
(2003) 09 AP CK 0039
In the Andhra Pradesh High Court
Case No : Writ Petition No. 13433 of 2001

D. Nagaiah

APPELLANT

Vs

District Collector and Chairman, District Selection Committee
and Others

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

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

Citation : (2003) 6 ALD 473 : (2003) 6 ALT 55

Hon'ble Judges : E. Dharma Rao, J; Bilal Nazki, J

Bench : Division Bench

Advocate : S. Siva Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

Bilal Nazki, J.—This is a writ petition filed by the applicant before the A.P. Administrative Tribunal seeking a declaration that the action of the respondents in not filling up of all the posts of Multipurpose Health Workers (Male) in the scheduled caste category was illegal, violative of constitutional provisions and contrary to G.O. Rt. No. 387, HM&FW (J2) Department, dated 18-5-1999 and Rule 22 of the A.P. State and Subordinate Service Rules. He also seeks quashing of the order passed by the Tribunal in O.A. No. 7425 of 1999, dated 21-12-2000. He also seeks a direction against the respondents to appoint him as Multipurpose Health Worker (Male) against the notified vacancies following roster points.

2. The petitioner had filed an O.A. being O.A. No. 7425 of 1999 before the Tribunal. He did not succeed, therefore this writ petition. The petitioner's case can be summed up in the following terms:

3. That the petitioner was a graduate in Arts and obtained a Diploma in Sanitary Course in the year 1995. The respondents notified 81 vacancies through local Employment Exchange and also issued a notification on 9-6-1999 for the purpose of recruitment to these 81 vacancies. The petitioner who was having requisite

qualifications was sponsored by the Employment Exchange to the District Selection Committee which was the authority constituted for the purpose of making the selection. The selection had to be made in accordance with G.O.Rt. No. 387, dated 19-5-1999. The respondents conducted a written examination on 4-7-1999 for appointment of Multipurpose Health Workers (Male). After conducting written examination the authorities issued appointment orders to the candidates in order of merit in respective categories following roster points. There were no candidates from the categories of Scheduled Tribes and Physically Handicapped. Therefore out of 81 vacancies only 76 candidates were appointed. The petitioner belongs to Scheduled Caste. Out of 76 posts 13 posts had to go to Scheduled Caste candidates in accordance with the roster position. 13 Scheduled Caste candidates had been appointed. The highest candidate among the Scheduled Caste candidates had secured 73 marks and the lowest candidate had secured 67 marks. So the case of the petitioner is that he and the last candidate Nagender Rao secured same marks, but the authorities issued appointment order to Nagender Rao on the ground that he was elder to the petitioner as Nagender's date of birth is 1-6-1967, whereas the petitioner's date of birth is 1-7-1970. The petitioner's further case was that Nagender Rao was already working in P&T Department and he was not interested in joining the post, therefore the petitioner made an application to the District Collector requesting him to consider his case for appointment in place of Nagender Rao who was not willing to join. The District Collector endorsed the same on 19-11-1999 to the Medical and Health Officer, Nellore for consideration who gave a reply on 30-11-1999 stating that the post had fallen vacant due to non-joining of the selected candidate, therefore it would have to be re-notified in the next recruitment as per G.O.Ms.No. 544, General Administration (Services-A) Department, dated 4-12-1998. Under this G.O. the authorities have been restrained from making appointments from the selection list beyond the notified vacancies in order to protect the interests of the eligible candidates in future.

4. Now the net case of the petitioner is that since the last candidate and he had obtained same merit, declining appointment to him on the basis of date of birth was wrong. Secondly it is contended that even if it is permissible that the elder person would get preference over the younger person, even then he was entitled to appointment because the last candidate Nagender Rao had not taken the appointment and the post was vacant.

5. The first argument we are not entertaining because that was not the case of the petitioner either before the Tribunal or even in the writ petition before this Court. The selection of Nagender Rao was not challenged before the Tribunal, therefore we are not going to that question as to whether a candidate can be preferred for appointment on the basis of seniority in age if the merit of two candidates was same. Only the second question was agitated before the Tribunal. Since the Nagender Rao's post had fallen vacant, it should have gone to the petitioner and, in our view, the Tribunal was right in rejecting the prayer of the petitioner. The Tribunal relied on G.O. Ms. No. 544, General Administration

(Services-A) Department, dated 4-12-1998, which reads:

"GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Public services-Recruitment (Direct Selection of candidates against resultant vacancies of non-joining/relinquishment of selected candidates-Discontinuance of operation of waiting list-orders-issued.

