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APHC010500642023

*** THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI**

+W.P.NO.26313 OF 2023

% 04.11.2026

#Between:

K.gangadhara, **...PETITIONER**

$And:

The Joint Commissioner St and Others **...RESPONDENT(S)**

! **Counsel for the Petitioner:** J SUDHEER

^ **Counsel for the Respondents:** GP FOR SERVICES I

Counsel for the Respondents: NUVVULA RAM BABU

<Gist:

>Head Note:

? Cases referred:

1. (1995) 2 SCC 745

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

***

+W.P.NO.26313 OF 2023

K.gangadhara, **...PETITIONER**

$And:

The Joint Commissioner St and Others **...RESPONDENT(S)**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of order may be marked to Law Reporters/Journals? Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

JUSTICE BALAJI MEDAMALLI

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

WRIT PETITION: 26313 OF 2023

ORDER:

This writ petition is filed seeking the following relief:

"…to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus- a)by declaring the Impugned orders of promotion issued vide Proceedings Ref.No-B2/40/2008/(B1)/54/2014, Dated- 21-09-2023 of the 1st Respondent, wherein, promoting the unofficial Respondent (R4) as ACTO/GSTO against vacancy meant for ST Roaster point No-25, even though the R-4 belongs to OC community, ignoring the case of Petitioner, despite the Petitioner belongs to ST Community, inspite of making several representations dt. 14.08.2023 and 29.08.2023 even though Petitioner herein is within the Zone of consideration and fully eligible for Roaster point No-25, is as highly illegal, arbitrary, unjust, total non-application of mind, contrary to orders issued vide G.O. Ms.No-77 General Administration (Services-D) Department, dated-02-08-2023, amendments to Rule 22 of Andhra Pradesh State and Subordinate Service Rules, 1996 and to set aside the impugned Proceedings Ref.No-B2/40/2008/(B1)/54/2014, Dated- 21-09-2023 of the 1st Respondent to enable the Petitioner to get such promotion, b) Further hold that the Petitioner herein is entitled for promotion to the post of ACTO / GSTO against the vacancy meant for ST Community i.e Roster No. 25 which is filled with the unofficial Respondent No.4, with all consequential benefits with effect from the day on which the unofficial Respondent No. 4 considered illegally for such promotion vide impugned Proceedings Ref.No-B2/40/2008/(B1)/54/2014, Dated- 21-09-2023 of the 1st Respondent, c) Consequently to direct the Respondents to promote the Petitioner as ACTO / GSTO in the place of unofficial Respondent No.4 against roster point No.25 with all consequential benefits…"

2. Brief facts of the case are that:

Petitioner, belonging to the Scheduled Tribe (ST) community, was initially appointed as Junior Assistant on 21.09.2011 against ST backlog vacancy and was subsequently promoted as Senior Assistant on 30.10.2014.

His name was included at Sl.No.424 in the final seniority list of Senior Assistants, and having passed the requisite departmental tests, he was fully eligible and within the zone of consideration for promotion to the post of ACTO/GSTO. Petitioner submitted representations dated 14.08.2023 and 29.08.2023 requesting consideration of his candidature against ST roster point No.25. However, by proceedings dated 21.09.2023, 1st respondent promoted 4th respondent, who admittedly belongs to the OC category, against the said ST roster point, without considering petitioner's claim. Case of the petitioner is that such promotion is contrary to Rule 22 of the Andhra Pradesh State and Subordinate Service Rules, 1996, as amended by G.O.Ms.No.77, General Administration (Services-D) Department, dated 02.08.2023, and the applicable principles governing vertical reservation, under which ST candidates promoted against open competition on their own merit cannot be adjusted against the ST reserved quota. It is further contended that, out of sanctioned cadre strength of 117 ACTO/GSTO posts and the applicable 6% ST reservation, 7 posts ought to be available for the ST category, whereas only 6 ST candidates are presently occupying such posts against ST quota. Therefore, vacancy at roster point No.25 ought to have been filled by an eligible ST candidate i.e., petitioner, and the promotion of the 4th respondent against the said vacancy is illegal, arbitrary and contrary to the applicable reservation rules. Hence, petitioner has approached this Court seeking to set aside the impugned proceedings dated 21.09.2023 and a consequential direction to promote him as ACTO/GSTO against roster point No.25 with all consequential benefits.

