

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.24311 OF 2017

ORDER:

Heard Mr.Surender Rao, learned senior counsel, for petitioner and Mr.Balakishan Rao, standing counsel for 2nd respondent.

The writ petition examines the quotation whether "By perseverance the snail reached the ark" of Charles H. Spurgeon and the opportunity of public employment comes in disguise in the form of misfortune, litigation and temporary defeat. The petitioner an un-employee in search of public employment applied for Group-1 service and the saga for eight years from the time she applied for Group-I is referred to herein.

The petitioner prays for Mandamus declaring the action of 2nd respondent in rejecting the petitioner's candidature for Group-1 services for interview as illegal, arbitrary and unconstitutional. The petitioner prays for a further declaration that the petitioner is entitled to be subjected to further process of selection and declared that the petitioner is entitled for appointment for one of the posts in Group-1 services based on her merit.

On 21.07.2017 in I.A. No. 1 of 2017 (WPMP No.30095/2017), this Court granted interim direction directing the respondents to allow petitioner for further process viz. personality test of selection in Group-1 services. The petitioner, it is stated by the learned counsel appearing for the parties, was interviewed for the post of Group-1 services, however, the result of her merit is not declared as per the conditional order dated 21.07.2017.

The consideration of writ prayer centres round whether the petitioner is entitled for the other reliefs i.e. declaration of her result and subject to securing merit awarding further relief.

The circumstances leading to filing of the writ petition are chronologically adverted to before referring to the averments made by the parties and the respective legal grounds raised by them.

On 30.06.2011, the 2nd respondent (APPSC then) issued Notification No.15/2011 for filling up backlog vacancies in 6 categories of posts. On 28.11.2011, the 2nd respondent issued Notification No.18/2011 for filling up general vacancies in 19 categories of posts in Group-1 services. On 20.12.2011, the petitioner applied online by furnishing details to the following columns as follows:

1	Reference Id:	516508385207081979
	Name	RAJANI PONUGUPATI
17	Employment status:	Un-Employee
	Length of service in A.P. State Govt	0

Declaration:

I hereby declare that all the entries/statements made in this application are true, complete and correct to the best of my knowledge and belief. In the event of any information being found false or incorrect or ineligibility being detected before or after the examination, the commission can take action against me as per rule in case it is detected that I have misled APPSC on any issue then I will be solely responsible for all penal consequences thereof.”

Sd/-

RAJANI PONUGUGUPATI”

The petitioner was assigned Hall Ticket No.91701673. The petitioner appeared for screening test held on 27.05.2012 and on 13.06.2012, the petitioner was declared successful in screening test. Between 18.09.2012 and 29.09.2012, the main examinations were held and the petitioner has got qualifying marks for declaring her as successful candidate. The petitioner was interviewed in the interviews held between 28.01.2013 and 23.02.2013. The selection process was challenged by filing O.A. in Andhra Pradesh Administrative Tribunal and on 04.01.2013, the Andhra Pradesh Administrative Tribunal, directed 2nd respondent to constitute expert committee consisting of more than two experts to decide the correct answer for question Nos.4, 43, 61 and 130 of the 'D' series and corresponding question numbers in A, B and C series. In WPMP No.2907 of 2013 in WP No.2392 of 2013, this Court allowed the selection process to go, however, restricted the 2nd respondent from issuing appointment orders till the expert committee considers correctness of questions referred to above and a final decision is taken by the 2nd respondent. On 26.07.2013, this Court called for report from UPSC on the correctness of questions referred to above. The decision was challenged in Special Leave Petition and on 07.10.2013, the Hon'ble Supreme Court while disposing of SLP-Civil Appeal Nos.9140, 9142 and 9143/2013 directed deletion of questions referred to above. The Apex Court through order dated 25.02.2015, dismissed the curative petition. In accordance with the final verdict after disposal of W.P. No.2392 of 2013 and batch, the 2nd respondent in the month of September, 2016 calling upon the candidates who were successful in the screening test held on

