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**(2001) 12 AP CK 0015**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 475 of 2001**

Andhra Pradesh Public Service Commission

APPELLANT

Vs

K.V. Muralikrishna and Others

RESPONDENT

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**Date of Decision : 14-12-2001**

**Acts Referred:**

Andhra Pradesh Treasury and Accounts Service Rules, 1962 — Rule 7  
Constitution of India, 1950 — Article 14, 16

**Citation : (2001) 12 AP CK 0015**

**Hon'ble Judges : S.R.K. Prasad, J;S.R. Nayak, J**

**Bench : Division Bench**

**Advocate : E. Manohar, for the Appellant; M. Surender Rao, for R-1, for the Respondent**

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## **Judgement**

S.R. Nayak, J.—This writ petition is filed by the Andhra Pradesh Public Service Commission, the petitioner herein, assailing the validity and legality of the order dated 8-12-2000 passed in O.A. No. 5511 of 2000 by the Andhra Pradesh Administrative Tribunal allowing the original application filed by the 1st respondent herein and directing the petitioner herein and respondents 2 and 3 to appoint the 1st respondent-applicant as Assistant Accounts Officer/Assistant Treasury Officer (for short, "AAO/ATO") in one of the BC-D vacancies which remained unfilled, within two weeks from the date of receipt of the order.

2. The basic facts leading to the filing of this writ petition be noted briefly as under:

The petitioner-Public Service Commission issued advertisement No. 5/1998, dated 24-6-1998 calling for applications from the eligible candidates to fill up vacancies in 19 categories of posts including the post of AAO/ATO. The 1st respondent belongs to BC-D group and he is a holder of B. Tech degree.

3. In response to the above notification, the 1st respondent applied for all the posts covered by advertisement No. 5/1998 including the post of AAO/ATO. In

the written test conducted by the petitioner-Public Service Commission, the 1st respondent has secured 649 marks in aggregate whereas one Jithender Reddy, another applicant for the said post secured 645.25 marks in aggregate. It is stated that the said Jithender Reddy was holding B.Com degree at the relevant point of time. Having regard to the educational qualification possessed by the said Jithender Reddy and having regard to his relative merit in terms of the total aggregate of marks obtained in the test, he was appointed to the post of AAO/ATO. When the 1st respondent herein came to know about the appointment of the said Jithender Reddy as ATO, he instituted the present O.A. No. 5511 of 2000 before the learned Tribunal praying for the following relief:

".....to declare that the action of the respondents in not selecting the applicant to one of the post in Group-I Services and especially to the post of Asst. Treasury Officer/Assistant Accounts Officer though a person who secured less marks was selected, as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India."

4. The original application filed by the 1st respondent herein was opposed by the petitioner-Public Service Commission by filing a counter affidavit. However, the learned Tribunal placing reliance on the clarification issued by the Government vide letter dated 4-10-1999 and also having regard to the fact that during the recruitment years 1990-1991, certain candidates possessing B. Tech degree were appointed to the post of ATO and also having regard to the fact that the 1st respondent has secured more marks in the written test conducted by the petitioner-Public Service Commission than the said Jithender Reddy, disposed of the application directing the petitioner and respondents 2 and 3 to appoint the 1st respondent as AAO/ATO. Hence this writ petition by the Public Service Commission assailing the validity of the said order of the learned Tribunal.

5. Sri E. Manohar, learned senior counsel appearing for the petitioner-Public Service Commission would question the tenability of the grounds stated by the learned Tribunal for allowing the original application filed by the 1st respondent. Learned senior counsel has drawn our attention to the conditions incorporated in Para 2 (A) (a) & (d) of the advertisement No. 5/1998 and also the Andhra Pradesh Treasury and Accounts Service Rules notified in G.O.Ms. No. 953, General Administration (Rules) Department dated 29-6-1962 particularly the educational qualifications prescribed for category-5 posts, which include AAO/ATO, and contends that non-consideration of 1st respondent's case for appointment for the post of AAO/ATO was justified and was in conformity with the statutory rules. Learned senior counsel would also contend that simply because during the recruitment years 1990-1991 certain applicants possessing B. Tech degree were appointed to the posts of ATO in violation of the rules, only on that count no mandamus could lie either to the Public Service Commission or to the recruiting agency to repeat the same irregularity and illegality by appointing the 1st respondent, who admittedly does not possess the prescribed educational qualification. Learned senior counsel would draw our attention to the following

observation of the learned Tribunal in para 9 of the impugned order:

".....Basing upon the clarification, four persons viz., Hari Prasad, Ram Kumar, P. Sunder and Chaitanya Bhargava were earlier appointed as Asst. Treasury Officers/ Asst. Accounts Officers though they were possessing B.E. qualification."

and would contend that this observation is clear indication of non-application of mind on the part of the learned Tribunal and that when M/s. Hari Prasad, Ramkumar, P. Sunder and Chaitanya Bhargava were earlier appointed as AAO/ ATO though they were possessing B.E or B. Tech Degree qualification during the recruitment years 1990-1991, because the clarification issued by the Government in its letter dated 4-10-1999 was not at all in existence and that when this is the factual position, quite surprisingly, the Tribunal in its order has stated that on the basis of the clarification issued by the Government, the above four persons were appointed to the post of AAO/ATO. Learned counsel would also attack the power of the learned Tribunal to record the finding that since the 1st respondent is holding an engineering degree, that degree should be considered as the prescribed qualification or higher than the normal degree and would maintain that it is not within the domain of the Tribunal or the Court to consider whether the two degrees are equivalent or one is superior to other and it is essentially for the academic bodies or the concerned state authorities to decide. For all these reasons, learned counsel would conclude that it is a fit case where the Court should step in and annul the order made by the learned Tribunal.

6. On the other hand, Sri M. Surender Rao, with his usual persuasiveness and tenacity would submit that it cannot be said that the 1st respondent lacks the prescribed educational qualification. Elaborating the contention, Sri M. Surender Rao would contend that the 1st respondent in the course of his studies leading to B. Tech degree has studied mathematics, managerial economics and principles of accountancy as the subjects in the I, II & III years of four years course leading to B. Tech degree and therefore, it should be held that the 1st respondent is also a holder of degree in mathematics within the meaning of Para 2 (A) (a) & (d) of the advertisement No. 5/1998 and also the Andhra Pradesh Treasury and Accounts Service Rules as notified in G.O.Ms. No. 953, General Administration (Rules) Department dated 29-6-1962. Lastly, learned counsel would contend that the two posts of AAO/ATO earmarked for BC-D remain unfilled for want of qualified candidates and therefore, looking from that angle also, there is no justification to disturb the appointment of the 1st respondent. Learned counsel would conclude by contending that be that as it may, even the recruiting agency has no objection for the appointment of the 1st respondent to the post of AAO/ ATO and there is absolutely no justification for the petitioner-Public Service Commission to assail the appointment of the 1st respondent in this writ petition. Learned counsel would meekly contend that the Public Service Commission does not have locus standi to present this writ petition against the order made by the learned Tribunal because it cannot be said to be an aggrieved party by the impugned order.

7. Let us dispose of the last contention of the learned counsel for the 1st respondent first because that goes to the root of the matter. In para 10 of the impugned order, the Tribunal directed the petitioner-Public Service Commission and respondents 2 and 3 who are respondents in O.A., to appoint the 1st respondent-applicant as AAO/ATO within the stipulated timeframe. By virtue of the said order, undoubtedly, the Public Service Commission is under a legal liability to implement the direction. If the petitioner-Public Service Commission thinks that the direction issued by the learned Tribunal is irregular and illegal and cannot be sustained in law, it cannot be said that it has no locus standi to assail the correctness of the order. We do not think it necessary to further dilute this aspect. Suffice it to state that under the impugned order, the petitioner-Public Service Commission is under a legal liability to implement the direction issued by the learned Tribunal and in view of that legal liability fastened to the Commission, it has locus standi to question the correctness of the order before this Court.

