

THE HON'BLE SRI JUSTICE SANJAY KUMAR

AND

THE HON'BLE SRI JUSTICE M. GANGA RAO

WRIT APPEAL Nos. 1494 and 1524 of 2018

COMMON JUDGMENT:

The Telangana State Public Service Commission filed these appeals aggrieved by the common order dated 06.09.2018 passed by a learned Judge of this Court disposing of W.P.Nos.20232 and 20273 of 2018. W.A.No.1494 of 2018 pertains to the said order insofar as it relates to W.P.No.20232 of 2018 while W.A.No.1524 of 2018 pertains to W.P.No.20273 of 2018. The issue before the learned single Judge was with regard to the notification issued by the appellant-Commission for filling up 284 notified vacancies in the category of Trained Graduate Teacher (TGT) in Science subject in schools run by the Residential Educational Institutions/Society.

The notification issued by the appellant-Commission in this regard was dated 14.04.2017. The crux of the controversy is with regard to compliance with Rule 6(A) of the Telangana State Public Service Commission Rules of Procedure framed by the appellant Commission. This Rule reads as under:

"Rule 6(A): Notwithstanding anything contained in adhoc Rule issued in G.O.Ms.No.544, G.A.(Ser.A) Department, dated 04.12.1998, 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 thereupon 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:

Provided this provision is applicable only when a single category of posts is notified in a notification and not applicable to a notification where multiple categories of posts are notified. However, it shall be ensured that the list shall not be operated for any additional vacancies indented by the Government Departments. The selection list for the purpose of selecting candidates in place of relinquished candidate/candidates shall be operated only till the next notification is issued or for a period of one year, whichever is earlier”.

Upon considering the material on record, the learned Judge concluded that the appellant Commission had failed to abide by the procedure prescribed in the aforesaid Rule and disposed of the writ petitions with the following directions.

(i) *The TSPSC is directed to enquire from the candidates included in the select list in terms of Rule 6(A) of the Rules of Procedure as to whether they are willing to relinquish for appointment to the post of TGT (Science). If any of the candidates included in the merit list exercise option to relinquish their right, delete those names, inform them accordingly and re-draw the select list by adding next meritorious candidates and forward the select list to the appointing authority. The entire exercise be completed as early as possible but not later than six weeks from the date of receipt of copy of this order. However, from this process, respondents 8 to 119 be excluded as they have expressed clearly to take the appointment as TGT (Science);*

ii) *As respondents 8 to 119 have stated that they were not selected to any other posts, are willing to take up the post of TGT (Science) and are more meritorious than petitioners, their appointment need not be stalled. The TSPSC shall authorize the appointing authorities to take consequential steps to appoint respondents 8 to 119;*

iii) *It is made clear that merely because some of them join early in view of above directions cannot claim seniority based on date of joining and inter se seniority of selected candidates depends on the merit secured by them in the selections conducted by PSC irrespective of date of joining.*

It appears that the unofficial respondents 8 to 119 got impleaded in W.P.No.20273 of 2018 and their case was that they were not interested in relinquishing their selection as TGTs (Science) and as they were more meritorious than the writ petitioners, their appointments ought not to be stalled due to the pendency of the writ petitions. It may be noted that the learned Judge found that their case was genuine and accordingly granted them relief in terms of para 18(ii) of the order.

Sri D. Balakishan Rao, learned counsel for the appellant Commission, would state that the option of relinquishing was offered to the candidates who appeared for selection as TGTs (Science) at the stage of verification of the certificates and therefore, there was no necessity to again take recourse to such an exercise at the time of drawing up the selection list.

We are not impressed with the submission of the learned counsel for the appellant Commission. The Rule puts it beyond the pale of doubt that the exercise had to be undertaken only after the selection list was drawn up. This is clear as Rule 6(A) postulates that the Commission must enquire from every candidate whose name has been included in the selection list in the direct recruitment as to whether he wishes to relinquish his appointment. The appellant Commission therefore could not have undertaken such an exercise even before drawing up the selection list. When the Rule stipulates that a particular procedure must be followed, the appellant Commission, which was the author of the said Rule, cannot adopt some other procedure and seek to justify its non-adherence to the Rule. (See *Taylor vs. Taylor*¹, *Nazir Ahmed vs. King Emperor*², and *State of Uttar Pradesh vs. Singhara Singh*³).

¹ (1875) 1 Ch. D 426

² LR 63 1A 372

³ AIR 1964 SC 358

We therefore find no merit in the submission of the learned counsel to the effect that the earlier exercise purportedly undertaken by the appellant Commission should be taken to be sufficient compliance with Rule 6(A).

In consequence, we find no merit in these appeals warranting interference with the directions of the learned Judge. Needless to state, as respondents 8 to 119 who figured in the selection list of 264 candidates finally drawn up by the appellant-Commission have already indicated that they are not willing to relinquish their selection to the subject post, they need not be disturbed at this stage by again requiring the appellant Commission to make an enquiry with them. However, the appellant Commission shall strictly abide by the mandate of the aforestated Rule 6(A) and make an enquiry with the rest of the candidates who figured in the said selection list and, in the event any such candidates indicate their willingness to relinquish their selection as TGTs (Science), the appellant Commission shall remove his/her name in the selection list and include the name of the next candidate in terms of merit. Insofar as the directions of the learned Judge in para 18(iii) is concerned, we find no grounds to interfere with the same.

The writ appeals are accordingly disposed of, directing the appellant Commission to complete the exercise in terms of para 18 (i) of the order under appeal within four weeks from today, without fail.

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

22nd November, 2018
KSM

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