

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.1333 of 2018

Date: 30.12.2019

Between:

Telangana State Public Service Commission (TSPSC),
Rep. by its Secretary, M.J. Road,
Nampally, Hyderabad, Telangana State.

... Appellant

and

Ponugupati Rajani,
D/o. Krishna Rao, and another

... Respondents

Counsel for the appellant:

Advocate General

Counsel for respondent No.1:

**Mr. Surender Rao,
Senior Counsel for
Madiraju Srinivasa Rao**

Counsel for respondent No.2:

GP for Services III

The Court made the following:

JUDGMENT: *(per the Hon'ble the Chief Justice Sri Raghendra Singh Chauhan)*

Aggrieved by the order dated 16.04.2018, passed by a learned Single Judge, in W.P.No.24311 of 2017, whereby the learned Single Judge has concluded that the respondent No.1- the petitioner (hereinafter referred to as 'the petitioner') did not suppress any material fact, and directed the appellant - the respondent No.2 (hereinafter referred to as 'the respondent No.2') to declare the result of the petitioner within four weeks from the date of receipt of a copy of the said order, and in case the petitioner stands in the merit list as per her entitlement, to issue the appointment letter, the respondent No.2 has challenged the said order.

Briefly the facts of the case are that the petitioner, Ponugupati Rajani, had completed her B.Sc. B.Ed and M.Ed. In 2008, the respondent No.2 - the Telangana State Public Service Commission (TSPSC), (the Andhra Pradesh Public Service Commission (APPSC) then) had issued a Teachers Recruitment Notification. Since the petitioner was hopeful that she would be appointed to the post of School Assistant (Maths), she applied for the same. Being successful in the selection process, by order dated 16.10.2009, she was appointed as a School Assistant on apprenticeship basis. According to the order dated 16.10.2009, she was appointed as an apprentice for a period of two years. During this period, she was entitled only to a stipend, and not to a regular pay scale.

While things stood thus, the respondent No.2 published a notification, namely Notification No.18/2011, dated 28.11.2011, calling for applications online from the qualified and eligible candidates for recruitment to the post of Group-I Services. According to the Notification, there were 312 vacancies. While 103 vacancies were available for OC (General), forty-three vacancies were available for OC (Women). Since the petitioner was hopeful that she would be selected for Group-I post, she applied under the said notification. On 27.05.2012, the petitioner undertook a Screening Test (Preliminary Examination). According to the results of the Preliminary Examination, she had succeeded in passing the said examination. However, as few candidates were aggrieved by the answer key issued by the respondent No.2, they challenged the same before the Andhra Pradesh Administrative Tribunal. After the learned Tribunal passed its order, the matter was carried before the former High Court of Andhra Pradesh in W.P.No.6009 of 2013. By order dated 19.02.2013, the Hon'ble High Court granted an interim order directing that appointments shall not be made in pursuance of the result of the main examination. By further order dated 26.07.2013, the Hon'ble High Court directed that the answer key should be referred to a Committee to be constituted by the Union Public Service Commission. Since the APPSC was aggrieved by the said order, it had filed an S.L.P., namely S.L.P.No.25157 of 2013 before the Hon'ble Supreme Court.

In its judgment dated 07.10.2013, the Hon'ble Supreme Court declared that the answers to six of the questions were incorrect. Therefore, it directed that the answers of the candidates must be subjected to correction while deleting the answers to these six questions. Since the APPSC was aggrieved by the said judgment dated 07.10.2013, it filed a Review Application. However, by order dated 06.08.2014, the Hon'ble Supreme Court dismissed the Review Application. Despite the fact that the APPSC has filed curative petition, namely Curative Petition (C) Nos.6,7,8 and 9 of 2015, the same was dismissed by the Apex Court by its order dated 25.02.2015.

During this period, the State of Telangana came into being on 02.06.2014. Therefore, the Hon'ble Supreme Court directed both the States and their respective State Commissions to conduct a fresh examination. Consequently, the APPSC and the TSPSC issued notifications clearly indicating that the main examination of Group-I services would be held separately from 14.09.2016 to 24.09.2016. The petitioner appeared in the main examination. Since the petitioner cleared the main examination, her name was shown in the provisional list published on 01.06.2017. She was asked to appear for the verification of the certificates on 15.06.2017. The petitioner did appear and did produce all the certificates on the said date. However, her candidacy was rejected ostensibly on the ground that she failed to produce a

“No Objection Certificate” from her employer, and on the ground that “she had indicated in the application that she was unemployed at the relevant time”. Although the petitioner had produced a certificate to show that she was working as a School Assistant (Maths) at ZPHS, Keethavari Gudem, Garudepally Mandal, Suryapet District, from 17.07.2015, the respondents were of the opinion that since her first appointment was dated 19.10.2009, she had hidden the fact of her employment by claiming that she was unemployed at the relevant time. Moreover, the respondents were of the opinion that since she was employed at the relevant time, she was liable to pay application fee of Rs.120/-, whereas she has paid only Rs.100/- claiming herself to be an unemployed graduate. Aggrieved by her rejection, she filed the present writ petition before this Court. By order dated 16.04.2018, the learned Single Judge has allowed the writ petition in the aforementioned terms. Hence, this appeal before this Court.

The learned Advocate General, Mr. B.S. Prasad, has raised the following contentions before this Court:-

Firstly, according to her appointment letter dated 16.10.2009, the petitioner was appointed on a “regular basis”, and was merely placed as probationer for a period of two years. Therefore, she cannot claim that she was unemployed at the relevant time.

