

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.3108 OF 2020

Date: 02.03.2020

Between:

M.Pradeep, s/o. Yesob, Aged about 39 years,
working as MPHA (Contract), PHC Dindi,
r/o. H.No.17-523, Santoshimata Colony,
Devarakonda, Nalgonda district.

.....Petitioner

and

The Telangana State Public Service Commission,
rep.by its Secretary, Nampally, Hyderabad
and others.

.....Respondents



The Court made the following:

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ORDER:

Petitioner claims that he belongs to Scheduled Caste community, passed Intermediate and secured certificate of Diploma in Public Health & Sanitation Technology from the College of Medical Technology, Ongole in the State of Andhra Pradesh and was appointed as Multi Purpose Health Assistant on contract basis on 29.05.2003 and is working in the said post as on today. On 27.07.2018, Telangana State Public Service Commission issued recruitment notification no.20/2018 dated 27.07.2018 calling for applications for selections to the post of Health Assistant in Municipal Administration and Urban Development Department. Petitioner responded to the said notification. In the selections conducted by the Public Service Commission, he secured relevant merit for appointment and accordingly, he was short listed for certificates verification. At this stage, this Writ Petition is filed praying to declare the action of respondents in not considering the case of the petitioner for provisional selection and appointment to the post of Health Assistant, as illegal, arbitrary and unconstitutional. Consequently, seeks a declaration that the qualification obtained by the petitioner from the College of Medical Technology, Ongole is sufficient and recognized qualification for the purpose of recruitment to the post of Health Assistant, and also seeks a direction to respondents to appoint him as Health Assistant.

2. Heard Mr. P.Amarender, learned counsel for petitioner, Mr. D.Bala Kishan Rao, learned standing counsel for TSPSC for

respondent no.1, and learned Government Pleader for Services-I (TG) for respondents 2 and 3.

3.1. According to the learned counsel for petitioner, the qualification possessed by the petitioner is same as prescribed in the recruitment notification. All along the certificate issued by the College of Medical Technology, Ongole is recognized, accepted and appointments were made accordingly. He would further submit that certain persons, who possessed the same qualification and working in lower posts, were promoted as Health Assistants, accepting the qualification possessed by them i.e., Certificate of Diploma in Public Health and Sanitation Technology from the College of Medical Technology, Ongole. He would further submit that accepting the qualification possessed by him, he was appointed in the year 2003 as Health Assistant and has been working in the said post. Therefore, there is no justification to deny him appointment as per his merit.

3.2. According to learned counsel for petitioner, recruitment notification requires a pass certificate in Multi Purpose Health Assistant Training Course awarded by the Chairman, Board of Examinations constituted by the Government of Telangana or Government of India/Government of Telangana Recognized Institution. As the College of Medical Technology, Ongole, is recognized by the Government and orders were issued on 18.11.1994 to that extent, petitioner satisfied the qualification. Therefore, ignoring his candidature in spite of securing merit is illegal, arbitrary and unconstitutional. The recruitment notification itself is contrary to the statutory rules.

3.3. He would further submit that having verified his certificates, petitioner was permitted to participate in the selections and once a candidate is permitted to participate in the selections, his candidature cannot be rejected at a later stage on the ground that he does not possess required qualification.

3.4. In support of his contention that his appointment was validly made and qualification possessed by him is one which is required as per the recruitment rules, he placed reliance on the decision of the Division Bench of this Court in **Kona Srinivas and others v. State of A.P., and others**¹, affirmed by the Hon'ble Supreme Court.

4. According to the learned standing counsel, the qualifications prescribed in the recruitment notification is based on the qualifications specified in the recruitment rules and as the recruitment rules require a candidate to possess Multi Purpose Health Assistant Training Course Certificate, unless said certificate is possessed by the petitioner, he is not eligible to participate in the selections and admittedly, petitioner do not have required qualification. The certificate granted by the College of Medical Technology, Ongole is a different certificate. As recruiting agency, Public Service Commission cannot traverse beyond the statutory rules governing the post and permit a candidate to be selected even if he/she does not possess requisite qualification.

