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

WRIT APPEAL NOS.879, 1060 AND 1243 OF 2018

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

W.P.No.4877 of 2015 was filed by Balaji Panugotu assailing the selection of Sapavat Vijaya Indira for appointment to the post of Post Graduate Teacher (PGT) in Commerce in Zone-VI under ST General quota on the ground that she was ineligible. He also sought a declaration that he was entitled to be selected and appointed to the said post in preference to Sapavat Vijaya Indira with all consequential benefits.

W.P.No.25528 of 2015 was filed by Sapavat Vijaya Indira aggrieved by the proceedings dated 30.07.2015 issued by the Additional Director, Model Schools, State of Telangana, terminating her services as PGT (Commerce) at Model School, Dharpally, Nizamabad District. She sought setting aside of the said proceedings and a direction to the authorities to continue her in the said post with all consequential benefits.

By common order dated 27.06.2016, a learned Judge of this Court allowed W.P.No.4877 of 2015 and dismissed W.P.No.25528 of 2015. Aggrieved by the said common order, Sapavat Vijaya Indira preferred W.A.Nos.839 and 840 of 2016. By common judgment dated 14.09.2016, a Division Bench of this Court took note of the fact that a ground which had not been taken before the learned Single Judge, viz., that Sapavat Vijaya Indira was appointed against one of the two vacancies reserved for ST Women and that she was entitled to be appointed as of right to the said post, even if she did not have B.Ed. qualification, was sought to be raised for the first time and opined that it would not be appropriate to consider a point which was not specifically raised and argued before the learned Single

Judge. Thereupon, Sapavat Vijaya Indira sought leave through her counsel to withdraw the appeals and file a review petition before the learned Single Judge. The writ appeals were accordingly dismissed as withdrawn giving liberty to Sapavat Vijaya Indira to approach the learned Single Judge.

Review W.P.M.P.No.25430 of 2017 in W.P.No.25528 of 2015 was then filed by Sapavat Vijaya Indira while Review W.P.M.P.No.20305 of 2017 in W.P.No.4877 of 2015 was filed by the State of Telangana and its authorities seeking review of the common order dated 27.06.2016. However, by common order dated 16.03.2018, the learned Judge dismissed both the review petitions. The said common order is now subjected to appeal.

W.A.No.879 of 2018 was filed by Sapavat Vijaya Indira against the common order dated 16.03.2018 in so far as it pertained to Review W.P.M.P.No.25430 of 2017 in W.P.No.25528 of 2015 and W.A.No.1060 of 2018 was filed by the State of Telangana and its authorities in the School Education Department against the very same common order dated 16.03.2018 in so far as it related to Review W.P.M.P.No.20305 of 2017 in W.P.No.4877 of 2015. W.A.No.1243 of 2018 was filed by the State of Telangana and its authorities in the School Education Department against the earlier common order dated 27.06.2016 in so far as it pertained to W.P.No.4877 of 2015. In this background, all three appeals are amenable to a conjoined disposal by way of this common judgment.

By order dated 07.08.2018 passed in W.A.No.1060 of 2018, this Court directed that till further orders, both the common orders passed by the learned Judge shall remain stayed.

Heard Sri J.Sudheer, learned counsel for Sapavat Vijaya Indira, Sri Pratap Narayan Sanghi, learned counsel for Balaji Panugotu and the learned Government Pleader for Education, State of Telangana, for the authorities.

Notification dated 06.02.2012 was issued by the Commissioner and Director of School Education & Ex-Officio Project Director, RMSA, Andhra Pradesh, Hyderabad, calling for applications for recruitment to the posts of Principals, PGTs and Trained Graduate Teachers in Model Schools in the erstwhile State of Andhra Pradesh. Sapavat Vijaya Indira and Balaji Panugotu applied for the post of PGT in Commerce. As per Clause 12 of the Notification dated 06.02.2012, a candidate aspiring for the post of PGT was required to have either passed the two year Integrated Post Graduate Course from the Regional Institute of Education of NCERT in the concerned subject or possess a Master's Degree from a UGC recognised university with at least 50% marks in aggregate in the concerned subject. Candidates having B.Ed. or equivalent degree with methodology in the concerned subject from a UGC recognised university were to be given preference as per this clause, but in the event a candidate with B.Ed. degree was not available, a candidate with M.Com. degree could be recruited. Balaji Panugotu is a post-graduate in Commerce and possesses B.Ed. degree in Social Studies. Sapavat Vijaya Indira, on the other hand, had a M.Com. degree as on the date of the Notification and acquired a B.Ed. degree only in July, 2013.

