

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 1651 of 2014

ORAL ORDER: *(Per the Hon'ble Sri Justice Suresh Kumar Kait)*

Vide the present petition, petitioners have challenged order dated 25.10.2013 passed in O.A.No. 4166 of 2013 whereby application of the petitioners filed under Section 19 of the Administrative Tribunals Act, 1985 was dismissed.

2. Petitioners have passed Intermediate and passed Certificate of Public Health and Sanitation Technology and they are eligible and qualified for appointment to the post of MPHA. 1st respondent issued G.O.Ms.No.208 dated 02.08.2011 permitting 5th and 6th respondents to notify 30 vacancies of MPHA (Male) on contract basis from the eligible candidates from Tribal Sub Plan Area in Warangal District. Accordingly, the 5th and 6th respondents have issued notification No.2 of 2011 calling applications for appointment of Para-Medical Staff of MPHA (Male) on contract basis in Sub Plan Area of ITDA, Eturunagaram from the eligible candidates of Scheduled Tribes.

3. According to the notification, 30 posts of MPHA (Male) were notified and qualifications prescribed for the said post are as follows:

- 1) Candidate should pass SSC
- 2) Candidate should pass MPHA (Male) Course and should be registered in A.P.Government Para-Medical Board.
- 3) Age as on 31.09.2011 should be between 18 to 43 yrs.

- 4) Candidates should be Tribals and they should enclose their latest caste certificate.
- 5) Candidates also should enclose their recent local residential certificate as per G.O.Ms.No.3 (SW) Department dated 10.01.2000.

4. Pursuant to the said notification, the petitioners applied for the post of MPHA (Male) on contract basis. As per the notification, one of the criteria is that the candidates should enclose their recent local residential certificates as per G.O.Ms.No.3 Social Welfare Department dated 10.01.2000. The said G.O. has been set aside by the Division Bench of the Tribunal by allowing O.A.No.5676 of 2001 dated 17.08.2005. Accordingly, the respondents should not insist the candidates to submit the residential certificate in accordance with the said G.O.

5. It is not in dispute that the petitioners are permanent residents of Warangal District and they belong to Scheduled Tribes and are locals in Warangal District.

6. As per the above said notification, out of 30 posts, 26 posts were filled up by 18 candidates, who produced residential certificates in accordance with G.O.Ms.No.3 dated 10.01.2000, and also 8 candidates, who did not submit residential certificates in accordance with the said Government Order. Further, 11 candidates, who approached the Tribunal by filing O.A.No.4676 of 2001 which was disposed of on 17.08.2005, were given appointment as MPHA (Male) by the 6th respondent herein vide proceedings in Rc.No.E/67/Male/2000-06 dated 19.01.2006, though they are non-residents of Sub Plan Area. Even in the present notification also,

8 candidates who did not produce the residential certificates of Sub Plan Area, were also given appointment orders to the post of MPHA (Male).

7. Learned counsel appearing on behalf of the petitioners submits that as per the notification issued by the Government vide G.O.Ms.No.68, Social Welfare Department, dated 16.04.1988, the posts shall be filled in only by the local members of the Scheduled Tribes. Thus, the petitioners are also eligible for appointment as MPHA (Male) in the local area of Warangal District. The Tribunal also discussed about the said G.O.Ms.No.68 dated 16.04.1988 and categorically held that the above notification does not in any way seek to expand the definition of a person belonging to Scheduled Tribes etc. in relation to a given state in any manner. It only enables the authorities to appoint members of the Scheduled Tribes as notified by the President alone, to be appointed in the geographical limits of the scheduled areas. Therefore, the petitioners are also eligible for appointment to the post of MPHA (Male) as per the orders of the Tribunal in O.A.No. 4676 of 2001, dated 17.08.2005.

