

(2001) 07 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 11174 and 11810 of 2000

K. Raji Reddy and Others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 24-07-2001

Acts Referred:

Andhra Pradesh Direct Recruitment for Posts of Teachers (Scheme of Selection) Rules,
1994 — Rule 10, 14, 17, 2(1), 4
Constitution of India, 1950 — Article 142

Citation : (2001) 5 ALT 239

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

**Advocate : K. Rama Krishna Reddy, for B. Mahender Reddy, for the Appellant;
G.P. for Services-II, for the Respondent**

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—These writ petitions are directed against a judgment dated 23-4-1999 passed by the A.P. Administrative Tribunal in O.A. No. 3629 of 1998 whereby and whereunder the application filed by the petitioners herein was dismissed.

2. The fact of the matter lies in a very narrow compass. Pursuant to a recruitment notification issued by the Director of School Education dated 15-3-1998 for appointment of teacher, the petitioners applied. The qualification required for the said post was as follows:

Secondary Grade Teachers:-- Must possess the qualifications of at least Intermediate Examination conducted by the Board of Intermediate Education, A.P., or its equivalent.

Must possess Teachers Training Certificate issued by the Commissioner for Government Examinations, Andhra Pradesh or its equivalent.

Candidates with higher qualifications may also be appointed i.e., B.A., B.Ed/

B.Sc., B.Ed.,/B.Com., B.Ed., are also eligible.

3. The petitioners allegedly completed B.Ed., course and appeared for B.Ed., examination in March, 1998. But their results were not published. They passed the written test which was held on 19-4-1998. The interview took place in June and July, 1998 wherein the petitioners were required to produce original certificates regarding their academic qualification. The petitioners failed to produce the original certificate of B.Ed examination as their results had not been published by that time. The petitioners were, therefore, not appointed. They filed the Original application before the Tribunal seeking:

....to declare that the applicants are entitled for selection and appointment to the post of Secondary Grade Teachers in pursuance of the notification dated 15-3-1998 issued by the 3rd respondent, the Director of School Education, Government of Andhra Pradesh, on the basis of rankings secured by them in the written test, duly permitting them for interview without insisting on production of B.Ed certificate as they had passed the written test.

4. The learned Tribunal dismissed the said application. Aggrieved thereby the writ petition has been filed. Mr. K. Ramakrishna Reddy, the learned senior Counsel appearing on behalf of the petitioners, would submit that as the matter relating to recruitment of teachers is governed by the Andhra Pradesh Direct Recruitment for Posts of Teachers (Scheme of Selection) Rules, 1994 (for the sake of brevity hereinafter referred to as "the Rules"), the notification dated 15-3-1998 must be read in the context thereof. The scheme of the notification according to the learned Counsel would clearly show that only at the time of appointment the educational qualifications, certificates, etc., are required to be verified. Our attention in this connection has been drawn to Rules 6, 7, 9, 10, 14 and 17 of the Rules which read thus:

Notification and communication of vacancies:-- On receipt of the estimate of vacancies in the manner provided in Rules 4 and 5 above, the Member-Convener of the District Selection Committee shall notify the vacancies to the Employment Exchanges of the concerned district. He shall also simultaneously communicate this information to the Director of School Education.

Communication of list by employment exchange:-- On receipt of requisition from the Member-Convener as per Rule 6 above, the concerned District Employment Exchange shall communicate the list of eligible candidates to the Member-Convener of the District Selection Committee.

Submission of applications together with fees:-- (a) The candidates intending to appear for the written test shall submit an application in the prescribed form to the Member-Convener of the District Selection Committee, duly furnishing therein required particulars including the name of Employment Exchange where his/her name is registered", the registration number and date, and also his preference to employment in Government or Panchayat Raj Schools.

Issue of Hall tickets:-- On receipt of applications from candidates, the Member-Convener of the District Selection Committee concerned shall take action to scrutinize applications and issue, to such of the candidates who fulfill the qualifications, hall tickets for the written test.

Selection:-- On completion of interview, the candidates will be selected on the basis of total marks secured both in written test and interview.

Appointment:-- The appointing authority shall issue orders of appointment immediately on receipt of allotment of the candidates from the Member-Convener concerned, subject to verification of antecedents, physical fitness, educational qualification certificates, etc. The appointment order shall be sent by registered post at the address indicated in the application form.

