

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOS.20232 & 20273 OF 2018

Date: 06.09.2018

WP No.20232 of 2018:

Between :

K.Archana, d/o. K.Srinivasa Murthy,
Aged 32 years, occu: unemployed,
r/o.H.No.2-92/1, Manajipet village,
Ghanpur Mandal, Wanaparthy district
and others.

....Petitioners

And

State of Telangana, rep.through Prl.Secretary,
Social Welfare Department, Secretariat,
Hyderabad and others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NOs.20232 & 20273 OF 2018

COMMON ORDER:

In these two writ petitions, petitioners are aggrieved by the action of Public Service Commission in not following the procedure envisaged in Rule 6(A) of the Telangana State Public Service Commission Rules of Procedure, preparing defective final select list, depriving the opportunity to the petitioners to include their names in the final select list for appointment to the post of Trained Graduate Teacher (TGT) in Science subject in the Residential Educational Institutions Societies.

2. The Telangana State Public Service Commission (TSPSC) issued recruitment notification No.14/2017 dated 14.04.2017 to conduct selections for recruitment to the posts of TGT in 1) Telangana Residential Educational Institutions Society; 2) Telangana Social Welfare Residential Educational Institutions Society; 3) Telangana Tribal Welfare Educational Institutions Society; 4) Mahatma Jothiba Phule Telangana Backward Classes Welfare Residential Educational Institutions Society and 5) Telangana Minorities Residential Educational Institutions Societies. In all, 4362 vacancies are notified. The vacancies are in various disciplines, which include languages, Mathematics, physical Science, Biological Science, Science and Social studies. In Science discipline 284 vacancies were notified. Petitioners in these writ petitions competed to the post of TGT (Science). Written examination was held on 30.08.2017. Based on the performance in the examination, candidates were short listed in the ratio 1:2 for verification of their eligibility and verification was conducted

between 09.03.2018 to 30.06.2018. Petitioners were also included in the short listed candidates for verification of eligibility. On 07.06.2018, PSC published the final selection list for the post of TGT (Science). According to petitioners, their names are not shown in the final selection list. According to petitioners, several of the candidates now included in the final selection list for the post of TGT (Science) were already selected to the post of Mathematics, Physical Science and Biological Science and expressed their unwillingness to be included in the final selection list for the post of TGT (Science), whereas erroneously the very same names are reflected depriving the petitioners opportunity to be included in the final selection list. According to petitioners, there are at least 40 candidates, who have opted out of selection for the post of TGT (Science). If their names are excluded, petitioner could have been included in the said final selection list. Hence, these writ petitions.

3. This Court by order dated 02.07.2018 directed the respondent - societies not to issue appointment orders to the post of TGT (Science). Initially the order was limited to two weeks and later on extended from time to time. Aggrieved by the order of stay of appointments, selected candidates filed I.A.No.6 of 2018 to implead them as respondents 8 to 119 in W.P.No.20273 of 2018. Said implead petition was ordered on 30.07.2018. The impleaded respondents filed I.A.No.7 of 2018 praying to vacate the interim order.

4. Heard learned counsel for petitioners Sri S.Rahul Reddy, learned standing counsel for TSPSC Mr. D.Balakishan Rao, learned standing counsel for Residential Educational Institutions

Societies except the Minority Residential Educational Institutions Society and Mr. P.Giri Krishna for unofficial respondents.

5. According to learned counsel for petitioners, after the finalization of selection list, before the selection list is forwarded to the appointing authority, the PSC is required to ask the candidates included in the final select list for their willingness to be appointed to the post to which they are selected and after ascertaining their views on inclusion of their names in the selected list and if any of the candidates opted out of selection for inclusion in the final selected list, they should be deleted from the final selected list and in their places, the next meritorious candidates should be included and after drawing the merit list in the said manner only, the final merit list should be sent to the appointing authority. The selection procedure by the PSC is regulated by the TSPSC Rules of Procedure. In the cases on hand, according to learned counsel, respondent PSC did not observe the Rule 6(A) and the final select list drawn by the respondent to the post of TGT (Science) is illegal. He submits that respondents be mandated to follow the procedure envisaged by Rules of Procedure and to re-draw the merit list in accordance therewith.

6. While publishing selection list for the posts in Mathematics, Physical Science and Biological Science when consent was sought, many candidates have expressed their unwilling to be included in the select list for the Science discipline. He would submit, along with the writ petition and in the additional set of material papers, petitioners placed on record the letters given by the candidates, who were selected to Mathematics, Physical Science and Biological

Science disciplines opting out of selection for being included in the select list for Science discipline. In spite of such relinquishment already given by the candidates, their names are reflected in the final list. Learned counsel vividly demonstrated the names of persons who have relinquished in the said manner, position occupied by them in the merit list and also the position of petitioners vis-à-vis the candidates opted out and contended that petitioners would have been included in the final merit list if opted out candidates are excluded and Rules of Procedure was observed properly.