8. Case of the respondents is that the posts relating to M & H Department in scheduled areas of the State shall be filled up only by the local members of the Scheduled Tribes, notwithstanding anything contained in any other rule of Law in force, and in order to strengthen the human dignity, free from exploitation, the right includes protecting of health and strength of workers, facilities to children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities and human conditions of work and maternity relief under Article 21 of the Constitution of India and with a view to protect the interest of local tribals, Government

have decided to reserve the posts in favour of local Scheduled Tribe candidates. The local Scheduled Tribe candidates means “the candidate belonging to the Scheduled Tribes notified as such under Article 342 of the Constitution of India and the candidates themselves or their parents have been continuously residing in the scheduled areas of the Districts in which they are residents till to date since 26.01.1950.

9. It is the further case of the respondents that the petitioners have not produced the local agency area certificates of Sub-Plan Area, and the area, in which the petitioners are residing, is not under the Sub-Plan Area/ITDA area. Therefore, the Project Officer, ITDA, Eturunagaram and District Collector , Warangal have not recommended their cases and selected them for appointment to the post of MPHA (Male) on contract basis in accordance with the Government Orders and the instructions of the Government from time to time.

10. It cannot be disputed that G.O.Ms.No.3 dated 10.01.2000 was issued by the Government of Andhra Pradesh for appointment of teachers. Therefore, other posts including the posts in the present case cannot be included in the said G.O. In addition to the above, a similar issue came before this Court in W.P.No.14591 of 2006 wherein it is observed and held as under:

“5. Before proceeding further, we must point out one thing that the opinion of the Tribunal contained in the penultimate Paragraph-15 of its order, is neither in tune with the prayer made in the original application, nor in tune with the law said to have been declared by this Court. It is stated by the learned Government Pleader for Services that by the order impugned in the writ petition, the Tribunal held G.O.Ms.No.3, Social Welfare (TW.EDN.II) Department, dated 10.01.2000, to be ultra virus the constitution. But, it appears that a Full Bench of this Court has

taken a contrary view in **Pulusam Krishna Murthy Vs. T. Sujan Kumar and others**¹. Therefore, the first part of Paragraph-15 of the impugned order of the Tribunal should go.

6. But, the above does not have any impact upon the case on hand, as G.O.Ms.No.3, dated 10.01.2000, is specifically confined to appointment to the poScheduled Tribes of teachers in schools situated in scheduled areas. The post, with which we are concerned in the present case, is M.P.H.A. (Male) and not the post of teacher. Therefore, G.O.Ms.No.3, dated 10.01.2000, did not fall for consideration either before the Tribunal or before this Court. Hence, we ignore G.O.Ms.No.3, dated 10.01.2000, and take up the other contentions.

7. The notification inviting applications issued in May, 2000 shows that Districts were treated as the Units of appointment for the post of M.P.H.A. (Male). Vacancies in five different Districts, including Warangal, were notified and it was indicated in Paragraph-2 of the notification that “concerned Districts appointment can be done as a unit”.

8. In tune with the indication in the notification that District was the unit of appointment, the invitation from candidates was also to the persons, who belonged to the Scheduled Tribes and who were residents of the unit of appointment, namely, the Districts. It was not specified in the notification that Scheduled Tribes residing only in the scheduled areas of the Warangal District alone should apply in response to the notification.

9. But, on the basis of the Government Order in G.O.Ms.No.68, Social Welfare (V) Department, dated 16.04.1988, the State has taken a stand that only those Scheduled Tribes residing within the scheduled areas of a particular District, would be considered as eligible for appointment. In order to test the above contention, it is necessary to have a look at the notification published under G.O.Ms.No.68, dated 16.04.1988, which reads as follows:

“In exercise of the powers conferred by sub-paragraph (1) of paragraph 5 of the fifth schedule to the Constitution of India, the Governor of Andhra Pradesh hereby directs that the poScheduled Tribes relating to the Medical and Health Department shown in the Annexure in the Scheduled areas of the State shall be filled in only by the local members of the Scheduled Tribes notwithstanding anything contained in any other order, rule or law in force.”