5. The learned Counsel in support of the aforementioned contention has strongly relied upon a Full Bench decision of the Court in Writ Petition No. 5730 of 1998 and batch, disposed of on 25-9-1998 wherein inter alia it was held:

Having regard to the nature of relief sought for in the writ petitions, strictly speaking nothing more needs to be done. However, in the light of the developments that took place during the pendency of the writ petitions, we consider it just and proper to modulate the relief and to give proper directions by way of abundant caution so as to give a quietus to any doubts that may arise in this regard to the Selection of the petitioners as teachers. We therefore direct that such of those petitioners who are called for the written examination and the interviews as per the interim directions granted by us on 26-3-1998 and 1-5-1998, shall not be debarred from being selected and appointed on the ground that on the date of submitting the applications, they were not possessing the pass certificates relating to TTI crash course. The same direction shall apply even in case of those candidates who could not secure interim orders of this Court/ but appeared for the selection on the basis of the call letters sent by the respondents.

6. The learned Counsel would contend that various Benches of this Court had issued similar direction.

7. Our attention in this connection has also been drawn to an order dated 7-9-1998 passed by a learned Single Judge in Writ Petition No. 14116 of 1998.

8. The learned Government Pleader for Services I, on the other hand, would submit that the conditions prescribed in the recruitment notification are absolutely clear wherein the following note was appended.

The candidates who have appeared for professional examination and who could not secure the certificates as on the date of notification are also eligible for appearing for the written examination but they should produce the original certificates of professional qualification at the time of interview. Otherwise they are not eligible for such appointment (as prescribed in Rule 2 (1) of G.O.Ms. No. 221 dated 16-7-1994.

9. It was submitted that in that view of the matter the petitioners who had filed their applications pursuant to or in furtherance of the said notification were bound to produce their educational, certificates.

10. The only question which arises for consideration in these writ petitions is as to whether, having regard to the aforementioned note appended to the recruitment notification dated 15-3-1998, can a direction be issued for appointment of the petitioners.

11. It may be true, as has been submitted " by Mr. Reddy to the effect that the matter relating to recruitment of teachers is governed by the rules, but the said rules do not suggest in any manner whatsoever that at the time of appearance at the interview the candidates who have passed the written test were not required to produce the certificates showing they had the requisite educational qualification. Rule 6 provides for notification and communication of vacancies. Rule 7 of the rules provides for communication of list by Employment Exchange. Rule 8 reads thus:

Advertisement in the newspapers:-(a) on receipt of information about the vacancy position from the Member-Convener of various districts, as indicated in Rule 6 above, the Director of School Education shall issue a notification in at least four leading newspapers in the State of which at least two in Telugu and one in Urdu inviting applications from candidates registered in the Employment Exchanges as on the date of notification.

12. Upon such advertisement the applications are required to be filed in the prescribed form duly furnishing therein particulars required therefore whereafter only hall tickets were to be issued. Rule 17 whereupon Mr. Reddy placed strong reliance reads thus:

Appointment:-- The appointing authority shall issue orders of appointment immediately on receipt of allotment pf the candidates from me Member-Convener concerned, subject to verification of antecedents, physical fitness, educational qualification certificates, etc. The appointment order shall be sent by registered post at the address indicated in the application form.

13. It is true that such appointment is to be made subject to verification of antecedents, physical fitness, educational qualification certificates, etc; but the same, in our considered opinion, does not mean that, the District Selection Committee at the time of interview would not have any jurisdiction whatsoever to scrutinize the certificates so as to satisfy themselves that the candidates fulfill the requisite qualification. So far as issuance of hall tickets and permission granted to such candidates to appear at the examination is concerned, the same stood on a different footing. In terms of the aforementioned note/the candidates were required to produce certificates only at the time of interview.

14. By reason of the aforementioned rules as also the recruitment notification a better facility had been given to the candidates. The normal rule is that the

candidates having regard to the requirements of possessing the minimum qualification must possess the same on the last date of filing of the application. It would, therefore, be not correct to contend that the certificates were not necessary to be produced at the time of interview.

15. The Full Bench decision of this Court in E. Krishna Prasad and Ors. v. Govt. of A.P. (W.P No. 5730 of 1998) was rendered in absolutely different fact situation. The candidates were required to pass only a crash course. The results were published pursuant to two Government orders bearing Nos. 339 as amended by 344, dated 18-9-1998 inasmuch as the State Itself decided to publish the results of the crash course.

