

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

WRIT PETITION NO.42243 OF 2017

ORDER: (Per Hon'ble Sri Justice M.Ganga Rao)

The petitioner is the unsuccessful applicant in O.A.No.3485 of 2014 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, the 'Tribunal'). Therein, he assailed the appointment of the 6th respondent as the Village Revenue Assistant (VRA) of Boddanapalli Village, vide proceedings dated 04.03.2014 of the Sub-Collector, Nuzveedu, Krishna District. However, the Tribunal dismissed the said O.A., vide order dated 08.08.2017. Aggrieved by the same, the present writ petition came to be filed.

Sri P.V.Krishnaiah, learned counsel for the petitioner, would state that pursuant to the notification dated 28.12.2013 issued by the District Collector, inviting applications for the post of VRA of Boddanapalli Village, the petitioner and the 6th respondent applied and participated in the selection process. In the written test, the 6th respondent secured '76' marks and was assigned rank No.3237 whereas the petitioner secured '75' marks and was assigned rank No.3238. Both belonged to 'OC' community. As the 6th respondent secured '1' mark more than the petitioner, he was appointed as the VRA, vide the impugned proceedings dated 04.03.2014. He would however contend that the 6th respondent did not fulfil the nativity criteria as required under Rule 9 (2) of The Andhra Pradesh Village Revenue Assistants Service Rules, 2005 (for short, 'the Rules').

Thus, the principal contention is that the 6th respondent was not eligible as he was not a resident of Boddanapally Village as he was residing in Vijayawada and was not a native of Boddanapally

Village as required under Rule 9 of the Rules. He failed to produce any of the certificates required under Rule 9 (2) of the Rules to satisfy the criteria of nativity. As per the information received by the petitioner under the Right To Information Act, 2005, in the check memo dated 25.02.2014 at Sl.No.2 in the column 'Nativity Certificate', it was mentioned that Certificate dated 25.08.2008 issued by the Tahsildar was produced, but no Residence Certificate was produced. Further, in response to the letter of the 3rd respondent dated 28.12.2013, the 4th respondent, vide letter dated 28.02.2014, categorically stated that the Tahsildar, Agiripalli, reported that the 6th respondent was not residing at Boddanapally Village since 8 years and he was residing at Vijayawada along with his family members. The 6th respondent studied S.S.C. at Patamata, Vijayawada. However, the 5th respondent issued Community, Nativity and Date of Birth Certificate dated 25.08.2008, but the subsequent incumbent in the office of the 5th respondent addressed a letter to the 4th respondent stating that the 6th respondent was not residing in Boddanapally Village. Even the information furnished under the Right To Information Act, 2005, by the Assistant Civil Supplies Officer, Circle-2, Vijayawada, clearly demonstrates that as per the Ration Card of the 6th respondent, bearing No.WAP0684201A0109, he was residing at Vijayawada from 2005 onwards. Thus, the 6th respondent is not a native of the Boddanapally Village so as to satisfy the requirement of nativity required under Rule 9 (2) of the Rules to fulfil the eligibility to be appointed as a VRA.

Learned counsel would further contend that the Tribunal on an erroneous view of the matter opined that the petitioner sought

appointment as the VRA of Boddanapally (V) in the vacancy that arose due to resignation of the 6th respondent on his being selected and appointed as a Postal Assistant and dismissed the O.A., holding that once the 6th respondent was appointed as the VRA, the selection process came to an end and in case of any future vacancy by way of resignation of the incumbent after some time, the recruitment process again has to start with a recruitment notification and there was no question of the Panel of Selection remaining or continuing for any length of time after the vacancy was filled up. He would point out that the Tribunal failed to consider that after notice was issued during the pendency of the O.A., for three years, none of the respondents filed counters and in spite of the same, the O.A. was dismissed contrary to the facts and the contentions of the applicant.

