

(1999) 12 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8125 of 1999 and Batch

G. Srinivas

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision : 27-12-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)

Citation : (2000) 1 ALD 619 : (2000) 1 ALT 129

Hon'ble Judges : Ramesh Madhav Bapat, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : Mr. C.V. Mohan Reddy, for the Appellant; Mr. R.V. Mallikarjuna Rao, J.R. Manohar Rao and M. Ramgopal Rao and Government Pleader for General Administration, for the Respondent

Judgement

Elipe Dharmarao, J.—The writ petition Nos.14872 and 15395 of 1999 are filed by the Andhra Pradesh Public Service Commission and the other eight writ petitions are filed by the other eligible candidates who appeared for the interview, for appointment of 176 posts of Assistant Executive Engineers in Panchayath Raj Engineering Services, seeking a writ of certiorari to call for the records relating to the common judgment in OA No.8622 of 1998 and OA No.8609 of 1998 dated 1-4-1999 of the Andhra Pradesh Administrative Tribunal, Hyderabad, and to quash the same, as illegal, arbitrary and unconstitutional.

2. The brief facts of the case are that the Andhra Pradesh Public Service Commission (for short Service Commission) issued notification in Advertisement No.8 of 1995 dated 27-11-1995 inviting applications from the eligible candidates for Gazetted and Zonal posts of Assistant Executive Engineers in A.P. Panchayath Raj Engineering Service, A.P. R & B Engineering Service, A.P. Engineering Service, and A.P. Public Health and Municipal Engineering Service. In these writ petitions we are concerned with the appointments of the Assistant Executive Engineers in the Department of A.P. Panchayath Raj Engineering Service. In response to the abovesaid notification of the Service Commission, there were

502 vacancies initially notified and the number of vacancies indicated is provisional and subject to variation and confirmation by the concerned appointing authorities. It is further mentioned that the Service Commission reserves the right to increase or decrease the number of vacancies which may be reported by the appointing authorities subsequent to the advertisement. The table hereunder indicates the vacancy position zone wise, for all the categories:

Zones OCs SCs STs BCs

Total

A B C D

Zone-I 37 10 5 5 8 1 4 70

Zone-II 25 8 3 2 6 1 3 48

Zone-III 30 9 4 4 5 4 50

Zone-IV 70 20 7 8 14 1 9 129

Zone-V 54 15 6 7 10 1 7 100

Zone-VI 54 15 6 6 10 1 7 99

Total 270 77 31 32 53 5 34 502

3. It is further stated that the selection is by way of a written test followed by interview. The maximum marks prescribed for written test and interview are 300 and 50 respectively and the minimum qualifying marks for admission to interview will be 40% in respect of OCs., 35% in respect of BCs., and 30% in respect of SCs., STs. and PHs. Further the Service Commission had discretion to fix the cut off marks at higher percentage than the minimum qualifying marks for calling for interview only such number of candidates as it considers necessarily having due regard to the number of vacancies/expected vacancies, etc. and after the written examination, eligible candidates will be called for interview at the ratio of 1:2 with reference to the number of vacancies-duly following the rule of reservation as per General Rule 22. In response to the said notification, 22300 applications were received in all and 17217 candidates appeared for the written test. The Service Commission has declared the results of the written examination by preparing a General Ranking List on 9-1-1997 and 1267 candidates were notified as qualified for appearing in oral interview in the ratio of 1:2 in respect of 502 vacancies. Thenumber of candidates qualified were more than 1:2 ratio, for the reason that the candidates have secured equivalent marks secured by the last candidate and the candidates are to be called for the interview in respective categories for each zone, and thus there was increase in the total number of candidates called for interview. The oral interviews were held in between 8-5-1997 to 6-6-1997 and only 1167 candidates have appeared for the oral interview for all the categories in respect of all the zones and the Service Commission rejected the candidature of two applicants for the interview.

