

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

W.P.No.33042 OF 2014

ORDER: (ORAL)

(per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioner-Andhra Pradesh Public Service Commission, rep. by its Secretary, has challenged the order dated 25.03.2014 passed in O.A.No.9803 of 2012 by the Andhra Pradesh Administrative Tribunal at Hyderabad (for short "the Tribunal"), whereby the application filed under Section 19 of the Administrative Tribunals Act 1985 by the 1st respondent has been allowed.

2. Brief facts of the case are that :

The 1st respondent, who is a Graduate in Technology, applied for various posts pursuant to Notification No.31/2007 (Group-I Services Direct Recruitment-2007 (General), dated 21.01.2008. He was declared successful in the Screening Test as well as in the Main Examination. The 3rd respondent i.e., the petitioner herein, through Memo dated 02.05.2009 informed the 1st respondent that he was provisionally qualified for interview to be held on 25.05.2009 and directed him to attend the same. Accordingly, the 1st respondent attended the interview. Later on, the petitioner published marks list of candidates of Group-I services main exams. As per the results published, the 1st respondent secured 445

marks in the written examination and 35 marks in interview making a total of 480 marks. On 23.06.2009, the petitioner notified the provisionally selected candidates for appointment to various posts notified.

3. It is not in dispute that the 1st respondent is a OC candidate belonging to Zone-III. The person whose Registered Number is 10702848, and who is a OC in Zone-III, secured 480 marks (shown at Sl.No.81) was given posting. But, the Registered Number of the 1st respondent has not figured in the select list though he also secured same number of marks. Accordingly, he made representation dated 21.12.2011 to the petitioner requesting him to furnish the information or the reasons as to why he was not selected for the post of Assistant Audit Officer. The petitioner through Memo dated 28.04.2012 informed the 1st respondent that he got lower rank (below rank than the candidate with Regd. No.10702848, who got selection in Zone-VI in non-local post). He received communication on 04.05.2012. Again he submitted representation dated 04.05.2012 to the petitioner requesting him to inform the details of selected candidates, list of marks and zone-wise details. Through reply dated 08.05.2012, the petitioner furnished provisional selected candidates details.

4. The case of 1st respondent before the Tribunal was that, on the application of 1st respondent dated 11.05.2012,

Public Information Officer and Deputy Director of State Audit, A.P., by his letter dated 22.05.2012 furnished information to the 1st respondent to the effect that 41 Assistant Audit officers were selected under Group-I Services Notification of 2007 and out of them 7 candidates were allotted to Zone-VI. Thereafter, the 1st respondent requested him to furnish the details of the procedure followed in the selection and also the names, date of birth, age, qualification and native zones of all the selected candidates. But no information was furnished by the petitioner. Pursuant to his application dated 02.07.2012, the Deputy Director of State Audit by his letter dated 25.07.2012 furnished information with zone-wise details of Assistant Audit Officers joined and non-joined, name-wise, age of Group-I Officers of 2009 batch. As per the information furnished by him, 7 candidates have not joined pursuant to the selections. The non-joined candidates are one each in Zone-II, Zone-III. Three (03) candidates did not join in Zone-V and in Zone-VI two candidates. One of the selected candidates in Zone-VI Mr. Gangavarapu Joseph Kumar, who also secured 480 marks and who belongs to same Zone and category as that of the 1st respondent, did not join in the post. As he did not join, the petitioner should have appointed the 1st respondent in his place. But, for the reasons best known to him, they have not given appointment to him.

5. The petitioner herein filed its counter-affidavit before the tribunal and stated therein that though the 1st

respondent secured 480 marks he could not get selection due to his low merit. It is admitted by the petitioner that it is true one by name Sri Gangavarapu Joseph Kumar, who also secured 480 marks, was selected for the post of Assistant Audit Officer in Zone-VI, but he did not join. As per the procedure envisaged in APPSC Office Manual when two or more candidates secured equal marks in direct recruitment, they will be ranked in the merit list and as per their age, i.e., candidates, who are older in age, will be ranked high. In the present case, four candidates secured equal marks of 480 including the 1st respondent. They were assigned ranks according to their age. Sri Joseph Kumar was ranked at 95th place whereas the 1st respondent was ranked at 98th place according to their date of birth.

