

**HONOURABLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

WRIT APPEAL Nos.1178 & 1270 OF 2016

COMMON JUDGMENT:(ORAL) (Per the Hon'ble Sri Justice A.Rajasheker Reddy)

We have heard the learned counsel for the parties.

2. Both the writ appeals arise out of the judgment dated 26.09.2016 in W.P.No.11677 of 2015. W.A.No.1178 of 2016 is at the instance of appellant - Insurance Regulatory and Development Authority (IRDA), which is 1st respondent in W.A.No.1270 of 2016. The 1st respondent in W.A.No.1178 of 2016 is the appellant in W.A.No.1270 of 2016 and petitioner in W.P.No.11677 of 2015. The parties are referred to as arrayed in W.A.No.1178 of 2016.

3. W.P.No.11677 of 2015 is filed by the 1st respondent-writ petitioner for Mandamus declaring the action of the appellant-IRDA in appointing respondents 2 to 5 as Assistant Director (Legal) pursuant to notification dated 23.10.2010 as illegal and arbitrary and quash their appointments. The writ petitioner also prayed for a consequential direction to the appellant-IRDA to appoint him as Assistant Director (Legal) pursuant to the notification.

4. The learned counsel for appellant-IRDA contends that the learned single Judge erred in setting aside the selections and directing the appellant herein to make fresh appointments. He also contends that 1st respondent-writ petitioner invoked the jurisdiction of this Court after

a lapse of four years and much water had flown during these years relating to availability of vacancies in the appellant organization, consequent upon reorganization of sanctioned strength; that the learned single Judge ought not to have entertained the writ petition instead ought to have dismissed it on the ground of laches; that though the issue of laches is raised, the same was not adjudicated upon by the learned single Judge; that there is reduction in sanctioned strength in the cadre of Assistant Directors from 36 to 20; that the learned single Judge while ordering notice before admission in the writ petition observed there was no need to issue notices to respondents 2 to 5 in the writ petition since the 1st respondent did not challenge the orders of appointment of respondents 2 to 5, but still the learned single Judge set aside the selection under OBC category, contrary to the proceedings dated 22.04.2015 in W.P.No.11677 of 2015.

5. He further contends that the 1st respondent-writ petitioner has not scored highest marks in the written examination under OBC category and setting aside the selection under OBC category to consider his case does not arise and any vacancy that may arise on account of resignation of any officer shall have to be filled up only in subsequent recruitment by following due process of law, if sanctioned posts are available; that the subject matter of W.P.No.28304 of 2011 is not applicable to the case of 1st respondent-writ petitioner, inasmuch as the petitioner therein was the lone ST candidate who has taken up the examination and attended the interview, but was not selected to the post of Assistant

Director, whereas in the present case, the 1st respondent-writ petitioner is one among the OBC candidates who has taken up the examination and attended the interview. Finally, he contends that the selection committee has followed the methodology and it cannot be said that the selection process is not transparent.

6. *Per contra*, learned counsel appearing for the 1st respondent- writ petitioner and the impleaded 6th respondent submits that the learned single Judge has rightly granted the relief to the writ petitioner, following the observations made in W.P.No.28304 of 2011 that selections were not in accordance with the procedure. They further submit that since the 6th respondent has secured highest marks, his case was to be considered under general category and the case of writ petitioner under OBC category. The learned Single Judge has rightly considered the aspect of filling up the vacancy under OBC category.

7. In order to appreciate the rival contentions and the controversy involved in these writ appeals, we find it relevant to narrate brief facts necessary for disposal of the writ appeals.

The appellant-organization issued notification on 23.10.2010 inviting applications for the posts of Assistant Director (Legal) along with other posts. Out of five posts of Assistant Director (Legal) notified, two posts were earmarked for Scheduled Tribes and one each to Scheduled Caste and OBC category by keeping the remaining post for unreserved. The 1st respondent attended the written examination on 23.01.2011 and was successful. Subsequently, by letter

dated 11.03.2011, the 1st respondent was called for interview held on 24.03.2011. In all, 31 candidates appeared for the interview. The 1st respondent claims that he has not received any communication from the appellant-organization, despite he being eligible to be considered to the unreserved post as well as to the reserved post under OBC category. This Court allowed W.P.No.28304 of 2011 filed by a candidate belonging to ST category challenging his non-selection and the writ appeal filed thereagainst was dismissed. The petitioner in the above writ petition joined service in February, 2014 consequent upon his appointment as Assistant Director (Legal). Subsequently, the 1st respondent-writ petitioner filed the writ petition impugned in these writ appeals challenging the action of appellant-organization in appointing respondent Nos.2 to 5 pursuant to the notification dated 23.10.2010. The appellant-organization opposed the writ petition on the ground of laches, besides stating that no irregularities were committed in the recruitment process. The appellant-organization also stated that since the writ petitioner did not figure in the list of selected candidates, no communication was sent to him. The 1st respondent-organization has followed fair and transparent procedure in the selection process. The petitioner did not secure highest marks among the candidates under OBC category and one Mr. Yashovant Ram Patel secured 282 marks. The appellant-organization filed additional counter affidavit denying violation of reservation policy in filling up the posts. The writ petitioner in reply stated that the appellant-organization appointed respondents 2 to 5 against the posts meant for reserved

candidates in violation of reservation policy. The selection committee recommended the names of two other candidates, apart from the 5th respondent under OBC category, but they have not challenged the appointment of 5th respondent.

