

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

WRIT PETITION No.1942 OF 2016

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

The Union of India and its Naval Officers filed this Writ Petition aggrieved by the common order dated 05.12.2014 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, in so far as it pertains to O.A.No.295 of 2014. The said O.A. was filed by the respondents herein assailing the Recruitment Rules, 2012 to the extent the said Rules allowed direct recruitment or selection by merit in non-selection posts and prescribed criteria regarding age, educational and other qualifications etc. for such direct recruits. The consequential notification published in the Employment News dated 20-26.04.2013 inviting applications for recruitment to the posts of Tradesmen Skilled through direct recruitment was also subjected to challenge. By the common order under challenge, the Tribunal directed the authorities to fill up the vacancies in question by following the Rules of 2000.

By order dated 08.09.2016, this Court granted interim suspension of the common order passed by the Tribunal in so far as it pertained to O.A.No.295 of 2014. This order reads as under:

“Heard the learned Additional Solicitor General for India appearing for the petitioners.

Perusal of the order passed by the Tribunal which is under challenge before us in this writ petition reflects that reference was made to the earlier orders passed by the Tribunal in a batch of cases but it is pointed out by the learned Additional Solicitor General for India appearing for the petitioners that those OAs were inapplicable in the light of the amendment of the relevant Rules in 2012.

This aspect of the matter seems to have been overlooked by the Tribunal as we find no discussion on this issue. There shall accordingly be interim suspension as prayed for.”

Thereafter, WVMP No.3532 of 2016 was filed by some of the respondents in this writ petition through Sri T.Koteswara Rao, learned counsel, to vacate the aforestated order. By order dated 22.02.2017, this Court made the interim order absolute. This order reads as under:

“By order dated 08.09.2016 passed in W.P.M.P.No.2467 of 2016, this Court granted interim suspension of the operation of the common order dated 05.12.2014 passed by the Central Administrative Tribunal, Hyderabad Bench, in so far as it pertained to O.A.No.295 of 2014. This interim order was granted taking into account the submission of the learned Additional Solicitor General for India, appearing for the petitioners, that the Tribunal had relied upon the earlier orders passed by it in a batch of cases but the same were inapplicable in the light of the amendment of the relevant Rules in 2012. As this Court found no discussion on this aspect in the order under challenge, interim relief was granted.

W.V.M.P.No.3532 of 2016 was filed by respondents 1 to 8, 10, 12 to 15, 17 to 26, 29, 31, 32, 34, 35, 37 to 42 and 44, through Sri T.Koteswara Rao, their counsel, to vacate the aforestated order.

Respondent No.27 appeared as a party-in-person and filed his individual counter-affidavit. The record reflects that respondent No.28 still remains unserved, as the notice sent by the Registry was not returned served.

Though comprehensive arguments were advanced by the learned Additional Solicitor General, Sri T.Koteswara Rao, learned counsel for the vacate stay petitioners, and respondent No.27, appearing as a party-in-person, in the main case along with two other writ petitions,

W.P.Nos.2016 and 2658 of 2016, these writ petitions cannot be disposed of at this stage as respondent No.28 in this writ petition is still unserved and has no notice of the pendency of this writ petition. The other two writ petitions were accordingly released and posted for hearing in the usual course.

This Court therefore restricts the present order to consideration of the vacate stay petition filed by Sri T.Koteswara Rao, learned counsel, on behalf of some of the respondents in the writ petition.

Perusal of the common order passed by the Tribunal in the three O.As., which are the subject matter of this writ petition and W.P.No.2016 of 2016 and W.P.No.2658 of 2016, reflects that the Tribunal was of the opinion that the cause of action involved in all the cases was common in all the O.As and that they were amenable to disposal by way of a common order.

The unofficial respondents in this writ petition filed O.A.No.295 of 2014 challenging the Rules framed under SRO 43/2012 to the extent of allowing direct recruitment for non-selection posts and prescribing the criteria of age, educational and other qualifications for such recruits. They also challenged the consequential notification dated 20-26th April, 2013 inviting applications for the posts of Tradesmen (skilled) through direct recruitment and sought a direction to the authorities to absorb them in the posts of Tradesmen (skilled) as per the earlier directions of the Tribunal in O.A.Nos.972, 978, 980 and 1377 of 2011 in terms of the earlier Rules framed under SRO 150/2000. By the common order under challenge, the Tribunal opined that the orders passed by it in O.A.Nos.51 of 2008, 972, 978, 980 & 1377 of 2011 and 782 of 2013 & batch would govern the issue and, in the light thereof, the Tribunal held that the action of the authorities in filling up the vacancies notified on 20-26th April, 2013 in terms of SRO 43/2012 was illegal and contrary to the recruitment rules applicable as on the date of arising of the vacancies as such vacancies arose admittedly before 2012. The Tribunal therefore directed the authorities to fill up the

vacancies notified in the Employment News dated 20-26th April, 2013 by following SRO 150/2000 as interpreted in the decision rendered in O.A.No.51/2008 & batch.

Learned Additional Solicitor General pointed out that the Tribunal erred in recording that it had been admitted before it by the authorities that the vacancies notified in the Employment News dated 20-26th April, 2013 were admittedly pre-2012. He would submit that no such admission was made before the Tribunal.

