

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.18426 OF 2018

DATED :11.07.2018

Between :

Thati Jampaiah, S/o.Thati Sammaiah,
Aged 27 yrs, Not-employed,
R/o.1-14/1, Thirlapuram Village,
Kondaigudem Post, Manuguru Mandal,
Bhadradri Kothagudem District.

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Petitioner

And

The District Medical and Health Officer,
Bhadradri Kothagudem District,
Kothagudem & others.

...

Respondents



This court made the following :

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ORDER :

Pursuant to the recruitment notification to fill up the posts of Staff Nurses in the agency area by the local scheduled tribes of that agency area, petitioner participated in the process of selection and was successful in the selections conducted. However, in the final selection list, petitioner was pushed down and, therefore, was not appointed in respect of the vacancies notified and for vacancies subsequently identified. This writ petition is filed praying for declaration that reducing merit of the petitioner by following wrong criteria in calculating the percentage of marks in recruitment as illegal and consequently to declare that petitioner is entitled for appointment to the post of Staff Nurse.

2. Heard learned counsel for the petitioner and learned Assistant Government Pleader for Services-II (TG).

3. According to learned counsel for the petitioner, petitioner prosecuted B.Sc. Nursing. The total marks for the entire course is 2800 and, therefore, the eligibility has to be determined basing on the marks secured by the petitioner in B.Sc Nursing vis-à-vis the total marks for the course. Whereas, while calculating the percentage, the respondents have wrongly treated the total marks for the Nursing post as 2900 and thereby reduced percentage secured by the petitioner and consequently petitioner is shown at the lower place in the merit list. But for this mistake only, petitioner could not be selected.

4. Based on the averments made in the counter affidavit, learned Assistant Government Pleader, would submit that after finalizing the selections, merit list was forwarded to the District Collector. The District Collector by his order, dated 06.09.2017, displayed the merit list on Notice board as well as in District Website and granted five days time to give objections and after considering the objections the final merit list was published and counseling was conducted on 13.09.2017. In the merit list published, petitioner is shown at Sl.No.41.

5. Learned Assistant Government Pleader would submit that petitioner failed to respond to the notice and no objections were filed. As the objections were not received, merit list was finalized, counseling was held, 15 vacancies of Staff Nursing were filled up, as per the merit determined. This entire exercise was completed by the middle of September 2017. However, as some more vacancies are required to be filled up, from out of the very same merit list, 14 candidates were chosen as per the order of merit, counseling was held on 28.02.2018. At the time of this counseling also, petitioner did not complain, and appointment orders were issued by 16.03.2018. After the appointment orders were issued, petitioner started filing complaints and thereafter instituted this writ petition.

6. Learned Assistant Government Pleader would, therefore, contend that petitioner is not entitled to claim appointment even assuming that wrong calculation was made in arriving at percentage of marks secured and as all the vacancies are filled up, petitioner cannot be appointed at this stage.

7. As per the recruitment process undertaken by the respondents, the selection is based on performance in the qualifying examination to the extent of 90 marks and 10 marks are earmarked for the age criteria. In the said manner while calculating percentage secured by the petitioner, the total marks for the course was treated as 2900. As petitioner secured 1846 marks in B.Sc Nursing for the 90% of marks secured, it was determined as 57.29 and she was awarded 3.5 marks under age criteria and total marks arrived at is 60.79. However, according to learned counsel for the petitioner, if total marks are treated as 2800 against 90% marks petitioner would have secured 63.9 marks and after adding weightage i.e., 3.5 to the age, the total marks secured would be 67.4 and petitioner would have been within the merit to secure any one of the 29 vacancies filled up.

8. The correctness of marks memo is not in dispute and the total marks prescribed are only 2800. Therefore, the percentage should have been arrived at by treating total as 2800 as criteria and erroneously wrong percentage was determined. However, it cannot be said that the respondents deliberately computed wrong percentage. Furthermore, as specifically averred in the counter, which is not denied, the marks list was displayed on the website and objections were called. Petitioner ought to have availed this facility and raised objection at the earliest point of time. Petitioner not only allowed the first phase of appointments to be completed but kept quiet even when second phase appointments were taken up and started agitating only after completion of the appointments and filling up all the vacancies.

9. Furthermore, none of the selected candidates are arrayed as respondents. No relief can be granted to the petitioner without upsetting the selections already made, more so, when learned Assistant Government Pleader, asserts that no vacancies are available. Thus, the relief sought in the writ petition cannot be granted at this distance of time.

10. Having regard to the fact that objections were called and opportunity was given to the petitioner at the earliest point of time, petitioner failed to avail the opportunity and all the vacancies are filled up and selected candidates are not arrayed as respondents the writ petition merits no consideration and is liable to be dismissed.

11. Accordingly, the Writ Petition is dismissed. Pending miscellaneous petitions, if any, shall stand closed.

11th July, 2018
Rds

P.NAVEEN RAO,J

