

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT APPEAL No.419 of 2019

and

W.P.Nos. 8679, 14343, 15052 & 15698 of 2019

30.08.2019

Between:

P. Ramakrishna

...Appellant

and

State of Telangana and others

...Respondents

Counsel for the appellants/petitioners : Mr. S. Rahul Reddy,

Mr. B. Kiran Kumar

Counsel for the respondents

: Advocate General,
GP for School Education,
D. Balakishan Rao

The Court made the following:

COMMON JUDGMENT : (Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

The present writ appeal, namely W.A.No.419 of 2019, has been filed against an interim order passed by a learned Single Judge in I.A.No.1 of 2019 in W.P.No.8679 of 2019, wherein the learned Single Judge had directed that “if any candidate relinquishes the post of Secondary Grade Teacher, in pursuance of notification No.53/2017 dated 21.10.2017, the case of the petitioners shall be considered by respondents, in accordance with law”.

Briefly stated, the facts of the case are that the Telangana State Public Service Commission (“the Commission” for short) had issued a notification, namely notification No.53/2017 dated 21.10.2017, notifying 5415 vacancies for the post of Secondary Grade Teacher (“SGT” for short). The said post is a district cadre post, and a single category post. Since the petitioners were hopeful that they would be selected for the said post, they applied under the said notification. The petitioners were called for verification of their certificates. However, once the results were announced, the petitioners discovered that they have scored marks slightly less than the cut-off marks for their respective categories.

However, Section 6(A) of the Telangana State Public Service Commission Rules of Procedure (“the Rules” for short) requires that prior to issuance of the appointment letters, an option shall be called for from those candidates, who are on the selection list, with regard to whether they wish to be appointed on the post or not? Therefore, the petitioners were hopeful that the procedure established by Rule 6(A) of the Rules would be duly followed by the

Commission. However, when the Commission published the selection list on 31.12.2018 for SGT (English Medium), and on 04.04.2019 for SGT (Telugu Medium), the petitioners realized that their names could not be considered for appointment, as the Commission had failed to adhere to the procedure prescribed by Rule 6(A) of the Rules. Since they were aggrieved by the omission committed by the Commission, they filed the writ petition, namely W.P.No.8679 of 2019, challenging the selection list for SGT (English Medium) dated 31.12.2018, and for SGT (Telugu Medium) dated 04.04.2019, and praying that the Commission should be directed to follow Rule 6(A) of the Rules. It is in this background that the learned Single Judge has passed the impugned order in this writ appeal.

During the course of the arguments in the present appeal, it was brought to the notice of this Court that the issue before this Court is whether the provision of Section 6(A) of the Rules has been followed by the Commission or not? Therefore, by order dated 19.07.2019, this Court directed Mr. B.S.Prasad, the learned Advocate General, to submit an affidavit showing the number of relinquishments, both in the subjects of Telugu and English. Consequently, an affidavit was filed by the learned Advocate General.

Moreover, it was brought to the notice of this Court that besides the present writ appeal, W.P.No.14343 of 2019, W.P.No.15052 of 2019, W.P.No.15698 of 2019 and W.P.No.8679 of 2019 continue to be pending before the learned Single Judge. Since it would be in the interest of justice to adjudicate upon the issue mentioned hereinabove, this Court thought it proper to call

for the writ petitions, which were pending before the learned Single Judge, and to settle the controversy once and for all. After all, the interest of those, who have already been selected provisionally, the interest of the Department, as well as the interest of the petitioners continue to be in animated suspension, till the issue is decided by this Court. It is in this background that this Court had directed all the writ petitions mentioned hereinabove to be listed today before this Court. Thus, the present writ appeal and all the writ petitions, mentioned hereinabove, are being decided by this common order.

The learned Advocate General also informs this Court that in W.P.No.2557 of 2019, a review petition has been filed against the order dated 21.02.2019. The said review petition would be decided separately by this Court.

Both Mr. S. Rahul Reddy and Mr. B. Kiran Kumar, the learned counsel for the petitioners, submit that there were 3786 vacancies for SGT (Telugu Medium), and 909 vacancies for SGT (English Medium). The petitioners had applied for the said posts. Moreover, according to the learned counsel, out of 3786 vacancies, 3375 candidates were provisionally selected for the post of SGT (Telugu Medium), and out of 909 vacancies, 837 candidates were provisionally selected for the post of SGT (English Medium). While provisionally selecting the candidates, Rule 6(A) of the Rules was not followed by the Commission. Relying on the case of **Telangana State Public Service Commission vs. K. Archana and others** (Writ Appeal Nos.1494 and 1524 of 2018 decided by a learned Division Bench of this Court on 22.11.2018), the learned counsel have pleaded that the learned Division Bench has already opined

that Rule 6(A) of the Rules is a mandatory provision. Therefore, before any appointment can be made, the Commission is duty bound to follow Rule 6(A) of the Rules. Therefore, the Commission was duty bound to seek the relinquishment option from all the 3375 candidates, who were provisionally selected for the post of SGT (Telugu Medium), and from the 837 provisionally selected candidates for the post of SGT (English Medium). However, the said process has never been undertaken by the Commission. Therefore, the Commission has committed a grave illegality. Hence, the impugned provisional selection lists, for the post of SGT (English) dated 31.12.2018, and for the post of SGT (Telugu) dated 04.04.2019, deserve to be set aside by this Court.