5. The issue for consideration is whether the petitioner has the requisite educational qualification to be appointed as Health Assistant in Municipal service?

¹ 2004 (2) ALD 654 (DB)

6. Prior to 24.04.1989, there were several posts attending to Para Medical services. The Government intended to consolidate and to form an integrated cadre. Accordingly, orders were issued in G.O.Ms.No.97, Health dated 08.02.1984 creating a cadre called Multi Purpose Health Assistant (Male & Female). These orders were given retrospective effect from 01.04.1983. This designation continues as on today. As can be seen from the previous posts, which are merged and common cadre is formed, true to its name the Multi Purpose Health Assistant is required to perform Multifaceted Para Medical Services. Vide G.O.Ms.No.273 Health Medical and Family Welfare (H-1) Department, dated 24.04.1989, recruitment rules called 'Andhra Pradesh Public Health Subordinate Services' were notified in supersession of earlier rules which govern this post.

7. Thereafter, the Government created posts of Sanitary Supervisors, Sanitary Inspectors and Health Assistants in the Municipalities vide G.O.Ms.No.83, Municipal Administration & Urban Development (G1) Department, dated 14.02.2012. Consequently, special rules governing the posts titled "Andhra Pradesh Municipal Health (Municipalities) Subordinate Service Rules, 2012 (Rules, 2012), were notified vide G.O.Ms.No.84 Municipal Administration and Urban Development (G1) Department, dated 14.02.2012. Category-III of the service is Health Assistants. Rule-4 of the Rules, 2012 prescribes method of appointment. According to this Rule, the post of Health Assistant can be filled up by direct recruitment and by promotion from the categories of Public Health Maistry and Public Health Worker.

Rule-6 of the Rules, 2012 prescribes qualifications. Sl.No.3 appended to Rule-6 of the Rules reads as under:

Sl. No.	Category	Qualifications
3.	Health Assistant	(i) Intermediate or an equivalent education qualification. (ii) A pass certificate in Multi Purpose Health Assistant Training Course/ Sanitary Inspector Training Course Certificate awarded by the Chairman, Board of Examinations, constituted by Government of Andhra Pradesh or from Government of India/Government of Andhra Pradesh recognized institution (iii) Physical fitness for camp life, as per standards as prescribed by the Commissioner & Director of Municipal Administration.

8. After formation of State of Telangana, in exercise of powers vested in the Government under Section 101 of the Andhra Pradesh Reorganization Act, 2014, the Government issued adoption orders vide G.O.Ms.No.161 Municipal Administration and Urban Development (D2) Department, dated 01.06.2016, adopting the Andhra Pradesh Municipal Health (Municipalities) Subordinate Service Rules, 2012 with certain modifications. Consequent to this notification, Rules are now called "Telangana Municipal Health (Municipalities) Subordinate Service Rules, 2012". Table appended to Rule-6 was amended by this order. Against Sl.No.3 in table appended to Rule-6 for the qualification prescribed in item (i) amendment is carried out and a note is appended.

9. Based on the recruitment rules, in paragraph-4 of the recruitment notification, dated 27.07.2018, Public Service Commission prescribed the educational qualifications required by a candidate to compete to the post of Health Assistant. The qualifications prescribed in paragraph-4 are same as prescribed in the recruitment rules. According to the recruitment rules and the

recruitment notification, a person must possess certificate in Multi Purpose Health Assistant Training Course / Sanitary Inspector Training Course Certificate awarded by the Chairman, Board of Examinations constituted by the Government of Telangana or an institution recognized by the Government of India or the Government of Telangana.

10. From the plain reading of the recruitment rules and the recruitment notification, the certificate of “Diploma in Public Health & Sanitation Technology” possessed by the petitioner is not the one which is prescribed as educational qualifications. Neither the recruitment rules nor the recruitment notification provide for eligibility to equivalent qualification or a better qualification. Learned counsel for petitioner sought to contend that the certificate of Diploma awarded by the College of Medical Technology, Ongole, is same as the certificate of Multi Purpose Health Assistant Training Course and, therefore, petitioner’s eligibility could not have been ignored. Petitioner may be possessing a better qualification when selection process is taken up, but what is required to be noticed is what are the qualifications prescribed in the rules and in the recruitment notification and whether a candidate possessed the said qualifications. Thus, even if a person possesses higher qualifications/better qualification, but does not have the qualifications prescribed in the recruitment notification, he cannot claim as qualified. It is appropriate to note at this stage that petitioner has not challenged the recruitment rules and the recruitment notification. Therefore, petitioner is not eligible to be selected and appointed as Health Assistant.

