
(2002) 11 AP CK 0038
In the Andhra Pradesh High Court
Case No : WA No. 1929 of 1999

Osmania University

APPELLANT

Vs

B. Laxman

RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2003) 1 ALD 306

Hon'ble Judges : S.R. Nayak, J; Dubagunta Subrahmanyam, J

Bench : Division Bench

Advocate : Deepak Bhattacharjee, SC, for the Appellant; P.R. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The Osmania University represented by its Registrar, being aggrieved by the order of the learned single Judge dated 16.9.1999 in WP No. 4158 of 1998, has preferred this writ appeal. The respondent herein viz., B. Lakshman filed the above writ petition under Article 226 praying for the following relief:

"Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to call for the records pertaining to the impugned letter contained in No. 4685/619/76/Esst.I dated 20.12.1997 issued by the respondent herein and set aside the same as illegal, arbitrary, discriminatory, without jurisdiction, void ab initio, unconstitutional, opposed to the principles of natural justice and violative of Articles 14, 15, 16 and 21 of the Constitution of India and consequently direct the respondent herein to consider the claims of the petitioner herein for the post of Assistant Registrar in the respondent university with effect from 7.11.1996 by duly following the rule of reservation for Scheduled Caste Candidates, with all consequential and attendant benefits such as arrears of salary, seniority and promotion etc., by the issuance of writ, order or direction essentially in the

nature of writ of mandamus."

2. The above relief was sought by contending that the appellant-University refused to apply reservation rule in considering the candidature of the writ petitioner for promotion to the post of Assistant Registrar of the University. The background facts leading to the filing of the writ petition be noted briefly in the first instance and they are as follows:

3. The writ petitioner joined the services of the University on 20.10.1976 as a Junior Assistant. Subsequently, he was promoted to the post of Senior Assistant and subsequently to the post of Superintendent on 13.2.1989. The petitioner belongs to Scheduled Caste community. In the year 1996, the DPC constituted by the University conducted viva-voce on 26.10.1996 to select the candidates for the post of Assistant Registrar. The writ petitioner participated in the said viva-voce and interview. According to the petitioner, he did well in the viva-voce and interview. However, the petitioner was not selected for the post of Assistant Registrar, but 11 others were selected by the DPC. In pursuance of the selections made by DPC, those 11 persons were appointed with effect from 7.11.1996. However, in the year 1998 the DPC again met to consider the candidatures of eligible candidates to fill up the vacancies in the post of Assistant Registrar on 25.9.1998 and the petitioner was selected for the post and he was appointed as Assistant Registrar with effect from 20.9.1999.

4. In the meanwhile, the petitioner filed W.P No. 4158 of 1998 praying for the relief already noticed above. The writ petition was opposed by the appellant-University by filing a counter-affidavit. In the counter-affidavit, it is contended by the University that the post of Assistant Registrar in the University is a post which is required to be filled by the mode, "selection on merit-cum-suitability"; rule of reservation is not applicable to the post of Assistant Registrar etc.

5. The learned single Judge on consideration of the rival contentions and the relevant rules and regulations and circular instructions issued by the appellant-University itself from time to time governing recruitment to the post of Assistant Registrar found that non-consideration of the petitioner's candidature for the post of Assistant Registrar during the year 1996 by the DPC was illegal and discriminatory. The learned single Judge placing reliance on the earlier proceedings of the University which go to show that as a matter of fact the University had applied rule of reservation in filling up the posts of Assistant Registrar of the University by way of promotion, rejected the claim of the University that the rule of reservation is not applicable to the post of Assistant Registrar. The learned single Judge directed the appellant-University to consider the case of the writ petitioner for the post of Assistant Registrar in the light of the judgment within a period of two months from the date of receipt of the order. Hence this writ appeal by the Osmania University.

6. We have heard Sri Deepak Bhattacharjee, learned Standing Counsel for the Osmania University and Sri P.R. Prasad, learned Counsel for the respondent.

7. Sri Deepak Bhattacharjee, learned standing Counsel reiterated the same contentions taken in the counter-affidavit and urged before the learned single Judge. On the other hand, Sri Prasad would support the findings recorded by the learned single Judge and the relief granted by his Lordship.

