

High Court for the State of Telangana

The Hon'ble The Chief Justice Raghvendra Singh Chauhan

and

The Hon'ble Dr. Justice Shameem Akther

W.A. No. 551 of 2019

Date: 03-07-2019

Between:

Telangana State Public Service Commission
Rep. by its Secretary, Prathibha Bhavan,
Nampally, Hyderabad

...Appellant

and

B. Anand Kumar and 5 others

...Respondents

Counsel for the appellant: Mr. B. S. Prasad, Advocate General

Counsel for the respondents: Mr. S. Rahul Reddy

The Court made the following:

Judgment: (per Hon'ble The Chief Justice Raghvendra Singh Chauhan)

The appellant, Telangana State Public Service Commission (for short 'the Commission), has challenged the legality of the order dated 11-06-2019, in WP.No.4495 of 2019, whereby the learned Single Judge has directed the Commission to follow Rule 6-A of the 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 learned Single Judge directed the Commission to complete this exercise within a period of four weeks.

Briefly the facts of the case are that the original petitioners, who are respondent Nos.1 to 6 herein, belong to BC-B, BC-D, SC, ST (Agency) and OC communities. According to them, they possess the requisite qualification for the post of Forest Beat Officer. By notification dated 15-08-2017, the Forest Department had notified 1857 vacancies of Forest Beat Officers. The said posts are district cadre posts, and single category posts. The petitioners further claim that they had applied for the said posts, and had even appeared in the examination on 29-10-2017.

Having cleared the written examination, they were called in for a walking test, which also they cleared. Subsequently, between 20-08-2018 to 24-08-2018, they were called for verification of their certificates. On 12-02-2019, the Forest Department issued a list of provisionally selected candidates. Since the petitioners did not find their names therein, they sent their representations to the Forest Department. However, their representations seem to have fallen on deaf ears. Therefore, the petitioners filed the writ petition before the learned Single Judge *inter alia* on the ground that Rule 6-A of the Rules of Procedure clearly stipulates that before the selection list is sent to the appointing authority, the selected candidates should be informed about their selection, and should be asked to inform the Commission, if they are willing to relinquish their right of appointment or not. However, the said procedure has not been followed by the Commission while dealing with the selection of candidates for the posts of Forest Beat Officers. As stated above, by order dated 11-06-2019, the learned Single Judge has allowed the writ petition with the aforementioned directions.

Mr. V.B. Prasad, the learned Advocate General, pleads that although Rule 6-A of the Rules of Procedure is mandatory, but its non-observation would not make the selection an illegal one. Moreover, the implementation of Rule 6-A as directed by the learned Single Judge cannot be carried out within the stipulated period of four weeks. After all, the selection is to be made for 1857 posts. Since there would be an inordinate delay in filling up the posts of Forest Beat Officers, the delay is unnecessarily creating difficulties for the Forest Department. For, without availability of the Forest Beat Officers, and due to the lack of man power, the Forest Department is finding it extremely difficult to maintain the forests, and to deal with the menace of encroachment in forest lands, and deforestation. Thus, it is imperative that the Forest Department be permitted to appoint the Forest Beat Officers as expeditiously as possible so that it can work at its optimum capacity.

On the other hand, Mr. S. Rahul Reddy, the learned counsel for the respondent Nos.1 to 6, submits that in Writ Appeal Nos.1494 and 1524 of 2018, the learned Division Bench, by its judgment, dated 22-11-2018, has already

observed that the compliance of Rule 6-A of the Rules of Procedure is mandatory one. Therefore, before the selection list can be sent by the Commission to the appointing authority, the procedure prescribed under Rule 6-A necessarily has to be followed. According to the learned counsel, since this procedure has been ignored by the Commission, the entire list stands vitiated. Therefore, the selection list, although forwarded by the Commission to the appointing authority, cannot be implemented until and unless the procedure under Rule 6-A of the Rules of Procedure is complied with. Therefore, the learned counsel has supported the impugned order.

Heard the learned counsel for the parties, and perused the impugned order.

To say the least, a quixotic condition has arisen with the emergence of two conflicting interests before this Court: *Firstly*, the interest of the Forest department, which is justified in claiming that with the lack of manpower, it cannot be expected to protect the forests; and the green cover of the State; *secondly*, the interest of the respondents, who claim that they would have the right of consideration

for appointment, if Rule 6-A of the Rules of Procedure were to be implemented in toto.

The issues that have arisen before this Court are: whether non-observation of a mandatory provision of law by the Commission would vitiate the selection process or not ? Whether the selection list can be implemented in a pragmatic manner, while protecting the interests of respondent Nos.1 to 6 or not ?

Needless to say, the High Court is not just a Court of law. But, most importantly, it is a Court of equity where the equities need to be balanced. Therefore, in the peculiar facts and circumstances of this case, this Court is asked to resolve the problem in a most pragmatic manner so as to satisfy the urgent need of the forest department, while protecting the interests of respondent Nos.1 to 6. Undoubtedly, the Commission should have followed the procedure established by law, especially by Rule 6-A of the Rules of Procedure. However, merely because a procedure has not been followed, it would not vitiate the entire selection process. For, the non-following of such a procedure is not an illegal act, but merely an irregularity committed by the

Commission. Hence, the irregularity can be cured by the Commission. Therefore, the learned counsel for the respondent Nos.1 to 6 is not justified in pleading that since the requirement of Rule 6-A of the Rules of Procedure has not been fulfilled, the entire selection process would stand vitiated.

While trying to balance the conflicting interests of the appellant and the respondent Nos.1 to 6, this Court is of the opinion that it would be in the interest of justice to permit the Commission, the appellant, to implement the selection list while reserving six posts for the benefit of the respondent Nos.1 to 6. If after implementing the selection list, it is discovered that certain candidates have not joined the service, the appointing authority shall consider the case of the respondent Nos.1 to 6, and if they are found to be eligible, they shall be appointed against the six vacancies kept for them. The other remaining vacancies, if any, can be dealt with in accordance with law.

However, it is clarified by way of abundant caution that in case respondent Nos.1 to 6 were to be appointed, and if the appointment letters have already been issued to others,

and if the others have already joined their services, such appointments would not adversely affect the seniority of the respondent Nos.1 to 6 even if they join later on. Their seniority would be counted from the date on which their batchmates have joined the services.

With these directions, the order dated 11-06-2019, in W.P.No.4495 of 2019 stands modified.

Accordingly, the appeal stands disposed of.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(Raghvendra Singh Chauhan, CJ)

(Dr. Shameem Akther, J)

Dt: 3rd July, 2019
lur