8. The learned single Judge allowed the writ petition and the operative portion of the judgment reads thus:

“In view of the above circumstances, this Court has to normally set aside the entire selections, but in view of the restriction placed at the time of admission of the Writ Petition, the selection under OBC category is set aside, and the respondents are directed to fill up the OBC vacancy on the basis of the merit obtained in the written examination, within a period of four weeks from the date of receipt of a copy of this order”.

Aggrieved thereby, the present writ appeals are filed.

9. In this case, it is to be seen that the appellant-organization has issued notification in the year 2010 and the impugned writ petition is filed in 2015 i.e., four years after the selected candidate joined the organization and worked as such and the delay is not explained. The only explanation offered in the writ petition pleadings is that the writ petitioner opened his eyes after W.P.No.28304 of 2011 filed by a ST candidate was allowed on 01.10.2013. After coming to know of the same, the writ petitioner filed the impugned writ petition after obtaining information under the Right to Information Act.

10. Furthermore, a specific plea was raised by the appellant – organization in the counter affidavit that the writ petition cannot be

entertained since the same is filed with inordinate delay and it has to be dismissed on the ground of laches. The learned Single Judge has not gone into the said aspect and even at the time of admission of the writ petition, the learned counsel for 1st respondent-writ petitioner has restricted the claim in respect of OBC vacancies available with the appellant-organization and that the 1st respondent-writ petitioner is not interested in challenging the orders of appointment of respondent Nos.2 to 5 made more than three years back. The same goes to show that the 1st respondent-writ petitioner conceded that there is delay and laches in filing the writ petition.

11. Admittedly, in this case, selections took place pursuant to notification dated 23.10.2010. The writ petitioner attended the interview on 24.03.2011 and later the impugned writ petition came to be filed in the year 2015. A perusal of the averments in the writ petition goes to show that one candidate belonging to ST category filed W.P.No.28304 of 2011 and succeeded. Subsequently, the 1st respondent-writ petitioner filed the impugned writ petition i.e., after four years after the selected candidate joined the organization and later left the same after working for some time. The same goes to show that reservation made in favour of OBC category was effected and the 5th respondent was appointed in the vacancy and merely because the 5th respondent left the organization, the 1st respondent-writ petitioner will not be getting any right for considering his case in that vacancy. As rightly pointed out the said vacancy if at all to be filled has to be done

by issuing fresh notification but it is stated subsequently the cadre strength of A. P. is reduced. In the present case, the notification is issued in the year 2010 and the 1st respondent-writ petitioner cannot be appointed in the said vacancy, that too after a period of four years after the selected candidate joined the organization and later left the same after working for some time. The settled things cannot be unsettled at this point of time. When the 1st respondent-writ petitioner did not secure highest marks under OBC category and above him one Yashovant Ram Patel was available, the petitioner cannot claim that his case should be considered in the vacancy and that the said Yashovant Ram Patel who is impeladed as 6th respondent in the writ appeal has to be given appointment under OC category, since he secured highest marks, cannot also be considered, since the writ petitioner himself gave up the claim against respondents 2 to 5 who are appointed under OC category at the time of ordering notice before admission in the writ petition. As such, the claim of appellant in W.A.No.1270 of 2016 cannot also be considered. Even in the writ appeal, the cause title goes to show that respondents 2 to 5 are not necessary parties. In such case, the question of disturbing the selection of respondents 2 to 5 after issuing notice in the writ appeal does not arise at this point of time. The same goes to show that 1st respondent-writ petitioner wants to take advantage of the orders passed in W.P.No.28304 of 2011 filed by a candidate belonging to ST category. When once the 1st respondent-writ petitioner is not the highest scorer under OBC category, he cannot contend that his case alone has to be considered

under that category. It also goes to show that respondents 2 to 4 have also been promoted to the next category in October, 2016. In the reply affidavit filed by the writ petitioner before the learned single Judge and as noted by the learned single Judge, he has not challenged the appointment of 5th respondent. Hence, the question of setting aside the selection under OBC category does not arise, that too at the instance of 1st respondent-writ petitioner who has not secured highest marks in the said category.

12. In the aforesaid facts and circumstances of the case, W.A.No.1178 of 2016 filed by appellant-IRDA is allowed setting aside the order of the learned single Judge and the writ petition No. 11677 of 2015 stands dismissed. Since W.A.No.1178 of 2016 is allowed *in toto*, the appellant in W.A.No.1270 of 2016 cannot be granted any relief, hence, W.A.No.1270 of 2016 is dismissed. No order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any pending, stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

14th March, 2019

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