Secondly, although the appointment letter dated 16.10.2009 claims that the petitioner will be “subjected to apprenticeship for two years period”, in fact, it is the period of probation and not of apprenticeship. Since she was treated as a probationer, the petitioner is unjustified in claiming that she was unemployed at the relevant time. Therefore, the petitioner is unjustified in paying the application fee of merely Rs.100/-, whereas she was required to pay the application fee of Rs.120/-. Hence, the learned Single Judge is not justified in concluding that at the relevant time, the petitioner was merely an “apprentice”, and thus, not an “employee”. The learned Single Judge is not justified in further concluding that the petitioner did not hide any relevant fact from the respondent No.2. Therefore, according to the learned Advocate General, the impugned order deserves to be set aside by this Court.

On the other hand, Mr. Surender Rao, the learned counsel for the petitioner, submits that according to the appointment order dated 16.10.2009, the petitioner was placed as an apprentice for a period of two years under Rule 18 in G.O.Ms.No.161, Education (Ser.VI) Department, dated 06.12.2008. According to the said G.O., her appointment was neither against a regular post, nor entitled her to receive a regular pay scale. In fact, she was merely entitled to receive a particular stipend during the period of her apprenticeship. Being an apprentice, she could not claim that she was a

regular employee. Hence, the petitioner was justified in claiming that at the relevant time, she was an unemployed person. Therefore, she was equally justified in submitting the application fee of Rs.100/-, rather than submitting the additional fee of Rs.120/-, which was required to be paid by an employed candidate. According to the learned counsel, there is a vast difference between an “apprentice” and a “probationer”. The relevant Rules, namely Rule 18 in G.O.Ms.No.161 dated 06.12.2008, and appointment letter dated 16.10.2009, clearly state that the petitioner has been appointed as an “apprentice” and not as a “probationer”. Hence, the learned counsel has supported the impugned order.

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

A bare perusal of the appointment order dated 16.10.2009, clearly reveals that the petitioner was “appointed” as a School Assistant (Maths). However, the petitioner would “*remain apprentice for a period of two (2) years as per Rule 18 in G.O. 1st read above and he/she will be paid remuneration as per the provisions in G.O.Ms.No.81 Education (SE-Ser-III) Department dated 13.06.2008 during the period of apprenticeship as per the terms and conditions laid down in G.O.Ms.No.112, Secondary Education (Genl-II) Department dated 06.10.2009*”.

By G.O.Ms.No.161, the Government of Andhra Pradesh had published the Andhra Pradesh Direct Recruitment for the Posts of Teachers (Scheme of Selection) Rules, 2008 (for short, 'the Rules'). Rule 18 of the Rules reads as under:

“Apprentice: Every selected candidate shall be initially appointed as an Apprentice teacher for a period of two years from the date of joining duty. He or she shall work under the general supervision of the Head Master/Head Mistress or Mandal Educational Officer/District Educational Officer as the case may be. During the period of apprenticeship he or she shall be paid a monthly stipend at the rate to be prescribed from time to time by the Government. On the satisfactory completion of period of Apprenticeship, he or she shall be appointed to a regular post with regular scale of pay. The contributory pension scheme shall be applicable to the teachers being appointed under these rules.”

A bare perusal of the said Rule clearly indicates that the selected candidate would initially be appointed as an “*apprentice*” teacher for a period of two years from the date of joining duty. Moreover, during the period of “*apprenticeship*”, he or she shall be paid a monthly stipend at the rate duly prescribed, from time to time, by the Government. It is only after the apprenticeship period is satisfactorily completed that he or she “*shall be appointed to a regular post with a regular pay scale of pay*”. Therefore, it is obvious that under Rule 18 of the Rules, the appointment is as an “*apprentice*” and not as a “probationer”.

Moreover, even under the guidelines issued by the respondents, guideline No.8 clearly deals with the issuance of appointment orders. It clearly states that the candidate should be informed that “the teacher” will be in the apprenticeship for a period of two years initially. Therefore, even the guidelines neither used the word “probation” nor claimed that it shall be a period of probation. Instead, the guidelines clearly used the word “apprenticeship” and claimed that the period of apprenticeship shall be two years.

Furthermore, G.O.Ms.No.81, Education (SE-Ser.III) Department, dated 13.06.2008 (mentioned in the appointment letter dated 16.10.2009), clearly indicates that during the period of apprenticeship, the stipend for the School Assistant for the first year has been enhanced from Rs.2,250/- to Rs.4,400/- and for the second year, from Rs.2,700/- to Rs.5,400/-. Thus, clearly, the initial appointment of a School Assistant is not for a regular post. Moreover, the School Assistant for the first two years is not entitled to receive the regular pay scale. Instead, the School Assistant, for the first two years of apprenticeship, is entitled merely to receive a particular stipend prescribed by the Government.

Therefore, the Scheme of the Rules and the G.O. clearly indicate that the initial appointment is not against the regular post, but is merely an appointment as an “*apprentice*”. Hence, the appointment is not even as the probationer. Thus,

the learned Advocate General is not justified in claiming that merely because the appointment letter dated 16.10.2009 used the word “appointed”, the appointment is as a “probationer” and not as an “apprentice”.

In catena of cases, the Hon’ble Supreme Court has clearly opined that an apprentice is merely a trainee and not an employee. Therefore, at the relevant time, the petitioner was not an employee, but was merely a trainee. Hence, she was not required to produce a “No Objection Certificate” from her employer. Moreover, she was justified in claiming herself to be an unemployed person. Therefore, she was equally entitled to claim that she was required to pay the application fee of merely Rs.100/- as she was an unemployed candidate.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned order. The appeal, being devoid of any merit, is hereby dismissed.

As a sequel, Miscellaneous Petitions, pending if any, shall also stand dismissed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(A. ABHISHEK REDDY, J)

Date: 30.12.2019
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