

[3219]

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

THURSDAY, THE TWENTIETH DAY OF OCTOBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SMT JUSTICE P. MADHAVI DEVI

WRIT PETITION NO: 38558 OF 2016

Between:

Bharadwaj Naik, S/o Banoth Bhadru Naik, Aged about 24 years, Un-employed,
R/o 11-9-66, Road No. 2, Laxmi Nagar Colony Kothapet, Saroomagar, Hyderabad
...PETITIONER

AND

1. Telangana State Public Service Commission, Represented by its Secretary, Hyderabad, Telangana State.
2. State of Telangana, Rep. by its Principal Secretary to Government, Municipal Administration & Urban Development Department, Secretariat, Hyderabad.
3. The Engineer-in-Chief, Public Health & Municipal Engineering Department, T.S., 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 a Writ of Mandamus declaring that the Petitioner is entitled to be appointed as Assistant Engineer/Technical Officer in the vacancies reserved for Physically Handicapped (H-H) candidates in accordance with the options exercised by the petitioner pursuant the recruitment notification No.09/2015 dated 29-08-2015 issued by the 1st respondent with all consequential benefits in accordance with the provisions of S. 33 of "The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955" and the orders issued in G.O.Ms.No.31 Women Development, Child Welfare & Disabled Welfare (DW) Department, dated 01.12.2009 by holding the action of the respondents in denying and depriving selection and appointment to the petitioner as Assistant Engineer/Technical Officer by omitting his name from the Result Notification dated 22.08.2016 issued in respect of PH Candidates published by the 1st respondent thought he was eligible candidate under the Hearing Impaired category, as being arbitrary, illegal, discriminatory, contrary to the provisions of

S.33 of "The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" and the orders issued in G.O.Ms.No.31 Women Development, Child Welfare & Disabled Welfare (DW) Department dated 01.12.2009 and in violation of Articles 14 and 16 of the Constitution of India.

Counsel for the Petitioner: SRI. SRINIVASA RAO MADIRAJU

Counsel for the Respondent No.1: SRI D. BALAKISHAN RAO (SC FOR TSPSC)

**Counsel for the Respondent Nos.2 & 3: GP FOR SERVICES – I FOR
GP FOR MEDICAL HEALTH & FAMILY WELFARE**

The Court made the following: ORDER

THE HON'BLE SMT. JUSTICE P.MADHAVI DEVI

W.P.No. 38558 of 2016

ORDER:

This writ petition has been filed by the petitioner seeking a writ of mandamus declaring that the petitioner is entitled to be appointed as Assistant Engineer/Technical Officer in the vacancies reserved for Physically Handicapped (HH) candidates in accordance with the options exercised by the petitioner pursuant to the recruitment notification No.9/2015, dated 29.08.2015, issued by the respondent No.1 with all consequential benefits in accordance with provisions of Sec.33 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the orders issued in G.O.Ms. 31 Women Development, Child Welfare and Disabled Welfare (DW) Department, dated 01.12.2009.

2. The brief facts leading to the filing of the present writ petition are that the petitioner is B.Tech. Graduate in Mechanical Engineering and belongs to Scheduled Tribe Community and was entitled for the benefit of rule of reservation in appointments under the category of physically handicapped as he suffered from 69% hearing disability and therefore, he was entitled for the benefit of reservation under the Hearing Handicapped (HH) quota in terms of

order of G.O.Ms.31, dated 01.12.2009. The TSPSC had issued notification No.9/2015, dated 29.08.2015 inviting applications from the eligible candidates for filling up of 563 vacancies in the Assistant Engineers category in various Government Departments. Since the petitioner was eligible and qualified in terms of the notification, he applied for the post of Assistant Engineer/Technical Officer and accordingly, Hall Ticket bearing No. 9150114891 was issued to him. Subsequent to the issuance of the notification, the vacancies were increased to around 1,044, but however, as per the terms and conditions stipulated in the notification dated 29.08.2015, recruitment shall be made only for the vacancies notified before the examinations. The petitioner appeared for written examination held on 07.11.2015 and qualified in the same. Thereafter, he was called for verification of certificates on 25/26.04.2016 and his certificates were duly verified. The petitioner was instructed to exercise options and accordingly he opted in the following order:

Preference Number	Name of the Department	Zone	Post
1	Irrigation & CAD Department	6	AE
2	Public Health and Municipal Engineering	CC	AE

3	Public Health and Municipal Engineering	6	AE
4	Public Health and Municipal Engineering	6	TO
5	Irrigation & CAD Department	5	AE
6	Public Health and Municipal Engineering	5	AE
7	Public Health and Municipal Engineering	5	TO

3. Thereafter, the petitioner was sent to medical examination at ENT Hospital, Koti, Hyderabad, vide letter no.513/RS-20/AEs/2015, dated 19.05.2016 referring to G.O.Ms.31, dated 01.12.2009. Upon examination, it was found that the percentage of the petitioner's hearing disability is 69%. As per Appendix-III appended to G.O.Ms.31, paragraph (B) dealing with Speech and Hearing Disability, candidates with 51% to 70% suffers from severe hearing impairment and thus, are entitled for selection. The petitioner was therefore expecting to get selected as Assistant Engineer/Technical Officer as per the options exercised by him. It is submitted that the respondents have published the result for the notification of Physical Handicapped candidates on 22.08.2016, but to his shock, the petitioner's name was not in the list. On approaching the office of the respondent No.1, the petitioner was orally informed that he is not having 75% disability and therefore,

his claim was overlooked. The petitioner immediately submitted a representation to the respondent No.1 on 24.08.2016 stating that only 11 persons were selected leaving all the other vacancies meant for Hearing Impaired unfilled without any justification, and that it has been certified that he is suffering from 69% hearing disability. When his case was not considered, the petitioner approached Andhra Pradesh Administrative Tribunal (APAT), Hyderabad, by instituting O.A.No.3466 of 2016 and during the pendency of the same, the Government of India had issued notification vide GSR No.888 (E), dated 15.09.2016 to the effect that the Andhra Pradesh Administrative Tribunal shall cease to have jurisdiction over the State of Telangana. In view thereof, the present writ petition was filed.

4. The learned counsel for the petitioner submitted that as per the Annexure-I appended to the recruitment notification, disclosed that in all 18 vacancies were earmarked for Physically Handicapped Category, for Post Code 1 to 5 out of which, 13 vacancies were reserved for physically handicapped Candidates, against Post Code 3 to 5. Against Post Code 3 i.e., Assistant Engineering (Civil or Mechanical) in Public Health and Municipal Engineering Department one vacancy was reserved for hearing handicapped (HH) candidates under city cadre and likewise one vacancy in each

Zones, V and VI were reserved for HH candidates. It is submitted that the post meant for hearing impaired have not been filled up and the respondent have choosen to overlook his claim for selection in utter disregard to the provisions of 1995 Act and G.O.Ms.31, dated 01.12.2009. Therefore, he sought consideration of his case for appointment to the post of Assistant Engineer/Technical Officer pursuant to the notification dated 29.08.2015 with all consequential benefits.

5. Learned counsel for the petitioner has drawn the attention of this Court to the notification dated 29.08.2015 and particularly to para V thereof dealing with important legal provisions governing the recruitment process. Sub para of 5 of para V deals with Zonal/local candidates and it provides that the Zonal and Local Reservations shall be followed as per para-8 of A.P.Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975, within the meaning of Sections 3 & 97 of A.P.State Reorganization Act 6 of 2014. He has also drawn the attention of this Court to Annexure-I and table 3 of the notification to demonstrate that one post of hearing impaired is reserved in Zone-6 for women and in the city cadre for general candidates, one post of hearing impaired was reserved.

