

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

WRIT PETITION NOs.39561 OF 2012,
39569 of 2012 AND 11871 of 2014

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

O.A.No.9523 of 2010 and O.A.No.1568 of 2011 were filed before the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), by M.Thirumala Reddy and SL.Narayana Reddy respectively. Both the applicants assailed the proceedings dated 06.07.2010 issued by the Commissioner and Director of School Education, Andhra Pradesh, informing them that the Government had issued orders *vide* G.O.Ms.No.31, Women Development, Child Welfare & Disabled Welfare (DW) Department, dated 01.12.2009, to the effect that only a person with 75% or more hearing disability can be considered for a job under the hearing handicapped quota. They sought consequential directions to the authorities to consider their candidature for appointment to the posts of Secondary Grade Teacher/ School Assistant (Biological Sciences) and Language Pandit (Telugu) respectively, under physically handicapped quota (hearing impaired).

By common order dated 26.04.2011, the Tribunal opined that as the applicants were aspiring to the posts in question pursuant to the Andhra Pradesh Direct Recruitment for the posts of Teachers (Scheme of Selection) Rules, 2008 (*for brevity*, 'the Rules of 2008'), notified under G.O.Ms.No.161, Education (Services-VI) Department, dated 06.12.2008, the orders issued under G.O.Ms.No.31 dated 01.12.2009, formulating uniform guidelines in relation to physically disabled, including the hearing impaired, would not have retrospective effect upon the selections made in the year 2008, and accordingly set aside the impugned proceedings dated 06.07.2010 rejecting

the case of the applicants for appointment on the ground that they did not fulfil the requirements of G.O.M.No.31 dated 01.12.2009. The authorities were directed to consider them for the posts of Secondary Grade Teacher/ School Assistant (Biological Sciences) and Language Pandit (Telugu) respectively, under physically handicapped quota (hearing impaired) as per their merit and eligibility, and issue them appointment orders if they were within the zone of consideration within a time frame. Aggrieved by these directions, the Government of Andhra Pradesh and its officials in the Education Department approached this Court. W.P.No.39561 of 2012 was filed by them challenging the common order in so far as it related to O.A.No.9523 of 2010 while W.P.No.39569 of 2012 was filed by them against the said order in so far as it pertained to O.A.No.1568 of 2011.

By separate orders dated 22.03.2013 passed in both writ petitions, this Court granted interim suspension of the common order under challenge.

Meanwhile, O.A.No.823 of 2012 was filed by D. Poli Reddy before the Tribunal assailing the action of the authorities in not considering his case for appointment to the post of Secondary Grade Teacher (Telugu) under physically handicapped (hearing impaired) quota and to consequently direct consideration of his case for appointment to the said post as per the order dated 26.04.2011 in O.A.No.9523 of 2010. By order dated 21.06.2012, the Tribunal followed its earlier common order dated 26.04.2011 passed in O.A.Nos.9523 of 2010 and 1568 of 2011 and disposed of the O.A., directing the authorities to appoint the applicant to the post of Secondary Grade Teacher (Telugu) as per the Government Orders which were in force at the time of the DSC-2008 Notification, as per his merit and eligibility, and to issue him an appointment order within a time frame if he came within the zone of consideration. Aggrieved by this direction, the Government of Andhra

Pradesh and its officials in the School Education Department filed W.P.No.11871 of 2014 before this Court.

This Court granted interim suspension of the order under challenge by order 21.04.2014. A petition was filed by D. Poli Reddy in W.P.No.11871 of 2014 to vacate the said interim order.

Heard the learned Government Pleader for Services, Andhra Pradesh, and Sri M.Surender Rao, learned senior counsel appearing for Sri M.Srinivasa Rao, learned counsel for the respondents-applicants in all three cases. As comprehensive arguments were advanced by both sides covering the main issue, the writ petitions are amenable to disposal at this stage.

The Rules of 2008 were promulgated by the Government of Andhra Pradesh in exercise of power under Article 309 of the Constitution and were applicable to all categories of teachers posts in Government, Zilla Praja Parishad, Mandal Praja Parishad, Integrated Tribal Development Agency, Municipalities and Municipal Corporation Schools and also such other categories of teachers posts in such other schools as were notified by the Government from time to time. Recruitment to the posts was to be undertaken, as per Rule 3 of the said Rules, through a selection process consisting of a written test and other criteria stipulated by the Government from time to time. The total marks prescribed were 100 and the details of allocation of marks for the written test and weightage for different aspects for different categories of posts were to be decided by the Government from time to time. Rule 16 of the said Rules dealt with preparation of the selection lists and sub-rule (3) thereof stated to the effect that the rules issued from time to time by the Department of Disabled Welfare shall be followed in respect of special representation for physically challenged persons.