8. The two points that arise for our decision are: (1) whether the University ought to have considered the candidature of the writ petitioner for appointment to the post of Assistant Registrar by applying the rule of reservation or not? and (2) whether under the relevant recruitment rules, the post of Assistant Registrar has to be filled up by the mode known as "promotion by selection" or by the mode known as "promotion by way of seniority-cum-merit or suitability" ?

9. If rule of reservation is not applicable to the post of Assistant Registrar, the writ petitioner cannot have any grievance particularly in the context that his candidature was subsequently considered in the year 1998 and he was promoted to the post of Assistant Registrar on relative merit with effect from 20.9.1999. Therefore, it is necessary in the first instance for us to examine the question whether the rule of reservation applies or not to the post of Assistant Registrar of the University.

10. The learned single Judge has placed reliance on the letter of the Government dated 16.12.1976 and also the resolution passed by the University Syndicate on 16.8.1977 to hold that the rule of reservation applies to the post of Assistant Registrar. Mr. Deepak Bhattacharjee, learned standing Counsel contended that the learned single Judge has lost sight of the fact that the rule of reservation applies only in the case of direct recruitment and it has no application when the University fills up that post of Assistant Registrar by way of promotion. We find force in the above contention of Sri Deepak Bhattacharjee. In the above letter of the Government, it is directed that while making direct recruitment to the teaching and non-teaching posts in the Universities, the University authorities should apply the rule of reservation in the case of candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Classes. The letter of the Government dated 16.12.1976 reads as follows:

"Copy of Letter No. 6098/C1/76-2, Education, dated 16.12.1976 from Sri B. Ramachandra Reddy, Deputy Secretary to Government, Education Department - Addressed to the Registrars of Andhra, Osmania, Sri Venkateswara, Kakatiya and Nagarjuna Universities and Post-Graduate Centres, Anantapur.

Sir,

Sub: Universities - Reservation of posts for Scheduled Castes, Scheduled Tribes and Backward Classes.

Ref: 1. Govt. Confidential Letter No. 1945-C1/76-6, dated 15.11.1976.

2. Govt. D.O. Letter No. 6098-C1/76-1, dated 30.11.1976.

It has come to the notice of the Government that no uniform procedure is being

followed in the Universities in the State regarding reservation for the Scheduled Castes, Scheduled Tribes and Backward Classes, while making direct recruitment to the teaching and non-teaching posts in the Universities. This position has, therefore, been reviewed by the State Government in the light of the decision of the University Grants Commission that reservation should be provided for Scheduled Castes and Scheduled Tribes for recruitment only up to the posts of Lecturers in Universities and that such reservation may not be operated on a roster system nor should the reserved posts be carried forward from year to year (D.O Lr. No. F. 1-46/75 (CP), dated 26.8.1975 from the Secretary, University Grants Commission refers).

2. In supersession of the instructions contained in the letters first and second cited above, the following procedure may be followed by the Universities in this behalf:

(i) So far as the teaching posts are concerned, reservation for S.Cs (14%) S.Ts 4% and B.Cs 25% shall be limited only to the posts of Lecturers for direct recruitment, without the roster system and without the reserved posts being carried forward from year to year;

(ii) So far as the non-teaching posts are concerned, the reservation for the Scheduled Castes, Scheduled Tribes and Backward Classes as per the orders issued by the State Government from time to time including the roster and carry forward system, may be followed scrupulously.

3. I am directed to request you to ensure that this policy regarding reservation is followed by the University while making appointments to teaching and non-teaching posts."

11. There are no statutory rules governing recruitment to the post of Assistant Registrars in the University. In the absence of statutory rules, the University has issued administrative instructions in the form of Circular dated 4.6.1991 and it reads as follows:

"CIRCULAR

Establishment-Gazetted-Administrative Officers.

Sub:- Appointment of Assistant Registrars-Recruitment Rules-Circular-Issued.

The University Syndicate at its 294th meeting held on 22.1.1981 has approved the following rules of recruitment for the post of Assistant Registrars in the University Service:-

1. These rules shall be called the Osmania University Recruitment Rules for the posts of Assistant Registrars and shall be deemed to have come into force with effect from 1.1.1981.

