

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition No.40435 of 2012

ORDER: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

The challenge in this writ petition at the instance of petitioners, is the order dated 27.12.2010 in O.A.No.2779 of 2010 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (for short "the Tribunal") whereby and whereunder the Tribunal allowed the said O.A filed by the 1st respondent and set aside the appointment of 2nd respondent herein (5th respondent in OA) and directed the petitioners herein (respondents 1 to 4 in OA) to appoint the 1st respondent in the place of 2nd respondent at Roster Point No.133 and to consider the case of 2nd respondent against those vacancies which are left unfilled under 80% quota i.e., local category as per his merit.

2) While ordering notice before admission, this Court in W.P.M.P.No.51287 of 2012 granted interim suspension of the order in OA. The 1st respondent appeared and filed vacate stay petition—W.V.M.P.No.3846 of 2016.

3a) The 1st respondent herein filed O.A.No.2779 of 2010. His case is that he belongs to ST community and he is a non-local candidate of Karimnagar District. He passed M.A. (English) and B.Ed. with English as one of the methodology subjects and according to him, he is eligible and qualified for selection to the post of School Assistant (English).

b) While-so, the Government have issued Teachers Recruitment Notification on 06.12.2008 (known as “DSC-2008”). It is a state wide notification with breakup of vacancies District wise and recruitment is made District wise. The posts of Secondary Grade Teachers (SGTs) and School Assistants (SAs) are organized at District Level. Karimnagar District is concerned, 126 posts of School Assistant (English) were notified. The 1st respondent applied for the said post and appeared for the examination and secured District Rank No.614 with 40.50 marks whereas the 2nd respondent secured 39.50 marks. Therefore, 1st respondent stood more meritorious than the 2nd respondent. However, the petitioners filled up the posts of SAs with the 2nd respondent, who is a local candidate though Roster Point No.133 is meant for non-local candidate.

c) The petitioners in writ petition, who are officials respondents 1 to 4 in OA, filed counter in OA stating that 7 posts were notified under ST (General) category in SA (English), out of which, 2 were backlog and 5 were current vacancies and selection was made with reference to rule of reservation/merit as per the selection procedure prescribed by the Government in G.O.Ms.No.112 Secondary Education (General-II) Department dated 06.10.2009. The representation of the applicant dated 20.10.2009 was examined with reference to the rules and it was observed that he has not come under the zone of selection due to non-local status and also securing less marks compared to the last selected candidate in the same category under open category and moreover, there were no leftover vacancies available.

d) The respondents in their counter, stated in a tabular form about the status of the posts meant for ST (General) candidates. As per which, altogether 7 posts available for ST (General) candidates, out of which, 2 were backlog posts and remaining 5 were current vacancies. Two backlog posts were filled up by candidates who secured 59.50 and 51.00 marks respectively. Out of the remaining 5 current vacancies, 20% was kept open for local and non-local candidates subject to the condition that candidates shall however belong to same reservation category (SC/ST/BC/ Women/PHC/Ex-Servicemen or a combination of these). Remaining 80% were meant for local candidates of that district only, subject to the condition that the candidate shall, however, belong to same reservation category (SC/ST/BC/Women/PHC/Ex-servicemen or a combination of these).

e) The respondents contended that in such division in the ratio of 20:80, out of current 5 vacancies, one vacancy was meant for open category (local and non-local candidates) and remaining four vacancies were meant for candidates, who were local in that district. In the open category, one Malothu Praveen, who secured 44 marks and stood at rank No.575 was selected. Since the petitioner secured 40.50 marks and stood at rank No.614, he could not be selected as he was less meritorious than the said Malothu Praveen. The remaining four posts were meant for local candidates and they were filled up with local candidates such as 5th respondent and others. Therefore, the OA is not maintainable.

4) The Tribunal held that out of 126 posts of SA (English) notified in DSC-2008, 25 posts were meant for Open Category i.e., both for local and non-locals and out of those 25 posts, 2 posts were meant for ST open category i.e., local and non-local. The Roster Point Nos.125 and 133 are to be filled up by ST (General) candidates. The respondents have rightly filled up the Roster Point No.125 with one Malothu Praveen, who secured 44 marks and obtained rank No.575 and belonged to ST open category. The Tribunal further held, the next Roster Point number for ST is 133 and it has to be filled up with ST candidate, who is next meritorious to the candidate selected at Roster Point No.125 i.e., Malothu Praveen, but instead, the respondents filled up Roster Point No.133 with 5th respondent, who is a local candidate and less meritorious than the applicant, depriving the right of the applicant, who is next meritorious candidate. The Tribunal ultimately allowed the OA and set aside the appointment of 5th respondent and directed the respondents to appoint the applicant in the place of 5th respondent at Roster Point No.133 under 20% reservation and issue proceedings accordingly. The Tribunal also held that the respondents can consider the case of 5th respondent against those vacancies which are leftover under 80% quota i.e. local category, as per his merit.