13.06.2012 to appear for the main examination held between 14.09.2016 and 24.09.2016. The petitioner, since was eligible as per the orders of the Supreme Court appeared for the re-examination held by 2nd respondent with Hall Ticket No.2011210141. On 01.06.2017, the petitioner was declared eligible for interview and was directed to attend before the Deputy Secretary of 2nd respondent for verification of certificates of short listed candidates. On 19.07.2017, the 2nd respondent published the details of hall ticket numbers of candidates admitted for personality assessment for the interviews scheduled from 24.07.2017 and also the candidates rejected for personality test. The petitioner was not included in selected list, the reasons for rejection are that the candidature of the candidates who attend for verification of the certificates failed to submit required certificates or who have not paid requisite fees while submitting the applications. The Hall Ticket No.2011210141 of petitioner is included in the list of rejected candidates. The parties do not dispute that the candidature of petitioner was rejected under the category i.e. who have not paid requisite fee while submitting the application i.e. paid Rs.100/- by declaring as un-employee instead of Rs.220/-. The petitioner in the instant writ petition challenges the order rejecting the candidatures of petitioner for personality test and declaring her result, as illegal, arbitrary and unconstitutional.

On 20th December, 2011, the petitioner uploaded the application for Group-I selection and Serial No.17 viz. on employment status as un-employee and length of service in A.P. State Government "Zero". The notification provides for payment of

total fee of Rs.100/-by un-employee. The candidate if is an employee, the fee payable by such applicant is Rs.220/-.

The case of petitioner is that the petitioner was appointed as apprentice through proceedings Rc.No.1475/B2/DSC/08-25 dated 16.10.2009 and the appointment order reads thus:

“Serial No.1: that he/she would remain apprentice for a period of two (2) years as per Rule 18 in G.O. 1st read above and he/she will be paid remuneration as per the provisions of in G.O.Ms.No.81, Education, (SE-Ser.III) Department dated 13.06.2008 during the period of apprenticeship as per the terms and conditions laid down in G.O.Ms.No.112 Secondary Education (Genl-II) Department dated 06.10.2009.”

Therefore, she claims that on the date the application was uploaded i.e. 20th December,2011 she was working as apprentice, therefore, she has shown her status as un-employee and paid Rs.100/- along with the application. After six years from 20.12.2011 through provisional list of candidates declared on 01.06.2017, the petitioner was called upon to appear for certificate verification before the 2nd respondent and the petitioner has given the certificates on 15.06.2017 for verification by informing the contemporaneous details on the date of verification of original certificates. According to petitioner, when she uploaded the application on 20.12.2011 she was an apprentice and the Government orders specifically treat her service as apprentice till the petitioner is appointed as School Assistant. The services of petitioner as teacher were regularized through proceedings dated 10.01.2012 and the operative portion reads thus:

“Adverting to the subject cited above Smt.P.RAJANISA, (Maths), is appointed as apprentice

teacher in DSC 2008 as per Ref.No.1 cited, and she has resumed to her duties vide Ref.No.2 cited. She has completed her (2) years apprentice period with availing EOL from 20.01.2010 to 19.03.2010 (59 days) and 21.09.2010 to 30.09.2010 (10days) she has completed two years of apprentice period successfully on 26.12.2011.

In terms of G.O.Ms.No.161 (Edn (Ser-VI) Dt:06.12.2008 cited above she is hereby absorbed in to regular time scale as shown in annexure. “

Therefore when the petitioner was called upon to attend for certificates verification, the petitioner declared as an employee and therefore there is no suppression when the application as uploaded on 20th December, 2011 and when the petitioner furnished verification certificate dated 15.06.2017. Therefore, the rejection of petitioner's candidature for personality test on the ground that there is suppression of material facts viz., on 20.12.2011 the petitioner was employed but declared as un-employee, is arbitrary, illegal and unconstitutional. She prays for setting aside the rejection order and the personality test of petitioner, since is completed prays for declaration of result and consideration of her case on merit.