3. On behalf of respondent Nos.1 to 3, respondent No.1 filed counter denying the averments made in the petition stating that pursuant to reorganization under G.O.Ms.No.331, Revenue (CT) Department, dated 20.07.2023, sanctioned strength of GSTOs in Chittoor Nodal Division is 117, out of which 113 are working, leaving four vacancies, including one vacancy under Rank Promotee quota. The earlier roster having ended at Point No.24, the next roster point is Point No.25, earmarked for ST category. However, under Rule 22(2)(a)(i)(c) and (d) of the A.P. State and Subordinate Service Rules, 1996, the roster point need not be filled by an ST candidate once the prescribed adequacy of ST candidates in the cadre has already been achieved. It is further contended that, against the cadre strength of 117, required 6% ST reservation is approximately 7 posts, whereas 8 ST candidates are already working in the GSTO cadre in Chittoor Nodal Division and, therefore, ST adequacy has been exceeded. As such, the next vacancy at roster point No.25 was rightly filled by an Open Category candidate, namely, Sri K. Madhan Mohan, who was promoted according to his seniority and pursuant to the directions of this Court in W.P.No.21592 of 2022, dated 14.02.2023. Petitioner's representations relying upon G.O.Ms.No.77, General Administration (Services-D) Department, dated 02.08.2023, were duly considered and rejected, as the provisions in the said G.O., applies only in cases of recruitment/ selection but not promotion. It is further contended that G.O.Ms.No.2, Social Welfare (SW.ROR-I) Department, dated 09.01.2004, specifically provides that once the prescribed adequacy of 6% for STs is

achieved in the category, reservation in promotions ceases and further promotions are to be made on merit-cum-seniority without earmarking the reserved roster point. Hence, the promotion of the 4th respondent was made strictly in accordance with the applicable rules and Government Orders, and there is no illegality or irregularity warranting interference of this Court.

4. 4th Respondent also filed counter affidavit stating that his promotion as ACTO/GSTO vide proceedings dated 21.09.2023 was made strictly in accordance with the applicable Rules and Government Orders and in compliance with the order of the Hon'ble High Court in W.P.No.21592 of 2022, dated 14.02.2023. He submits that, pursuant to reorganization, GSTO cadre strength in Chittoor Nodal Division is 117, with one vacancy under the Rank Promotee quota, and though roster point No.25 pertains to the ST category, the prescribed ST adequacy had already been achieved. Hence, in terms of Rule 22 of the A.P. State and Subordinate Service Rules, 1996 and G.O.Ms.No.2, dated 09.01.2004, reservation in promotion ceases upon achievement of the prescribed adequacy, and the vacancy is to be filled on merit-cum-seniority. He further submits that the G.Os., relied upon by the petitioner relate to selection/recruitment and do not confer any right upon the petitioner in promotions. Petitioner's representations were duly considered and rejected for valid reasons. Therefore, his promotion was effected strictly in accordance with applicable rules.

5. Heard Sri J.Sudheer, learned counsel for petitioner and Sri Sharat Kumar, learned Assistant Government Pleader for Services – I appearing for respondent Nos.1 to 3 and Sri Nuvvula Ram Babu, learned counsel for 4th respondent.

6. The contention of learned counsel for petitioner is that cadre strength of ACTOs/GSTOs in Chittoor Nodal Division is 117 and the prescribed reservation percentage for the Scheduled Tribe (ST) category is 6%. Accordingly, seven posts of ACTOs/GSTOs are required to be reserved for candidates belonging to the ST category. However, during the selection process, vacancies against which ST candidates were considered for promotion under the open category, on the basis of their merit and seniority, were also adjusted against the seven posts required to be reserved for the ST category, which is contrary to G.O.Ms.No.77 dated 02.08.2023. For the said contention, learned counsel for petitioner has drawn the attention of this court to the details of candidates belonging to ST category who were considered for promotion, as set out in paragraph 6 of the affidavit, which reads as under:

S.No	Name of the ACTO Candidate	Category	RP/DR	Remarks
1	M. Janeswari	ST	RP	Promoted as ACTO under Open Competition, vide Cycle of communal Roaster 03-OC
2	M.Nagendra Babu	ST	DR	Appointed under ST category against DR post
3	Sree Lakshmi	ST	DR	Appointed under ST

				category against DR post
4	Puspaleela	ST	DR	Appointed under ST category against DR post
5	Muneeswaramma	ST	RP	Promoted as ACTO under ST category against R.P. post
6	U.Yesurathnam	ST	RP	Promoted as ACTO under Open Competition vide Cycle of Communal Roaster 98
7	Sura Sura Sreenivasulu	ST	DR	Appointed under ST category against DR post
8	Suneetha	ST	DR	Appointed under ST category against DR post

7. Basing on the above, learned counsel for petitioner submits that Sl. No. 1 - M. Janeswari, who belongs to ST category, was promoted against roster point 3, earmarked for the Open Category, on the basis of her merit and seniority. Similarly, Sl.No. 6 - U. Yesurathnam, who also belongs to ST category, was considered and promoted to the post of ACTO under the Open Category against roster point 98 of the communal roster cycle. Thus, it is evident that both the aforesaid candidates were promoted to the post of ACTO under the Open category against roster points 3 and 98, respectively. This factual position has not been disputed either by the official respondents or by the 4th respondent. Learned counsel further submits that, out of total 117 vacancies, seven vacancies were required to be filled by candidates belonging to the Scheduled Tribe (ST) category in terms of the 6% reservation provided under Article 16(4) of the Constitution of India. Since M. Janeswari and U.