Thereafter the Service Commission prepared and published a list of marks obtained in the written test and oral interview on 6-6-1997 and on 5-11-1997 the Department of Panchayath Raj and Rural Development vide their DO letter No.33467/Est.III/A2/97 dated 5-11-1997 requested the Service Commission to select further 126 Assistant Executive Engineers from out of the already interviewed candidates in addition to the earlier notified 502 vacancies, immediately in view of the urgency and need as per the table given below zone wise:

Zones OCs SCs STs BCs

Total

A B C D

Zone-I 8 3 - 2 1 - 1 15

Zone-II 9 2 2 2 2 - - 17

Zone-III 7 2 1 1 2 - 1 14

Zone-IV 15 4 2 2 2 1 2 26

Zone-V 15 4 2 3 2 - 2 26

Zone-VI 12 4 2 2 2 - 2 24

Total 66 19 9 12 11 1 8 126

4. Thereafter the Service Commission has notified the selection list who were provisionally selected for appointment to the post of Assistant Executive Engineer, zone wise and the selection list was displayed on the Notice Board on 15-11-1997 and in all 616 candidates were selected as against the total vacancies as Assistant Executive Engineers in the department of A.P. Panchayath Raj Engineering Service. Thereafter the Engineer-in-chief, Panchayath Raj Department vide his letter dated 20-3-1998 furnished the list of fallout vacancies in which candidates who did not joint duty for various reasons on 20-3-1998 and on 22-4-1998 the Service Commission published the first supplemental provisional list selecting 74 candidates from General and BC categories in respect of fallout vacancies, in all the zones. On 6-6-1998, the Service Commission published the second supplemental provisional list selecting 23 candidates from SCs., STs. and also BCs. in respect of fallout vacancies in all the zones and after completion of the entire process of selection, still 16 vacancies remained unfilled in SC, ST and BC-C (Women) categories at 5, 19 and 2 respectively.

5. In the case of ST (Women), vacancies in various zones by going down in the General Ranking List, no ST (Women) candidates were available in any of the zones; in case of SC (Women) in Zone-V, only one candidate was available by going down in the General Raking List and in all five eligible candidates were available in the reserved categories for the 16 unfilled vacancies. Therefore, the Service Commission was compelled to call the five candidates for interview for

filling up the unfilled reserved vacancies in the categories and therefore, the notification was issued accordingly.

6. On 9-9-1998 the Department of Panchayath Raj, vide their DO Lr. No.31492/Est.III/A2/98-I requested the Service Commission to allot 176 candidates for the post of Assistant Executive Engineers for executing multifarious rural development programmes like Rural Water Scheme, Jawahar Rojgar Yojana, Minor Irrigation, Works, Rural Roads, Mandal and Municipal Buildings with the assistance of NABARD, World Bank, etc. and all these projects are time bound programmes and in public interest, those vacancies were to be filled for the execution of the said works during the year 1999-2000 and the said engineers are the lower level functionaries and are essential for the successful completion of the above scheme and works within the stipulated time. The vacancy position for 176 posts of Assistant Executive Engineers, zone-wise is as per the table below:

Zones	OCs	SCs	STs	BCs					
Total									
A	B	C	D						
Zone-I	-	-	-	-	-	-	-	-	-
Zone-II	17	5	1	2	2	-	3	30	
Zone-III	11	3	1	1	3	-	1	20	
Zone-IV	14	4	1	2	2	-	2	25	
Zone-V	36	10	4	4	7	1	5	67	
Zone-VI	18	5	2	2	5	-	2	34	
96	27	9	11	19	1	13	176		

7. In view of the requisition made by the Panchayath Raj Department, the Commission discussed the issue at length in a special meeting of the Commission convened on 18-9-1998 and after consider all aspects of the matter elaborately, the Commission took a decision to call for the candidates at the ratio of 1:2 for the purpose of filling up 176 vacancies duly calculating on the basis of the number of candidates already interviewed. It is submitted that the decision of the Service Commission is in consonance with the requirement of the notification i.e., to call the candidates for the interview in the ratio of 1:2 in respect of the vacancies, the Service Commission has also taken into consideration about the availability of the required number of candidates in the reserved categories including women in all the zones, as 16 vacancies in respect of the reserved categories of SCs., STs. and BCs. (Women) could not be filled by then from among the available candidates who were already interviewed, and interviews were held for the unfilled reserved vacancies on 28-9-1998 and only three candidates appeared for the interview as against five candidates called for