2nd respondent filed counter affidavit and does not dispute dates and events referred to above. The 1st objection raised by 2nd respondent is that the petitioner since was an employee could not have claimed fee exemption of Rs.120/-. The 2nd respondent admits the rejection of petitioner's candidature for not paying the difference of fee payable between un-employee and employee i.e. Rs.100/- and Rs.220/- respectively. According to 2nd respondent, the petitioner was receiving consolidated remuneration of Rs.5,500/-

per month as School Assistant and therefore, could not be treated as un-employee. The 2nd respondent refers to following conditions in the notification and contends that the case on hand suffers from *suppressio veri, suggestio*.

1. THE APPLICANTS ARE REQUIRED TO GO THROUGH THE USER GUIDE AND DECIDE THEMSELVES AS TO THEIR ELIGIBILITY FOR THIS RECRUITMENT CAREFULLY BEFORE APPLYING AND ENTER THE PARTICULARS COMPLETELY ONLINE ALL CANDIDATES HAVE TO PAY RS.100/- (RUPEES ONE HUNDRED ONLY) TOWARDS APPLICATION PROCESSING FEE AND ALL THOSE WHO ARE NOT EXEMPTED FROM PAYMENT OF FEE HAVE ALSO TO PAY RS.120/-(RUPEES ONE HUNDRED AND TWENTY ONLY) TOWARDS EXAMINATION FEE.

xxx

6. The persons already in Government Service/Autonomous bodies/Government aided institutions etc., whether in permanent or temporary capacity or as work charged employees are however required to inform in writing, their Head of Office/Department that they have applied for this recruitment.

xxx

3. INCOMPLETE/INCORRECT APPLICATION FORM WILL BE SUMMARILY REJECTED. THE INFORMATION IF ANY FURNISHED BY THE CANDIDATE SUBSEQUENTLY WILL NOT BE ENTERTAINED BY THE COMMISSION UNDER ANY CIRCUMSTANCES, APPLICANTS SHOULD BE CAREFUL IN FILLING UP OF THE APPLICATION FORM AND SUBMISSION. IF ANY LAPSE IS DETECTED DURING THE SCRUTINY, THE CANDIDATURE WILL BE REJECTED EVEN THOUGH HE/SHE COMES THROUGH THE FINAL STAGE OF RECRUITMENT PROCESS OR EVENT AT A LATER STAGE.”

Therefore, the 2nd respondent contends that the declaration of petitioner as un-employee and paying Rs.100/- against Rs.120/- result in rejection of her candidature for further verification. According to 2nd respondent, the petitioner being an apprentice amounts to employment.

Mr. Surender Rao contends that the rejection of petitioner's candidature for personality test and declaration of result is vitiated by the arbitrariness, lack of application of mind and violative of Articles 14 and 16 of the Constitution of India. He contends that the 2nd respondent misunderstood on what constitutes suppression of material fact and whether the disclosure of undisputed details either on 20.12.2011 and/or on 15.06.2017 could be treated as suppression of material facts? According to him, the petitioner was appointed as School Assistant through proceedings dated 16.10.2009 as an apprentice for two years and the services of petitioner as School Assistant were regularised through proceedings dated 10.01.2012 i.e. after the petitioner has uploaded the application. Therefore, the petitioner cannot and could not have been expected to show her status on 20th December, 2011 as an employee. contrary to Government Orders under which the petitioner was appointed as Assistant or according to the law laid down by this Court and the Apex Court on meaning and scope of apprentice. The petitioner was not treated as an employee working under an employer. According to him, there is no clarity in Column No.17. Serial No.17 insists upon furnishing length of service in Government and the petitioner has rightly disclosed that the

petitioner did not have service in Government. To bring home the point, that the petitioner on 20th December, 2011 disclosed correct state of affairs, he relies on proceedings dated 16.10.2009 appointing the petitioner as School Assistant and also the regularisation order dated 10.01.2012 issued by the District Educational Officer and the petitioner has been treated as employee from 10.01.2012. The petitioner continued as School Assistant pursuant to regularization order dated 10.01.2012, when she was called for certificate verification and the factual position as on 15.06.2017 was stated by petitioner and the rejection of the candidature of petitioner on the ground of non-payment of Rs.120/- on 20.12.2011 or that petitioner suppressed details is unsustainable. As the interim direction is complied with he prays for a direction to consider declaring the result and the petitioner's case for appointment basing on the merit she has secured in the main exam and personality test. He further contends that the petitioner was called for personality test held between 28.01.2013 and 23.02.2013. The petitioner disclosed the very same details now she is disclosing and when 2nd respondent permitted the petitioner to appear for personality test held between 28.01.2013 and 23.02.2013 denying opportunity now when the same details are furnished, likewise not declaring the results are liable to be set aside and appropriate directions issued by this Court.

