HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THURSDAY, THE TWENTY FIRST DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

WRIT APPEAL NO: 1127 OF 2024

Writ Appeal under clause 15 of the Letters Patent preferred against the Order dated 03/06/2024 in W.P.No.26676 of 2021 on the file of the High Court.

Between:

1. Telangana State Southern Power Distribution Company Limited TSSPDCL, Rep by its Managing Director Mint Compound Saifabad Hyderabad.
2. The Chief General Manager, Telangana State Southern Power Distribution Company Limited TSSPDCL Mint Compound Saifabad Hyderabad.

...APPELLANTS/RESPONDENTS IN WP 26676/2021

AND

1. T. Gopal, S/o: Uttam, Aged about 30 years, Occ:Unemployee Hall Ticket No 351625, R/o. H. No.529/1, SomarathThanda Mandal Gandhari Kamareddy District.

...RESPONDENT/WRIT PETITIONER

2. The State of Telangana, Rep by the Chief Secretary General Administration Department GAD Secretariat Hyderabad.
3. State of Telangana, Rep by its Principal Secretary to the Energy Department B R K Bhavan Basheerbagh Hyderabad.

(Respondent No's. 2 and 3 are formal parties in the Writ Appeal)

...RESPONDENTS

IA NO: 2 OF 2024

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 stay the operation of the orders passed in W.P. No.26676 of 2021, Dated.03.06.2024.

Counsel for the Appellants: SRI G. VIDYA SAGAR, APPEARING FOR
SRI R. VINOD REDDY (SENIOR COUNSEL FOR
TSTRANSCO)

Counsel for the Respondent No.1: SRI PRABHAKAR CHIKKUDU

The Court Delivered the following: JUDGMENT

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

WRIT APPEAL No.1127 of 2024

JUDGMENT: *(Per Hon'ble Sri Justice Abhinand Kumar Shavili)*

This Writ Appeal is filed aggrieved by the order passed by the learned Single Judge of this Court in W.P.No.26676 of 2021, dated 03.06.2024.

2. Heard Sri G.Vidya Sagar, learned Senior Counsel, appearing for Sri R.Vinod Reddy, learned Standing Counsel on record for the appellants and Sri Prabhakar Chikkudu, learned counsel appearing for respondent No.1.

3. It has been contended by the appellants that they have issued recruitment notification for the post of Junior Assistant – cum – Computer Operator, i.e., Notification No.03 of 2019, dated 28.09.2019. In all, 500 posts of Junior Assistant – cum – Computer Operator were notified and the vacancies were notified circle wise, community wise and gender wise. As per the said notification, 95% of the posts were to be filled up with local candidates by giving preference to them and 5% of the posts were to be filled up based upon merit and accordingly, the same was also notified in the Annexure appended to the said Notification and the procedure for

selection was set out in Para-VIII of the said notification, as per which, selection will be drawn in two parts, the first part will comprise 5% of the posts consisting of combined merit list and the remaining second part will comprise the balance 95% of the posts consisting of candidates belonging to that District only and the posts will be filled up following the existing Rules of reservation. Respondent No.1 has participated in the selection process and later, when his case was not considered for selection as Junior Assistant – cum – Computer Operator, he has approached this Court by way of filing W.P.No.26676 of 2021, contending that the appellants are following the Telangana Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 2018 (for brevity, hereinafter referred to as 'the Presidential Order'). The appellants further contended that TSSPDCL being a Company, the Presidential Order has no application and if the Presidential Order is followed, then it violates Articles 14 and 16 of the Constitution of India.

4. Learned Senior Counsel appearing for the appellants had contended that the appellants are not following the Presidential Order and they are only giving preference to local candidates to an extent of 95% and that admittedly, the Presidential Order is not

applicable to the appellants, but the respondent understanding of the method of selection, that it is in violation of the Presidential Order, is totally incorrect.

5. Learned Senior Counsel for the appellants further contended that Para-V of the notification dated 28.09.2019 deals with important provisions governing the recruitment process and Clause-5 of the said para states that for 95% of the posts, preference shall be given to the district candidates. Nowhere, it is stated that selection process is in the form of reservation and merely giving preference would not amount to applying the Presidential Order. He further contended that during the pendency of Writ Petition No. 26676 of 2021, learned Single Judge has passed interim order, dated 22.02.2022, directing the respondents therein to permit the petitioner therein i.e, respondent No.1 herein to undergo the proficiency test in computers, however, observed that the petitioner therein, i.e., respondent No.1 shall not claim any equities. When the appellants have taken a stand that they are not adopting the Presidential Order and the Notification categorically states that the appellants would give preference to the local candidates to an extent of 95% of the posts, the same could not be understood as reservation. Whenever the word 'preference' is used, it means that if

two candidates are having same merit, then preference will be given to the local candidates, but the learned single Judge was of the view that the appellants are trying to make reservations in favour of the local candidates, which is totally incorrect. He further contended the learned single Judge has erroneously came to a conclusion that the appellants are adopting the Presidential Order and on the same analogy, they are extending 95% of posts in favour of the local candidates, which is totally incorrect.

6. In support of his submissions, learned Senior Counsel for the appellants relied upon the judgment of the Hon'ble Supreme Court in ***Nidamarti Maheshkumar Vs. State of Maharashtra***[1], wherein it is held that providing reservation or preference in respect of certain percentage of seats in the medical college or colleges in each region in favour of those who have studied in schools or colleges within that region, does not amount to violating constitutional mandate of equality.

