

**HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO
AND
HON'BLE SRI JUSTICE K. LAKSHMAN**

WRIT PETITION No.17600 of 2019

ORDER: (per MSR, J)

The petitioner has filed this writ petition to declare the action of respondent No.1 in issuing the impugned order No.(1)/2017, dt.04.10.2017, communicated through G.O.Ms.No.133, General Administration (SR-I) Department, dt.04.10.2017, in allocating the petitioner to the State of Andhra Pradesh in respect of the Head of the Department i.e., A.P. Administrative Tribunal, as arbitrary and illegal, and consequently sought a direction to respondent No.1 to allocate the petitioner to the State of Telangana as per the Guidelines issued by respondent No.1.

The petitioner was employed as a Senior Assistant in the A.P. Administrative Tribunal, Hyderabad, and he had been promoted to the said post on 18.03.2013, on which date, the State of Andhra Pradesh comprised of both the areas of residuary State of Andhra Pradesh as well as the new State of Telangana (which came to be created under the Andhra Pradesh Re-organisation Act, 2014 (for brevity "the Act") w.e.f. 02.06.2014).

Guidelines were framed by the Government of India, Ministry of Personnel, P.G. & Pensions, Department of Personnel & Training, on 29.10.2014 under sub-section (2) of

Section 77 of the Act, Guideline No.18(f) to (i) states as follows:

“Principles guiding Allocation:

18. The following principles and procedure shall guide the final allocation of personnel :

(a) to (e)

(f) The allocation shall be done in order of seniority as available on June 01, 2014. Those who have opted, who are ‘local candidates’ relatable to the State to which they have opted, shall, in order of their seniority, be considered for allocation first. If allocable posts in that category remain, then, others who have opted to the State may be allocated in order of seniority. If still posts remain allocation will be made in reverse order of seniority.

(g) Vacant posts or posts created subsequent to the appointed day by either State Governments will be reckoned, if so desired by that State, for the purposes of final allotment of State Services employees.

(h) Employees who are not local in relation to both States will be allocated on the basis of place of birth or home district, as the case may be, after due verification and certification. Those originally from other States will be allocated on a case by case basis after considering their option.

(i) Employees who are members of the Scheduled Castes or the Scheduled Tribes shall be considered for allocation on the basis of their option if they are local candidates. In the event an SC or ST employee has not exercised his option or where he has not been so allocated he/she shall be allocated to the State where his caste or tribe, as the case may be, included in the concerned schedule of the State.”

It is the contention of the learned counsel for petitioner that the petitioner belongs to Scheduled Tribe Community

‘Yerukala’ and, therefore, as per Clause (i) of Guideline No.18, he should be allotted to the State of Telangana on the basis of his option, since he is a local candidate to the State of Telangana having been born in that State.

Respondent Nos.2, 4 and 5 have filed counter affidavit refuting the said contention of the petitioner. It is pointed out that the cadre strength in the cadre of Senior Assistants was ‘11’, out of which, ‘6’ posts were allotted to the residuary State of Andhra Pradesh, and ‘5’ posts were allotted to the new State of Telangana; that the seniority list existing as on 01.06.2014 was notified and options were called for from the employees through Notification dt.13.07.2017; that the petitioner exercised option for allocation to the State of Telangana; but the petitioner stood at Sl.No.9 in the seniority list in the State of Telangana. It is stated that out of ‘11’ posts available in the cadre of Senior Assistants, 5 persons, who are seniors to the petitioner and who are local to the State of Telangana, have opted for Telangana and they were allotted to the State of Telangana against the ‘5’ posts allotted to the State of Telangana. Since there were no posts in the cadre of Senior Assistant available in the State of Telangana so as to accommodate the petitioner, he was allotted to the State of Andhra Pradesh as per the provision contained in Guideline No.18(f), referred to supra.

In the additional counter affidavit filed by the above respondents, they have dealt with the contention of the

petitioner with regard to Guideline No.18(i), referred to above. It is contended that Guideline No.18(i) must be harmoniously read with Guideline No.18(f). Reliance is also placed on the Circular Memo No.19184/SRI/A1/2014-7, dt.25.02.2015, issued by the Governments of Andhra Pradesh and Telangana and it is pointed out that the order of priority was mentioned in the said Circular Memo for allocation of different categories of personnel between the successor States of Andhra Pradesh and Telangana, who belong to Scheduled Caste, Scheduled Tribe and other Classes. It is stated with regard to ST Community, Clause 3(A) states that in allocation of employees to the respective States, priority should be given to the members of 'Thoti Tribe', which is notified only in Telangana State, and the persons belonging to that Tribe alone have a right to be allocated to the State of Telangana, whether they have opted or not to the said State and even if they have opted for other State of Andhra Pradesh.