It is relevant to note that as per the Notification dated 06.02.2012, in so far as Zone-VI is concerned, in the category of PGTs (Commerce), four posts were notified under ST General while two posts were notified under ST Women. Selection was made on the strength of a written test and an interview, whereby Sapavat Vijaya Indira was selected and appointed but not Balaji Panugotu. Aggrieved by his non-selection in the context of Sapavat Vijaya Indira being selected, Balaji Panugotu filed W.P.No.4877 of 2015. Upon receipt of the notice of filing of this writ petition, the authorities themselves issued show-cause notice dated 22.06.2015 to Sapavat Vijaya

Indira proposing to cancel her selection and appointment on the ground that she acquired B.Ed. qualification only in July, 2013. After considering her reply dated 06.07.2015, proceedings dated 30.07.2015 were issued by the Additional Director, Model Schools, State of Telangana, terminating her services as PGT (Commerce) at the Model School, Dharpally, Nizamabad, with immediate effect. Aggrieved thereby, Sapavat Vijaya Indira filed W.P.No.25528 of 2015.

At this stage, it would be relevant to note the details of the candidates under ST category, who were selected and appointed to the posts of PGT (Commerce), pursuant to the Notification dated 06.02.2012:

Sl. No.	H.T.No.	Candidate Name	Community	Gender	Marks
1	61832000051	M. Ramesh	ST	Male	43
2	62332000045	N. Ravi	ST	Male	41
3	61632000330	Rama Nayak	ST	Male	40
4	61632000194	M. Prasanna Kumari	ST	Female	38.5
5	61432000043	M. Ramesh	ST	Male	35
6	62332000025	M. Anuradha	ST	Female	34

The details of Sapavat Vijaya Indira and Balaji Panugotu are as under:

Sl. No.	H.T.No.	Candidate Name	Community	Gender	Marks
1	60001949	Sapavat Vijaya Indira	ST	Female	36.5
2	60055929	Balaji Panugotu	ST	Male	35

It appears that after certificate verification was conducted in May, 2013, the authorities rejected the candidature of Sapavat Vijaya Indira on the ground that she did not possess B.Ed. qualification. However, when she submitted representation dated 21.01.2014, the Grievance Committee constituted by the Regional Joint Director of School Education, State of Telangana, examined her case and found that as she had secured 36.5

marks and the cut-off mark for ST Women was 34 marks, she should be considered for appointment. This led to her being appointed to the post on 21.09.2014. Balaji Panugotu raised an objection in relation to her appointment on 24.09.2014 and again on 16.02.2015 stating that her appointment was against the Notification and that he was more eligible when compared to her, as he possessed B.Ed. qualification even as on the date of the Notification. Basing on the efforts made by Balaji Panugotu, be it through his representations or through W.P.No.4877 of 2015 filed by him, the authorities terminated her services under the proceedings dated 30.07.2015.

It may be noted at this stage that as against six notified posts, seven appointments were made and after termination of Sapavat Vijaya Indira from service, 6 PGTs (Commerce) were still working. However, she was continued in service even thereafter pursuant to the interim order dated 13.08.2015 passed in W.P.No.25528 of 2015.

By the earlier common order dated 27.06.2016, the learned Judge opined that Sapavat Vijaya Indira was ineligible as she did not possess B.Ed. degree as on the relevant date when compared to Balaji Panugotu, who did, and though she secured 36.5 marks as opposed to the 35 marks secured by Balaji Panugotu, she could not have been given preference over him. It is on the strength of this reasoning that the learned Judge allowed W.P.No.4877 of 2015 filed by Balaji Panugotu and dismissed W.P.No.25528 of 2015 filed by Sapavat Vijaya Indira. In effect, her termination from service, *vide* proceedings dated 30.07.2015, was upheld and the authorities were directed to select and appoint Balaji Panugotu as a PGT (Commerce) in Zone-VI under ST General quota.