8. Advertisement No. 5/1998 deals with the posts mentioned in column No. 18 which includes posts of AAO/ATO, and para 2 (A) (a) & (d) of the said advertisement stipulates that applicants desirous to apply for the said posts should hold degree in Commerce, Economics or Mathematics of a recognised university with atleast II class in the subject. This prescription in the said advertisement is in conformity with the rule requirement under Rule 7 of the A.P. Treasury and Accounts Service Rules 1962 as notified in G.O.Ms. No. 953, dated 29-6-1962. Therefore, the applicants applying for the posts of AAO/ATO should necessarily possess a degree in Commerce or Economics or Mathematics of a recognised university with atleast II class in the concerned subject. The question therefore, to be considered is whether the 1st respondent who is appointed to the post of ATO was possessing, at the relevant point of time, a degree in Commerce or Economics or Mathematics. The argument of the learned counsel for the 1st respondent is that the 1st respondent, at the relevant point of time, had passed degree in both Mathematics and Economics. This argument is built-up on the premise that in the course of studies leading to B. Tech degree, the 1st respondent has had an occasion to study Mathematics as well as Managerial Economics and Principles of accountancy. This contention of the learned counsel for the 1st respondent is not acceptable to the Court. It cannot be gainsaid that in academics, a degree in a particular subject has a definite connotation. When the relevant rules speak about the degree in Commerce or degree in Economics or degree in Mathematics, it means that the applicant applying for the posts should study the concerned subject as the main subject leading to the award of a degree. Otherwise, a candidate who has secured a degree in a particular main subject or discipline could also be considered to be a degree holder in each and every subject, which he happens to study in the entire course leading to a particular degree. To be specific, we may give a concrete example. If a candidate after passing intermediate pursues 3 years degree course in B. Sc with Mathematics, Physics and Chemistry as part of his curriculum, he may also study

languages, social sciences or some other subsidiary subjects or minor and then, on the basis of such study, he would not be called to be a graduate in those subsidiary or minor subjects. It is well known in academic world that engineering degree is a degree in applied sciences and not a degree in basic sciences. Undoubtedly, the engineering graduate would study basic sciences like mathematics, physics and chemistry as part of his curriculum leading to his degree, but the emphasis would be on the application of the basic sciences. Be that as it may, it is not for the Tribunal or for the Court to equate the degree of B. Tech held by the 1st respondent as equivalent or more superior to B. Sc in Mathematics, Physics and Chemistry etc. If the Tribunal or the Court were to do so, undoubtedly, it would overstep its legitimate power and usurp the powers of the academic bodies like the universities and academies and recruiting agencies.

9. The reasons assigned by the learned Tribunal in granting the relief to the 1st respondent, in our considered opinion, are perverse and cannot be sustained. Firstly, there is total lack of application of mind on the part of the learned Tribunal. The Tribunal has observed that on the basis of the clarification issued by the Government dated 4-10-1999, four persons viz., M/s. Hari Prasad, Ramkumar, P. Sunder and Chaitanya Bhargava were appointed as AAO/ATO during the recruiting years 1990-91. Alas! By the time they were appointed, the Government order was not at all in existence. It came to be issued subsequent to their appointments. Be that as it may, even the clarification issued by the Government is misconstrued by the learned Tribunal and held that the Government is of the opinion that the graduate degrees in Engineering and Pharmacy etc., are more than equivalent to graduate degrees in mathematics, science or commerce because they are professional degrees. The letter of the Government Lr. No. 55968/Ser.A/99-1, dated 4.10.1999 reads :

"Government of Andhra Pradesh General Administration (Ser. A) Department Lr. No. 55968/Ser. A/99-1

From

The Secretary to Government (Sers), General Administration Department, A.P. Secretariat, Hyderabad

To

The Secretary, APPSC, Hyderabad

Hyderabad dt. 4.10.99

Sir,

Sub : P.S. - Recruitment (Direct) - Prescription of Preferential Degrees as alternative qualifications - Regarding.