Mr. Balakishan Rao contends that through proceeding dated 16.10.2009 the petitioner was appointed as apprentice and the petitioner was paid consolidated amount of Rs.5,500/-. The petitioner should have disclosed her status as employee and paid

fee payable by an employee i.e. Rs.220/-. According to him, the petitioner suppressed her status as an employee rendered herself disqualified for personality test in spite of petitioner completing main examination. He relies on the conditions excerpted above from notification and contends that there is purpose and meaning for each one of the conditions in the case on hand. The non-disclosure of status of petitioner as employee amounts to breach of declaration given by petitioner. Therefore, no exception to the rejection of petitioner's application can be taken. He relies on the decision of the Apex Court in *A.P. Public Service Commission v. Koneti Venkateshwarlu & others* in Civil Appeal No.5335 of 2005 for the proposition that the suppression of material details entails rejection of candidatures at any stage of consideration. According to him, even though petitioner was appointed as apprentice, still the petitioner ought to be treated as employee for all purposes. He prays for dismissing the writ petition.

I have taken note of the submissions of learned counsel appearing for the parties, perused the record and on the analysis of all relevant circumstances, the following points arise for consideration:

Whether the petitioner suppressed material details in the application uploaded on 20.12.2011 and in verification certificates dated 15.06.2017 and whether the details disclosed amount to *suppressio veri, suggestio false*.

In the case on hand, the rival submissions do not present a dispute on facts. Both the sides refer to same facts, but conclude

differently. Therefore, in the final analysis this order considers which one of the conclusions is correct or right.

The case of petitioner is that first and foremost the appointment of petitioner as School Assistant was as apprentice. The petitioner relies on Rule 18 of Andhra Pradesh Direct Recruitment for the Posts of Teachers (Scheme of Selection) Rules, 2008. Rule 18 reads thus:

“Apprentice: Every selected candidate shall be initially appointed as an Apprentice teacher for a period of two years from the date of joining duty. He or she shall work under the general supervision of the Head Master/Head Mistress or Mandal Educational Officer/District Educational Officer as the case may be. During the period of apprenticeship he or she shall be paid a monthly stipend at the rate to be prescribed from time to time by the Government. On the satisfactory completion of period of Apprenticeship, he or she shall be appointed to a regular post with regular scale of pay. The contributory pension scheme shall be applicable to the teachers being appointed under these rules.”

The words ‘Apprentice’ and ‘Apprenticeship’ in P. Ramanatha Aiyar’s Advance Law Lexicon defines thus:

“Apprentice: A learner, one who is taken to learn a trade; a person, usually a minor, bound, in form of law, under a contract of apprenticeship, to a master to learn from him his art, trade, or business, and to serve him during his time of the apprenticeship.”

“Apprenticeship: The service or legal condition of an apprentice, the method or process of gaining knowledge of some trade, art, or profession from the instruction of a master; the term during which one is an apprentice.”

The Apex Court in *Ashok Kumar Mittal v. Ram Kumar Gupta*¹ held that in common parlance, an apprentice is a trainee not an employee. Even if he is given a stipend that does not mean that there is a relationship of master and servant between the firm and the apprentice. In *Chairman/M.D. Mahanadi Coalfields Limited v. Sadashib Behera*², the Apex Court held that the word 'apprentice' means a person who is going apprenticeship training in pursuance of a contract of apprenticeship.

It is contended for petitioner that the 2nd respondent by rejecting the petitioner's hall ticket has denied to petitioner the consideration of her candidature on its merits, thereby the actions are violative of Articles 14 and 16 of the Constitution of India. Much deliberation is not needed to apply the principle of law once a finding is recorded on the circumstances under which the issue falls for consideration. On the other hand, if the Court considers and accepts the contention of 2nd respondent then this Court would be accepting the rejection of petitioner's hall ticket as justifiable in law.

