

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

WRIT PETITION NO.8609 OF 2015

ORDER: (per SK,J)

The petitioner is the unsuccessful applicant in O.A.No.1837 of 2012 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. His prayer therein was to set aside the selection of the fourth respondent as an Assistant Motor Vehicle Inspector in Zone-IV and to select and appoint him to the said post with all consequential benefits. By order dated 04.09.2014, the Tribunal dismissed the O.A. Aggrieved thereby, the applicant filed the present writ petition.

Sri P.Suresh Reddy, learned senior counsel representing Sri D.Ramakrishna, learned counsel for the petitioner, would state that the matter is squarely covered by the decisions of this Court in THE DISTRICT EDUCATIONAL OFFICER & MEMBER CONVENOR, DISTRICT SELECTION COMMITTEE, NIZAMABAD V/ s. B.ANNAPURNA¹, GOVERNMENT OF ANDHRA PRADESH V/ s. MS.BHAGAM DORASANAMMA², MOHAMMED ASLAM V/ s. THE TELANGANA STATE POWER GENERATION CORPORATION³, and TELANGANA POWER GENERATION CORPORATION V/ s. K.ANJALIAH⁴.

The issue relates to the status of a vacancy when the candidate selected thereto does not even turn up for certificate verification. Consequently, the question that arises is whether such a vacancy can be

¹ W.P.NO.21306 OF 2015 DECIDED ON 04.09.2006

² 2013 SCC ONLINE AP 875= 2014 (1) ALD 88 (DB)

³ W.A.NO.1320 OF 2016 DECIDED ON 15.03.2017

⁴ W.A.NO.353 OF 2015 DECIDED ON 12.12.2017

treated as a non-joining vacancy whereby the next candidate in the merit list cannot aspire thereto in terms of the relevant rules.

In the case on hand, the fourth respondent secured 206 marks and therefore, stood over and above the petitioner-applicant who secured 182.5 marks. However, it is an admitted fact that the fourth respondent did not turn up for the certificate verification even before issuance of the appointment order. In such circumstances, the aforestated case law held to the effect that unless an appointment order is issued and the person selected for such appointment fails to join, such a vacancy cannot be treated as a non-joining vacancy. When the vacancy stood relinquished by the selectee even before the offer of appointment, as in the case on hand, the question of categorising such a vacancy as a non-joining vacancy would not arise. This aspect was made clear by the Supreme Court in *MUNJA PRAVEEN V/ s. STATE OF TELANGANA*⁵, wherein the view taken by a Division Bench of this Court in *MS.BHAGAM DORASANAMMA*² was approved and the Supreme Court observed that fallout vacancies due to relinquishment or non-joining of the selected candidates would only arise after issue of the letter of appointment and there can be no relinquishment and non-joining unless an appointment letter is issued.

It is an admitted fact that no such letter of appointment was offered to the fourth respondent and he relinquished his selection to the post by failing to present himself for certificate verification before the offer of appointment itself. This Court is further informed that the vacancy notified at that point of time remained unfilled and was not notified again owing to pending litigation. That being the situation, the right of the

⁵ (2017) 14 SCC 797

petitioner-applicant to be considered for the post, being the next meritorious candidate, cannot be denied.

The writ petition is accordingly allowed setting aside the order dated 04.09.2014 passed by the Tribunal in O.A.No.1837 of 2012. The respondents shall forthwith consider the candidature of the petitioner-applicant for appointment to the post of Assistant Motor Vehicle Inspector against BC-E category in Zone-IV, if he is otherwise eligible.

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

Date:03.12.2018

PGS



SANJAY KUMAR,J

M.GANGA RAO,J