On the other hand, the learned Advocate General, Mr. B.S. Prasad, has pleaded that after the selection process was over, the Commission realized that there are a large number of candidates who have applied both for the post of SGT (Telugu Medium) and for the post of SGT (English Medium). Since it is not possible for the same candidate to be appointed to the two posts simultaneously, therefore the Commission had sought the relinquishment option only from those persons who were common candidates for both the posts. According to the learned Advocate General, 184 candidates had submitted their relinquishment option, clearly stating that they do not wish to be considered for the post of SGT (Telugu Medium), but should be considered only for SGT (English Medium). Thus, according to the learned Advocate General, Rule 6(A) of the Rules was followed both in its letter and spirit. Therefore, the provisional selection lists dated 31.12.2018 and dated 04.04.2019 are legally valid. Hence, this

Court need not interfere with the impugned provisional selection lists.

Heard the learned counsel for the parties and perused the record submitted before this Court.

In the case of **K. Archana and others vs. State of Telangana** (W.P.Nos.20232 and 20273 of 2018), the learned single Judge observed as under:-

“Provision in Rule 6(A) of the Rules of Procedure are intended only to obviate the contingency of any post remained unfilled, more particularly when selection is held simultaneously to various posts, candidates are eligible to compete to various posts so notified and their names are included in more than one merit list, and if the option is called, the candidate may opt out any one of those posts and, therefore, the other candidates can be included in the merit list. By following this procedure, the PSC only ensures that entire merit list sent to various categories of posts do not contain the same name in more than one post. It would ensure reducing the possibility of non-joining in posts and ensures that next meritorious candidates get opportunity for being appointed. Thus, the scheme has larger public interest element.”

Since the Commission was aggrieved by order dated 06.09.2018, it filed W.A.Nos.1494 and 1524 of 2018. While upholding the decision of the learned single Judge, the learned Division Bench in the case of **Telangana State Public Service Commission vs. K. Archana and others**, observed as under:-

*“The Rule puts it beyond the pale of doubt that the exercise had to be undertaken only after the selection list was drawn up. This is clear as Rule 6(A) postulates that the Commission must enquire from every candidate whose name has been included in the selection list in the direct recruitment as to whether he wishes to relinquish his appointment. The appellant commission therefore could not have undertaken such an exercise even before drawing up the selection list. When the Rule stipulates that a particular procedure must be followed, the appellant Commission, which was the author of the said Rule, cannot adopt some other procedure and seek to justify its non-adherence to the Rule. (See **Taylor vs. Taylor ((1875) 1 Ch. D 426)**, **Nazir Ahmed vs. King Emperor (LR 63 1A 372)** and **State of Uttar Pradesh vs. Singhara Singh (AIR 1964 SC 358)**.”*

Moreover, the learned Division Bench had opined that the *“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”*. Thus, obviously, this Court has held that Rule 6(A) of the Rules is mandatory in nature. Therefore, the Commission cannot ignore the same. Moreover, Rule 6(A) of the Rules needs to be implemented prior to the issuance of the appointment letters.

Admittedly, in the present case, the Commission has called for the relinquishment option only from those candidates who are common to the posts of SGT (Telugu Medium) and SGT (English Medium). However, they have not called for the options of those

who may find mention only in one list and not in both the lists. There is, indeed, a great possibility that a person, who may be selected only for one post, may still want to relinquish his right of appointment, as he may have better options in life to choose from. Thus, if the said candidate would not join, despite his selection, still vacancies will be left unfilled.

Moreover, a bare perusal of Rule 6(A) of the Rules does not indicate that Rule 6(A) is to be applied only for that category of candidates, who are common to both the lists for two different posts. In fact, the tenor of Rule 6(A) is that the candidates, who have been provisionally selected, should be asked for their relinquishment option. If X number of candidates do give their relinquishment option, then the cases of those who are slightly below the merit list need to be considered for X number of vacancies by the Commission for appointment. After all, the purpose and object of Rule 6(A) of the Rules is to ensure that the posts do not go unfilled.

Hence, in the present case, the Commission was required to seek the relinquishment option from all the 3375 provisionally selected candidates for the post of SGT (Telugu Medium), and from the 837 provisionally selected candidates for the post of SGT (English Medium). But the same has not been done.

Therefore, for the reasons stated above, the writ appeal and the writ petitions are hereby allowed. The provisional selection lists, dated 31.12.2018 and dated 04.04.2019, for the posts of SGT (English Medium) and SGT (Telugu Medium) respectively, are set aside. The Commission is directed to first seek the relinquishment option from all the candidates who are

provisionally selected for the post of SGT (Telugu Medium), and from all the candidates provisionally selected for the post of SGT (English Medium). In case, the Commission receives relinquishment option from the provisionally selected candidates, it is directed to fill up those vacant posts while considering the cases of the petitioners. However, it is clarified that the petitioners will be entitled to be appointed, provided they fulfil the eligibility and suitability requirement for the said posts. The said exercise shall be carried out by the Commission by 30.09.2019. There shall be no order as to costs.

The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

30th August, 2019
JSU/pln

High Court for the State of Telangana**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN****AND****THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY****WRIT APPEAL No.419 of 2019****and****W.P.Nos. 8679, 14343, 15052 & 15698 of 2019****(Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)****Date: 30.08.2019****JSU**