Hence the Writ Petition by respondents 1 to 4 in OA.

5) The 1st respondent herein filed his counter and opposed the petition.

6) The parties are referred as they are arrayed in this writ petition.

7) Heard arguments of learned Government Pleader for Services-I; Sri Ch.Jagannatha Rao, learned counsel for 1st respondent and Sri D.Bala Kishan Rao, learned counsel for 2nd respondent.

8) Fulminating the order of the Tribunal, learned Government Pleader would argue that the Government have issued Teachers Recruitment Notification on 06.12.2008 (known as DSC-2008), which was State wide notification with breakup of vacancies District wise and recruitment was also made District wise. The recruitment relates to the Posts of Second Grade Teachers (SGTs) and School Assistants (SAs) of Karimnagar District. In the said District, he would submit, 125 posts of SAs (English) were notified, out of which 7 posts notified are backlog vacancies in various categories, of which 2 posts belong to ST (General) category. The remaining 118 posts are current vacancies of various categories. The Roster Point for these 118 posts started from 112 (OC-Women) and ended with 229 (BC-A General). Thus in between 112 and 229, the Roster Point Nos.25, 33, 75, 83 and 25 of next cycle pertains to ST (General). Therefore, 5 posts out of 118 vacancies relate to ST (General).

a) He would further submit, the recruitment was done following the guidelines in G.O.Ms.No.112 Secondary Education (Gen-II) Department dated 06.10.2009. As per Para 3(B), of the available posts, the top 20% of the Roster Points should be kept open to be filled up as per merit for local and non-local candidates, subject to the condition that the candidate shall however belong to the same reservation category

(SC/ST/BC/Women/ PHC/Ex-Servicemen or a combination of these).

He argued that when this rule is applied, of the available 5 posts for ST (General), one vacancy (i.e., 20%) has to be earmarked for open category and remaining 80% posts shall be earmarked as local quota. In that process, one vacancy, meant for open category (i.e, open for local and non-local candidate) was filled up with Malothu Praveen against Roster Point No.125 since he secured 44 marks and stood at Rank No.575. Since the 1st respondent secured only 40.50 marks and stood at Rank No.614, could not be selected as he was less meritorious than Malothu Praveen.

He could not be considered in the remaining 4 vacancies because he was ST (non-local). The remaining 4 posts, which were earmarked for ST (local) candidates following the Presidential Order, were filled up with the 2nd respondent and other three ST (local) candidates. Therefore, the 1st respondent cannot harp that even though he secured higher marks than 2nd respondent he was omitted and 2nd respondent was accommodated on local basis. Learned Government Pleader submitted that though 2nd respondent secured lesser marks (39.50) than the 1st respondent he was accommodated in one of the 4 vacancies because those 4 vacancies relate to ST (local) candidates. Such a selection was not on any extraneous consideration but in strict compliance of the reservation policy laid down by the rules.

He further argued that before the Tribunal the 1st respondent sought to argue as if there were 2 vacancies in open category (local and non-local candidates) in Roster Points 125 and 133 and after filling the Roster Point No.125 with Malothu Praveen, who secured 44 marks, the

next vacancy in Roster Point No.133 should have been filled up with the 1st respondent as he is the next meritorious candidate. He would vehemently argue that there is no basis for 1st respondent to contend that 2 posts are meant for open category (local and non-local candidates). Unfortunately, the Tribunal also held as if 2 posts were meant for open category which is not correct. He would reiterate that on strict compliance of the reservation policy and Presidential Order, out of 5 posts meant for ST (General), only one post could be earmarked for ST (General) open category (local and non-local) and remaining 4 posts were meant for local candidates. He thus prayed to allow the writ petition and set aside the order of the Tribunal.

