

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

WRIT APPEAL No. 1964 OF 2017

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

This Writ Appeal is filed under Clause XV of the Letters Patent against the order dated 20.11.2017 passed in Writ Petition No.33898 of 2016, wherein and whereby the learned Single Judge of this Court directed the 4th respondent herein to consider the case of the 1st respondent herein in the vacancy caused by the resignation of one Ghansya Naik.

2. Heard Sri P.V.Ramana, learned counsel for the appellant, the learned Government Pleader for Social Welfare for respondents 2 to 4 and the learned Government Pleader for Medical & Health for respondent No.5. None appeared for respondent No.1.

3. The brief facts of the case are that the appellant (5th respondent in writ petition) and the first respondent (petitioner in the writ petition) submitted applications for the post of MPHA (M) on contract basis in response to the Notification No.M/5321/2012, dated 15.07.2012, issued duly referring G.O.Ms.No.208, HM & FW (J2) Department, dated 02.08.2011. It was a special recruitment drive intended only for candidates belonging to the Scheduled Tribes in Mahabubnagar District. Total 16 vacancies were notified, out

of which one was reserved for physically handicapped category, 10 were reserved for Scheduled Tribes from plain area and 5 were reserved for local STs (agency area). It was also made clear that for 10 vacancies which were reserved for STs from plain area, both STs from plain area and local STs (agency area) are eligible.

4. Pursuant to the above notification, the appellant and 1st respondent participated in the written test and secured 72 and 63 marks respectively. Eventually, both failed to get appointment. However, one Ghansya Naik, who secured 73 marks and got appointment, resigned the said post later. In the said vacancy, the appellant got appointment as he stood next in the merit list. Aggrieved by the same, the 1st respondent filed Writ Petition No.33898 of 2016 claiming that he belongs to local ST (agency area) and he stood as next meritorious candidate from local ST (agency area) with 63 marks at Serial No.18. This court, while disposing of the writ petition, directed the District Collector, Mahabubnagar District to consider the case of the 1st respondent in the vacancy caused by Ghansya Naik and pass appropriate orders. The same is carried before us by way of this writ appeal.

5. The learned counsel for the appellant submitted that the sub-classification of the Scheduled Tribes on the basis of

the residence i.e. from plain area and agency area, is not permissible under the Constitution and that discrimination is oppose to the constitutional provisions. The claim of the 1st respondent for appointment in the vacancy caused by the resignation of Ghansya Naik, who was appointed under local STs (agency area) category, is illegal as per the Presidential Order. The Mahabubnagar District falls under Zone-VI and each District is a local area for local candidates. In fact, the post of MPHA(M) is a District post and all local persons of the district are entitled to be treated as local candidates based on their study.

6. As per G.O.Ms.No.68, Social Welfare (V) Department, dated 16.04.1988 and G.O.Ms.No.3, Social Welfare (TW.EDN.II) Department, dated 10.01.2000, the reservation of vacancies were made in favour of local Scheduled Tribes and the said GOs are not subjected to challenge. However, the learned Single Judge while making an observation that when the case of the appellant was initially rejected by stating the reason in the marks column that he belongs to non-agency area, it is not known how he was later appointed in the S.T. (Agency) category, directed the District Collector to consider the case of the 1st respondent.

7. Since the G.O.Ms.No.3, dated 10.01.2000 is specifically confined to appointment to the posts of teachers in schools in

scheduled areas, that did not fall for consideration and therefore, we ignore the said G.O.

8. The notification dated 15.07.2012 was issued referring G.O.Ms.No.208, HM & TW (J2) Department, dated 02.08.2011. In turn, the said G.O.Ms.No.208 was issued referring G.O.Ms.No.68, dated 16.04.1988, which reads thus:

“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 posts relating to 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.”

9. However, when the post of MPHA (M) is a District post, the local area for appointment to such post would be the District and all persons belonging to Scheduled Tribe category residing in such District will come under the expression “local members”. Therefore, there cannot be a sub-classification of Scheduled Tribes as rightly contended by the learned counsel for the appellant/5th respondent.

10. The similar issue was considered by a Division Bench of this Court in case of *Principal Secretary, Government of Andhra Pradesh, Health, Medical and Family Welfare (J2)*

*Department and others Vs. Ajmeera Raju and others*¹,

wherein it was held at Paras 10 to 13 as follows:

“10. As seen from the notification, it was issued under Paragraph-5(1) of the V-Schedule to the Constitution. The 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 posts as District Posts, Zonal Posts, Multi-Zonal Posts and Statewide Posts. 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

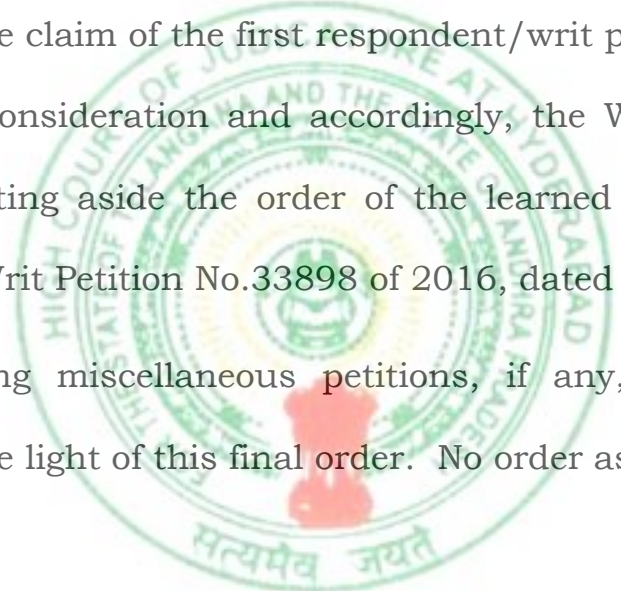
¹ 2017(1) ALT 291 (DB)

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. Hence, following the ratio laid down in the aforesaid decision, the claim of the first respondent/writ petitioner does not merit consideration and accordingly, the Writ Appeal is allowed setting aside the order of the learned Single Judge passed in Writ Petition No.33898 of 2016, dated 20.11.2017.

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

Date: 19.04.2018
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**HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE M.GANGA RAO**



WRIT APPEAL No. 1964 OF 2017

April 19, 2018

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