It is not in dispute that as on the date of promulgation of these rules, G.O.Ms.No.56, Women Development, Child Welfare and Disabled Welfare (DW) Department, dated 02.12.2003, was in operation. This G.O. provided for preference being given to the severely disabled in employment. Reference was made therein to Section 2(t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (*for brevity*, 'the Act of 1995'), which defines a 'person with disability' to mean a person suffering from not less than 40% of any disability as certified by a medical authority and the Uniform Guidelines issued by the Government of India were adopted for the purpose of enabling employment of the disabled. In the Annexure attached thereto, the recommended classification in so far as hearing impairment is concerned reads as under:

S. No.	Category	Type of Impairment	DB level and/ or	Speech discrimination	Percentage of impairment.
1.	I	Mild hearing impairment	dB 26 to 40 dB in better ear	80 to 100% in better ear	Less than 40%
2.	II	Moderate hearing impairment	41 to 55 dB in better ear	50 to 80% in better ear	40-50%
3.	III	Severe hearing impairment	56 to 70 dB Hearing impairment in better ear.	40 to 50%	50 to 75%
4.	IV	(a) Total deafness	No hearing	No discrimination	100%
		(b) Near total deafness	91 dB and above in better ear	-do-	100%
		(c) Profound hearing impairment	71 to 90 dB	Less than 40% in better ear	75-100%

The facilities to be offered to the disabled for rehabilitation, under II B in this Annexure, are as under:

'Category	I	No Special benefits
Category	II	Considered for Hearing Aids at Free or concessional costs only.
Category	III	Hearing aids free of cost or at concessional rates. Jobs reservation Benefit of special Employment Exchange.
Category	IV	Hearing Aids – facilities of reservation – special employment exchange. Special facilities in schools like Scholarship. Hearing aids– Exemption from 3 language formula (to study in recommended single language).'

It is therefore clear that only if severe hearing impairment/total deafness/near total deafness/profound hearing impairment is found, reservation in employment is contemplated. While so, it appears that due to litigation in relation to the selections of 2008, the process could not be concluded immediately. In the meanwhile, the Government issued G.O.Ms.31 dated 01.12.2009, whereby comprehensive orders were issued stipulating the guidelines for evaluation of various disabilities and the procedure for certification. Thereunder, 'hearing impairment' was defined to mean loss of sixty decibels or more in the better ear in the conversational range of frequencies. Annexure-I to this G.O. stipulated that the minimum degree of disability should be 40% in order to be eligible for any concessions/benefits. As regards hearing impairment, the categories thereof were stipulated in Annexure-III to this G.O., as under:

Category	Type of Impairment	D B Level	Speech discrimination	% age of impairment
I	Mild hearing impairment	DB 26 to 40 dB in better ear	80 to 100% in better ear	Less than 40% to 50%
II (a)	Moderate hearing	41 to 60 dB in better ear	50 to 80% in better ear	40% to 50%
II (b)	Severe hearing impairment	61 to 70 dB hearing Impairment in better ear	40 to 50% in better ear	51% to 70%
III	a) Profound hearing impairment	71 to 90 dB	Less than 40% in better ear	71% to 100%
	c) Total deafness	91 dB and above/ in better ear/to hearing	Very Poor discrimination	100%

Letter dated 22.05.2010 was issued by the Special Chief Secretary to Government, Women Development, Child Welfare & Disabled Welfare Department, Government of Andhra Pradesh, to all concerned clarifying that hearing impairment meant loss of sixty decibels or more in the better ear in the conversational range of frequencies, which corresponds to 85 dBs hearing threshold on the audiogram in the better ear, i.e., 85 dB hearing

level in audiogram – 25 dB upper limit of normal hearing – 60 dB hearing loss which therefore corresponds to 75% and above hearing disability as per Section 2(l) of the Act of 1995. It was further stipulated that only a person having 75% or more hearing disability should be considered for job provision under hearing handicapped reservation category. Pursuant to this clarification, the Commissioner & Director of School Education, Andhra Pradesh, addressed the District Educational Officer, Khammam, *vide* proceedings dated 06.07.2010, informing him of the orders issued in G.O.Ms.No.31 dated 01.12.2009 to the effect that only a person with 75% or more hearing disability is eligible to be considered for any job under hearing handicapped quota and requesting him to take necessary action at his end.