General Administration (Ser.A) Department

G.O. Ms. No. 544

Dated 4-12-1998

Read the following:-

(1) Government Lr.No. 3790/Ser.A/98-1, G.A. (Ser.A) Dept, dated 11-9-1998 addressed to Secretary, APPSC, Hyderabad.

(2) From the Secretary, APPSC, D-O.Lr.No. 2341/RR/97, dated 28-9-1998.

ORDER

The following notification shall be published in the Andhra Pradesh Gazette.

Notification

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and all other powers hereunto enabling the Government of Andhra Pradesh hereby makes the following Ad hoc rule namely:

Ad hoc Rule

"Notwithstanding anything contained in the Andhra Pradesh State and Subordinate Service Rules/Special Rules or Ad hoc rules governing maintenance and operation of waiting list for all the Direct Recruitments for the posts under the State and Subordinate Services and Last Grade Services that are being taken up by various recruiting agencies and also through Employment Exchange the maintenance and preparation of waiting list for all the recruitments shall be dispensed with and the list of candidates approved/selected in any recruitment by any recruiting agency in the State in any department for such posts shall be equal to the number of vacancies notified for that recruitment only including those meant for reserved community/category notified by the Unit Officers. The fall out vacancies, if any, due to relinquishment and non-joining etc., of selected candidates shall be notified in the next recruitment.

(By order and in the name of the Governor of Andhra Pradesh)

V. Ananda Rao,

Chief Secretary to Government."

6. This G.O. gives no room for the respondents to make appointments beyond the number of vacancies that were notified. Since there were 13 vacancies available and 13 candidates had been selected, the petitioner was not one of them, therefore he could not seek appointment. A waiting list becomes operative only if the rules permit so. In this case reliance is placed on a judgment of the Supreme Court reported in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, . In this case there were 11 vacancies of Munsifs and the Secretary to Government, Law Department, wrote a letter to the Public Service Commission informing them that there were presently only 11 vacancies, but a selected list of 20 candidates may be prepared, no further waiting list was required. Thereafter it appears that a list of 20 candidates was prepared, but only 11 candidates were appointed and other candidates wanted to get appointed. The Supreme Court rejected their contention and held:

"It must be that the requisition in the present case by the Government was for holding selection tests by the Commission for filling up 11 clear vacancies and nothing more. No anticipated vacancies were contemplated to be filled in. The process of recruitment was got initiated by the State through the Commission, for only eleven clear vacancies."

7. In Para-22 it gave the reasoning for coming to the conclusions,

"22. It is no doubt true that even if requisition is made by the Government for 11 posts the Public Service Commission may send merit list of suitable candidates which may exceed 11. That by itself may not be bad but at the time of giving actual appointments the merit list has to be so operated that only 11 vacancies are filled up, because the requisition being for 11 vacancies, the consequent advertisement and recruitment could also be for 11 vacancies and no more. It is easy to visualize that if requisition is for 11 vacancies and that results in the initiation of recruitment process by way of advertisement, whether the advertisement mentions filling up of 11 vacancies or not, the prospective candidates can easily find out from the Office of the Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a case a given candidate may not like to compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated he may like to compete. Consequently the actual appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Government. In such an eventuality, candidates in excess of 11 who are lower in the merit list of candidates can only be treated as wait listed candidates in order of merit to fill only the eleven vacancies for which recruitment has been made, in the event of any higher candidate not being available to fill the 11 vacancies, for any reason. Once the 11 vacancies are filled by candidates taken in order of merit from the select list that list will get exhausted, having served its purpose."

8. The learned Counsel for the petitioner, however, placed reliance on a judgment of the Supreme Court reported in *A.P. Aggarwal v. Government of National Capital Territory of Delhi*, 1999 (9) Sup 251. This was given altogether in

different circumstances where a Selection Committee was constituted for the purpose of recommending a panel of two names for one vacancy and it had selected two candidates, one of them was appointed who relinquished the post and the post was vacant. The Supreme Court interpreted the Act being Delhi Sales Tax Act, 1975 under which the appointment was made. There were certain instructions in the office memorandum issued by the Central Government dated 14-5-1987. The Supreme Court interpreted those instructions also. The law laid down by the Supreme Court in this judgment has to be understood in the context of relevant provisions of the Delhi Sales Tax Act, 1975 and the relevant office memorandum. In the present case there was an embargo by Ad hoc rule promulgated by G.O. Ms. No. 544, dated 4-12-1998. Therefore this judgment would not be helpful to the petitioner in any case.

9. For the reasons given hereinabove, we do not find merit in this writ petition which is accordingly dismissed.