Sapavat Vijaya Indira sought review of this order in so far as it pertained to W.P.No.25528 of 2015. Separately, the State and its authorities

sought review of the said order in so far as it pertained to W.P.No.4877 of 2015. Both reviews came to be dismissed by the learned Judge *vide* common order dated 16.03.2018. Perusal of this common order demonstrates that the authorities brought it to the notice of the learned Judge that the six notified posts meant for ST candidates were already filled up and there was no post available to accommodate Balaji Panugotu, as the very appointment of Sapavat Vijaya Indira was irregular. The learned Judge was however disinclined to accept this plea as it had not been urged before him at the time of disposal of the writ petitions. The learned Judge further opined that as Sapavat Vijaya Indira, who was appointed on 21.09.2014, was permitted to remain in service till 30.07.2015, the authorities were raising this ground only to deny Balaji Panugotu of the benefit of the order passed in his writ petition. Having perused the record, the learned Judge concluded that Balaji Panugotu deserved to be selected and as it was stated that six appointees were already working, but there were a number of vacancies, the order could be implemented without disturbing the appointed candidates. On this reasoning, the learned Judge dismissed the review petitions.

The admitted fact is that only six posts were notified under ST category in PGT (Commerce) in Zone-VI. Of these, two were reserved for ST Women. As per the counter affidavit filed by the Additional Director, RMSA/ Model Schools, Office of the Commissioner & Director of School Education & Ex-Officio Project Director, RMSA/Model School, Saifabad, Hyderabad, these six posts were relatable to Roster Points 8 and 58 (ST Women) and Roster Points 25, 33, 75 and 83 (ST General). In the first phase of counselling held on 17.05.2013, M.Prasanna Kumari, M.Ramesh, M.Anuradha and N.Ravi were selected. M.Rama Nayak, however, did not present himself for certificate verification. The case of Sapavat Vijaya Indira was rejected in this

counselling as she did not possess B.Ed. qualification. M.Prasanna Kumari with 38.5 marks was selected against Roster Point No.8 meant for ST Women while M.Ramesh with 43 marks was selected against Roster Point No.25 meant for ST General. These two candidates were selected under the 30% quota based on merit for which both local and non-local candidates could aspire. Thereafter, against the balance 70% quota meant for locals, N.Ravi with 41 marks, M.Anuradha with 34 marks, Rama Nayak with 40 marks and M.Ramesh with 35 marks were selected against Roster Points 33 (ST General), 58 (ST Women), 75 (ST General) and 83 (ST General) respectively. It may however be noted that in the second phase of counselling held on 09.09.2014, Sardar Ramavath and M.Ramesh were called but as only M.Ramesh, with 35 marks, appeared, he was selected. Though Rama Nayak was absent despite being called for the first counselling, he was appointed along with Sapavat Vijaya Indira on 21.09.2014.

Sri J.Sudheer, learned counsel, would contend that M.Prasanna Kumari with 38.5 marks ought not to have been considered against the ST Women post when she was meritorious enough to aspire for the ST General post. He would assert that if M.Prasanna Kumari is adjusted against one of the four ST General posts, M.Anuradha with 34 marks, who got lesser marks than Sapavat Vijaya Indira, but possessed B.Ed. qualification, would be selected against the ST Women post and the second post in that category would have to be given to Sapavat Vijaya Indira, with 36.5 marks.

On the other hand, Sri Pratap Narayan Sanghi, learned counsel, would contend that Sapavat Vijaya Indira was appointed under ST General quota and when her very selection was irregular as she did not possess the requisite qualification on the relevant date, Balaji Panugotu ought to have been selected in her place as he possessed B.Ed. qualification, unlike her.

At this stage, we may state that the direction of the learned Judge to accommodate Balaji Panugotu as a number of vacancies were still available, though the six notified posts were already filled up, cannot be countenanced. The recruitment under Notification dated 06.02.2012 was akin to public employment and no arrangement can be made to accommodate candidates over and above the notified vacancies without following the due procedure.

In this context, the learned Judge also lost sight of the fact that acceptance of the argument of either Sapavat Vijaya Indira or Balaji Panugotu necessarily entailed a challenge to the appointments already made, whereby one or the other of the six appointed candidates would have to be removed to make way for them.