16. The Full Bench itself held that the contention raised in the writ petition need not be gone into and the observations as noticed therein were made having regard to the developments which took place during the pendency of the writ petition. No law as such has been laid down thereby nor the said Full Bench decision creates any binding precedent.

17. On the other hand, the matter is squarely covered by a recent judgment of the apex Court in Bhupinderpal Singh and Others Vs. State of Punjab and Others, wherein the apex Court has laid down the law in the following terms:

Placing reliance on the decisions of this Court in Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, , A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others, , District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, , Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others, , Dr. M.V. Nair Vs. Union of India (UOI) and Others, and U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, the High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service, rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice be done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.

18. The petitioners herein do not come in any of those categories mentioned supra. In the instant case, a cut-off date for production of certificates had been prescribed and the petitioners who had submitted their applications pursuant to the aforesaid recruitment notification were bound thereby. They are estopped and precluded from contending contra.

19. Yet again a Division Bench of this Court in Writ Petition No. 13389 of 2000 and batch disposed of on 24-8-2000 has clearly held that certificates must be produced on the date on which they are required to be produced. It was observed:

This will lead to so many uncertainties and anomalies. That apart, the said requirement imposed by the authorities cannot by any stretch of imagination be termed as arbitrary, as any inaction or delay in either conducting the examinations for the qualifying degree or the delay in declaration of results thereof, cannot form a valid basis for facilitating the candidates to procure such certificates and file the same at the time of interviews or selection.

20. Mr. Reddy alternatively submitted that the Court should take a sympathetic view. Sympathy as is well-known cannot be a substitute for a legal right so as to enable the petitioners to obtain a writ of or in the nature of mandamus. Sympathy alone cannot be a ground for grant of relief which would be contrary to law. This aspect of the matter has been considered in *Ashoke Saha v. State of West Bengal* 1999 (2) C.L.T. 1 wherein it was held:

..... there are series of decisions wherein the Supreme Court has clearly laid down the law that a pupil who is not entitled to appear in the examination should not be allowed to do so in violation of the statutory regulation. Reference in this connection, may be made to *A.P. Christian Medical Educational Society v. Government of A.P.* reported in (1986) 2 SCC 677; *State of T.N. v. St. Joseph Teachers' Training Institute* reported in (1991) 3 SCC 37; *State of Maharashtra Vs. Vikas Sahebrao Roundale and others*, ; *Central Board of Secondary Education Vs. Nikhil Gulati and Another*, ; *Central Board of Secondary Education v. Sunil* 1997 (1) CLJ 143, a Division Bench of this Court was considering a matter relating to the right of a person to take admission and not with the question raised therein. In this jurisdiction also a Division Bench of this Court in *Central Board of Secondary Education and Ors. v. Adarsh Kumar Sedhwarayar and Ors.* reported in 1998 (2) CHN 61 upon considering the aforementioned decision as also the decision of the apex Court in *Guru Nanak Dev University Vs. Parminder Kr. Bansal and another*, as also other decisions held:--

"It is beyond any dispute that the said Park Point School was not affiliated with the appellant. The Writ Petitioner might have taken admission under a misconception but it is beyond any cavil of doubt that unless the statute permits appearance of students as private candidates they cannot be permitted to do so."

21. In *Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another*, . the law has been laid down in the following terms:

"Thus apart from the directions as to appointment on compassionate grounds being against statutory provisions, such direction does not take note of this fact. Whatever it may be the Court should not have directed the appointment on compassionate grounds. The jurisdiction under mandamus cannot be exercised in that fashion.

22. In *G. Kalyan Sundaram v. UCO Bank and Anr.* 1995 (2) C.L.T. (HC) 201 one of us (S.B. Sinha, C.J.) had observed that in the fact of that case even sympathy has no role to play.

23. In *Latham v. Richard Johnson and Nephew Ltd.*, 1911-13 AER (Reprint) 117 Farwell L.J. observed-

We must be careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will of the wisp to take as a guide in the search for legal principles.

24. In *State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another*, the apex Court observed that Court cannot grant relief on humanitarian ground contrary to law.

25. The decision of the Calcutta High Court in *Ashoke Saha* (2 supra) has recently been followed by a Division Bench of this Court in *Ch. Anita and Others Vs. State of Andhra Pradesh and Others*, .

26. For the reasons aforementioned, there is no merit in these petitions which are dismissed. There shall be no order as to costs.