10. As seen from the notification, it was issued under Paragraph-5(1) of the V-Schedule to the Constitution. The

¹ 2002 (1) ALD 423 (FB)

expression used in the notification is “local members of the Scheduled Tribes”. The expression “local members” is not defined in the Constitution. Considering the special status of the State of Andhra Pradesh, the aforesaid notification has to be read, in tune with the Presidential Order, 1974 issued, in exercise of the powers conferred by Clauses 1 and 2 of Article 371D of the Constitution. Though the Presidential Order does not use the expression “local members” it uses the expression “local candidate”. Paragraph-4 of the Presidential Order defines a local candidate. This definition is in the context of what a local area is. The expression “local area” is to be understood in the context of Paragraph-3 of the Presidential Order.

11. Therefore, the term “local members” appearing in G.O.Ms.No.68, dated 16.04.1988, has to be understood in the context of the expressions “local area” and “local candidate” as indicated in the Presidential Order. The Presidential Order carves out certain PoScheduled Tribes as District PoScheduled Tribes, Zonal PoScheduled Tribes, Multi-Zonal PoScheduled Tribes and State-wide PoScheduled Tribes. If the unit of appointment is a District, the local area for appointment to such a post would be the District. If the local area for appointment to a post is a District, a person residing in that area is a local member.

12. Therefore, the final conclusion reached by the Tribunal, despite its observations with regard to G.O.Ms.No.3, dated 10.01.2000, is perfectly in order. Once it is admitted that the respondents belonged to the Scheduled Tribes and once it is admitted that they were residents of the unit of appointment, namely, the District, there cannot be a sub-classification of Scheduled Tribes residing in scheduled areas of a District and Scheduled Tribes residing in non-scheduled areas of the same unit of appointment.

13. As a matter of fact, a discrimination based upon residence, is opposed to the Constitution. But, the same has been recognized in the State of Andhra Pradesh, in view of Article 371D. But, Article 371D also does not permit the application of G.O.Ms.No.68, dated 16.04.1988, de hors the unit of appointment. Therefore, the Writ Petition is devoid of merits. Hence, it is dismissed.”

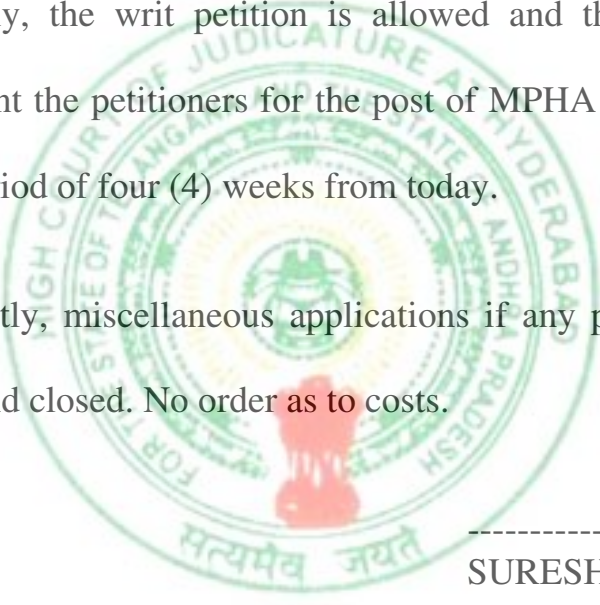
11. The afore-cited case was filed by the Government against judgment dated 17.08.2005 passed in O.A.No.4676 of 2001 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. The present case is squarely covered by the said judgment.

12. As stated by the counsel for the petitioners across the Bar, the notification was issued for filling up of 30 vacancies and still 8 vacancies are left unfilled.

13. The only case of the respondents is that the petitioners do not belong to Scheduled Tribes of particular area, whereas, admittedly, the petitioners are Scheduled Tribes of Warangal District. Thus, in view of the judgment rendered by this Court as stated above, the petitioners are also eligible to be considered for the post of MPHA (Male).

14. Accordingly, the writ petition is allowed and the respondents are directed to appoint the petitioners for the post of MPHA (Male) on contract basis within a period of four (4) weeks from today.

Consequently, miscellaneous applications if any pending in the writ petition shall stand closed. No order as to costs.



SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

15th February, 2018

Note: Furnish C.C. in two weeks.

(b/o)
cbs

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
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W.P.No.1651 of 2014
(allowed)

15th February, 2018

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