6. Learned counsel for the petitioner relied upon the order of this Court the interim order dated 02.12.2016 in W.P.M.P.No.47502 of 2016 in W.P.No.38558 of 2016 wherein this Court has observed that *merely because the ENT hospital while assessing the petitioner's impairment as 69%, wrongly treated his impairment as "Moderate" and not "severe", petitioner cannot be denied the employment as the percentage of impairment 69% is not disputed.* He submitted that in view of the above direction of this Court, the respondents ought to have considered the case of the petitioner for appointment instead they are taking a different stand in the counter which is not sustainable. It is submitted that the respondents are trying to substitute the reasons for rejecting the case of the petitioner by adopting pedantic approach and raising contentions in the counter affidavit which were not raised earlier, for denying the claim of the petitioner.

7. The respondents have not only filed a counter affidavit but have also filed additional counter affidavit and accordingly, submitted that after verification of the certificates of the petitioner, it was found that the petitioner is not a local candidate of the city cadre, but that he belongs to Zone-VI and there is only one post of physically handicapped, which is also reserved for women in Zone VI. It is further submitted that as far as the claim of the petitioner

for city cadre is concerned, he submitted that after verification of the school certificates of the petitioner, it was found that he does not belongs to city cadre and therefore, cannot be considered for the post of general candidate, reserved for hearing impaired in the city cadre.

8. Both the counsel relied upon their respective contentions.

9. Learned counsel for the petitioner has further furnished before this Court the information obtained by the petitioner and also by some other candidates under the Right to Information Act to demonstrate that the posts reserved for hearing impaired in the city cadre is still kept vacant and therefore, he submitted that by appointing the petitioner to the said post, there is no prejudice caused to any other candidate.

10. Learned counsel for the petitioner had also drawn the attention of this Court to the Presidential Order whereby 70% of the posts are kept vacant for local candidates and submitted that if there are no local candidates available, then the posts should be filled up with non-local candidate who are otherwise eligible. He further submitted that in the notification also it is not stated that the post shall be filled up only by local candidates.

11. Having regard to the rival contentions and the material on record, it is noticed that the petitioner is qualified for the post of Assistant Engineer/Technical Officer and accordingly, he has been found qualified in the written examination and his case was not considered only on the ground that the disability of 69% is not sufficient to consider him as physically handicapped person. This Court in the earlier proceedings, had clarified that a person with 69% hearing impairment is to be considered under physically hearing handicapped quota. After going through the notification issued by the Government, it is noticed that in the city cadre, for the general candidate, one post is kept vacant. As per the Presidential Order, the preference has to be given to the local candidates, however, if there are no local candidates, posts will have to be filled up by an eligible non-local candidates. Admittedly, the post has not been filled up as on today, therefore the respondents are directed to consider the case of the petitioner and appoint him to the post from the date other such candidates have been appointed. However, the petitioner shall not be entitled to the back wages, but the notional service from the date of appointment of other candidates till the date of actual joining shall be treated as continuity of service for the purpose of retirement benefits only.

12. The writ petition is accordingly allowed. There shall be no order as to costs.

Miscellaneous applications, if any pending, shall also stand closed.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble the Chief Justice UJJAL BHUYAN, on this Thursday, the Twentieth day of October, Two Thousand and Twenty Two.

SD/-K.SHYLESHI
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

- 1 The Secretary, Telangana State Public Service Commission, Hyderabad, Telangana State.
- 2 The Principal Secretary to Government, Municipal Administration & Urban Development Department, State of Telangana, Secretariat, Hyderabad.
- 3 The Engineer-in-Chief, Public Health & Municipal Engineering Department, T.S., Hyderabad.
- 4 One CC to SRI. SRINIVASA RAO MADIRAJU Advocate [OPUC]
- 5 Two CCs to GP for Services-I, High Court for the State of Telangana at Hyderabad. [OUT]
- 6 Two CCs to GP for Medical Health and Family Welfare, High Court for the State of Telangana at Hyderabad. [OUT]
- 7 One CC to SRI. D BALAKISHAN RAO(SC FOR TSPSC) [OPUC]
- 8 Two CD Copies
- 9 One Spare Copy

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SB *An*

HIGH COURT

DATED:20/10/2022

ORDER

W.P.No.38558 of 2016



**ALLOWING THE WRIT PETITION
WITHOUT COSTS**

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27/10/22