Sri T.Koteswara Rao, learned counsel, and respondent No.27/party-in-person are unable to rebut this statement.

Learned Additional Solicitor General would further contend that in the absence of such an admission, the Tribunal necessarily had to determine as to whether any of the vacancies notified were pre-2012 and if so, whether they would be governed by the earlier orders passed by the Tribunal in various O.As. He would point out that no such exercise was undertaken by the Tribunal and the Tribunal did not even examine on facts as to how many of the vacancies notified would be governed by later Rules framed in 2012 under SRO 43/2012.

This Court finds merit in the aforesaid submissions advanced by the learned Additional Solicitor General. Perusal of the order under challenge reflects that the Tribunal relied on its earlier judgments in various O.As. and except for one, all the said O.As. were instituted prior to promulgation of the Rules of 2012 under SRO 43/2012. There is also no determination by the Tribunal on factual aspects as to how many of the vacancies notified in the Employment News dated 20-26th April, 2013 were pre-2012 vacancies. The admission in this regard noted by the Tribunal has no legs to stand upon as the learned Additional Solicitor General denied that such an admission was ever made and the opposite side is unable to rebut the same.

Learned Additional Solicitor General would further point out that some of the applicants in O.A.No.295 of

2014 themselves filed W.P.No.2658 of 2016 assailing the very same common order, being dissatisfied with the consideration bestowed by the Tribunal upon the issues raised by them.

In that view of the matter, the bald direction to apply the earlier Rules framed under SRO150/2000 to all the vacancies notified in the Employment News dated 20-26th April, 2013, without even ascertaining as to how many of such vacancies were pre-2012 vacancies, cannot be given effect to. This Court therefore finds no reason to vacate the interim order dated 08.09.2016 which is consequently made absolute.

The WPMP and WVMP are ordered accordingly. Office is directed to list the writ petition for hearing immediately after service is completed upon respondent No.28.”

We are informed by Sri B.Krishna Mohan, learned counsel representing the learned Assistant Solicitor General for India appearing for the petitioners, that the aforestated order was confirmed by the Supreme Court upon challenge by the petitioners in the vacate stay petition. The 28th respondent in the Writ Petition, who remained un-served on the date of passing of the afore-stated order dated 22.02.2017, then filed WVMP No.884 of 2017 to vacate the interim order dated 08.09.2016. The said vacate stay petition was also dismissed by this Court vide order dated 01.03.2017. This order reads as under:

“The 28th respondent in the writ petition filed this vacate stay petition to vacate the order dated 08.09.2016 passed by this Court in W.P.M.P.No.2467 of 2016 and the order dated 22.02.2017 making the said order absolute in W.V.M.P.No.3532 of 2016.

Though Sri D.V.Rao, learned counsel, would contend that it is open to him to argue the matter afresh despite the fact that he was heard on behalf of some of the other

respondents while disposing of W.V.M.P.No.3532 of 2016, he is not in a position to answer the preliminary question as to whether his client has given up his challenge to SRO 43/2012 in terms of his prayer in O.A.No.295 of 2014. That apart, he also has no explanation to offer as regards the discrepancies pointed out by this Court while making the interim order absolute under its order dated 22.02.2017.

We therefore see no reason to vacate either of the orders aforesaid.

The WVMP is accordingly dismissed.

Office is directed to post the writ petition for final hearing as per its turn.”

At this stage, I.A.No.1 of 2018 was filed by Sri T.Koteswara Rao, learned counsel, seeking dismissal of the writ petition on the ground that W.P.No.20025 of 2017 filed against the order of the Tribunal in O.A.No.782 of 2013 & batch was dismissed.

However, as the order dated 22.02.2017 passed in this writ petition would demonstrate, this Court was of the opinion that the order passed by the Tribunal in O.A.No.782 of 2013 & batch had no application to the case on hand and that was the reason why the order passed by the Tribunal was found fault with.

When this Court was about to dismiss I.A.No.1 of 2018, Sri T.Koteswara Rao, learned counsel, submitted that as the Tribunal failed to undertake examination of the issues arising in the O.A. in the context of what has been set out by this Court in the order dated 22.02.2017, the matter may be remanded to the file of the Central Administrative Tribunal, Hyderabad Bench at Hyderabad, for consideration of all issues on their own merits and in accordance with law.

Sri B.Krishna Mohan, learned counsel representing the learned Assistant Solicitor General for India, would state that he has no objection.

Though respondent No.27 appeared earlier in person and respondent No.28 is represented by Sri D.V.Rao, learned counsel, there is no representation on their behalf.

In that view of the matter, the Writ Petition is allowed setting aside the common order dated 05.12.2014 passed by the Tribunal in so far as it pertains to O.A.No.295 of 2014. The said O.A. shall stand restored to the file of the Tribunal for consideration afresh of all issues arising therein on their own merits and in accordance with law. Both parties are permitted to supplement their existing pleadings in the O.A. so that all issues may be addressed comprehensively. As it is the second round of litigation, the Tribunal shall endeavour to give priority to the O.A. and dispose of the same expeditiously.

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

SANJAY KUMAR, J

M. GANGA RAO, J

27th September, 2018
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