

(1998) 12 AP CK 0075
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5653 of 1993

A. Vasudevaiah

APPELLANT

Vs

Executive Officer, TTD, Tirupathi and another

RESPONDENT

Date of Decision : 18-12-1998

Acts Referred:

Citation : (1999) 1 ALD 339 : (1999) 1 ALT 425

Hon'ble Judges : Y.V. Narayana, J

Bench : Single Bench

Advocate : Mr. B. Rajendra, for the Appellant; Mr. P. Sarada SC for TTD, for the Respondent

Judgement

1. The writ petitioner was originally appointed as Welding Instructor by the 1st respondent vide his proceedings dated 27-3-1983 and was posted in the 2nd respondent-Institute. His services were regularised and probation was also declared. Meanwhile, the 2nd respondent directed the petitioner to work as Store Keeper in the Engineering Stores of the Institute in addition to his regular duties as Welding Instructor, by issuing proceedings dated 28-2-1985 and that the petitioner has been acting as such from that day onwards. It is submitted that actually there was no sanctioned post of Store Keeper in the 2nd respondent-institute. Thereafter, on the recommendations of the Standing Committee, the 1st respondent-Devasthanam passed a Resolution on 13-5-1987 creating the post of Store Keeper in the 2nd respondent-institute. Insofar as the eligibility criteria for appointment to the post of Store Keeper is concerned, it is submitted that the Craft Instructor (Senior) presently working in the ITI's are eligible to be appointed to the post of Store Keeper. As per the petitioner, the post of Craft Instructor (Senior) which is existing in the ITI's and the post of Senior Instructor in the 2nd respondent-Institute are similar. Thus, the crux of contention of the petitioner is that being Senior Welding Instructor he is eligible to be appointed as Store Keeper. As far as his educational qualifications are concerned, the petitioner submits that he possesses the CTI Certificate. Therefore, in view of the

fact that since he has already been working as Store Keeper and since he is also eligible to be appointed as Store Keeper, he submitted several representations to the 1st respondent requesting to consider his case for appointment by transfer to the newly created post of Store Keeper. But, the 1st respondent, without considering the petitioner's case, is now trying to fill up the said post by conducting interviews. Hence, the present writ petition.

2. Counter is filed by the respondents admitting the averment of the petitioner that he was placed in-charge of the post of Store Keeper, but however, contended that it was only made as a stop-gap arrangement in order to cope up with the work. When coming to the question of appointment to the said post, it is contended that the respondents are bound to follow the prescribed procedure, rules and regulations and also the rule of reservation while filling up any vacant post. It is further submitted that as per the instructions of the Government, only those candidates who are sponsored by the Employment Exchange are interviewed and selected for recruitment to the vacant post and that the respondents are, therefore, not entitled to fill up the vacant post by the process of recruitment by transfer. It is lastly admitted that as on today, there is no rule framed governing the recruitment to the post of Store Keeper in this institute and that therefore the respondent-Devasthanam is at liberty to recruit the person of its choice, who may be an in-service candidate or outsider, after assessing the qualifications of that candidate. It is, therefore, contended that the petitioner cannot claim any right of preference for recruitment to the post of Store Keeper.

3. From the above averments, it is clear that the petitioner is working as Store Keeper in the 2nd respondent-Institute. The respondent also did not deny the said factum. But, the petitioner's appointment was made in the post of Instructor (Welder). Thus, by virtue of the proceedings of the 2nd respondent dated 28-2-1985, the petitioner has been discharging the duties of Instructor (Welder) as well as Store Keeper in the 2nd respondent-Institute. After the creation of the post of Store Keeper, admittedly, no rules are framed by the Devasthanam with regard to the mode and method of appointment to the said post of Store Keeper. Similarly, in regard to the eligibility criteria also, the TTD Employees Service Rules, 1989 are silent. The petitioner contends that the post can be filled up by the method of recruitment by transfer, which is, however, disputed by the respondents. The respondents tried to contend that since Rules are not framed prescribing the method and qualifications etc., for recruitment to the post of Store Keeper, they can select the candidate of their choice by calling for eligible candidates from the Employment Exchange. But, this Court is not ready to accept the above contention in toto. When, admittedly, there is no Rule which mandates filling up of a particular post by any particular method, i.e., either direct recruitment or recruitment by transfer, the employer cannot be permitted to say that he will follow anyone of the above methods which would suit their convenience. No doubt, in the absence of any Rule which govern the process of recruitment, the respondents are entitled to call for candidates from

the Employment Exchange, interview them and select any one of the them in the vacant post. But, this practice could be resorted to by the respondents only when there are no eligible candidates who are already employed with them. When there are employees who claim themselves to be eligible to be appointed to a particular vacant post by way of promotion, the employer cannot ignore their claims and recruit outsiders in the said vacant post. Such an attempt is nothing but closing the future of the employee once and for all. It is no doubt true that promotion of an employee to the next higher post is not automatic because the employer has the option to assess the eligibility of that particular employee who claims promotion before effecting promotion and if, in the opinion of the employer, the employee is not eligible for promotion, such an employee can be ignored and when there is no other employee who is eligible to be promoted, the employer can go on with filling up of the vacant post by resorting to the method of direct recruitment. In this case, it is the specific case of the petitioner that he is very much eligible to hold the post of Store Keeper but the respondents ignored him completely and trying to fill up the said vacancy by the method of direct recruitment. In view of what is stated supra, the said attempt of the respondents is nothing but offending the petitioner's legitimate expectation of promotion to the higher post. This Court cannot approve such attempts. When the petitioner claims himself to be eligible to be appointed as Store Keeper, the respondents ought to have first considered his case and if they feel that he is not eligible, then only they are entitled to recruit candidate by way of direct recruitment.

4. For the foregoing reasons, I am inclined to issue a direction to the respondents to consider the case of the petitioner first while filling up the post of Store Keeper in the 2nd respondent-Institute by duly following the well established method of recruitment, before resorting to the process of direct recruitment. With this direction, the writ petition is disposed of. No costs.