7. On written instructions furnished to the learned standing counsel, copy of which is placed on record, learned standing counsel would submit that PSC is observing Rule 6(A) and in terms thereof, options were called from the candidates who were selected for Mathematics, Physical Science and Biological Science disciplines and accordingly select lists were finalized to those three disciplines. He admits that many candidates have relinquished their selection to Science discipline. He would submit that by the time the relinquishment option was given to the candidates selected to those disciplines, the selection was not finalized to Science discipline and was not part of the consent sought. Thus, while finalizing selection list for Science discipline, those options were not taken into consideration as it would be contrary to the requirement of Rule 6(A) and their names continued to be reflected as per the merit secured by them in Science discipline. He would further submit that selection list was already sent to the appointing authority and, therefore, at this stage it is not possible to re-draw the selection list.

8. Sri Giri Krishna would submit that unofficial respondents were only selected to the post of TGT (Science) and they were not selected to any other posts and they did not express unwillingness to include their names in the select list. All of them have secured more merit than the petitioners, whereas grievance of petitioners is limited to not excluding the names of candidates who have already relinquished and by adding their names. According to learned counsel, admittedly, as petitioners secured less merit than the unofficial respondents, there is no justification to stall the entire appointment process including the appointment of unofficial respondents and due to interim order granted by this Court, grave prejudice is caused to the meritorious selected candidates.

9. Learned standing counsel representing the Residential Educational Institutions Societies, except Minority Residential Educational Institutions society, would submit that as per the merit list furnished by the PSC, they have taken consequential steps. He emphasized that there is an urgent need to fill up all the posts and on account of stay granted by this Court, the teaching curriculum is affected, and students are suffering.

10. 284 vacancies notified for the post of TGT (Science) include vacancies reserved to various social groups, in favour of disabled persons and Ex-servicemen. Out of 284 vacancies notified, as per orders passed by this Court in separate writ petitions, two posts are kept vacant and 18 vacancies are left unfilled due to non-availability of candidates belonging to various reservation categories. Thus, it leaves 262 slots to be filled up in the final merit list. As fairly submitted by learned standing counsel for

TSPSC, several candidates, who were selected to TGT (Science), have opted out as they were selected to other disciplines. However, he sought to justify the action of respondent PSC not deleting their names on the ground that by the time willingness was called, merit list for TGT (Science) was not finalized and, therefore, their names are not excluded. Material on record would disclose that insofar as Mathematics, Physical Science and Biological Science disciplines are concerned, after publication of final selection list, PSC has called for willingness of candidates as to whether they intend to relinquish selection to any other post. It appears, taking note of relinquishments given by some of the candidates, their names were excluded in the final selection list of those three disciplines, but the same procedure was not followed for Science discipline.

11. The recruitment procedure is regulated by the Rules of Procedure. The system of maintenance of wait list is dispensed with and PSC is required to prepare the merit list to the extent of vacancies notified only. For any reason, selected candidates do not join in the post offered to him or after joining the post he leaves the employment, the said vacancies go to the next recruitment. However, fact remains that many times candidates do not join the post to which they are selected or though they join the post, but leave the employment immediately thereafter. This can be for various reasons, such as, candidate may have been selected to a better post or post of his choice or after joining he may have been selected some other employment. To obviate this contingency and to avoid candidate in the select list not joining the post after his selection, PSC is required to follow procedure prescribed by Rule 6(A).

12. According to Rule 6(A), candidate whose name is included in the selection list, on enquiry by the Commission may relinquish his claim for appointment. If the candidate relinquishes, the Commission can remove the name of such candidate and select another candidate. Thereafter, the PSC has to draw the select list and forward to employer. However, PSC is also required to inform the candidate about removal of his name and once candidate relinquishes and same is informed, such candidate loses his right for appointment in future with reference to the said selection. This procedure was not followed by the PSC and without asking for willingness of the candidates, the selected candidate names were included in the final list and forwarded to the appointing authority. Apparently, many of them expressed to opt out of selection to this post.

13. Similar issue has come for consideration before Andhra Pradesh Administrative Tribunal. The action of PSC in not following the procedure prescribed by Rule 7, as it stood, was challenged before the Andhra Pradesh Administrative Tribunal in O.A.No.239 of 2007 and batch. The Tribunal found fault with the action of PSC in not following the procedure as required by Rule 7, held that final select list of the posts concerned sent to the Government was not just and proper as Rule 7 was not followed and directed the respondents to fill up the unfilled vacancies from out of the leftover merit list. This was challenged before the High Court in W.P.No.17401 of 2007. The Division Bench of this Court on construing Rule 6 prior to amendment and after amendment and Rule 7, held that Rules 6 and 7 have to be independently

considered; that the procedure contemplated by Rule 7, which is mandatory, is a step to be taken at the threshold of the selection list after conducting an enquiry as contemplated there under and then only, the provision of Rule 6 come into operation. In the said case, Division Bench also noticed that no enquiry as contemplated by Rule 7 was followed and upheld the decision of Andhra Pradesh Administrative Tribunal. Civil Appeal No.4380 of 2009 preferred by PSC was dismissed by the Supreme Court vide order dated 14.01.2016.