9) Per contra, learned counsel for 1st respondent would contend that out of total 126 posts of School Assistants (English) 25 posts are meant for open category i.e, local and non-local and out of those 25 posts, 2 posts are meant for ST (General) at Roster Point Nos.125 and 133. Since Roster Point No.125 was filled up with ST (local) candidate i.e, Malothu Praveen, the next vacancy at Roster Point No.133 has to be filled up with 1st respondent, who is next meritorious candidate. However, the petitioner authorities have filled up Roster Point No.133 with 2nd respondent in preference to the 1st respondent on the sole ground that he is a local candidate, though he is less meritorious than the 1st respondent. The Tribunal having found this illegality, rightly set aside the recruitment of 2nd respondent and ordered to fill up the Roster Point No.133 with the 1st respondent. He thus prayed to dismiss the writ petition.

10) The point for determination is:

“Whether the impugned order passed by the Tribunal is factually and legally sustainable?”

11) **POINT:** The prime difference in the contention of writ petitioners and 1st respondent is that while the writ petitioners would contend that notification was issued for filling up 125 vacancies, of which, posts earmarked for ST (General) are 5 i.e, one for open category (locals and non-locals) and 4 for local candidates, the 1st respondent would contend, the notification was issued for 126 posts, of which, the posts earmarked for open category (local and non-local) are ‘2’. This Court, therefore, directed the petitioners to produce the copy of notification and the same was accordingly produced.

12) A perusal of the Annexure-I(A) of the Notification for Recruitment of Teachers - 2008 would show that 125 posts of School Assistants were notified to be filled in Karimnagar district. Thus the total posts notified are 125 but not 126 as contended by the 1st respondent. Of these 125 posts, 7 are backlog vacancies and 118 are current vacancies. It is to be noted that of the 7 backlog vacancies, only 2 are ST (General) that were filled. Be that it may, Note – I and II of the said Notification speaks of the reservation policy adopted by the petitioners in filling up the vacancies. Note – I and II reads thus:

“I. The rule of reservation to local candidates is applicable.

II. The rule of special representation in the matter of appointment of candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, Physically Challenged, Ex-

service Men and women is applicable as per Rules and rule 22 of Andhra Pradesh State and Subordinate Service Rules as amended from time to time.”

Therefore, it has now to be seen when the rule of reservation as mentioned supra is applied, how many vacancies out of 118, are earmarked for ST (General). Admittedly, for the 118 current vacancies, the Roster Point commences from 112 and ends at 229. In between 112 and 229, as per Rule 22 of the State & Subordinate Service Rules, Roster Points 25, 33, 75, 83 and 25 of next cycle relate to ST (General).

Therefore, it is clear that 5 posts are earmarked for ST (General).

For these 5 posts, when Presidential Order, 1975 is applied, first 20% shall be filled up by open category (i.e, local and non-local) and remaining 80% shall be filled up by local candidates. Thus in essence, out of 5 posts earmarked for ST (General), the first post is to be filled up in open category ST-G (local and non-local) and remaining 4 posts shall be filled up by local candidates. Hence the contention of the 1st respondent and finding of the Tribunal that 2 posts at Roster Point Nos.125 and 133 are available in the open category is wrong. Running the risk of repetition, it must be mentioned that out of 5 vacancies for ST (General) – one vacancy is meant for open category and remaining four vacancies for the local candidates.

13) Then, Malothu Praveen though a local candidate, since stood more meritorious than others, he was accommodated at Roster Point No.125 meant for open category. The remaining 4 posts are obviously meant for local candidates. Therefore, the 2nd respondent and 3 others being the

local candidates were accommodated in those posts. It is true that the 2nd respondent got lesser marks than the 1st respondent. However, 1st respondent admittedly being a non-local candidate does not fit into any of the 4 remaining vacancies which are meant for local candidates. Therefore, we find force in the contention of the writ petitioners that 1st respondent was not found selected. The Tribunal unfortunately has not properly appreciated the argument raised by the writ petitioners herein and wrongly held as if there were 2 vacancies for open category and after filling Malothu Praveen in one vacancy at Roster Point No.125, the remaining post has to be filled up with the 1st respondent at Roster Point No.133. As already noted supra, there is no basis to hold that 2 posts are available for open category (local and non-local). Therefore, the order of the Tribunal is unsustainable.

14) In the result, this Writ Petition is allowed by setting aside the order dated 27.12.2010 passed by the Tribunal in O.A.No.2779 of 2010. No costs.

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

SURESH KUMAR KAIT, J

U.DURGA PRASAD RAO, J

Date: 07.09.2018
Murthy/scs.