

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.17516 OF 2019

ORDER:

This Writ Petition is being disposed of at the admission stage with the consent of both the parties.

This Writ Petition is filed seeking a writ of mandamus declaring the action of the second respondent in not considering the case of the petitioner against the existing two vacancies reserved for Scheduled Caste Candidates in Zone VII which were unfilled pursuant to a selection process undertaken vide notification No.09/2015 dated 29.08.2015 notwithstanding the fact that the petitioner was eligible, qualified and a selected candidate, as illegal, arbitrary and in violation of principles of natural justice and a consequential direction is sought to direct the respondents to consider and appoint the petitioner in any of the existing two vacancies reserved for Scheduled Caste Candidates in Zone VII.

Heard Sri D. V. Sitharam Murthy, learned Senior Counsel appearing for Sri Mamidi Avinash Reddy, learned counsel for the petitioner, learned Government Pleader for Municipal Administration for R-1 and Sri D. Balakishan Rao, learned Standing Counsel for R-2.

It has been contended by the learned Senior Counsel that the petitioner is fully eligible to be appointed to the post of Assistant Engineer (PH) and the respondents have issued a notification on 29.08.2015 for filling up of Assistant Engineer in Public Health and Municipal Engineering Subordinate Services. In all 258 posts were advertised and the petitioner has responded to

the said notification. After undertaking regular selection process, the petitioner was selected and appointed as Assistant Engineer. It is further submitted that he is a member belonging to Scheduled Caste community and that one Sri S. Venkata Swamy has challenged the appointment of the petitioner by filing W.P.No.42005 of 2016 and this Court was pleased to allow the said Writ Petition vide orders dated 19.12.2018 and the appointment of the petitioner was set aside, as the petitioner in the said Writ Petition has secured more marks than the petitioner herein. Learned Senior Counsel further contends that there are two more vacancies which are unfilled in city cadre which are earmarked for Scheduled Caste candidates. Even if the petitioner in W.P.No.42005 of 2016 is appointed as Assistant Engineer in the city cadre, the case of the petitioner can still be considered in the remaining two vacancies in city cadre. As admittedly the petitioner had participated in the selection process and has secured enough marks to get appointed in the unfilled vacancies, the petitioner has submitted a representation to the respondents on 15.06.2019 requesting the respondents to consider his case for appointment in the unfilled vacancies, but so far the respondents have not considered the petitioner's case for appointment in the unfilled vacancies earmarked for Scheduled Caste candidates. Therefore, learned Senior Counsel seeks a direction to the respondents to consider the petitioner's representation dated 15.06.2019 and pass appropriate orders in accordance with law.

Learned Senior Counsel further relied on the judgment rendered by the Hon'ble Supreme Court in **R. S. Mittal v. Union of India**¹ wherein, the Hon'ble Supreme Court has held as under:-

“The Tribunal dismissed the application by the impugned judgment on the following reasoning:

- (a) The selection panel was merely a list of persons found suitable and does not clothe the applicants with any right of appointment. The recommendations of the Selection Board were directory and not mandatory and were not therefore enforceable by issue of a writ of mandamus by the Court.
- (b) The letter of Ministry of Home Affairs dated 08.02.1982 which extends the life of panel till **exhausted** is not relevant in the present case. In the circumstances the life of the panel in this case cannot go beyond 18 months and as such expired in July 1989.

It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.”

Learned Senior Counsel contended that since all these aspects were not considered in W.P.No.42005 of 2016 and admittedly as there are two unfilled vacancies, the case of the petitioner can be considered for appointment in any of those two

¹ 1995 Supp (2) SCC 230

vacancies even after filling up of the Scheduled Caste cadre. Therefore, learned Senior Counsel contended that in view of the law laid down by the Supreme Court and the fact that two vacancies are available in the Schedule Caste cadre, the petitioner can be considered without reference to the earlier order dated 30.05.2019.

Learned Standing Counsel contended that since the petitioner has submitted a representation dated 15.06.2019 before the respondents, the case of the petitioner would be considered and appropriate orders would be passed on the representation submitted by the petitioner on 15.06.2019 within a reasonable period of time.

Having considered the rival submissions made by the learned counsel on either side, this Writ Petition is disposed of directing the respondents to consider the representation of the petitioner dated 15.06.2019 and pass appropriate orders in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

(ABHINAND KUMAR SHAVILI, J)

12th November 2019
RRB