
(2008) 12 AP CK 0037

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27760 of 2008

Andhra Pradesh Public Service Commission

APPELLANT

Vs

G. Jyothi Ram and Others

RESPONDENT

Date of Decision : 22-12-2008

Acts Referred:

Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 22

Citation : (2009) 4 ALT 596 : (2009) 15 ALT 596

Hon'ble Judges : Ghulam Mohammed, J;B. Seshasayana Reddy, J

Bench : Division Bench

Advocate : M. Vijay Kumar, for the Appellant; G.P. for Services-I for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—This writ petition is filed by the Department aggrieved by the order of the A.P. Administrative Tribunal in O.A. No. 5750 of 2004, dated 4.9.2007.

2. The facts in brief are that the Department has issued notification for filling up the posts of Junior Lecturers in Government Junior Colleges. Pursuant to which, the 1st respondent-applicant who belongs to S.C.-"C" has applied for the post of Junior Lecturer in Telugu. He also participated in the selection process and secured 353 marks. The applicant could not be selected on the basis of his merit in Zone-III to which he belongs. According to the applicant, there were 9 posts of Junior Lecturers of Telugu in Zone - IV, including one post reserved for S.C.-"C". The applicant claims that he is eligible to be considered for selection and appointment to the said post in the aforementioned vacancies, basing on his merit as a non-local candidate. Applicant also asserted that as per the Presidential Order, 60% of the vacancies have to be filled up by local candidates and remaining 40% of the vacancies can be filled up by local and non-local candidates and the applicant can be considered under that category. He also claimed that as per Rule 22 of A.P. State and Subordinate Service Rules (for

short "the Rules"), roster point from 75 onwards is allotted to the following categories, which reads thus:

75 ST

76 OC

77 SC "C"

78 OC(W)

79 BC

80 OC

81 BC "B"(W)

82 OC

83 ST

84 OC(W)

85 BC "B"

86 OC

3. According to the petitioner, as per G.O. Ms. No. 124, dated 7.3.2004, the first four roster points i.e. from 75 to 78, are to be filled up from combined merit list of local and non-local candidates; that roster point 77 is reserved for S.C.-"C" Community and as the applicant secured highest marks among the S.C. candidates, the case of the applicant ought to have been considered for appointment to the post of Junior Lecturer in Telugu in Zone IV, instead, the department called a OC candidate under roster point 77. Assailing the said action of the department, the respondent applicant filed O.A. No. 5750 of 2004 before the Tribunal.

4. Before the Tribunal, the department filed counter stating that there are 12 vacancies available in Zone IV, out of which, one vacancy belonged to S.C.-"C" As per rules, four vacancies were kept open for non-local candidates and intended to be filled up basing on over all merit. Though the applicant is eligible to be considered against the four non-local vacancies, since he was less meritorious, he could not come up within the zone of consideration for selection against those vacancies. The department also gave the details of the marks secured by the candidates selected against those vacancies, which read thus:

1. 381

2. 380

3. 379

4. 377

5. It further stated that since the applicant secured 353 marks, he could not be considered for selection against those vacancies. Even though the vacancy at roster point 77 was meant for S.C.-"C", the same had to be filled up by local candidates belonging to Zone IV only.

6. The Tribunal having heard the learned Counsel for the parties and having perused the averments made in the counter affidavit, disposed of the O.A. with a direction to the department to consider the case of the respondent-applicant for appointment to the post of Junior Lecturer (Telugu) in the unfilled post, which was kept vacant as per the interim orders of the Tribunal, dated 25.10.2004. Aggrieved by the said order, the department filed the present writ petition.

7. Sri M. Vijaya Kumar, learned Standing Counsel appearing on behalf of the Commission would contend that the provisional selection was already finalized and the Tribunal without taking all these aspects into consideration, erroneously issued a direction to consider the case of the respondent for appointment. He further stated that if the case of the respondent had to be considered, it may exceed the non-local quota and unsettle the selection and the appointment of other local candidates. He further stated that the post of Junior Lecturer in Telugu had already been filled up by one Chitti Babu, a candidate belonging to local S.C.-"C" and it is not therefore feasible for it to consider the case of the respondent-applicant; that if it had to implement the order of the Tribunal, a supernumerary post had to be created. He also contended that the respondent-applicant did not implead Mr. Chitti Babu, who is the aggrieved as necessary party and on this ground also, the O.A. is liable to be dismissed. He, therefore, contended that the writ petition be allowed and the impugned order be set aside.

8. There is no dispute about the fact that the department issued the notification for filling up the posts of Junior Lecturers. There is also no dispute about the fact that the respondent-applicant secured 353 marks in the oral and written examination. Even according to the department, 12 vacancies were available in Zone IV out of which, one vacancy belonged to S.C.-"C". and out of those 12 posts, as per G.O. Ms. No. 124, dated 7.3.2002, four posts are meant for local and non-local meritorious candidates . However, subsequently, the Government issued clarificatory instructions to G.O. Ms. No. 124, dated 7.3.2002, vide Memo No. 42005/ACR.D/2002-1, dated 28.8.2002 clarifying that since there is reservation on two counts, one communal and the other being non-local, both of them had to be integrated. Therefore, as per the aforesaid clarificatory instructions issued by the Government in the aforesaid Memo dated 28.8.2002, the department is liable to follow the communal roster point as specified in Rule 22 of the State and Subordinate Service Rules even while filling up the posts, which are meant for local and non-locals. Since the department filled up the vacancy meant for roster point 77 with a candidate belonging to O.C. non-local candidate instead of the respondent-applicant, the same is contrary to G.O. Ms. No. 124, dated 8.3.2004 and Rule 22 of the Rules. In the circumstances, the Tribunal was justified in disposing of the O.A. with a direction to the department

to consider the case of the respondent-applicant for appointment to the post of Junior Lecturer (Telugu), which was kept unfilled pursuant to the interim order dated 25.10.2004 of the Tribunal in the aforesaid O.A.

9. So far as the contention of the learned Standing Counsel for the respondent that the vacancy had already been filled up and a supernumerary post had to be created to comply with the direction of the Tribunal is concerned, since the respondent-Commission is the recruiting agency, it is the discretion of the respondent (petitioner)-Commission as to how it should implement the order of the Tribunal and this Court cannot issue any direction to the Commission as to the creation or abolition of a supernumerary post.

10. We, therefore, do not find any reason to interfere with the well considered order of the Tribunal. The writ petition fails and it is accordingly dismissed. No costs.