

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

WRIT APPEAL NOS.899 AND 912 OF 2018

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

SC & ST Teachers Association of Jawaharlal Nehru Technological University, Kakinada, the appellant in these two appeals, is aggrieved by the dismissal of W.P.Nos.2366 and 2374 of 2018 filed by it, *vide* common order dated 14.03.2018. W.A.No.899 of 2018 arises out of the common order in so far as it pertains to W.P.No.2366 of 2018 while W.A.No.912 of 2018 relates to the dismissal of W.P.No.2374 of 2018. The prayer in W.P.No.2366 of 2018 was to declare the Notification dated 06.01.2018 issued by the Andhra University, Visakhapatnam, Andhra Pradesh, inviting applications for filling up the posts of Assistant Professors as illegal on the ground that it failed to implement the roster scheme in terms of G.O.Ms.No.117 dated 05.03.1983. The prayer in W.P.No.2374 of 2018 was to declare the Notification dated 05.01.2018 issued by the Jawaharlal Nehru Technological University, Kakinada, inviting applications for filling up the posts of Assistant Professors with 6% reservation instead of 7.5%, rounded off to 8%, in terms of G.O.Ms.No.117 dated 05.03.1983, as illegal. Consequential directions were sought in both the writ petitions to the University concerned to issue a fresh Notification duly implementing the roster scheme in terms of G.O.Ms.No.117 dated 05.03.1983.

By the common order under appeal, a learned Judge of this Court opined that there was no illegality or perversity in the procedure adopted by the Universities in applying the principle of reservation at 6% for Scheduled Tribes in terms of Rule 22 of the State and Subordinate Service Rules, 1996 (*for brevity*, 'the Rules of 1996'). Aggrieved thereby, the SC & ST Teachers

Association of Jawaharlal Nehru Technological University, Kakinada, is in appeal.

Heard Ms.Kalyani Ghayal, learned counsel representing Mr.S.Sri Ram, learned counsel for the appellant-association, Mr.K.Jyothi Prasad, learned standing counsel for Andhra University, and Mr.Rajasekhar Rao, learned standing counsel for Jawaharlal Nehru Technological University, Kakinada.

The issue turns upon G.O.Ms.No.117, Education (C) Department, dated 05.03.1983, issued by the Government of Andhra Pradesh. Therein, the Government referred to the letter dated 23.08.1982 of the Secretary, University Grants Commission, in the context of population percentages of Scheduled Castes and Scheduled Tribes; the decision of the Government of India in the Ministry of Education that reservation percentages for admission and appointments should be 15% for Scheduled Castes and 7.5% for Scheduled Tribes hereafter; and the request of the University Grants Commission to the State Government to take steps to make similar reservations in the matter of appointments to the posts of Lecturers in Universities and also in filling up non-teaching posts. The Government accordingly decided to increase the reservation percentages for Scheduled Castes from 14% to 15% and Scheduled Tribes from 4% to 7.5% in appointments to teaching posts up to Readers level in the Universities and also for filling up non-teaching posts. The Government requested the Universities to take necessary action accordingly.

Cause for grievance in the writ petitions was that the Universities in question issued Notifications wherein the reservation for Scheduled Tribes was not maintained at 7.5% but was restricted to 6%. This reduced percentage is traceable to Rule 22(2)(a) of the Rules of 1996. Be it noted that the Rules of 1996 were framed in exercise of the power conferred by

the *proviso* to Article 309 of the Constitution. G.O.Ms.No.117 dated 05.03.1983, on the other hand, is an executive instruction issued by the State in exercise of power under Article 162 of the Constitution. Administrative or executive instructions issued by the State can supplement the Rules framed under the *proviso* to Article 309 of the Constitution but if there is a conflict between such instructions and the Rules, the Rules would invariably prevail. (See UNION OF INDIA V/ s. SOMASUNDARAM VISWANATH¹, PALURU RAMKRISHNAIAH V/ s. UNION OF INDIA², R.S.AJARA V/ s. STATE OF GUJARAT³, K.H.SIRAJ V/ s. HIGH COURT OF KERALA⁴, P.D.AGGARWAL V/ s. STATE OF U.P.⁵ and K.KUPPUSAMY V/ s. STATE OF T.N.⁶).

It is therefore clear that once the Rules of 1996 were framed, the executive instructions issued by the State under G.O.Ms.No.117 dated 05.03.1983 no longer held the field, being contrary to the statutory rules.

Ms.Kalyani Ghayal, learned counsel, would argue that even after the advent of the Rules of 1996, the Government of Andhra Pradesh continued to implement G.O.Ms.No.117 dated 05.03.1983. She would draw our attention to the letter dated 26.05.2006 addressed by the Director of Tribal Welfare, Tribal Welfare Department, Government of Andhra Pradesh, to the Registrar, Andhra University, Visakhapatnam, in relation to filling up of roster points for Scheduled Tribes in teaching posts, wherein reference was made to G.O.Ms.No.117 dated 05.03.1983.

Though we find it to be so, we are of the opinion that the same is of no consequence in the light of the settled legal position set out *supra*.

¹ (1989) 1 SCC 175

² (1989) 2 SCC 541

³ (1997) 3 SCC 641

⁴ (2006) 6 SCC 395

⁵ (1987) 3 SCC 622

⁶ (1998) 8 SCC 469

Unmindful of the same, even if the Government issues any communication to the contrary, it would not have the effect of placing the executive instructions in G.O.Ms.No.117 dated 05.03.1983 on a higher pedestal than the statutory Rules of 1996. There is no dispute that the Notifications issued by Andhra University, Visakhapatnam, and Jawaharlal Nehru Technological University, Kakinada, impugned in the writ petitions, are in conformity with Rule 22 of the Rules of 1996. That being so, no illegality could be imputed to these Notifications in so far as reservation for Scheduled Tribes was concerned. The common order under appeal holding to this effect therefore does not warrant interference.

The writ appeals are devoid of merit and are accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR, J

M.GANGA RAO, J

7th SEPTEMBER, 2018

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