I have perused the circumstances leading to the decision of Hon'ble Supreme Court in *A.P. Public Service Commission v. Koneti Venkateshwarlu and others*. The decision is distinguishable as already noticed, in the case on hand, at no stage the petitioner has suppressed the material facts. When she applied online for recruitment of Group-1 services, the petitioner was apprentice though she was appointed as School Assistant and therefore, she declared her status as 'un-employee'.

¹ (2009) 2 SCC 656

² (2005) 2 SCC 389

This Court is bounded by the principle of law that a candidate seeking public employment is expected not to suppress details much less material facts. This Court under its judicial review can certainly examine whether the disclosure or non-disclosure in fact can be treated as suppression or not, and if so whether the details stated amount to suppression of material circumstance warranting rejection of the application of a candidate.

The petitioner was appointed as apprentice vide proceedings dated 16.10.2009, by the District Educational Officer and Member Secretary DSC-2008. The appointment as apprentice refers to G.O.Ms.No.161 Education (Ser.VI), Department. The preamble and short title of G.O.Ms.No.161 Education (Ser.VI) dated 06.12.2008 read thus:

“In exercise of the powers conferred by Article 309 of the Constitution of India read with Sub Section (3) and (4) of section 26, Sub-section (3) and (4) of Section 51 and Section 59 of The Andhra Pradesh Panchayat Samithi's and Zilla Praja Parishads Act, (Andhra Pradesh Act XXXV of 1959) and third proviso to section 74 of the Andhra Pradesh Municipalities Act, 1965 and in exercise of the powers conferred in Section 78 and Section 99 of Act 1 of 1982, the Governor of Andhra Pradesh hereby makes the following rules for Direct Recruitment to the posts of Teachers in the schools of Andhra Pradesh.

RULES

1. SHORT TITLE AND APPLICATION:

- 1) These rules may be called the Andhra Pradesh Direct Recruitment for the posts of Teachers (Scheme of Selection) Rules, 2008.”

The statutory rules define the nomenclature and nature of appointment. The petitioner accepted appointment made under these rules and working as apprentice, when the

petitioner uploaded the application. At the cost of repetition, let me excerpt the details given by petitioner on 20.12.2011.

1	Reference Id:	516508385207081979
	Name	RAJANI PONUGUPATI
17	Employment status:	Un-Employee
	Length of service in A.P. State Govt:	0

Declaration:

I hereby declare that all the entries/statements made in this application are true, complete and correct to the best of my knowledge and belief. In the event of any information being found false or incorrect or ineligibility being detected before or after the examination, the commission can take action against me as per rule in case it is detected that I have misled APPSC on any issue then I will be solely responsible for all penal consequences thereof."

Sd/-
RAJANI PONUGUGUPATI"

The petitioner on her, before the services are regularized could not have treated her status as employee and given her employment status accordingly. The petitioner exactly given the details according to the rules under which the petitioner was appointed apprentice. The petitioner had no choice on 20.12.2011 except to treat her working as apprentice. In law, as considered and held by the Supreme Court an apprentice is a trainee and not an employee. Let me examine the same circumstances from another perspective viz. assuming the petitioner stated her status as employee on 20.12.2011, then it could be said that the petitioner declared her employment status contrary to statutory Rules. Rule 18 of G.O.Ms. No.161 clearly sets out that on satisfactory completion of

apprenticeship he or she will be appointed to a regular post with regular scale of pay. Therefore, till a regularisation takes place the candidate is an apprentice. On 10.01.2012 the order of regularization was made and the operative portion reads thus:

“Adverting to the subject cited above Smt.P.RAJANISA, (Maths), is appointed as apprentice teacher in DSC 2008 as per Ref.No.1 cited, and she has resumed to her duties vide Ref.No.2 cited. She has completed her (2) years apprentice period with availing EOL from 20.01.2010 to 19.03.2010 (59 days) and 21.09.2010 to 30.09.2010 (10days) she has completed two years of apprentice period successfully on 26.12.2011.