interview and two candidates, one each in Zone II and Zone IV were provisionally selected vide III supplemental provisional selection list dated 22-10-1998. In pursuance of the decision taken by the Service Commission to fill up 176 vacancies of Assistant Executive Engineers in Panchayath Raj Department, as requested by them, a notification was issued on 2-11-1998 which was published on 3-11-1998 calling 470 candidates for interview in the ratio of 1:2 and interviews were held between 24-11-1998 to 7-12-1998 and in all 334 candidates appeared for interview and on 7-12-1998 the Service Commission prepared an additional consolidated ranking list so as to make selection by preparing the selection list. At that stage, the unofficial respondents Sri V. Narender and Srinivasa Reddy filed OA No.8622 of 1998 before the A.P. Administrative Tribunal questioning the action of the Commission in issuing a notification published on 3-11-1998 calling 470 candidates for interviews for filling up of 176 vacancies. Mr. A. Sri Rama Rao filed another OA No.8609 of 1998 before the A.P. Administrative Tribunal to direct the respondents therein not to make selections to the posts of Assistant Executive Engineers in excess of the vacancies notified in Advertisement No.8 of 1995 and to declare the notification published on 3-11-1998 with regard to fresh interviews, as illegal and unconstitutional.

8. The main contentions raised before the A.P. Administrative Tribunal were that the list prepared as per Rule 6 of the Andhra Pradesh Public Service Commission Rules of Procedure (for short Service Commission Rules) the validity of the list prepared cannot be extended beyond the period of one year even undue additions to the originally notified number of vacancies would not be justifiable and the petitioners therein relied on the decisions of the Supreme Court in *Ashok Kumar and Others Vs. Chairman, Banking Service Recruitment Board and Others*, ; *Prem Singh and Others Vs. Haryana State Electricity Board and Others*, . They further contended before the Tribunal that the candidates approved/ selected by the Selection Authority shall be equal to the number of vacancies notified, including those reserved for communities/ categories like Scheduled Castes and Scheduled Tribes and any additions should be only to the extent of the fallout vacancies due to relinquishment, non-joining, etc., and the vacancies over and above those vacancies should be notified for the next recruitment. As per the decision of the Supreme Court in *Surender Singh and others etc. v. State of Punjab and another, etc.* AIR 1998 SC 18, where there is no exceptional circumstances or palpable emergent situation, deviation by the State from the principle of limiting the number of appointments advertised would not be proper.

9. The Administrative Tribunal, after considering the abovesaid submissions made on behalf of the petitioners, the learned Standing Counsel for the Service Commission and the learned Government Pleader for the General Administration Department, in those two OAs. and on considering the Rule 6 of the Service Commission Rules, quashed the notification issued by the Service Commission published on 3-11-1998 calling for 470 candidates at the rate of 1:2 to fill up 176

vacancies of the Assistant Executive Engineers from among the already interviewed candidates, on the ground that the selection list can not be operated beyond one year and the vacancies that have already arisen and arising have to be filled up only through another fresh recruitment. It further held that there was no real urgency to justify the selection and appointment of additional Assistant Executive Engineers over and above more than 700 candidates already appointed against 502 vacancies notified initially with reference to the selections made in furtherance of the notification dated 27-11-1995. At the most, what the Service Commission could have done is to advertise the vacancies afresh at the earliest, having issued the notification in the year 1995.

10. Questioning the above common judgment in the above two OAs. of the Administrative Tribunal, the present writ petitions are filed by the Service Commission and the candidates who were interviewed in pursuance to the notification published on 3-11-1998.

11. While advancing arguments on behalf of the Service Commission, the learned Advocate General, Sri v. Venkataramanaiah, submitted that the Service Commission is an autonomous body constituted under Article 315(1) of the Constitution of India, and it is vested with the power of recruitment and functions as a recruitment agency to all State Services viz., Group 1 and Group II etc., and the Commission has framed its own Rules and Regulations prescribing the procedure to be followed while making recruitments.

12. Rule 3 of the Service Commission Rules, 1962 contemplates that where any competitive examination is to be conducted by the Commission for the purpose of direct recruitment to a State or Subordinate Service, the Service Commission shall announce the number of vacancies under public notification, number of vacancies subject to variation, notify and invite applications, provided that when the approximate number of vacancies to be filled is not ascertainable, the Commission may invite application in anticipation of vacancies likely to arise. Under Rule 6 a duty is cast upon the Commission to select the candidates from the ranking list in force in place of those who relinquish or who do not join duty within the time given and also new requisitions. Rule 7 contemplates that results shall be displayed on notice board of the Service Commission.

13. Rule 6 contemplates the ranking list prepared by the Commission for selection in a direct recruitment shall remain in force for a period of one year from the date on which the selection list is published on the Notice Board of the Commission or till the publication of the new selection list whichever is earlier. Further the Commission may select candidates from the ranking list in force in place of those who relinquish the selection or who do not join duty within the time given and also new requisitions (sent by appointing authorities). However, the Commission shall have the right to freeze any ranking list for reasons recorded.