At the time of applying for the post, M.Thirumala Reddy produced certificate dated 15.05.1997 issued by the Regional Medical Board, S.V.R.R. Government General Hospital, Tirupathi, stating to the effect that there was 80 dB hearing loss in his right ear and 85 dB hearing loss in his left ear. The percentage of his hearing impairment was quantified at 65%. D. Poli Reddy produced certificate dated 12.07.1998 from the Regional Medical Board, S.V.R.R. Government General Hospital, Tirupathi, certifying that his hearing loss in the right ear was 90 dB and in the left ear it was 85 dB. The percentage of his hearing disability was stated to be 76%. The details of the certificate, if any, produced by SL. Narayana Reddy at the time of his applying for the post are not placed before this Court.

However, after their selection for appointment on the strength of their performance in the written test, all three of them were sent for evaluation of their hearing loss to the Government ENT Hospital, Hyderabad. Certificate of hearing disability dated 21.08.2010 was issued by the said hospital to M.Thirumala Reddy certifying that the pure tone threshold of hearing in

conversational frequencies in his right ear was 55 dB and in his left ear it was 85 dB. The percentage of his disability was quantified at 53%. The certificate included a table, which reads as under:

		BENEFITS OFFERED	
Category	Disability	Percentage	Benefits
I	Mild	Less than 40 %	* No Special benefits
II	Moderate	40% and above	* Hearing aid at free of cost or concessional rates
III	Severe	75% and above	* Hearing aid at free of cost or concessional rates * Job reservation * Benefit of special employment exchange * Scholarships * Single language formula
IV	Profound	100%	* Hearing aids * Facilities of reservation * Special employment exchange * Special facilities in schools like Scholarships, hearing aids * Exemption from 3 language formula

In terms of the above table, his hearing disability was categorised as 'moderate'. This table, however, is neither relatable to G.O.Ms.No.56 dated 02.12.2003 nor to G.O.Ms.No.31 dated 01.12.2009. It however mentions G.O.Ms.No.27 dated 09.08.2000 and G.O.Ms.No.109 dated 15.06.1992, both of which would not be applicable as on the date of issuance of the said certificate, as the later G.O.Ms.No.56 dated 02.12.2003 was in force by then.

In so far as SL Narayana Reddy is concerned, the Government ENT Hospital, Hyderabad, issued certificate dated 03.11.2009 certifying that the pure tone threshold of hearing in conversational frequencies in his right and left ears was 55 dB respectively. The percentage of his disability was shown as 45%. Again, reference was made to the very same G.O.s as in the case of M.Thirumala Reddy and the same table was reproduced in the certificate, whereby the extent of his disability was shown as 'moderate'.

In the case of D. Poli Reddy, the certificate of hearing disability issued by the Government ENT Hospital, Hyderabad, is dated 21.08.2011. Therein,

the pure tone threshold of hearing in conversational frequencies in his right ear was stated to be 60 dB and in his left ear it was 65 dB, whereby the percentage of his disability was quantified at 54%. Again, reference was made to the very same G.O.s as in the certificate pertaining to M.Thirumala Reddy and the table in relation to the benefits offered was replicated, categorising the extent of his disability as 'moderate'.

Learned Government Pleader would contend that as G.O.Ms.No.31 dated 01.12.2009 was issued even before the selection process in relation to the 2008 recruitment concluded, it would have application and not G.O.Ms.No.56 dated 02.12.2003. This very contention was urged by the authorities before the Tribunal, but the Tribunal was unwilling to accept the argument and rightly so, in our opinion.

The issue essentially boils down to whether G.O.Ms.No.31 dated 01.12.2009 would have retrospective effect to cover the selection process already initiated pursuant to the Rules of 2008.