If the argument of Sri J.Sudheer, learned counsel, is accepted, M.Prasanna Kumari would have to be adjusted against one of the vacancies meant for ST General which would mean that M.Ramesh, with 35 marks, who was the last candidate appointed to this category of posts, would have to be removed to make way for her, so that Sapavat Vijaya Indira can be adjusted against the resulting ST Women post.

Further, the very appointment of Sapavat Vijaya Indira under ST General quota long after the selections and appointments were made in June, 2013 was clearly unsustainable in law as she did not possess the requisite qualification on the relevant date and there was no notified post available to accommodate her. Therefore, her wrongful appointment would not entitle Balaji Panugotu to raise a claim or seek appointment to a ST General post, which was not even available. Admittedly, Balaji Panugotu secured 35 marks on par with M.Ramesh, the last candidate appointed to a ST General post, but he did not challenge his selection and appointment. According to Balaji Panugotu, M.Rama Nayak's appointment is also illegal as

a candidate who remained absent or whose case was rejected in the first phase of counselling, ought not to have been selected. However, in his own wisdom, he did not choose to challenge M.Rama Nayak's appointment.

In effect, there can be no consideration of the claims of either Sapavat Vijaya Indira or Balaji Panugotu, in the absence of M.Ramesh and M.Rama Nayak. Without the affected candidates being brought before this Court and without a challenge being made to their appointments, the question of adjudicating either of the claims would not arise. Despite being made aware of the fact that seven appointments were made to the six notified posts, the learned Judge failed to take note of these crucial aspects and proceeded on the ground that confirming the proceedings dated 30.07.2015, whereby the services of Sapavat Vijaya Indira were terminated, would be sufficient to make way for Balaji Panugotu. As already pointed out, it is not for this Court to enlarge the scope of the notification or direct accommodation of Balaji Panugotu in a post which may be available as on date but which was not notified for direct recruitment. In these circumstances, neither Balaji Panugotu nor Sapavat Vijaya Indira can be accommodated as against any of the six posts notified on 06.02.2012.

Though Sri Pratap Narayan Sanghi, learned counsel, would rely upon case law in support of his contention that a supernumerary post should be created to accommodate Balaji Panugotu, we are not persuaded to agree. In N.T.BEVIN KATTI V/s. KARNATAKA PUBLIC SERVICE COMMISSION[1], appointments were made to the posts of Tahsildars during the pendency of the writ petition before the High Court and the appointment orders contained a specific term that the appointments would be subject to the result of the writ petition. As the petitioners in the said writ petition

[1] AIR 1990 SC 1233

succeeded, the Supreme Court opined that the appointments made were liable to be set aside. However, as the appointees had been working for 14 years and great hardship would be caused to them if their appointments were quashed, the Supreme Court considered it expedient in the interest of justice not to interfere with their appointments but to direct the State Government to create supernumerary posts for appointing the petitioners. This case clearly turned upon its individual facts and no discernible ratio can be culled out from it to aid Balaji Panugotu.

Similarly, in GAURAV PRADHAN V/s. STATE OF RAJASTHAN[2], the Supreme Court observed that candidates who were irregularly appointed on migration basis against reserved vacancies should not be displaced but the unreserved candidates who could not be appointed due to this illegal migration should be accommodated, if necessary, by creating supernumerary posts. This case also turned on its individual facts and has no application to the case on hand as Balaji Panugotu, in any event, does not come within the zone of consideration as it is established that the very appointment of Sapavat Vijaya Indira against a ST General post after filling up the four notified posts was illegal and unsustainable. The case law relied upon by the learned counsel therefore has no relevance to the cases on hand.

On the above analysis, W.A.No.879 of 2018 filed by Sapavat Vijaya Indira is dismissed and W.A.Nos.1060 and 1243 of 2018 filed by the State of Telangana and its authorities are allowed. The order dated 27.06.2016 in W.P.No.4877 of 2015 and the order dated 16.03.2018 in Review W.P.M.P.No.20305 of 2017 in W.P.No.4877 of 2015 are accordingly set aside. In consequence, W.P.No.4877 of 2015 shall stand dismissed along with W.P.No.25528 of 2015.

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[2] AIR 2017 SC (Supp) 810

Pending miscellaneous petitions, if any, in all cases shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR, J

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M.GANGA RAO, J

13th NOVEMBER, 2018

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