14. The learned Advocate-General submits that in pursuance of the notification

issues by the Service Commission on 27-11-1995 through Advertisement No.8 of 1995, as many as 502 vacancies were notified, zone-wise and category wise and after conducting both the written and oral tests, selection list was published on 15-11-1997 and on 9-9-1998 the Department of Panchayath Raj has sent a requisition for 176 candidates for appointment to the post of Assistant Executive Engineer to execute multifarious Rural Development Programmes like Rural Water Scheme, Jawahar Rojgar Yojana, Minor Irrigation Works, Rural Roads, Mandal and Municipal Buildings with the assistance of NABARD and World Bank and all those projects were time bound programmes and have to be executed within the time schedule, in public interest during 1999-2000. Accordingly, after considering the request made by the Department, the Commission which is an autonomous body having its own Rules, under Rules 3 and 6 of the Service Commission Rules, it can announce the number of vacancies subject to variation and invite the applications. The selection list is valid for a period of one year and during the period of one year from the date on which the selection list is published on the notice board of the Commission or till the publication of the new selection list whichever is earlier, that the Service Commission may select candidates from the ranking list in force in place of those who relinquish the selection or who do not join duty within the time given and also new requisitions sent by appointing authorities. In the case on hands, the selection list was published on 15-11-1997 and the requisition made by the department on 9-9-1998 is before expiry of one year, therefore, the Service Commission has taken a decision to allot 176 candidates for appointment as Assistant Executive Engineer which is contemplated under Rule 6, and basing upon the requisition of the appointing authority which has given reasons to fill up the vacancies of 176 Assistant Executive Engineers, to execute emergent works in public interest with the assistance of NABARD and World Bank, called for the candidate for interview and appointment. Therefore, the order passed by the Tribunal is illegal and liable to be quashed.

15. The same was the arguments advanced by the other Counsel appearing on behalf of the candidates who appeared for the interview i.e., Sri C.V. Mohan Reddy, Sri M. Ratngopal, Sri P. Gangaiah Naidu, Sri M.P. Chandramouli.

16. In reply to the submission made by the learned Advocate-General, the learned Counsel appearing for unofficial respondents viz., Sri J.R. Manohar, M. Ramgopal Rao and R. V. Mallikarjwa Rao have reiterated the contentions raised before the Administrative Tribunal and submitted that the Government has issued G.O. Ms. No.SI General Administrative Department (Services-A) Department, dated 22-2-1997 directed that henceforth the list of candidates approved/selected by the Service Commission shall be equal to the number of vacancies only including those reserved for reserved communities/categories notified by the unit officers, that the fallout vacancies if any due to relinquishment and non-joining etc., of selected candidates shall be notified in the next recruitment. This G.O. was issued when the selection process of the Assistant Executive Engineers was started, therefore, the Commission should not have accepted the requisition

made by the Department of Panchayath Raj on 9-9-1998 to fill up 176 vacancies of the Assistant Executive Engineers from among the candidates already interviewed, as the above said G.O., prohibits maintenance of waiting list. He also contended that while making requisition, the Department has not given cogent reasons i.e., the nature of urgency to fill up the vacancies and in similar circumstances, the Supreme Court has interfered with the selection process made by the Service Commissions. He further contended that the department has resorted to take the services of as many as 674 Assistant Executive Engineers on contract basis. He has also urged that the Service Commission has no power to fill the future vacancies, and he relied on the decision of the Supreme Court in Ashok Kumar's case (supra) and Prem Singh's case (supra), referred to above.

