not come up for consideration on their own merit against open category posts, they would necessarily have to compete with each other for a reserved post. They therefore stand on par. It is not open to the APPSC to draw a distinction between them on the strength of one such reservation category candidate availing age relaxation and the other not doing so. If the contention of the APPSC is accepted, reservation category candidates who benefit from age relaxation must aspire only for reserved posts. The APPSC would have it that a reservation category candidate who does not avail age relaxation can compete on merit with open category candidates for general category unreserved posts but a reservation category candidate who avails age relaxation can only aspire for a reserved post, even if meritorious in his own right. There is no tenable basis for this sub-categorization within a reservation category. Further, the APPSC is blithely overlooking the

² (2010) 3 SCC 119

genesis for providing age relaxation to reservation category candidates. Such age relaxation relates to their status as historically disadvantaged classes and is extended to them as a special benefit under Article 16 of the Constitution. It merely enables them to enter the zone of consideration along with others, notwithstanding the normal age bar. It is not linked to their candidature for reserved posts alone.

In *JITENDRA KUMAR SINGH*², the Supreme Court rejected the contention that relaxation in age would deprive candidates belonging to the reserved categories of an opportunity to compete against general category candidates. It was pointed out that reserved category candidates have not been given any advantage in the selection process by such relaxation, as all candidates would have to appear in the same written test and face the same interview. The relaxation, *per* the Supreme Court, is only to enable certain candidates belonging to reserved categories to come into the zone of consideration and does not, in any manner, tilt the balance in their favour in so far as preparation of the final merit list is concerned. The Supreme Court pointed out that if a reserved category candidate gets selected on the basis of merit, he cannot be treated as a reserved candidate. On facts, the Supreme Court found that the concession availed by reserved category candidates in age relaxation had no relevance to the determination of the *inter se* merit on the basis of the final written test and interview and held that reserved category candidates must be included in the general category candidates on the basis of merit.

The observations of the Supreme Court in para 75 are of relevance:

'75. In our opinion, the relaxation in age does not in any manner upset the "level playing field". It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be

infringement of Article 16(1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfill the eligibility conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination. With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the preliminary test as also in the physical test. It is only thereafter that successful candidates have been permitted to participate in the open competition.’ *(emphasis is ours)*

Significantly, in PRADIP KUMAR MAITY V/ s. CHINMOY KUMAR BHUNIA³, dealing with age relaxation in favour of the disabled, the Supreme Court observed thus:

7. Age relaxation enables disabled persons, otherwise outside the orbit of employment to general posts, an additional opportunity of being considered for such post. It is dissimilar to the regime of a reserved post where only a person in the postulated group is eligible for appointment. One readily recalls the self-deprecation of the saint who realised the triviality of his lament for not possessing a pair of shoes on his encountering a person who had no feet. When a relaxation of age is extended to the disabled, the post remains to be nevertheless filled up by adherence to merit.

(emphasis is ours)

The aforesaid observations strengthen us in our conviction that age relaxation does not constitute a reservation in itself. It merely allows those falling in a disadvantaged category the right to be brought within

³ (2013) 11 SCC 122 = 2013 SCC OnLine SC 515

the zone of consideration so as to compete with others. Once a reservation category candidate competes for selection, be it by availing age relaxation or otherwise, he would be on par with a open category candidate if he figures in the select list on the strength of his own merit. The understanding of the APPSC that a reservation category candidate who avails age relaxation cannot aspire for an open category post therefore defies logic and is contrary to the Constitutional scheme. The Tribunal rightly appreciated the legal position and allowed the O.A. This Court therefore finds no error in the order under challenge.

The writ petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR,J

M.GANGA RAO,J

19th APRIL, 2018

Note: L.R. copy to be marked
B/ o PGS