
(2009) 09 AP CK 0052

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12828 of 2009

K. Rajasekhar

APPELLANT

Vs

Vice-Chairman and Managing Director, APSRTC and Another

RESPONDENT

Date of Decision : 03-09-2009

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2009) 6 ALD 293 : (2009) 6 ALT 194 : (2009) 3 APLJ 437

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : P. Venkateswara Rao, for the Appellant; K. Madhava Reddy, SC, for the Respondent

Judgement

G. Rohini, J.—The petitioner herein is working as a Conductor with the respondent - A.P. State Road Transport Corporation. In the month of November, 2008, the Corporation issued a Notification for recruitment to the post of Traffic Supervisor (Trainee) and Mechanical Supervisors (Trainee). Having submitted his application to the post of Traffic Supervisor (Trainee) in Hyderabad Zone, the petitioner had appeared for the written test as well as the interview on 26.2.2009 as a Departmental candidate. The selection list was released on 28.2.2009 in which it was found that one P. Srinivasa Rao was selected to the post of Mechanical Supervisor (Trainee) under the Departmental quota. Similarly one M. Vijaya Kumar was selected to the post of Traffic Supervisor (Trainee) under Departmental quota in Hyderabad zone. However, subsequently the selection of M. Vijaya Kumar as Traffic Supervisor (Trainee) was cancelled having found that he was not a Departmental candidate. Challenging the same the said candidate M. Vijaya Kumar filed W.P. No. 7791 of 2009. The said writ petition was disposed of by this Court by order dated 21.04.2009 with a direction to the respondents to consider the case of the petitioner therein (M. Vijaya Kumar) for the post of Traffic Supervisor (Trainee) under the external candidates quota provided the vacancies have not already been filled up. Consequent to the cancellation of the selection of M. Vijaya Kumar, one. post of Traffic Supervisor

(Trainee) reserved for OC-Men under departmental quota remained vacant. The petitioner claims that being the next candidate in the merit list he should be selected to the said post and accordingly made a representation on 15.6.2009. By letter dated 22.6.2009, the petitioner was informed by the Corporation that so far as the post of Traffic Supervisor (Trainee) the case is pending in this Court. Though the petitioner had informed the Corporation that W.P. No. 7791 of 2009 was already disposed of by this Court on 21.04.2009 holding that the said M. Vijaya Kumar was not entitled for selection under Departmental quota and requested to appoint him in the said post, the Corporation failed to consider.

2. Hence, the present writ petition seeking a declaration that the action of the respondents in not selecting/appointing the petitioner as Traffic Supervisor (Trainee) under the Departmental quota in Hyderabad Zone as arbitrary and illegal.

3. A counter-affidavit has been filed on behalf of the Corporation stating that in Hyderabad Zone, 29 posts of Traffic Supervisor (Trainee) were notified, out of which 6 posts were reserved for Departmental candidates. It is also stated that out of the said 6 posts reserved for Departmental candidates, one post was notified for OC-Men for which two candidates namely M. Vijaya Kumar and P. Srinivasa Rao were called for interview. Since P. Srinivasa Rao, who was selected for both the posts of Traffic Supervisor (Trainee) and Mechanical Supervisor (Trainee), opted for Mechanical Supervisor (Trainee), the other candidate as per merit i.e., M. Vijaya Kumar was selected for the post of Traffic Supervisor (Trainee). However, it was subsequently found that he was not a Departmental candidate and accordingly his selection was cancelled and the said unfilled vacancy would be carried forward to the future recruitment.

4. In the additional counter-affidavit dated 12.08.2009 filed on behalf of the Corporation, it is further explained that the writ petitioner was short-listed for interview to the post of Traffic Supervisor (Trainee) as a Departmental candidate. He secured 53.77 marks whereas M. Vijaya Kumar secured 59.53 marks. Hence the selection of M. Vijaya Kumar was finalized on 26.2.2009. However his selection was cancelled subsequently and the remaining vacancy has been carried forward in accordance with the instructions issued in G.O.Ms. No. 544, G.A.D. (Services-A), dated 4.12.1998.

5. I have heard the learned Counsel for both the parties and perused the material on record.

6. It is clear from the counter-affidavit filed on behalf of the Corporation that the writ petitioner, who is also a Departmental candidate, stood next to M. Vijaya Kumar in the merit list. It is also not in dispute that the selection of the said M. Vijaya Kumar was cancelled having found subsequently that he was not a Departmental candidate. Then the only question that arises for consideration is whether the decision of the Corporation to carry forward the resultant vacancy to the future recruitment without appointing the writ petitioner is in accordance

with law.

7. The learned Counsel appearing for the Corporation while relying upon G.O.Ms. No. 544, dated 4.12.1998 contended that the petitioner cannot have any claim or legal right for appointment against the resultant vacancy consequent to cancellation of selection of M. Vijaya Kumar. A perusal of G.O.Ms. No. 544, dated 4.12.1998 shows that in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India an adhoc rule was made by the Government as under:

AD-HOC RULE

Notwithstanding anything contained in the Andhra Pradesh State and Subordinate Service Rules / Special Rules or adhoc 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 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 fallout vacancies, if any, due to relinquishment and non-joining etc. of selected candidates shall be notified in the next recruitment.

8. A plain reading of the above provision shows that the same applies only to the fall out vacancies due to relinquishment and non-joining etc., of the selected candidates. Such vacancies shall be notified in the next recruitment. However, this is a case where the Corporation itself committed an error in considering the candidate by name M. Vijaya Kumar under Departmental quota. Having regard to the admitted fact that he was not a Departmental person, his selection was cancelled and the same was upheld by this Court. In the result, there was no selection at all so far as the said post is concerned. It is not a case where the vacancy arose on account of relinquishment or non-joining of the selected candidate. Apparently the Corporation has decided to fill-up the said post in the next recruitment on a misreading of the ad hoc rule under G.O.Ms. No. 544, dated 4.12.1998. The said action of the respondents which resulted in denying the petitioner an opportunity of being considered for appointment against an existing vacancy is arbitrary and illegal.

9. Accordingly, there shall be a direction to the Corporation to consider the candidature of the petitioner, who is admittedly eligible to be called for interview as per the order of the merit, for appointment against the post of Traffic Supervisor (Trainee) reserved for OC-Men under Departmental quota subject to his selection by the Selection Committee. Such exercise shall be completed as expeditiously as possible preferably within a period of six weeks from the date of receipt of this order.

10. Writ Petition is accordingly disposed of. No costs.