11. In **Kona Srinivas** (supra), Government made appointments of Multi Purpose Health Assistants (Male) on contract basis. While making such appointments, the candidates possessing SSC with Diploma qualifications were made eligible and were selected and appointed. Later, their services were dispensed with on the ground that they did not have Intermediate qualification and, therefore, were ineligible for appointment. The termination/non-renewal of services of contract employees working as Multi Purpose Health Assistants on this ground was found to be erroneous by the Division Bench. The Division Bench observed that not possessing the qualifications prescribed in the rules has no relevancy when appointments were not made on regular basis, but were made on contract basis. The Division Bench also found fault with the cancellation of selections of certain candidates, who were awarded certificate by the College of Medical Technology, Ongole, on the ground that steps were taken to cancel the recognition granted to the said College. The Division Bench observed that the issue of recognition of the said College was only at the stage of issuing show-cause notice and calling for explanation and no final decision was taken and, therefore, could not have resorted to cancellation of selection of candidates on that ground. This view of the Division Bench of this Court was affirmed by the Hon'ble Supreme Court. Petitioner was also one of the candidates appointed on contract basis as Multi Purpose Health Assistant and is continuing consequent to the judgment of Hon'ble Supreme Court.

12. The issue involved in this case is entirely different from the issue in the said batch of writ petitions considered by the Division

Bench in **Kona Srinivas**, and judgment do not come to the aid of petitioner.

13. Learned counsel for petitioner also contended that having allowed the petitioner to participate in the selection process, it is not open to respondents to reject his candidature at the stage of scrutiny of the certificates. Paragraph-IV of the recruitment notification deals with general provisions. According to clause-5 of general provisions, all the essential certificates issued by the competent authority should compulsorily be kept with the applicants to produce as and when required. According to clause-6 of the general provisions, the declaration made by the applicants regarding date of birth, educational/technical qualifications, experience and community status are accepted only provisionally as per the information furnished by them in their applications and would be subject to verification and satisfaction of the Public Service Commission. It also states that mere admission of the candidate to test or interview or inclusion of the name of a candidate in a merit list would not confer on the candidate any right for appointment.

14. This is the procedure adopted by the Public Service Commission in all recruitments and the Commission does not undertake strict scrutiny of the applications made by the candidates at the initial stage. One of the reasons assigned by the Public Service Commission is that whenever recruitment notification is issued large number of applications are received and at the initial stage, if strict scrutiny of eligibility is undertaken, it would consume lot of time and would cause delay in selection process, and therefore candidates are subjected to selection

without such verification. After the examination, a provisional merit list would be drawn and then would undertake certificate verification and eligibility of candidates included in the provisional merit list. After weeding out the unqualified persons, it would prepare a merit list. This procedure is invoked in all recruitments and Court cannot find fault with the said procedure. It is just and equitable and subserves larger public interest.

15. Merely because a candidate is permitted to participate in the selections does not vest in him indefeasible right to claim appointment even if he is not qualified. It is also apt to note that a person is entitled to be appointed only if he possesses requisite qualifications and eligibility to the concerned post and secures merit. Public Service Commission as recruiting agency undertakes process of assessing merit of candidates, verify their eligibility and then recommends for appointment. That being the settled legal position, merely because petitioner was subjected to selection process, would not vests in him right to claim appointment even if he is not qualified. In the instant case, as petitioner does not have qualification prescribed for the post of Health Assistant in Municipal Subordinate Service, non-consideration of his candidature for further selection process and not recommending him for appointment by the Public Service Commission cannot be faulted, warranting interference by this Court. Writ petition merits no consideration. Writ Petition is accordingly dismissed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 02.03.2020

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Note:L.R. Copy to be marked.

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