In terms of G.O.Ms.No.161 (Edn (Ser-VI) Dt:06.12.2008 cited above she is hereby absorbed in to regular time scale as shown in annexure. “

On 01.06.2017 the petitioner was called upon to attend for certificate verification and on 15.06.2017 the petitioner stated thus:

“TELANGANA STATE PUBLIC SERVICE COMMISSION
HYDERABAD

VERIFICATION CERTIFICATE

This is to certify that Mr./Mrs. RAJANI PONUGUPATI S/o./D/o. KRISHNA RAO, TSPSC-ID_____attended for Verification of Certificates to the Recruitment of Group-1 Services, vide Notification Nos.15/11 & 18/11 and the required certificates in Original are verified. This Verification Certificate will be valid for his/her eligibility to the said Recruitment only conducted by the Telangana State Public Service Commission.

The following certificates are verified in original.

1.	Proof of Education Qualifications	tick
2.	Date of Birth Certificate (SSC Memo)	tick
3.	School Study Certificate	tick
4.	Certificate of Residence/Nativity	---

5.	Declaration by the Un-employed	---
6.	No Objection Certificate from Employer (if anywhere employed)	tick
7.	Community Certificate	---
8.	Non-Creamy Layer Certificate	---
9.	Differently abled Certificate (VH/HH/OH)	---
10.	Service Certificate	tick
11.	i) Other Certificates	---

Sd/-
Signature of the Candidate

Sd/-
Deputy Secretary"

From the above consideration, this Court is of the view that there is no suppression of a circumstance much less material fact by the petitioner. An act of suppression presupposes to gain something or avoid something. In the case on hand, the difference fee payable between employed and unemployed is Rs.220/- and Rs.100/- respectively.

Suppression of the truth is equivalent to suggestion of falsehood or suppressing the truth suggesting the falsity. There is no suppression, except informing what the Government/DEO treated the petitioner to be.

By keeping in view the rigor of statutory Rule 18 of Andhra Pradesh Direct Recruitment For the Posts of Teachers (Scheme of Selection) Rules, 2008 and the declaration of Apex Court on the meaning of apprentice, this Court is of the view that the petitioner cannot and could not have while uploading the application for Group-1 services declared that she is an employee. Further it is noteworthy to trace back the steps to happenings between 28.01.2013 and 23.02.2013, when the petitioner has disclosed the same details and was permitted to take personality test. The

petitioner by disclosing the employment status, however, with enhanced experience, for the interviews scheduled in the year 2017 could not have been denied consideration. The case on hand can also be examined from another perspective i.e. the petitioner when has presented herself for certificate verification has produced the service certificate, no objection certificate and also the service she has put in on the date of giving the details as on 15.06.2017. Hypothetically examined, the petitioner if declares herself as un-employee on 15.06.2017 then it would be a case of suppression of fact. The same is the position if the petitioner had declared herself as employee on 20th December, 2011. The petitioner for having disclosed the exact state of affair on the date of filling up of the application i.e. on 20th December, 2011 or on 15.06.2017 is not suppressing any material detail. The difference in disclosure and non-disclosure is payment of fee of Rs.120/-, more than that cannot be the issue in a case where for several years a candidate is striving for public employment. The case on hand presents piquant circumstances in which the petitioner was and is placed, with her appointment as apprentice later on as School Assistant. Looked at from either of the perspectives, this Court is of the view that the petitioner as matter of fact, did not suppress material fact. Therefore, refusing to subject petitioner to personality test and now after personality test since has been conducted not declaring the result of petitioner as per her entitlement is arbitrary, illegal and unconstitutional. The points are ordered in favour of petitioner and against respondent No.2. For the above analysis this Court is of the view that the writ petition be ordered as follows:

That the petitioner has not suppressed material facts and the rejection of petitioner's Hall Ticket No. 2011210141 for personality test is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. The 2nd respondent, since has already subjected petitioner to personality test, the 2nd respondent is directed to declare the result of petitioner within four weeks from the date of receipt of copy of this order and if the petitioner stands in the merit list as per her entitlement orders of appointment are issued.

The Writ Petition is ordered as indicted above. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

Date: 16.04.2018
Sp



S.V. BHATT, J