Yesurathnam, who belong to the ST category, were promoted against communal roster points Nos. 3 and 98, respectively, which are earmarked for the Open Category, on the basis of their merit and seniority, their appointments cannot be counted towards the vacancies reserved for the ST category. As such, only six candidates belonging to the ST category were promoted to the post of ACTO against the roster points earmarked for the ST category, leaving one vacancy yet to be filled. As the roster had progressed up to point No. 24, the next roster point, i.e., point No. 25, was required to be filled by a candidate belonging to the ST category. However, contrary to the aforesaid position, authorities filled the said roster point by promoting the 4th respondent, who admittedly belongs to the Open Category. As such, selection of 4th respondent is vitiated for violation of Rules as well as constitutional mandate.

8. Learned counsel for petitioner placed reliance on judgment of the Hon'ble Apex Court in ***R.K. Sabharwal v. State of Punjab***[1], wherein the relevant portion of the judgment reads as under:

> ***4.*** *When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution*

[1] (1995) 2 SCC 745

of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/ promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition. We, therefore, see no force in the first contention raised by the learned counsel and reject the same.

9. Placing reliance on the above judgment, learned counsel for petitioner submitted that once a roster point is reserved for a particular backward class, the same has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for such category. Learned counsel further submits that so long as instructions/ rules providing certain percentage of reservations for the backward classes are operative, the same has to be

followed. Despite any number of appointees/ promotees belonging to backward classes against general category posts, the prescribed percentage has to be provided in addition to that.

10. Per contra, learned Assistant Government Pleader appearing for respondents submitted that as against available seven vacancies, eight candidates were already selected under ST category, as such, adequacy under ST category was met. Hence, the next vacancy against roster point 25 was considered for filling up under the open category. Accordingly, 4th respondent was promoted.

11. Learned counsel for 4th respondent reiterated the same contentions as stated in his counter affidavit.

12. Considered the submissions made on either side and perused the record.

The respondents rejected the case of petitioner stating as under:

> *"The representation of Mr. Gangadhar is examined vis-à-vis the guidelines given in G.O Ms. No: 77 General Administration [Services-D] Department dated: 02-08-2023. The individual in his representation highlighted clauses (I) (ii)(iii) under heading 22-B of the said G.O. While clauses (i) & (ii) talk about vertical and horizontal reservations, clause (iii) talks about the model / method in which vertical reservations are to be applied. The opining line of clause(iii) categorically highlights two [2] important phrases - 'Merit' and 'selection'. Thus, it is very much obvious from the terminology used in the said clause that it talks about recruitment and not promotion. Thus, clause (iii) is applicable in cases of recruitment [Selection] but not promotion. As such, the said clause is not applicable to Mr. Gangadhar. Thus, the request of*

Mr. Gangadhar is rejected as adequacy under ST Category is already met."

13. On perusal of the above, the claim of petitioner was rejected on two counts i.e., adequacy under ST category was already met and G.O.Ms.No.77 is applicable only for direct Recruitment, but not for promotions.

14. With regard to the objection regarding G.O.Ms.No.77, dated 02.08.2023 is concerned, it was issued making certain amendments to AP State and Subordinate Service Rules, 1996. The abstract of the said GO reads as under:

Public Services Andhra Pradesh State and Subordinate Service Rules, 1996 Implementation of Horizontal Reservation to Women, Persons with Benchmark Disabilities, Ex-Servicemen and Meritorious Sportspersons in the matter of direct recruitment and promotions and Amendments to Rule- 22 Orders/Notification Issued.

The above said G.O., was issued to amend Rule 22 of AP State and Subordinate Service Rules, whereunder Rule 22-B provides for Special Reservation (Horizontal Reservation) and framed certain operational guidelines. Relevant guidelines i.e., Rule 22-B(1)(ii) and (iii) reads as under:

"(ii) Social reservations in favour of SC, ST and OBC under Article 16(4) of the Constitution of India are 'vertical reservations'. Special reservations in favour of physically handicapped, women etc., under Articles 16(1) or 15(3) are 'horizontal reservations'. Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non- reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class.

(iii) Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even

exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. But the aforesaid principle applicable to vertical (social) reservations. will not apply to horizontal (special) reservations."

