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**(2011) 09 AP CK 0024**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 2431 of 2011**

Boddu Satyanarayana

APPELLANT

Vs

Rashtriya Ispat Nigam Limited and Others

RESPONDENT

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**Date of Decision : 09-09-2011**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation : (2011) 6 ALT 527**

**Hon'ble Judges : L. Narasimha Reddy, J**

**Bench : Single Bench**

**Advocate : S.V.S. Ravi Kiran, for the Appellant; V. Ravinder Rao for the Respondent Nos. 1 to 3 and None Appeared for the Respondent Nos. 4 to 7, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Hon'ble Sri Justice L. Narasimha Reddy

1. Respondent No. 1 published a notification on 12.12.2008 inviting applications for selection of candidates for various posts mentioned therein. The age limit stipulated therein is 18 to 25 years for general candidates, relaxed to the extent of 30 years for the candidates belonging to S.C. and ST. category and 28 years for O.B.C. candidates. The petitioner belongs to O.B.C. category and he is aged 27 years. He submitted his application.

2. A written test was conducted for all the candidates. The petitioner was qualified therein and he was called for interview on 25.07.1999. He secured 64.20 marks in all. However, he was not selected, whereas respondent Nos. 4 to 7, who belong to the same category, but secured less number of marks than the petitioner, were selected. The petitioner challenges the action of respondent Nos. 1 to 3 in not selecting him for the post of Junior Trainee (Electrical). He contends that the action of respondent Nos. 1 to 3 is illegal, arbitrary and discriminatory.

3. Respondent Nos. 1 to 3 filed a counter-affidavit. They admit that the petitioner

secured 64.20 marks and that respondent Nos. 4 to 7, who too belong to O.B.C. category, secured less number of marks. It is, however, stated that respondent Nos. 4 to 7 were selected against unreserved vacancies on the basis of their performance and that the only post of Junior Trainee (Electrical), reserved in favour of O.B.C. category has been filled by a candidate from the category of Ex-Servicemen. It is also stated that the Government of India issued instructions to the effect that the candidates who belong to reserved category of S.C., ST. and O.B.C. can be considered against the unreserved vacancies only in case they have not availed the benefit of any relaxation of age or educational qualifications. According to them, the petitioner is not eligible to apply but for the relaxation of age limit and in that view of the matter, he was not considered against an unreserved vacancy. Heard Sri S.V.S. Ravi Kiran, learned counsel for the petitioner and Sri V. Ravinder Rao, learned counsel for respondent Nos. 1 to 3.

4. The petitioner submitted his application for the post of Junior Trainee (Electrical). He was successful in the written test and he secured 64.20 marks after the interview, was conducted. The petitioner is correct in his submission that respondent Nos. 4 to 7, who belong to O.B.C category, were selected as Junior Trainees (Electrical), though they secured less number of marks. The information furnished by respondent Nos. 1 to 3 supports this contention. If the matter is that simple, the appointment of respondent Nos. 4 to 7 or anyone of them deserves to be set aside to pave the way for the appointment of the petitioner.

5. It is not in dispute that the petitioner became qualified only on the basis of the relaxation extended in favour of O.B.C. candidates as regards the age limit. Respondent Nos. 4 to 7, on the other hand, though belong to the same category were within the age limit stipulated for unreserved category of candidates.

6. The adjustment of the candidates belonging to reserved category vis-a-vis the unreserved posts has its own complications. In some cases, the candidates belonging to O.C. category stand denied of their opportunity. In other cases, the candidates, who belong to reserved category may choose to be considered against the posts reserved for their respective categories than to be considered against the unreserved posts, thereby, adversely affecting the chances of candidates from the same category, who secured less marks.

7. After examining the various implications involved in the matter, the Ministry of Personnel, PG & Pensions Department of Personnel & Training issued Office Memorandum, dated 01.07.1998, to the effect that the candidates belonging to reserved category can be permitted to compete vis-a-vis the unreserved vacancies, if only they did not avail the benefit of relaxation of age or educational qualifications. Illustrations were also cited.

8. The principle underlying the memo dated 01-07-1998 has a definite and clear purpose to serve. Article 16 of the Constitution carves out an exception to the principle of equality, enshrined in Article 14, and enables the State and its

instrumentalities, to make reservation in public employment, in favour of various categories of persons. Different parameters are stipulated for filling the vacancies that are reserved. In many cases, the relaxation is provided, in the matter of age and educational qualifications. Nobody can have qualms about it.

9. A candidate belonging to a particular reserved category is by no means disqualified from competing for the posts, which are unreserved. As a citizen of the country, he can compete with any other candidate. However, the employer must ensure level play as regards such posts. Every candidate, irrespective of the social or economic background, must be subjected to the same parameters in the context of the selection and appointment against unreserved vacancies. If a candidate belonging to reserved category fulfills the conditions of age and qualifications, stipulated for general candidates, there is no reason why he be excluded vis-a-vis such posts. However, he acquired eligibility to apply only on account of relaxation of age and educational qualification, a clear case of unequals being treated equally, emerges, if he is considered for an unreserved vacancy.

10. For instance, the age limit in a recruitment is 30 years, and relaxation to the extent of 5 years is provided in favour of a reserved category. Candidate from a reserved category can certainly compete with the candidates belonging to the same category, who are entitled to avail the benefit of relaxation of age. However, when it comes to the question of his being considered against unreserved vacancy, he would be pitted against a candidate with a lesser age limit and persons of his age group in the unreserved category were precluded from applying. This brings about a case of discrimination.

11. Another part of the problem is that if a candidate from a reserved category is otherwise eligible and is selected against an unreserved vacancy, he cannot be permitted to switch over to the posts that are reserved for the category to which he belongs. Though his intention in doing so may be to brighten his career, he would be blocking the chances of a candidate belonging to the category, who secured less marks.

12. It is to correct these anomalies, that the Central Government issued the memo. It is not in dispute that the petitioner became eligible only on account of the relaxation provided in favour of O.B.C. candidates. Therefore, he was not entitled to be considered against the unreserved posts. Respondent Nos. 4 to 7 though secured less number of marks than the petitioner did not avail the benefit of relaxation of age or educational qualifications. Obviously, they were eligible to be considered for unreserved posts and accordingly, they were appointed.

13. The petitioner was rendered unfit to compete for unreserved post. Still, he was entitled to be considered against the post reserved for O.B.C. category. It so happened that only one post of Junior Trainee (Electrical) was reserved for that category and that has been filled by a candidate from the Ex-Servicemen category. Therefore, no relief can be granted to the petitioner.

14. Hence, the writ petition is dismissed. There shall be no order as to costs.