6. Learned counsel appearing on behalf of the petitioner submits that as per Rule 6 of APPSC Rules of Procedure, the validity period of the rank list is for one year from the date of finalisation of selection or publication of the next notification, whichever is earlier. The candidates next in merit are eligible to be considered in followed/non-joining vacancies. However, Rule 6 was amended in G.O.Ms.No.81, G.A. (Ser.A) Department, dated 22.02.1997 and the procedure of operating waiting list is dispensed with. As per amended Rule 6, selection shall be confined to vacancies notified only. Fallout or non-joining vacancies, if any, have to be carried forward to the subsequent recruitment. Rule 6 was amended

in the year 1997 and it applies to the selection under Notification No.31/2008. With the amendment of Rule 6, Rule 7 has lost its relevance and became inoperative. However, the aforesaid facts have been ignored by the learned Tribunal and allowed O.A filed by the 1st respondent.

7. It is not in dispute that the 1st respondent secured same marks as that of Sri Joseph Kumar i.e., 480 marks, and as both of them belong to same category and zone. The petitioner ought to have appointed the 1st respondent as Assistant Audit Officer in the non-joining vacancy of Sri Joseph Kumar in Zone-VI.

8. As per Rule 7 of APPSC Rules of Procedure, the petitioner ought to have enquired Sri Joseph Kumar whether he is relinquishing his claim for appointment to the post of Assistant Audit Officer in writing, and as it failed to do so, the 1st respondent lost chance of appointment.

9. Sri Joseph Kumar, who was elder in the age to the 1st respondent, was appointed as Assistant Audit Officer in the last OC vacancy, in Zone VI, under non-local category, but he did not join in that post. Rule 6 and 7 of APPSC Rules of Procedure are relevant for the purpose of the present case, which reads as under:

“Rule 6 :The list of the candidates approved/selected by the Commission shall be equal to the number of vacancies only including those for reserved communities/categories notified by the Unit Officers Government. The fallout vacancies if any due to

relinquishment and non-joining etc., of selected candidates shall be notified in the next recruitment.

(Subs. By proceedings No.2341/RR/2/97, dt.30.07.1997)

Rule 7 : Any candidate whose name has been included in a selection list in a direct recruitment prepared by the Commission, on enquiry by the Commission, may relinquish his claim for appointment in writing in the proforma prescribed by the Commission. The Commission shall there upon remove the name of such candidates from the selection list and select any other candidate according to rules. The candidate whose name has been so removed from the selection list shall be informed of such removal by the Commission and shall have no right for the said appointment in future with reference to the said selection.

10. In the cases reported in **Jal Narain Ram Vs. State of U.P & Others¹**, **Sheo Shyam & others Vs. State of U.P & others²** and **Bharat Sanchar Nigam Ltd. & others Vs Abhishek Shukla & another³**, are for the proposition that, if a selected candidate fails to join, appointment to the next in merit should be given. For the same proposition, the judgment of Allahabad High Court reported in **Ravindra Vikram Vs. State of U.P & others⁴** and the judgment of High Court of Jammu & Kashmir in **SWP Nos.2223 of 2011 and batch, dated 8.8.2013**, which were relied upon by the learned counsel for the 1st respondent before the tribunal.

11. The case of the petitioner is that as per amended Rule 6 of APPSC Rules of Procedure, all fallout vacancies

¹ AIR 1996 SC Page 703

² (2005) 10 SCC 314

³ 2009 (5) SCC page 368

⁴ W.A.No.58207 of 2007

arising due to relinquishment and non-joining etc., of selected candidates have to be notified in the next recruitment and following the same, the 1st respondent was not appointed in the non-joining vacancy of Sri Joseph Kumar.

12. It is not in dispute that Rule 6 was amended on 30.07.1997. After amendment it reads that the list of candidates approved/selected by the Commission shall be equal to the number of vacancies only. Meaning, thereby there is no need for maintaining waiting list. Whereas Rule 7 casts a duty upon the APPSC to enquire each of the selected candidates whether he or she is willing to join in the selected post or its relinquishing his or her right to join in that post. If the procedure laid down in Rule 7 is followed, then, the APPSC will be knowing as to how many of the selected candidates are willing to join in the posts against which they were selected. Simultaneously it can take steps for selecting other candidates in the merit list in the place of those who have relinquished their claims. It is evident that Rule 6 and 7 are independent and have to be read harmoniously so as to advance the cause of justice.

13. If Rule 7 is scrupulously followed by the APPSC, then, no notified post would remain vacant. All the meritorious candidates who have participated in the selection process will get justice. Public interest will also be served best by filling up all the posts. The interest of candidates who

are about to become over aged would also be protected adequately.