15. The aforesaid provision stipulates that social reservations in favour of SC, ST and OBC under Article 16(4) of the Constitution of India are 'vertical reservations'. Where a vertical reservation is made in favour of a backward class under Article 16(4), candidates belonging to such backward class, may compete for non-reserved post and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the reserved backward classes. As the very G.O., itself was issued for making amendments to Rule 22 of AP State and Subordinate Service Rules in the matter of direct recruitment and promotions, the contention of respondents that such Rule has no application in the respect of promotions is untenable. However, petitioner's contention by placing reliance on Rule 2(15) of AP State and Subordinate Service Rules that recruitment by promotion from lower post also falls under the ambit of definition of direct recruitment cannot be accepted as the said rule excludes the selection by way of promotion from a lower post from the scope of direct recruitment. However, as stated above, G.O.Ms.No.77 dated 02.08.2023 was issued, prescribing the method and modalities to implement the reservations as per the roster points, both in direct recruitment as well as promotions.

16. Therefore, the only grievance that remains to be considered is that as to whether the adequacy of ST quota is met or not. No material is placed on record by the respondents nor the counter affidavit filed is also silent with regard to achievement of adequacy of ST posts is concerned. Admittedly, seven vacancies were available for ST category. Though eight ST candidates were promoted to the post of ACTO, two of them, namely, M. Janeswari and U. Yesurathnam, were promoted against Open Category vacancies corresponding to roster points Nos. 3 and 98, respectively. If these two candidates were promoted on the basis of their own merit and seniority against Open Category vacancies, they cannot be adjusted against the vacancies earmarked for promotion under ST category. Assuming for a moment that, out of eight candidates, these two candidates who got promoted against roster point Nos.3 and 98 were adjusted against general category candidates, there will be still a shortfall of one more candidate as only six candidates were promoted under ST category. Thus, the next vacancy under roster point No.25 has to be filled by the ST category only. It is also not in dispute that the 4th respondent belongs to the Open Category. Though he was senior, his case for promotion had been deferred on account of his involvement in ACB cases. Subsequently, pursuant to the orders dated 14.02.2023 passed by this Court in W.P. No. 21592 of 2022, his case was considered for promotion in terms of G.O. Ms. No. 257, dated 10.06.1999, on the basis of his merit against an Open Category vacancy. If the prescribed adequacy under ST category is met, it is always open to the authorities to fill

up those remaining vacancies though earmarked for ST with the open category candidates. However, in the instant case, no explanation is forthcoming from the respondents that the adequacy was met after excluding the candidates appointed against roster point Nos.3 and 98, which are earmarked for open category. If the candidates belonging to ST category are promoted against Open Category basing on their merit and selection, such candidates shall not be adjusted towards the prescribed reservation quota for the ST category for the purpose of determining adequacy. Any such adjustment would deprive their benefit of reservation to which they are entitled under Article 16 of the Constitution of India. Further, petitioner also raised a contention as to how the respondents have promoted eight candidates to the post of ACTO, particularly when there are only seven vacancies; however, no material is forthcoming either from the official respondents or unofficial respondent. Whereas the contention that M.Janeswari and U.Yesurathnam who were considered for promotion under cycle of communal Roster Point Nos.3 and 98, which is meant for open competition was not denied by the authorities and no averment even explaining such selection is under the roster point meant for ST or not.

17. Therefore, in view of the foregoing reasons apart from the unrebutted assertion by petitioner clearly indicate that M.Janeswari and U.Yesurathnam were promoted against Roaster points 3 and 98 respectively against the open category vacancies. Thus, as only six candidates were filled under ST

category, it can be safely concluded that adequacy under ST category has not met and still one more vacancy is available.

18. In such circumstances, this court came to an irresistible conclusion that the respondents have failed to meet the adequacy and as such considering the next roster point i.e., 25 to the open category is contrary to G.O.Ms.No.77 dated 02.08.2023 and also G.O.Ms.No.2 dated 09.01.2004.

19. Accordingly, the impugned order dated 21.09.2023 passed by the 1st respondent is hereby set aside and the respondent authorities are directed to pass appropriate orders on the representations of petitioner dated 19.08.2023 and 29.08.2023 for considering his case for promotion under the ST community, subject to his entitlement and seniority at the relevant point of time, among the ST category and pass appropriate orders within a period of two (2) months from the date of receipt of a copy of this order.

20. Accordingly, writ petition is disposed of.

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

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JUSTICE BALAJI MEDAMALLI

Date: 04.11.2026
Dvs

Whether the order is:

Speaking	☑	Reasoned	☑
Reportable	☑	Non-reportable	

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

WRIT PETITION: 26313 OF 2023

Date: 04.11.2026

Dvs