7. Learned Senior Counsel for the appellants had further contended that in the instant case also, the appellants are giving preference to local candidates and merely giving preference to local candidates does not amount to violation of Articles 14 and 16 of the

[1] (1986) 2 SCC 534

Constitution of India and therefore, appropriate orders be passed in present Writ Appeals by setting aside the impugned common order.

8. On the other hand, learned counsel appearing for the unofficial respondent contended that some of the provisions of the Presidential Order issued in G.O.Ms.No.124, dated 30.08.2018, are being implemented though in the form of preference, the effect of Note-(i) of PARA-VIII of Notification No.01 of 2019, which is appended to procedure of selections in PARA-VIII, is virtually amounting to implementation of the Presidential Order; that the appellants being a public sector company, the Presidential Order has no application; and under Article 371(D) of the Constitution of India, in the State of Telangana, an exception is carved to Articles 14 and 16 of the Constitution of India in the Presidential Order to the extent that 95% of the posts are liable to be filled up only by local candidates and the remaining 5% of the posts are liable to be filled up by unreserved candidates by incorporating a Note in the procedure for selection i.e., Note-(i) appended to PARA-VIII, which reads as follows:

"PARA-VIII: PROCEDURE FOR SELECTION:

NOTE:

(i) The selection list will be drawn into two parts. The first part will comprise 5% of the posts consisting of combined merit list and the remaining second part will comprise the balance 95% of the

posts consisting of candidates belonging to that District only and the posts will be filled, following the existing rules and rule of reservation.

(ii) .....

(iii) .....

(iv) .....

9. A perusal of the said Note-(i) of PARA VIII contemplates that selection will be drawn in two parts. The first part will comprise 5% of the posts consisting of combined merit list and the remaining second part will comprise the balance 95% of the posts consisting of candidates belonging to that District only and the posts will be filled, following the existing rules and rule of reservation.

10. Learned counsel appearing for the unofficial respondent further contended that as per the aforesaid Note, persons from other districts are totally eliminated from consideration to the extent of 95% of the posts, which virtually denies equal opportunity guaranteed under Articles-14 and 16 of the Constitution of India and as Articles-14 and 16 are being violated, the learned single Judge has rightly allowed the Writ Petition in favour of the unofficial respondent and directed the appellants to consider the case of the writ petitioner and issue appointment orders to the petitioner therein, i.e., respondent No.1 herein according to his merit and without reference to the Presidential Order issued by respondent

No.2 vide G.O.Ms.No.124, GAD, dated 30.08.2018 and G.O.Ms.No.132, GAD, dated 01.09.2018, with all consequential benefits. But, the appellants instead of complying with the orders of the learned Single Judge, filed the present Writ Appeal.

11. Learned counsel appearing for the unofficial respondent further contended that during the pendency of the Writ Petitions, interim orders were passed (i) directing the respondents therein, i.e., the appellants herein to permit the petitioner therein, i.e., respondent No.1 herein to undergo the proficiency test in computers. Learned single Judge has, however, observed that the petitioner therein shall not claim any equities and any appointment made shall be subject to further orders of this Court. Further, learned counsel contended that in pursuance of the interim order dated 22.04.2022 in W.P.No.26676 of 2021, respondent No.1 herein has participated in the proficiency test, however, his case has not been considered. Subsequently, by the impugned order, the learned single Judge has allowed the said Writ Petition with a direction to the respondents therein to consider and issue appointment orders to the petitioner therein/respondent No.1 herein according to his merit and without reference to the Presidential Order issued by respondent No.1 *vide* G.O.Ms.No.124, GAD, dated 30.08.2018 and

G.O.Ms.No.132, GAD, dated 01.09.2018, with all consequential benefits.

12. This Court, having considered the rival submissions made by learned counsel appearing for both the parties, is of the considered view that Note-(i) appended to PARA-VIII of notification No.03 of 2019, dated 28.09.2019, is the only paragraph which is violating Articles 14 and 16 of the Constitution of India. The learned single Judge erred in not setting aside Note-(i) of PARA-VIII of notification No.3/2019, dated 28.09.2019, therefore, Note-(i) appended to PARA-VIII of notification No.03 of 2019 is set aside and the remaining findings of learned Single Judge in the impugned order do not warrant interference by this Court.

13. Accordingly, the Writ Appeal is disposed of directing the appellants to consider the case of respondent No.1 for the post of Junior Assistant-cum-Computer Operator against the unfilled vacancies, if any. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

SD/-M.MANJULA
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Managing Director, Telangana State Southern Power Distribution Company Limited TSSPDCL, Mint Compound Saifabad Hyderabad.
2. The Chief General Manager, Telangana State Southern Power Distribution Company Limited TSSPDCL Mint Compound Saifabad Hyderabad.
3. One CC to Sri R. Vinod Reddy(SC for TSTRANSCO) [OPUC]
4. One CC to Sri Prabhakar Chikkudu, Advocate [OPUC]
5. Two CD Copies

TJ
LS

HIGH COURT

DATED:21/11/2024



JUDGMENT

WA.No.1127 of 2024

DISPOSING OF THE WRIT APPEAL

WITHOUT COSTS

25/01/25