A statutory Rule or a Government Order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. If recruitment rules are amended retrospectively during the pendency of the selection, the selection must be held in accordance with the amended rules. Whether such rules have retrospective effect or not would primarily depend upon the language of the rules and its construction as to legislative intent. The legislative intent is ascertained either by express provisions or by necessary implication. If the amended rules are not retrospective in nature, the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. (See N.T. DEVIN KATTI V/ s. KARNATAKA PUBLIC SERVICE COMMISSION¹).

¹ (1990) 3 SCC 157

On the same lines, in *P.MAHENDRAN V/ s. STATE OF KARNATAKA*², the Supreme Court held that where the amending rules did not contain any provision enforcing them with retrospective effect, they must be held to be prospective in nature and such rules cannot take away or impair the right of the candidates who were qualified for selection and appointment as per the rules obtaining as on the date of selection.

In *B.N.NAGARAJAN V/ s. STATE OF MYSORE*³, a Constitution Bench rejected the contention that as appointments were made after amendment of the rules, they should have been in accordance with the amended rules. It was held that as the whole procedure of issuing the advertisement, holding interviews and recommending names was in accordance with the existing rules prior to amendment, appointments made on the basis of the old rules could not be rendered invalid.

In the case on hand, it may be noted that G.O.Ms.No.31 dated 01.12.2009, though it referred to G.O.Ms.No.56 dated 02.12.2003, did not supersede it. There is no indication in the G.O. that it is intended to have any retrospective effect. Therefore, G.O.Ms.No.31 dated 01.12.2009, on the face of it, was intended to have only prospective effect. In consequence, the candidature of the first respondents-applicants in these three cases had to be evaluated in terms of the provisions of G.O.Ms.No.56 dated 02.12.2003, which was holding the field as on the date of initiation of the selection process, *vide* G.O.Ms.No.161 dated 06.12.2008. In terms thereof, hearing impairment between 50% and 75%, under category III, is described as severe hearing impairment and entitles the person afflicted to job reservation. In terms of this categorisation, M.Thirumala Reddy, who admittedly suffered from 53% hearing impairment as per the certificate

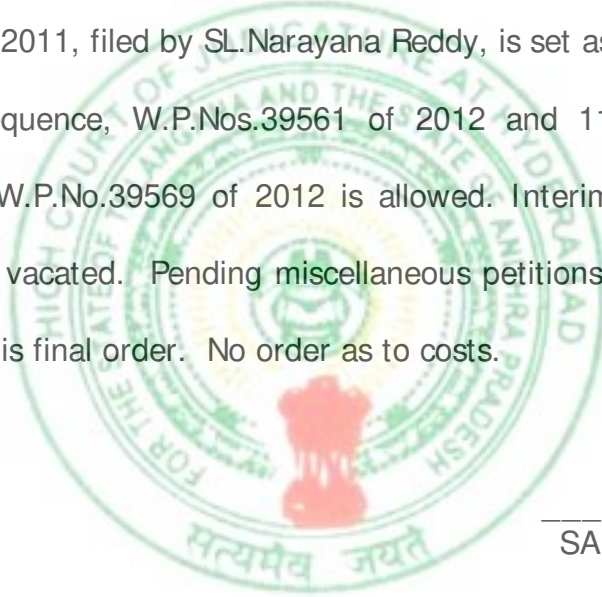
² (1990) 1 SCC 411

³ AIR 1966 SC 1942

dated 21.08.2010 of the Government ENT Hospital, Hyderabad, and D. Poli Reddy, who suffered from 54% hearing impairment as per the certificate dated 21.08.2010 issued by the Government ENT Hospital, Hyderabad, qualified for job reservation. It is only SL.Narayana Reddy who suffered from 45% hearing impairment, as per the certificate dated 03.11.2009 issued by the Government ENT Hospital, Hyderabad, who is disentitled to job reservation, in terms of G.O.Ms.No.56 dated 02.12.2003.

The orders passed by the Tribunal in favour of M.Thirumala Reddy and D. Poli Reddy in O.A.Nos.9523 of 2010 and 823 of 2012 are accordingly confirmed, but the common order dated 26.04.2011 in so far as it pertains to O.A.No.1568 of 2011, filed by SL.Narayana Reddy, is set aside.

In consequence, W.P.Nos.39561 of 2012 and 11871 of 2014 are dismissed and W.P.No.39569 of 2012 is allowed. Interim orders in all the three cases are vacated. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

M. GANGA RAO, J

27th APRIL, 2018

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