Learned counsel for the petitioner would further contend that after resignation of the 6th respondent, the post of VRA of Boddanapally Village fell vacant from 03.07.2015 and no one was appointed in the place of the 6th respondent, due to pendency of the litigation before the Tribunal as well as this Court. He therefore prays that this Court should direct the respondents to appoint the petitioner as the VRA of Boddanapally Village by setting aside the proceedings dated 04.03.2014.

Per contra, the learned Government Pleader appearing for the official respondents, on instructions, would contend that the 6th respondent secured more marks than the petitioner and as the 6th respondent was a native of Boddanapally Village, he satisfied the requirement of Rule 9 of the Rules. As per the notification, the candidate need not be a resident of the concerned Village, but he

should be a native of the Village. However, on being selected as Postal Assistant, the 6th respondent resigned from the post of VRA and joined as a Postal Assistant. In view of the resignation of the 6th respondent, the post of VRA of Boddanapally Village fell vacant.

Appendix-II specifies the requirement of Rule 9 (2) for determining the criteria of 'Nativity', which reads as under:

“ Requirement of Rule 9 (2) is that the VRA should be a native of the Village and have adequate knowledge of the Village concerned. Nativity may be determined based on any one of the following documents in that order:-

1 (a) “Place of Birth” as shown in the Birth Certificate, if available, or

(b) Nativity as issued by authority competent under G.O.Ms.No.58 Social Welfare (J) Department, dated: 12-05-1993.

(c) Ration Card

(d) Place of study for a period of not less than four consecutive academic years out of 7 years, or place of continuous stay for a period of not less than four years, as the case may be, as on date the notification for selection is issued.

(e) Pass port.

(f) In the case of married women, her nativity or her husband's nativity, shall be determined with the documents stated above, which can be taken into account for this purpose, with a rider that a married women including widows, divorced women and women judicially separated from her husband and not re-married can chose nativity either her own or of her husband.

(g) For a Married women Passport or a Marriage certificate also can be relied on to determine her nativity.”

Having considered the rival contentions and having perused the requirement of Rule 9 (2) of the Rules for determination of 'nativity', as enumerated in Appendix-II of the notification, we find

that the 6th respondent was appointed as the VRA of Boddanapally Village even though he did not satisfy the criteria of nativity as per Rule 9 (2) of the Rules. He did not produce any certificate in support of his claim of nativity. He was appointed only on the ground that he got '1' mark more than the petitioner. The petitioner, being a native of Boddanapally Village, fulfilled all the requirements of the notification and was entitled to be appointed as the VRA whereas the 6th respondent was not even a native of the said Village. As rightly contended by the learned counsel for the petitioner, the 6th respondent did not submit any documentary evidence in proof of his nativity to be appointed as the VRA of Boddanapally Village. Hence, the appointment of the 6th respondent was illegal and contrary to Rule 9 (2) of the Rules. The Tribunal misdirected itself and, on an erroneous appreciation of facts and law, held that once the 6th respondent was appointed as the VRA, the selection process came to an end and in case of any future vacancy by way of resignation of the incumbent after some time, the recruitment process again has to start with a recruitment notification as there was no question of the Panel of Selection remaining or continuing for any length of time after the vacancy was filled up. Hence, the impugned order dated 08.08.2017 passed in the O.A. as well as the impugned proceedings dated 04.03.2014 are liable to be set aside and are accordingly set aside.

As per the submission of the counsel for the petitioner, the post of VRA of Boddanapalli Village is lying vacant from 03.07.2015 i.e., from the date of resignation of the 6th respondent. In view of the same, the respondents are directed to consider the case of the petitioner for appointment as the VRA of Boddanapalli

Revenue Village, as the petitioner was eligible and qualified to be appointed as a VRA as per the Rules, unlike the 6th respondent. The said exercise should be completed as expeditiously as possible and in any event, not later than two months from the date of receipt of a copy of this order.

The Writ Petition is accordingly allowed.

Pending miscellaneous petitions, if any, shall stand closed.

No order as to costs.

SANJAY KUMAR, J

M. GANGA RAO, J

31st December, 2018
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