

HIGH COURT FOR THE STATE OF TELANGANA
THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

WA.No.628 of 2019

31.07.2019

Between

The Government of Telangana,
Rep. by its Principal Secretary,
Irrigation Department,
Secretariat, Hyderabad – 22 and others.

...APPELLANTS

AND

C. Narshimulu, S/o. Late Jammanna,
Aged about 33 years, working as Junior Assistant,
O/o The Executive Engineer, RDS (LOC) Division,
District Irrigation Office, Gadwal,
Jogulamba Gadwal District.

...RESPONDENT

Counsel for the Appellants: GP for Services - II

Counsel for the Respondent: Ms. G.R. Mercy Vijaya

The Court made the following:

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.628 of 2019

JUDGMENT: { Per the Hon'ble the Chief Justice Sri Justice Raghvendra Singh Chauhan }

The appellants are aggrieved by the order dated 08.04.2019, passed by the learned single Judge, in WP.No.34590 of 2018, whereby the learned single Judge has allowed the writ petition filed by the respondent, ('the petitioner' for short), Mr. C. Narshimulu and directed the appellants to consider his case for promotion against roster point No.56, which is reserved for the physically challenged candidates.

2. Briefly the facts of the case are that the petitioner, Mr. C. Narshimulu, was appointed as Office Subordinate on compassionate ground, on 09.03.2011, by the Superintending Engineer, PJP Circle No.1, Gadwal. Subsequently, on 03.05.2013, his services were regularized. On 24.08.2013, he was promoted as Junior Assistant. On 18.11.2015, his services were regularized on the post of Junior Assistant. The respondent further claimed that he is a physically challenged person suffering from locomotor disability.

3. The petitioner further claimed that under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, 3% of the posts have to be reserved for the physically challenged persons, under the existing 100 point roster prescribed under Rule 22 of the Andhra Pradesh State and Subordinate Service Rules. The vacancies at roster point Nos.6, 31 and 56 need to be filled by persons belonging to physically challenged category.

Since the respondent/petitioner was hopeful that he would be promoted to the post of Senior Assistant on the reserved category, being physically challenged, he submitted a representation to respondent No.3. Respondent No.3 sought a clarification from the Engineer-in-Chief (Administrative Wing), respondent No.2, vide letter dated 22.05.2018 bringing it to the notice of respondent No.2 that there are 30 posts of Senior Assistants sanctioned in the circle, and 3% reservation is applicable to the said post. In pursuance of the said letter, respondent No.2 directed that the vacancies shall be filled up as per the merit-cum-seniority only, but did not make any provision for filling up 3% quota as warranted by the Act. Subsequently, by memo dated 25.08.2018, the petitioner's request for promotion to the post of Senior Assistant in accordance with roster point No.56 was rejected. Aggrieved by the same, the petitioner filed the writ petition. As mentioned above, by the impugned order dated 08.04.2019, the learned single Judge has directed the appellants to consider the case of the petitioner against roster point No.56. Hence, this appeal.

4. Learned Government Pleader for Services – II, appearing for the appellants, submits that since one A. Siva Kumar was already promoted to the post of Senior Assistant under the General Quota, there was adequate representation of the physically challenged persons in the service. Hence, the learned single Judge was unjustified in directing the appellants to consider the case of the petitioner. Therefore, the impugned order deserves to be set aside by this Court.

5. On the other hand, Ms. G.R. Mercy Vijaya, learned counsel for the petitioner, submits that even if Mr. A. Siva Kumar was promoted to

the post of Senior Assistant, his promotion was not under the reserved category, but was under the general quota. Therefore, roster point No.56 has to be filled. Since the petitioner was eligible for the said promotion, his case should have been considered by the appellants. Hence, she supported the impugned order.

6. Heard learned counsel for the parties.

7. It is, indeed, trite to state that once reservation is made for a particular category, the benefit of reservation necessarily has to be given to the persons belonging to the said category. Merely because Mr. A. Siva Kumar has been promoted to the post of Senior Assistant, that too under the general quota, the appellants are unjustified in claiming that the benefit of reservation cannot be given to the petitioner ostensibly on the ground that there is sufficient representation of the physically challenged community in the service. The stand being taken by the appellants is legally unsustainable. Therefore, this Court does not find any illegality or perversity in the impugned order passed by the learned single Judge.

For the reasons stated above, this Court does not find any merit in the writ appeal and it is hereby dismissed. Pending miscellaneous petitions shall also stand dismissed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, CJ

DR. SHAMEEM AKTHER, J