Ref:- 1. GO Ms. No. 374, G.A.(Ser-A) Dept., dt.28.4.76

2. GO Ms. No. 471, G.A. (Ser-A) Dept., dt.25.6.79

3. GO Ms No. 137, G.A. (Ser. A) Dept. dt.18.3.93.

I am directed to inform that in an earlier occasion, having examined the prescription of professional degree as alternative qualification, Government issued orders in the G.O.s 1st and 2nd cited for specifying any degree of any university in India established or incorporated by or under a Central Act or Provincial Act or State Act or an Institution recognized by the University Grants Commission as the academic qualification for recruitment to post in state services categorized as Group-I service and Group-II services respectively. Similarly in G.O. 3rd cited orders were issued that the B.A.L. Degree awarded to the students of five year B.L. Degree Course in Law be treated as equivalent to a basic degree viz., B.A., B.Sc., and B. Com., and the students, who have completed three years in Law Course and awarded B.A.L. Degree shall be entitled to appear for competitive examinations, being conducted by the A.P. Public Service Commission.

2. An instance has come to the notice of the Government recently, wherein persons with Graduation in Engineering and Pharmacy have filed O.As in the A.P. Administrative Tribunal contesting that the stand taken by the A.P. Public Service Commission that the graduate degrees in Engineering, Pharmacy are not equivalent to degrees of graduation in Arts, Science and Commerce. The graduate degrees in Engineering and Pharmacy etc., are more than equivalent to graduation but they are professional degrees. This dispute arose because the A.P. Public Service Commission while issuing notification calling for applications from candidates stipulated that one must be "Graduate in Arts, Science or Commerce or its equivalent". In order to avoid such litigation, it has been considered that it is advisable that the Service Commission avoids the usage of the word "equivalent" and better states in such cases in the notification as "Bachelors Degree in any subject recognized by the State or Central Government or any University in India recognized by the State and Central Governments" in order to avoid any further litigation.

3. I am therefore, to request you to examine the matter on the above lines and to consider the same in all the Commission's future notifications.

Yours faithfully, Sd/- xxxxxx For Secretary to Government (Services)

Copy to :

The General Administration (Ser.F) Department"

10. True, in para 2 of the above letter dated 4.10.1999, the Government has referred to the grievance of the persons with graduation in engineering and in that context it has referred to their claims, whereas quite surprisingly, the Tribunal has observed thus:

"... Engineering degree, which the applicant holds, is equivalent or a higher degree than a normal degree prescribed under the Rules, for the post of Assistant Accounts Officer/Assistant Treasury Officer"

11. The statement, 'the graduate degrees in Engineering and Pharmacy etc., are more than equivalent to graduation' occurring in para 2 of the above letter of the Government in the context is attributable to the graduate engineers, and it cannot be treated as the opinion of the Government.

12. Alternatively it needs to be emphasised that simply because during the recruitment years 1990-91, the Public Service Commission and the recruiting agency appointed certain unqualified candidates to the posts of AAO/ATO, on that basis no mandamus would lie to the recruiting agency to commit similar irregularity and appoint Engineering graduates to the post of AAO/ATO the same. In this connection, it is apposite to note the decisions of the Apex Court in *STATE OF ORISSA v. DURGA CHARAN DAS*, 1966 SC 1547, *COROMANDEL FERTILISERS LTD. vs. UNION OF INDIA* 1984 SC 1772 *Chandigarh Administration and another Vs. Jagjit Singh and another, & Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, wherein it was held that if an authority makes an order in violation of a rule in favour of an ineligible person, that would not justify the claim by another ineligible person.

13. The request of the learned counsel for the 1st respondent that the two vacancies earmarked for BC-D candidates remain unfilled for want of eligible candidates and in that view of the matter, there is no justification to disturb the appointment of the 1st respondent to the post of AAO/ATO is also not acceptable to us. We are in the domain of public employment. Vacant public posts should be filled up by competent qualified candidates only after issuing necessary notification calling for applications from the eligible candidates and after going through the selection procedure prescribed under the recruitments rules, and the Court cannot direct to fill-up those posts by ineligible candidates and without due procedure, and if the Court were to do so, it would offend the spirit and letter of Articles 14 and 16 of the Constitution. If the vacancies meant for BC-D group are still vacant, it is for the recruiting agency to take appropriate steps to fill-up those posts by issuing fresh advertisement calling for applications from the eligible candidates belonging to BC-D group and in terms of the recruitment rules.

14. In the result and for the foregoing reasons, we allow this writ petition and set aside the order dated 8-12-2000 in O.A. No. 5511 of 2000 passed by the learned Tribunal and dismiss O.A. No. 5511 of 2000. No order as to costs.