2. The recruitment shall be made by selection from the category of Superintendents who have:-

(i) put in not less than 15 years of regular service in the University of which not less than 5 years shall be in the supervisory category of Superintendents; and

(ii) passed the following tests:

(a) Accounts Test for Executive Officers conducted by the Andhra Pradesh Public Service Commission/the Osmania University or any other Tests recognised by the Osmania University as equivalent thereto; and

(b) Tests pertaining to the University Statutes, Ordinances, Regulations and other service matters as may be conducted by the Osmania University.

Provided that the cases of otherwise eligible Superintendents who have not yet passed these tests will be considered for recruitment as Assistant Registrars for a period of 2 1/2 years from the date of the commencement of these rules.

3. The selection shall be made on the basis of merit and suitability; Provided that other things being equal, due consideration shall be given to the seniority.

4. The selected candidates shall be on probation for a period of two years.

5. The selected candidates to whom proviso to Rule (2) (ii) apply and who did not fulfil the requirement of passing the Tests mentioned in the said Rule should pass within the two years period of probation the following Tests.

Tests:-

(a) Accounts Test for Executive Officers conducted by the Andhra Pradesh Public Service Commission/The Osmania University or any other Tests recognised by the Osmania University as equivalent thereto; and

(b) Tests pertaining to the University Statutes, Ordinances, Regulations and other service matters as may be conducted by the Osmania University;

Provided that if the candidate selected has attained the age of (52) years at the time of selection he shall not be required to pass the Tests hereinabove mentioned.

6. The selected candidates who fail to pass the above Tests within the prescribed period of two years, probation shall not be eligible for the declaration of probation and, further they shall not be eligible to draw the increments.

Sd/-

REGISTRAR AND SECRETARY

UNIVERSITY SYNDICATE.

To

All the Principals of University and Constituent Colleges, O.U.

All the Administrative Officers of O.U."

12. A careful perusal of the guidelines contained in the above Circular makes it abundantly clear that the only method by which the post of Assistant Registrar could be filled up is by way of promotion on the basis of seniority-cum-merit/suitability.

13. Sri Deepak Bhattacharjee, at the time of hearing, would strenuously contend that the references made by the learned single Judge in the impugned order to the application of rule of reservation in filling up the post of Assistant Registrar were related to filling up the post by way of direct recruitment and not by way of promotion. This contention of the learned Counsel is not acceptable to us and it has to be noticed only to be rejected. It is trite that the University being a State within the meaning of Article 12 of the Constitution is bound by its own regulations in the matter of appointments to posts in its administration and it cannot act de hors the rules and regulations and the guidelines laid down by it. Since the guidelines contained in the Circular of the University dated 4.6.1981 do not envisage filling up the post of Assistant Registrar by way of direct recruitment, it should not lie in the mouth of the University to state that it has applied "rule of reservation" in filling up the post of Assistant Registrar by way of direct recruitment. The relevant regulations governing the recruitment to the post of Assistant Registrar envisages only one mode of recruitment i.e., by way of promotion. Therefore, it is quite clear that the University had applied "rule of reservation" in filling up the posts of Assistant Registrar in the past. The learned single Judge has also referred to the diametrically contrary stand taken by the University in its pleadings, i.e., grounds urged by the very University in W.A No. 1465 of 1997 and extracted by the learned single Judge at pages 16 and 17 of the judgment. The University cannot be permitted to approbate and reprobate to treat its employees who are similarly circumstanced differently. Since there is no controversy that on previous occasions the University itself had applied the rule of reservation in appointment to the post of Assistant Registrar by promotion also, the refusal of the University to extend the same treatment to the writ petitioner cannot be sustained on the touchstone of Article 14. Every authority, statutory or otherwise in the public field is obliged to practise the postulates of Articles 14 and 16 and if the Court finds that the said postulates are subverted or breached by the State or other public authorities, the Court should step in and correct the flaws in the appointment procedure and the resultant appointments.

14. In that view of the matter, we cannot take any exception to the view taken by the learned single Judge. The order passed by the learned single Judge is in accordance with the mandates of the Constitution and recruitment rules. No ground is made out for interference with the order of the learned single Judge. The Writ Appeal is devoid of merit and it is accordingly dismissed. No costs.