14. In the present case, it is obvious that, the petitioner has not following the procedure laid down in Rule 7 before issuing appointment orders. It laid more emphasis on Rule 6. It is not open to the petitioner to contend that after amendment to Rule 6, Rule 7 has lost its significance. As long as Rule 7 exists in the statute book, it has to be followed scrupulously by the petitioner.

15. We note, the learned tribunal has opined that, at any rate, it has not an empty formality. It is the intention of the rule making authority and then it would have deleted Rule 7 while amending Rule 6. The very fact that it was not deleted would go to show that it has got its own purpose and meaning. The petitioner cannot ignore Rule 7 while laying emphasis on Rule 6 when both the rules were made to subserve justice. Had the petitioner followed Rule 7 in the letter and spirit, then, in all probability, the 1st respondent would have been definitely expressed his willingness to join in the post of Assistant Audit Officer.

16. It is not in dispute that the similar question fell for consideration before the Hon'ble Supreme Court of India in the decisions cited above. In the decision reported in AIR 1996, their Lordships have held that, if the candidate duly selected to a particular post fail to join, denial of appointment

to the next meritorious candidate in the select list is not legal. It was further held that there was no requisition by the State Government to Service Commission for preparation of waiting list.

17. In the decision reported in (2005) 10 SCC page 314 wherein held that facts would indicate that there were 30 unfilled vacancies in the category of Public Prosecutors, due to non-joining of selected candidates, and as against them, the State Government requested for recommending only seven additional names with a view to fill up only seven consequent vacancies. The other candidates in the select list have approached the Hon'ble Supreme Court and their Lordships observed as under :

“11. Had the Commission on receipt of the office memorandum dated 14.1.1999 pointed out to the State Government that its view was not in line with the Commission's view that would have sorted out the areas of differences. Interestingly, in a particular case referred to by the appellants, Commission accepted that the period was to be from the last date of recommendation. Though there cannot be any estoppel in law, yet a statutory body like the Commission cannot blow hot and cold at the same breath. There has to be consistency in its view. To rule out unfortunate situations like the present one being allowed to recur again, both the State government and the Commission are required to be more vigilant and constructive in their approach. When dealing with the careers of large number of candidates, their stands have to be consistent and not varying to avoid giving room for unsavoury suspicions and ensuring the systems to work more transparently to add to its reputation and strength.

12. In the peculiar circumstances noted above, we direct that the appellants shall be considered by the Commission and the

State government and they would be appointed if otherwise found suitable, and eligible after verification of such credentials, documents and background as are necessary to be done for appointment.”

18. In a decision reported in 2009 (5) SCC 368 also, the same principle was reiterated. In that case also, a plea was taken by the recruiting agency that there was no provision in the recruitment rules for maintaining a wait list and all the non-joining vacancies have to be carried forward. Hon’ble Supreme Court rejected the contention and directed the authorities to consider filling up the non-joining vacancies by offering appointment letters to the candidates next in merit at Sl.Nos.1 and 2.

19. In addition to above, this Court in W.P.No.957 of 2011, dated 21.06.2011, a similar case relating to the recruitment of Teachers came before this Court, therein observed as under:

“It is not in dispute that the first respondent has attended the written test for the post of SGT in DSC-2006 under PH-VH General Category and secured 63.50 marks and he was subjected to medical examination. As per the merit list of DSC-2006, seven candidates were selected. Out of which the name of one Sri A.Chenakrishna Reddy was eliminated as he is having only 30% of blindness, which is not sufficient as per G.O.Ms.No.27, dated 09.08.2000 for appointment and produced a bogus certificate. As such, the petitioners have mistakenly allowed said Chenakrishna Reddy to appear for the said post under Physically Handicapped Category. Since the vacancy arisen in view of the mistake of the petitioners and in view of the fact that the said post remained unfilled as per the letter dated 21.06.2011, produced by the

learned Government Pleader, the next immediate meritorious candidate in the merit list i.e., the first respondent is entitled for appointment to the post of Secondary Grade Teacher even though there is no waiting list in DSC-2006. Therefore, we do not find any infirmity in the order impugned. However, if the first respondent has got 40% of disability, he can claim for appointment to the post of Secondary Grade Teacher under Physically Handicapped Category-Visually Handicapped Category.”

20. In view of the above discussion and legal position, we find no illegality or perversity in the order dated 25.03.2014 passed in O.A.No.9803 of 2012 by the learned Tribunal.

21. Finding no merit in the instant petition and the same is accordingly dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J.

ABHINAND KUMAR SHAVILI, J.

Date : 29-01-2018
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