

HIGH COURT FOR THE STATE OF TELANGANA
(Special Original Jurisdiction)

THURSDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND TWENTY

PRESENT

THE HON'BLE SRI JUSTICE P NAVEEN RAO

WRIT PETITION NO: 11564 OF 2020

Between:

Smt. P.Ramanya Kumari, D/o Narsimha, Age. 34 years, Occ. Govt. Employee, Caste. SC H.No.11-5-95/9, Near Women Police Station, Road No.5, Venkateshwara Colony, Saroornagar, Hyderabad - 500 035

...PETITIONER

AND

1. The State of Telangana, rep.by its Spl. Chief Secretary Revenue (Excise) Department, Secretariat, Hyderabad
2. The Director/Commissioner, Prohibition and Excise, Nampally, Telangana State, Hyderabad
3. Deputy Commissioner, Prohibition and Excise, Nampally, Telangana State, Hyderabad

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or Direction more particularly one, in the nature of Writ of Mandamus declaring the action of the 1st respondent in not considering the representations dated 26-09-2016, 03-07-2018 and 18-02-2020 for relaxation of the height required as per Rule 4 (2) (c) (ii) of the Prohibition and Excise Service Rules for appointment to the post of Assistant Prohibition and Excise Superintendent is illegal, arbitrary and discriminatory and further the action of the 2nd respondent i.e., the Commissioner of Prohibition and Excise in rejecting the petitioner's request for relaxation of height vide proceedings Cr. No. 2454/ 2018/ CPE/ A2 dated 03-12-2019 is illegal, arbitrary and without power and further direct the 1st respondent to consider and pass appropriate orders on petitioner's representations dated 26-09-2016, 03-07-2018 and 18.02.2020 duly taking in to account the relaxations in height granted earlier vide G.O.Rt.No.91, Revenue (Excise-I) Department, dated 04-03-2015 and G. O. Rt. No.521, Revenue (Excise-I) Department, dated 19-02-2008.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents not to fill the post of Assistant Prohibition and Excise Superintendent at C.P.No.240 against Roster Point No.7- Scheduled Caste meant for Assistant Chemical Examiners arisen in the panel year 2018-19.

Counsel for the Petitioner: SRI M. V. RAMA RAO

Counsel for the Respondents: GP FOR PROHIBITION AND EXCISE

The Court made the following: ORDER

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.11564 OF 2020

ORDER:

Heard learned counsel for the petitioner and learned Government pleader appearing for the respondents.

2. Petitioner is working as Assistant Chemical Examiner. The next avenue of advancement in service is Assistant Prohibition & Excise Superintendent. As per Rule 4 (C) (2) (c) of Telangana State Excise Service Rules, 1961 (for short 'the Excise Rules'), a person must have put in three years of service; must have height of atleast 165 cms; 81 cms round the chest on full expiration with a chest expansion of at least 5 cms; and must have passed the departmental tests prescribed therein. Petitioner passed the departmental tests and has also put in three years of service. However, petitioner is falling short of height prescribed in the Excise Rules. Therefore, petitioner submitted representations to the Government on 26.09.2016 and 03.07.2018 requesting to relax the requirement of 165 cms of height. Petitioner placed reliance on earlier instances of granting such relaxation. By the order impugned, dated 03.12.2019, the Commissioner of Prohibition & Excise, considered the request of petitioner to grant relaxation and rejected the same.

3. At this stage, the only submission made by learned counsel for the petitioner is as per Rule 31 of the Telangana State and Subordinate Service Rules, 1996 (for short 'the General Rules'), power to grant relaxation is vested in the Government. He submits that though Rule 32 of the General Rules vests power in the Head

of Department to consider the application for relaxation, but that provision is not applicable to the posts higher in rank to that of the Junior Assistant and as the post of Assistant Prohibition & Excise Superintendent is far higher to that of Junior Assistant, the Commissioner of Prohibition & Excise is not competent.

4. Learned Government Pleader, do not dispute the fact that the Commissioner has no competence to deal with the request to grant relaxation to any of the provisions which govern the posts higher in rank than the post of Junior Assistant, but seeks to contend that as Head of the Department, the Commissioner of Prohibition & Excise considered the claim and having found that the claim has no merit, he has not forwarded the request to the Government and rejected. She therefore, submits that the rejection is valid and no interference is called for.

5. As the issue involved requires consideration on scope of Rules 31 and 32 of the General Rules only and the facts are not disputed, the Writ Petition is considered at the stage of admission and disposed of by this order.

6. It is not in dispute that based on the representations submitted by the petitioner, the Government called for remarks of the Commissioner of Prohibition & Excise, vide Memo dated 27.07.2018. Instead of submitting the remarks as sought by the Government, the Commissioner himself passed orders, impugned herein, which is ex-facie illegal. It is also appropriate to note at this stage that the same officer was holding the position as Principal Secretary to the Government and as the Commissioner of Excise. Sitting in the Chair of the Principal Secretary to the

Government he calls for remarks, but by sitting in the Chair of the Commissioner he takes a decision ignoring the Government directions.

7. From a reading of Rule 32 of the General Rules, it is apparent that the power of relaxation is vested in the Head of Department only to the extent of considering the request of relaxation of Rules governing the post of the rank of Junior Assistant or below. Request for relaxation of any Rule governing a post higher in rank than the Junior Assistant has to be considered only by the Governor under Rule 31 of the General Rules. It is not in dispute that the post of Assistant Prohibition & Excise Superintendent is far higher post to that of Junior Assistant. Whether, the claim to grant relaxation is validly made cannot be gone into at this stage as the competent authority to consider such claim is Government and Governor of the State alone is required to take a decision under Rule 31 of the General Rules. As the order of Commissioner is without jurisdiction and competence, the same is not sustainable and is liable to be set aside.

8. Accordingly, the Writ Petition is allowed. The first respondent is directed to consider the representations of the petitioner dated 26.09.2016, 03.07.2018 and 18.02.2020 to relax the requirement of height of 165 cms and take appropriate decision as warranted by law. Pending miscellaneous petitions, if any, shall stand closed.

SD/-CH.VENKATESWARULU
ASSISTANT REGISTRAR
RV
SECTION OFFICER

//TRUE COPY//

To,

1. The Spl. Chief Secretary Revenue (Excise) Department, State of Telangana, Secretariat, Hyderabad
2. The Director/Commissioner, Prohibition and Excise, Nampally, Telangana State, Hyderabad
3. Deputy Commissioner, Prohibition and Excise, Nampally, Telangana State, Hyderabad
4. One CC to Sri M. V. Rama Rao, Advocate [OPUC]
5. Two CCs to GP For Prohibition and Excise, High Court for the State of Telangana. [OUT]
6. Two CD Copies.

MP

V. J.

HIGH COURT

DATED:06/08/2020



ORDER

WP.No.11564 of 2020

ALLOWING THE WRIT PETITION
WITHOUT COSTS

⑧ VLV
20/8/20