

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.4495 of 2019

ORDER:

This writ petition is filed seeking a Writ of Mandamus, declaring the action of 2nd respondent in publishing the impugned selection notification dated 12.02.2019 of the provisionally selected candidates to the post of Forest Beat Officer notified vide Notification No.48/2017, dated 15.08.2017 without enquiring into relinquishment from the selected candidates as per mandatory Rule 6-A of the Telangana State Public Service Commission Rules of Procedure, thereby affecting the petitioners' right to be considered, as arbitrary, illegal, without jurisdiction and violative of Articles 14, 16 and 21 of the Constitution of India and sought a consequential direction directing the 2nd respondent to follow Rule 6-A of TSPSC Rules of Procedure and select and appoint the petitioners as per their merit by removing all the candidates who have relinquished their candidature to the post of Forest Beat Officer notified vide Notification No.48/2017, dated 15.08.2017 with all consequential benefits.

2. Heard Sri S.Rahul Reddy, learned counsel for petitioners and the learned Advocate-General appearing on behalf of Standing Counsel for 2nd respondent.

3. It has been contended by the petitioners that they are fully eligible and qualified to be appointed to the post of Forest Beat

Officer and the respondents have issued Notification No.48 of 2017, dated 15.08.2017 inviting applications to the post of Forest Beat Officer. The petitioners have responded to the said notification and after undergoing regular selection process, have fared decently well in the said selections. The petitioners further contend that in all 1857 vacancies were notified in the cadre of Forest Beat Officer. The petitioners further submit that the respondents have also issued notification to the posts of Forest Range Officer and Forest Section Officer, vide Notification Nos.46 of 2017 and 47 of 2017 respectively. In all, 30 vacancies of Forest Range Officer and 53 vacancies of Forest Section Officer were notified. The petitioners though have fared decently well, could not come up in the zone of consideration. They are next meritorious candidates. The grievance of the petitioners is that the 2nd respondent has to strictly follow Rule 6-A of TSPSC Rules of Procedure, which reads as under :

“Rule 6-A : Notwithstanding anything contained in ad hoc 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.”

4. Provision in Rule 6-A is similar to earlier Rule 7 and the only change brought out is in the form of proviso. As per proviso appended to Rule 6-A, the exercise required by main provision is confined to the selections when single category post is notified. Procedure required as per Rule 6-A is mandatory and if merit list is drawn without complying Rule 6-A, the same is not valid in law.

5. Learned counsel appearing for petitioners contended that a perusal of the above said Rule makes it abundantly clear that the 2nd respondent, after preparing the selection list, must inquire as to whether the selected candidates intend to relinquish the post, and if any of the candidates so relinquishes, the same should be offered to the next meritorious candidates. He contended that Rule 6-A is mandatory and whether Rule 6-A of Telangana State Public Service Commission Rules of Procedure is mandatory or not, has fell for consideration before this Court in Writ Petition No.20232 of 2018 and this Court, vide orders dated 06.09.2018, has held that the said Rule is

mandatory and the said writ petition was disposed of with the following observations :

- “(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.”*

6. Counsel for petitioners further contended that the 2nd respondent herein has carried the matter in appeal by filing Writ

Appeal No.1494 of 2018 and a Division Bench of this Court, vide orders dated 22.11.2018, had confirmed the orders passed by the learned Single Judge. Therefore, counsel for petitioners contend that the respondents have not followed Rule 6-A of TSPSC Rules of procedure and thus denied opportunity to the petitioners to be considered against the posts relinquished by the selected candidates.

7. The learned Advocate-General appearing for the 2nd respondent had contended that the respondents have followed Rule 6-A of TSPSC Rules of Procedure and given opportunity to the selected candidates to relinquish their respective posts and Rule 6-A was extended to the posts of Forest Range Officer and Forest Section Officer. As far as the relinquishments made to the post of Forest Beat Officer are concerned, those posts were offered to the next meritorious candidates and further contended that the recruitment process was simultaneously carried out for Forest Beat Officers, Forest Range Officers and Forest Section Officers. Since the persons who were selected to the higher posts of Forest Range Officer and Forest Section Officer have relinquished their post of Forest Beat Officer, the resultant vacancies were offered to the next meritorious candidates in the cadre of Forest Beat Officers. Since Rule 6-A of TSPSC Rules of Procedure was followed for the posts of Forest Range Officer and Forest Section Officer, the 2nd respondent need not follow the said Rule in respect of Forest Beat Officer, which is admittedly a lower cadre post and no candidate would relinquish their appointment to the post of Forest

Beat Officer. Therefore, the learned Advocate-General contended that there are no merits in the writ petition and the same is liable to be dismissed.

8. This Court, having heard the rival contentions of the parties, is of the considered view that Rule 6-A of TSPSC Rules of Procedure is mandatory and it should be applied to each and every post. Admittedly, in the instant cast, the respondents have not followed Rule 6-A to the post of Forest Beat Officer. The respondents are contending that they did not extend relinquishment to the candidates selected against the last grade post of Forest Beat Officer and the same was extended to the posts of Forest Range Officer and Forest Section Officer, as no candidate selected to the post of Forest Beat Officer would relinquish his post. But, this Court is of the considered view that the action of respondents in not following Rule 6-A of TSPSC Rules of Procedure is violative of recruitment procedure. Rule 6-A mandates that the said Rule has to be followed in every recruitment process which is undertaken by the 2nd respondent. Therefore, the respondents cannot contend that Rule 6-A need not be followed in respect of the post of Forest Beat Officer as the said post is the last grade post among the three notified categories of posts. It is to be noticed that relinquishment by the selected candidates could be for various reasons. If a candidate secures admission in Post-graduation or gets better job opportunities, then a selected candidate may exercise his option to relinquish such post. Until and

unless Rule 6-A of TSPSC Rules of Procedure is followed and if recruitment process proceeds further and appointment orders are issued, and at that time, if a candidate do not report in pursuance to the said appointment order, then, the question of considering the next meritorious candidate would not arise and the resultant vacancy will have to be tagged on to the next notification. In the above said position, Rule 6-A is of paramount importance and it would be a step introduced in the selection process to be followed prior to issuance of appointment orders, so as to see that, if a candidate relinquishes his post, the same can be made available to the next meritorious candidate. Admittedly, in the instant case, respondents have not followed Rule 6-A of TSPSC Rules of Procedure in respect of Forest Beat Officer.

9. Therefore, the writ petition is allowed, directing the respondents to follow Rule 6-A of TSPSC Rules of Procedure in the selection process and if any candidate relinquishes his post in terms of the said Rule, the same can be offered to the next meritorious candidate. The respondents are directed to follow Rule 6-A of TSPSC Rules of Procedure even in recruitment to the post of Forest Beat Officer as was done by them in respect of Forest Section Officer and Forest Range Officer.

10. The whole exercise as directed above should be completed by the respondents within a period of four weeks from the date of receipt of a copy of this order.

11. With these observations, the writ petition is allowed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

11th June, 2019

ajr

