

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIPT PETITION No.42005 of 2016

ORDER :

Heard the learned counsel for petitioner, Sri D.Balakishan Rao, learned Standing Counsel for 1st respondent, learned Government Pleader for Services appearing for 2nd respondent, and Sri V.Maheswar Reddy, learned counsel for 4th respondent. Sri S.Gopala Rao, learned counsel has filed vakalat for 3rd respondent. No counter-affidavit is filed by the State of Telangana and the 3rd respondent.

2. The 1st respondent had issued Notification No.09/2015 dt.29-08-2015 for filling up of vacancies of Assistant Engineers in various Engineering Subordinate Services in the State of Telangana including Assistant Engineer (Civil or Mechanical in Public Health and Municipal Engineering Department). A total of 258 such vacancies were sought to be filled up in the said Department and vacancies were divided among Zone –V, VI and City cadre.

3. The petitioner belongs to Scheduled Caste community. He applied for appointment to one such vacancy and in his application, he mentioned that he falls in City cadre, though as regards his education details he mentioned as having studied in Ranga Reddy District.

4. It is important to note that petitioner had filled the One Time Registration System (OTR) introduced by the 1st respondent giving his education details and therein he specifically stated that he studied in Wesley Co-Education High School, Habsiguda, which falls in

Tarnaka located within Hyderabad city limits and he also indicated that he belongs to City cadre and the 1st respondent gave him an I.D.number, which is specifically referred to in his application for the above post.

5. When petitioner's name was not found selected in the City cadre and respondent Nos.3 and 4 were found to be in the selection list, though 3rd respondent secured only 169 marks and 4th respondent secured equal marks as the petitioner i.e. 170 marks, petitioner approached this Court by filing this Writ Petition and challenged the action of respondents in not considering his candidature for selection to the post of Assistant Engineer in the Public Health and Municipal Engineering Department by 1st respondent in the City cadre.

6. It is also important to note that the declaration of results for above examination was on 18-01-2016, but prior thereto petitioner had addressed a letter dt.13-01-2016 to the 1st respondent stating that by mistake he mentioned that his school is in Ranga Reddy District instead of Hyderabad District and he had done his schooling in Wesley Co-Education High School, Habsiguda, Tarnaka, Secunderabad in Hyderabad District and his One Time Registration application be corrected accordingly. Having received the same, nothing was done by 1st respondent.

7. Subsequently, after the Writ Petition was filed, memo No.513/Rs-20/2015 dt.03-12-2016 was issued by the 1st respondent stating:

“I am to inform that as per your application, you have completed your school education from Wesley Co-Education High School, Street No.1, Tarnaka, Ranga Reddy District. On verification of the records it looks that you come under Zone-VI. Hence your candidature cannot be considered for city cadre as your are claiming. I am to further inform that you have got 170 marks where as the marks of last candidate in zone VI in your category is 187. Sd/- Secretary.”

8. Learned counsel for petitioner contends that petitioner's school education was done in Wesley Co-Education High School, Tarnaka which falls within the Hyderabad District and that was why he had mentioned in his OTR application as well as application seeking appointment to the post of Assistant Engineer in Public Health and Municipal Engineering Subordinate Services that he belong to the 'City cadre' and merely because there was a mistake in mentioning the District where the said school was located i.e. Ranga Reddy District instead of Hyderabad District, the respondents cannot treat him as belonging to Zone-VI (Ranga Reddy District) and not in the City cadre, particularly when there is no doubt about the location of the said school in Tarnaka, Hyderabad District and not in Ranga Reddy District.

9. In support of this contention, he also referred to certificate dt.26-10-2016 issued by the said school mentioning that the said school was located and functioned in Tarnaka in Secunderabad Division and had shifted to Ranga Reddy District only from 1999-2000 academic year.

10. It is not disputed that the petitioner passed SSC in the year 1992 and therefore his school education was in Hyderabad District only and not in Ranga Reddy District at that time.

11. In the counter-affidavit filed by 1st respondent, a new ground is taken that the petitioner wrongly mentioned in his OTR form as well as application seeking appointment to the post of Assistant Engineer that his education was in Ranga Reddy District and therefore on the basis of the said representation made by petitioner, he was considered in Zone-VI and not in the City cadre.

12. This contention totally ignores the fact and both in the OTR application as well as in the application seeking appointment to the post of Assistant Engineer in the Public Health and Municipal Engineering Subordinate Services pursuant to the notification No.09/2015 dt.29-08-2015, petitioner specifically indicated that he belongs to City cadre Zone. At no point of time the 1st respondent seek a clarification from the petitioner if it had entertained a doubt as to which zone the petitioner would fall under; and as stated above, it had totally ignored petitioner's request dt.13-01-2016 to consider him as having done his schooling in the Hyderabad District and not in the Ranga Reddy District; and that in his OTR application as well as application seeking the post of Assistant Engineer pursuant to the application, he had erroneously mentioned his school education as Ranga Reddy District.

13. In Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others¹, the Supreme Court held:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji²

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

14. Therefore in view of the above decision, it is not open to the respondents to give new grounds for rejection of petitioner's candidature in the City cadre on the basis of an after thought more particularly when there is no dispute as to the fact that Tarnaka, where the Wesley Co-Education High School was located in 1992, falls in Hyderabad District and not in the Ranga Reddy District.

15. Sri V.Maheswara Reddy, learned counsel appearing for 4th respondent supported the stand taken by the 1st respondent and also placed reliance on the fact that petitioner had mentioned that the

¹ AIR 1978 SC 851

² AIR 1952 SC 16

school in which he studied is located in Ranga Reddy District in his applications referred to above and now he cannot make a u-turn.

16. I have already discussed this issue and rejected the said contention on the part of the 1st respondent.

17. In this view of the mater, the Writ Petition is allowed; the memo dt.513/Rs-20/2015 dt.03-12-2016 of the 1st respondent is set aside; and the respondents are directed to consider appointing the petitioner in the post of Assistant Engineer in Public Health and Municipal Engineering Department vide Notification No.09/2015 dt.29-08-2015 issued by 1st respondent in the City cadre in the S.C. category since he possessed more marks than the 3rd respondent, who has secured only 169 marks and issue appointment order to the petitioner by displacing the 3rd respondent. This exercise shall be done within four (04) weeks from the date of receipt of a copy of this order. No costs.

18. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 19-12-2018

Vsv