
(2008) 06 AP CK 0041

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13167 of 2008

K. Ravindra and Others

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 24-06-2008

Acts Referred:

Andhra Pradesh Prohibition and Excise Subordinate Services Rules — Rule 3, 4
Constitution of India, 1950 — Article 14, 16, 21

Citation : (2008) 5 ALD 26 : (2009) 3 SLR 797

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : T. Balaji, for the Appellant; G.P. for Service-II, for the Respondent

Judgement

Ghulam Mohammed, J.—This writ petition is filed seeking a mandamus declaring the action of the respondents in not filling up the vacancies reserved for direct recruitment as per rules and filling up those vacancies by the A.P.S.P. Constables on deputation, as arbitrary, illegal, unconstitutional, and violative of Articles, 14, 16 and 21 of the Constitution of India and ultra-vires of Rule 3, read with Note 3 of A.P., Prohibition and Excise Subordinate Service Rules and set aside the judgment dated 10.04.2008 in O.A. No. 6391 of 2004 & batch on the file of the A.P. Administrative Tribunal at Hyderabad.

2. The grievance of the petitioners is that they have applied for the post of Prohibition & Excise Constable governed by the A.P. Prohibition & Excise Subordinate Service Rules (for short "The Rules"), which was included as Category IV of Group II of the A.P. Prohibition & Excise Subordinate Service Rules etc., As per Rule 3 of the aforesaid rules, the post of Excise Constable has to be filled up by two methods - (1) by direct recruitment and (2) by appointment by transfer of attenders in the A.P. Last grade Service. As per note 3 of Rule 4 of the aforesaid rules, in a cycle of 20 vacancies in the category of Prohibition & Excise Constables, 1st to 9th and 11th to 18th vacancies shall be filled up by direct recruitment and 10th, 19th and 20th vacancies shall be filled up by

appointment by transfer. The post of Prohibition & Excise Constable is lower than that of Junior Assistants in the Excise Department. It is a District Cadre post and the District head in the Excise Department is the appointing authority.

2. The learned Counsel for the petitioners vehemently submitted that as per para 5 of the Andhra Pradesh Public Employment (Organization of Local Cadres & Regulation of direct recruitment) Order 1975, Excise Constables, who belong to one District can be transferred to other districts, but the employees working in other districts cannot be transferred and posted as Excise Constables on deputation, since the post of Excise Constable is organized as a separate district cadre post and as such the A.P.S.P. Constables cannot be continued as Excise Constables.

3. As per the notification issued for the year 1994, the District Selection committee had conducted efficiency physical, written and oral test during October, 1994 and the petitioners have participated in the said selection process and qualified in the physical and written test and subsequently they have appeared for the oral test also. It is submitted that after completion of the oral test the concerned Superintendents have also prepared the merit list based on the notified vacancies in their respective districts. Aggrieved by the inaction of the respondents in not appointing the petitioners to the post of Excise Constables as per the selection list and continuing the A.P.S.P. Police Constables on deputation basis, the petitioners filed O.A. No. 6391 of 2004 before the Tribunal. The Tribunal after following the judgment rendered by the Supreme Court in Civil Appeal Nos. 604 of 2000 and 915 of 2000 dismissed the O.As. Aggrieved by the same, the present writ petition is filed.

4. We have perused the judgment of the Supreme Court in Civil Appeal Nos. 604 of 2000 and 915 of 2000 dated 23.04.2003 preferred by the State.

5. The relevant portions of the order passed by the Apex Court reads as under:

In the counter affidavit filed on behalf of the respondents in civil appeal No. 915 of 2000, in paragraph 16 it is stated that the process of selection was cancelled at the last stage i.e., before publishing the list of selected candidates on the sole ground that the State Government wanted to introduce prohibition and obviously the Government felt that there was no need of Excise Constables during imposition of Prohibition in the State. There is serious dispute as to the completion of selection process. According to the appellants, the selection process was not complete. No record has been placed before us to show that the selection process was complete, but it is not disputed that the select list was not published. In paragraph 16 of the counter affidavit, referred above, the respondents themselves had admitted that the selection process was cancelled at the last stage. In the absence of publication of select list, we are inclined to think that the selection process was not complete. Be that as it may, even if the selection process was complete and assuming that only select list was remained to be published that does not advance the case of the respondents for the simple

reason that even the candidates who are selected and whose names find place in the select list, do not get vested right to claim appointment based on the select list. It was open to the state Government to take a policy decision either to have prohibition or not to have prohibition in the State. Certainly, the Government had right to take a policy decision, if pursuant to a policy decision taken to impose prohibition in the State there was no requirement for the recruitment of constables in the Excise Department, nobody can insist that they must appoint candidates as Excise Constables. It is not the case of the respondents that there was any malafide on the part of the appellants in refusing the appointment to the respondents after the selection process was complete. The only claim was that the action of the appellants, in not appointing the respondents as Excise Constables, was arbitrary. In the light of the facts that we have stated above, when it was open to the Government to take a policy decision, we fail to understand as to how the respondents can dub the action of the respondents as arbitrary, particularly, when they did not have any right as such to claim appointments. In the absence of selection and publication of select list, mere concession or submission made by the learned government pleader on behalf of the appellant-state cannot improve the case of the respondents. Similarly, such a submission cannot confer right on the respondents, which they otherwise did not have.

Under these circumstances, we find it difficult to sustain the impugned judgment and order. However, having regard to the peculiar facts and circumstances of the case and that the respondents had the benefit of the order of the High Court we think it is just and appropriate that as and when any fresh selection takes place to the post of Excise Constables, the respondents may apply for regular recruitment. In that event age bar will not be put against them but, they shall satisfy after eligibility conditions and requirements, including qualification.

Under these circumstances, the impugned orders are set aside, subject to what is stated above. The appeals are allowed accordingly. No costs

6. From the order of the Supreme Court, it is clear that the process of selection of Excise Constables at the relevant time was not completed and, therefore, the persons like the petitioners herein who had participated in the selection process cannot claim any vested right to seek appointment to the post of Excise Constable based on the selection list alleged to have been prepared by the Department. The process of selection could not be completed because of the change in the policy of the State Government with regard to prohibition in the State of Andhra Pradesh at the relevant point of time. Unless the process of selection is completed and appointment orders are issued, no right accrued to the persons applied for. In this view of the matter, the Tribunal, in our opinion, has rightly declined to grant the relief sought for by the petitioners.

7. However, the Supreme Court in its order referred to above observed that in case persons similarly situated like the petitioners therein apply for fresh regular recruitment, age bar will not be put against such persons, if they satisfy the

other eligibility criteria.

8. At this stage, the learned Government Pleader appearing for the respondents, submitted that the Government even now prepared to consider the cases of the persons like the petitioners herein, who have applied for recruitment to the post of Excise Constables, earlier, as per the observations of the Supreme Court referred to above, in fresh regular selection. If this is so, this order of ours will not come in the way of State Government from considering such cases in future recruitment.

9. Subject to the above observations, writ petition is disposed of. No order as to costs.