17. In Ashok Kumar's case (supra), when the State Bank of India sent its requisition on 19-4-1982 for recruitment of 960 vacancies, and equally, other Nationalised Banks pooled together and had given requisition for recruitment of 1713 Vacancies, in 1983 while making recruitment the Recruitment Board for the State Bank of India prepared a select list in excess of the requirement notified by the respective banks, i.e., 3100 candidates were put in the list to be appointed by the State Bank of India, equally since vacancies had arisen to the extent of 6700, combined examination Board for the Nationalised Banks made a mess in the recruitment of the candidates in excess of the notified vacancies. When Mohd. Shahzad, appellant No.3 who was standing at Serial No.2156 of the waiting list for the Nationalised Banks, was not appointed, he approached the High Court and thereafter Apex Court. In those circumstances the Supreme Court held that Articles 14 and 16(1) of the Constitution of India enshrines fundamental rights of every citizen to claim consideration for appointment to a post under the State. Therefore, vacant post arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution of India. Thus the procedure adopted, therefore, in appointing the persons kept in the waiting list by the respective Boards, though the vacancies had arisen subsequently without being notified for recruitment, is unconstitutional. The Supreme Court further held that however, since the appointments have already been made and none was impleaded, Their Lordships were not inclined to interfere with those matters adversely affecting their appointments. But direction was given to the Recruitment Boards to notify the existing and expected vacancies and the Boards should get the advertisement published and recruitment should strictly be made by the Boards in accordance with the procedure to notify the vacancies but not to any vacancies that may arise during the process of selection. Ultimately, no relief was granted to the appellant.

18. In the present case, as per Rule 3 of the Service Commission Rules, the Service Commission was empowered to publish selection list of the candidates, it

has got the power to announce the number of vacancies subject to variation and invite the applications. The Commission has not selected the candidates to fill up the expected vacancies arisen during the period of selection process or any future vacancies. Requisition was made by the department to fill up the vacancies of Assistant Executive Engineers, which were in existence to execute the emergent works of Public interest to be carried out with the assistance of NABARD and World Bank in a specific lime schedule of 1999-2000. That apart, under Rule 6 of the Service Commission Rules, the validity of the ranking list shall be one year and during the expiry of one year, the appointing authority has got the power to request the Service Commission to send further list of candidates to fill up the vacancies. Thus the Service Commission has acted on the requisition of the appointing authority, the Panchayath Raj Department dated 9-9-1998. Thus the principle laid down by the Supreme Court in the above decision has no application to the facts and circumstances of the case on hand.

19. With regard to applicability of the decision of the Supreme Court in Prem Singh's case (supra), two questions arose for consideration before Their Lordships, firstly, whether it was open to the Board to prepare a list of as many as 212 candidates and appoint as many as 137 out of that list when the number of posts advertised were only 62; secondly, whether the High Court was justified in quashing the selection of all the 212 candidates and appointments of 137. After elaborate consideration of the case law on those aspects, the Supreme Court held in paragraph 25 of the judgment that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies, but not for future vacancies. If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even with filling up of more posts than advertised is challenged the Court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case.

20. With reference to the second query before the Apex Court, it invalidated the appointments made for future vacancies i.e., post which are beyond the selected posts, but upheld the appointments made to the anticipated vacancies. Applying the said principle laid down by the Supreme Court to the facts and circumstances of the case on hand, the Department has given specific reasons for making a requisition to appoint 176 Assistant Executive Engineers as a matter of policy to implement and execute the time bond programmes, hereinbefore mentioned, to be carried out with the assistance of NABARD and World Bank within a time frame of 1999-2000. In the instant case, the question of filling up of future

vacancies or anticipated vacancies does not arise, in view of the facts hereinbefore stated. Therefore, we are unable to accede to the contention raised by the learned Counsel for the respondents.

21. Coming to the G.O. Ms. No.81 General Administration (Ser-A) Department, dated 22-2-1997, Paragraph 9 thereof, in unequivocal terms speaks that the Government has agreed with the proposal of the Andhra Pradesh Public Service Commission that henceforth the list of candidates approved/selected by the Andhra Pradesh Public Service Commission shall be equal to the number of vacancies only including those for reserved communities/categories notified by the unit officers, and the fall out vacancies, if any, due to relinquishment and non-joining etc., of selected candidates shall be notified in the next recruitment. The operation of the said G.O., is prospective and it has no application to the selection already made.

22. "The decision of both the department and the Commission to fill up 176 posts of Assistant Executive Engineers was assailed by the candidates, who failed in the examination conducted by the Commission. Therefore, they have no locus standi to question the abovesaid action of the Service Commission, inasmuch as they are not affected parties and their interests are not being jeopardised. Therefore, we have no hesitation in holding that the reasons assigned by the Panchayath Raj Department for appointing 176 Assistant Executive Engineers is of emergent nature to make use the funds of NABARD and the World Bank, within a time frame of 1999-2000. Therefore, the conclusions arrived at by the Administrative Tribunal is erroneous and liable to be quashed and is accordingly quashed.

23. In the result, the writ petitions are allowed, but in the circumstances without costs.