14. Subsequently, the procedure Rules were amended, and Rule 6(A) is now incorporated. Rule 6(A) reads as under:

“Rule 6(A): Notwithstanding anything contained in adhoc Rule issued in G.O.Ms.No.544, G.A.(Ser.A) Department, dated 04.12.1998, any candidate whose name has been included in a selection list in a direct recruitment prepared by the Commission, on enquiry by the Commission, may relinquish his claim for appointment in writing in the proforma prescribed by the Commission. The Commission shall thereupon remove the name of such candidates from the selection list and select any other candidate according to rules. The candidate whose name has been so removed from the selection list shall be informed of such removal by the Commission and shall have no right for the said appointment in future with reference to the said selection:

Provided this provision is applicable only when a single category of posts is notified in a notification and not applicable to a notification where multiple categories of posts are notified. However, it shall be ensured that the list shall not be operated for any additional vacancies indented by the Government Departments. The selection list for the purpose of selecting candidates in place of relinquished candidate/candidates shall be operated only till the next notification is issued or for a period of one year, whichever is earlier”.

15. Provision in Rule 6(A) is parametria same as in earlier Rule 7. Only change brought out is in the form of proviso. As per proviso appended to Rule 6(A), the exercise required by main provision is confined to selections when single category post is notified. In the cases on hand, selection was only to single category i.e., TGT (Science). Thus, Rule 6(A) is applicable.

16. Procedure required as per Rule 6(A) is mandatory and if merit list is drawn without complying Rule 6(A), the same is not valid in law. In the cases on hand also, admittedly, Rule 6(A) procedure was not followed prior to drawing the merit list and therefore, the selection list drawn by PSC to the post of TGT (Science) is not valid.

17. Though learned counsel for petitioners sought to contend that PSC ought not to have included the names of candidates who have already expressed unwilling for inclusion of their names in the merit list for the post of TGT (Science), going by the mandate of Rule 6(A), the contention of learned counsel cannot be accepted. Such claim is contrary to mandate of Rule 6(A). Based on earlier view expressed by them, their names cannot be excluded straightaway. As required by Rule 6(A), only after the final merit list is drawn, the willingness of candidates should be enquired to by the PSC and if the candidates expressed their unwillingness, their names should be excluded from the final merit list and to that extent, add the name of next meritorious candidates, draw the select list and forward to the appointing authority. By the time willingness was called, the selections for the post of TGT (Science) were not finalized and, therefore, at that stage question of

relinquishment does not arise. As per the merit secured by the candidate, he is entitled to be included in the merit list. It is for that candidate to choose the post offered to him or to relinquish. The relinquishment is voluntary, and nobody can force a candidate to relinquish even if he is selected to more than one post. Provision in Rule 6(A) of the Rules of Procedure are intended only to obviate the contingency of any post remained unfilled, more particularly when selection is held simultaneously to various posts, candidates are eligible to compete to various posts so notified and their names are included in more than one merit list, and if the option is called, the candidate may opt out any one of those posts and, therefore, the other candidates can be included in the merit list. By following this procedure, the PSC only ensures that entire merit list sent to various categories of posts do not contain the same name in more than one post. It would ensure reducing the possibility of non-joining in posts and ensures that next meritorious candidates get opportunity for being appointed. Thus, the scheme has larger public interest element.

18. Having regard to the fact in this case, the Writ Petitions are disposed of with the following directions:

i) The TSPSC is directed to enquire from the candidates included in the select list in terms of Rule 6(A) of the Rules of Procedure as to whether they are willing to relinquish for appointment to the post of TGT (Science). If any of the candidates included in the merit list exercise option to relinquish their right, delete those names, inform them accordingly and re-draw the select list by adding next meritorious candidates and forward the select list to the appointing authority. The entire exercise be

completed as early as possible but not later than six weeks from the date of receipt of copy of this order. However, from this process, respondents 8 to 119 be excluded as they have expressed clearly to take the appointment as TGT (Science);

ii) As respondents 8 to 119 have stated that they were not selected to any other posts, are willing to take up the post of TGT (Science) and are more meritorious than petitioners, their appointment need not be stalled. The TSPSC shall authorize the appointing authorities to take consequential steps to appoint respondents 8 to 119;

iii) It is made clear that merely because some of them join early in view of above directions cannot claim seniority based on date of joining and *inter se* seniority of selected candidates depends on the merit secured by them in the selections conducted by PSC irrespective of date of joining.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE P NAVEEN RAO

Date: 06.09.2018
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