It is contended that the petitioner belongs to 'Yerukala Caste Community' under the Scheduled Tribe category, which is included in both the States of Andhra Pradesh and Telangana; it is not exclusive to any State to get preference for allocation; therefore, preferential allocation to the petitioner to the State of Telangana is not possible on the basis of his status; and hence he is treated on par with other general categories only on the basis of his seniority and hence the said action of the respondents cannot be found fault with.

The learned Government Pleader for Services-III and Sri Krishna Kishore Kovvuri, learned Central Government Standing Counsel also adopted the said stand of the State of Andhra Pradesh.

Learned counsel for the petitioner reiterated his submissions and also placed reliance on a judgment of the Supreme Court in ARVIND KUMAR GUPTA vs. PRINCIPAL SECRETARY, MEDICAL, HEALTH AND FAMILY WELFARE, UTTARAKHAND AND ORS.¹

We have noted the contentions of the learned counsel for the respective parties.

There is no dispute that, in the instant case, in the post of Senior Assistant, the cadre strength was fixed as '11' and in the seniority list, the petitioner is placed at Sl.No.9. It is also not in dispute that the petitioner was born in the State of Telangana and belongs to Scheduled Tribe 'Yerukala' Community.

We have already extracted Clause (f) of Guideline No.18, which mandates that allocation should be done in order of seniority as available on 01.06.2014 and those who have opted, who are local candidates relatable to the State to which they have opted, shall, in order of their seniority, be considered for allocation first. If allocable posts in that category remain, then, others, who have opted to the State,

¹ Civil Appeal No.9390 of 2013, dt.20.07.2017

may be allocated in order of seniority. If still posts remain, allocation will be made in reverse order of seniority.

Thus, the guidelines give importance to the seniority of a candidate in the service and mandate that allocation should be done in order of seniority as available on 01.06.2014. Thus, as per Guideline No.18(f), the persons, who are placed high up in the order of seniority, “should be” considered for allocation first, if they have opted to a particular State and are local candidates in that particular State.

In contrast to Clause (f) of Guideline No.18, Clause (i) of Guideline No.18 mandates that the employees, who are members of SCs or STs ‘shall be considered’ for allocation on the basis of their option, if they are local candidates. This clause does not mandate allocation of Members of SCs or STs on the basis of their option, but only directs “consideration” of allocation.

We are, therefore, of the considered opinion that, since there were only ‘5’ posts allocated to the State of Telangana and the persons, who are seniors to the petitioner and who also belong to the State of Telangana, had exercised their option for allocation to the State of Telangana, they were rightly allocated to the State of Telangana. Consequently, there was no vacant post available in the State of Telangana so as to accommodate the petitioner, notwithstanding the fact that he belongs to Scheduled Tribe Community belongs to the State of Telangana. Therefore, there is no other choice for the

respondents, except to allot the petitioner to the State of Andhra Pradesh.

Further, para 3(A) of the Circular Memo.No.19184/SR I/A1/2014-7, dt.25.02.2015, states as follows:

“A. SC/ST under Para 18(i) (Constitutional Requirement) :

SC: Godagali and Godagula are notified as SC in only A.P. while Beda (Budga) Jangam are notified only in Telangana State. Hence the allocation of these employees will be made to the respective States where they are notified, if they have opted so or even in case of absence/non-exercise of their options or even if they have opted for either of the States.

ST: Malis, Valmiki, Dhulia, Paiko and Putiya Tribes are notified in only Andhra Pradesh, while Thoti Tribe is notified only in Telangana State. Hence the allocation of these employees will be made to the respective States where they are notified, if they have opted so or even in case of absence/non-exercise of their options or even if they have opted for either of the States.”

A reading of the above clause indicates that in the order of priority, only the persons of ‘Thoti Tribe’, which is notified as ‘Scheduled Tribe’ in the State of Telangana, shall be allocated in the State of Telangana.

Unfortunately, the petitioner does not belong to ‘Thoti Tribe’, but belongs to ‘Yerukala Tribe’.

Since the Circular Memo dt.25.02.2015 explains the order of priority to be followed while applying Guideline No.18(i) and since under the said Circular Memo, the

petitioner does not have any priority to be allocated to the State of Telangana, we find no error committed by the respondents in allotting the petitioner to the State of Andhra Pradesh.

Coming to the decision relied upon by the learned counsel for petitioner in ARVIND KUMAR GUPTA's case (supra), it is to be noted that in the said case, the Supreme Court, in exercise of its powers under Article 142 of the Constitution of India, had allowed the appellant therein to continue in the State of Uttar Pradesh, though he was allotted to the State of Uttarakhand, on the ground that he wanted to continue in Uttar Pradesh, after its bifurcation into the State of Uttarakhand and residuary State of Uttar Pradesh. This Court does not have power akin to Article 142 of the Constitution of India.

For the aforesaid reasons, we find no merit in the writ petition and it is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

K. LAKSHMAN, J

28.11.2019.
Msr

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO
AND
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