
(2002) 09 AP CK 0066

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 3853 and 5322 of 2002

P. Jhansi

APPELLANT

Vs

Tirumala Tirupathi Devasthanam and Others

RESPONDENT

Date of Decision : 06-09-2002

Acts Referred:

Tirumala Tirupati Devasthanams Employees Service Rules, 1989 — Rule 5(1)

Citation : (2002) 5 ALD 621

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : Vedula Srinivas, in WP No. 3853 of 2002 and Challa Dhanamjaya, in WP No. 5233 of 2002, for the Appellant; P. Suresh Reddy, SC for Respondent Nos. 1 and 2 and P. Govind Reddy, for the Respondent

Final Decision : Allowed

Judgement

Ghulam Mohammed, J.—Since the controversy involved in both these writ petitions, is one and the same, they are being disposed of by a common order.

2. WP Nos. 3853 and 5233 of 2002 have been preferred by one P. Jhansi and T. Ravi who are the petitioners respectively, seeking for a direction in the nature of writ of mandamus to declare the action of respondents 1 and 2 in selecting and appointing the 3rd respondent as A.P.R.O. vide proceedings dated 16.2.2002 as arbitrary and illegal and to direct the respondents to appoint the petitioners as A.P.R.O. in pursuance to the selections held on 15-2-2002.

3. The backdrop of the case, which led to the filing of these writ petitions, is that the petitioner- P. Jhansi is a postgraduate in Mass Communication and Journalism and she worked as a Public Relation Officer in a Public Limited Company for 3 years. The petitioner-T.Ravi has been working as Assistant Translator in the Office of the Public Relations Officer of T.T.D. Tirupathi since 1995 without any blemish nor adverse remarks. He completed M.A. in English Literature, M.A. in Advertising and Public Relations, B.Ed., Bachelor of Public Relations, Diploma in

Computers and Diploma in Temple Culture. He belongs to Scheduled Caste. The 3rd respondent who was working in T.T.D. as Superintendent in the Educational Department, is aged about 55 years. The 1st respondent notified the post of Assistant Public Relations Officer in Eenadu Daily on 28-7-2001. The candidate should possess Masters Degree in M.A., M.Sc., Degree or Diploma in Journalism or Public Relations and three years experience in the field of Public Relations. The upper age of the candidate shall be above 35 years. There is a relaxation of 5 years provided for S.C., S.T. and B.C. candidates. In the said notification, it was also stated that in service candidates can also apply for the post. The petitioners and the 3rd respondent have also applied for the said post. Written examination was held on 15-2-2002 and 26 candidates appeared for the written test. The mode of appointment is not by promotion, but it is by way of direct recruitment. The 3rd respondent is aged about 55 years and is not eligible for the post since he is over aged. The 1st respondent short listed of three candidates viz., the petitioners and the 3rd respondent. The whole process of selection was held on the same day and in a hurried manner. The respective case of the petitioners, is that they did well in the written examination and they are eligible for appointment. The 3rd respondent is not at all eligible for being considered for the post of A.P.R.O. and that entertaining the application of the 3rd respondent itself, was irregular. But, respondents 1 and 2 appointed the 3rd respondent and the same is arbitrary and illegal. Having aggrieved by the same, the present writ petitions have been preferred.

4. Heard Mr. Vedula Srinivas, the learned Counsel for the petitioner in W.P. 3853 of 2002 and Mr. Challa Dhananjaya, the learned Counsel for the petitioner in W.P.5233 who adopted the argument of Mr. Vedula Srinivas and Mr. Govind Reddy, the learned Counsel for the 3rd respondent and Mr. P. Suresh Reddy, the learned Standing Counsel for respondents-1 and 2.

5. The learned Counsel for the petitioner would contend that statutory rules have been framed as to the mode of recruitment. The 3rd respondent at the threshold itself, ought not to have been allowed for the examination, since he was over aged. He would further contend that the field is occupied by the statutory rules. Rule 11 of the Tirumala Tirupathi Devasthanams Employees Service Rules, 1989 (hereinafter referred to as "Rules") prescribes the upper age limit as 28 years or the age prescribed therefore in the Annexure II wherein the upper age limit is fixed as 35 years and that by the date of advertisement for the post in question, the upper age limit is fixed as 35 years. He would further contend that having notified the post for direct recruitment and having fixed the upper age limit as 35 years by the date of advertisement, respondents 1 and 2 ought to have rejected the application of the 3rd respondent at the threshold itself.

6. Therefore, the appointment of the 3rd respondent who is in service candidate and who has crossed upper age limit as prescribed in the advertisement and also Rule 11 of the Rules, is arbitrary and illegal.

7. On the other hand, the learned Standing Counsel would contend that the

Government of A.P. in G.O.Ms.No. 614, dated 27-6-1989 exempted the qualified in service candidates of T.T.D from the media of Employment of Exchange for selection to a post on direct recruitment and that the T.T.D. Board exempted the qualified in service employees from the operation of age rules for selection to a post on direct recruitment. He would further contend that there is no violation of recruitment procedure, and as such, there is no illegality in the selection and the appointment of the 3rd respondent is in accordance with the procedure.

8. The learned Counsel appearing on behalf of the 3rd respondent, while drawing my attention to provisions of Rule 5 (1) of the Rules, would contend that under the said rule, the Board of Trust is empowered to relax the age of in service candidates and in pursuance of the said powers conferred under Rule 5 (1), it is resolved by the Board of Trust that it is desirable to exempt the qualified in service employees from the operation of age rule for competing with the candidates sponsored by the employment agencies. Therefore, the appointment of the 3rd respondent is in accordance with the procedure and it does not warrant any interference by this Court.

9. I have perused the entire material available on record and the relevant rules. Advertisement in Eenadu dated 27.7.2001 clearly invites applications for the post of Assistant Public Relation Officer from the candidates fulfilling the requirements mentioned therein. The in service candidates are also eligible for submitting their applications. At the end of the advertisement, it is clarified that the applicants who are Hindus only, can apply for the same. The maximum age limit is fixed at 35 years and it will be relaxed by five years in case of S.C. and S.T. candidates. In the circumstances, the contention of the respondent that the post is confined only for O.C. category, has no basis.

10. G.O. Ms. No. 614, Revenue (Endowments III) Department, dated 27-6-1989 enables the in service candidates of T.T.D. who possess the requisite qualifications, to compete with the fresh candidates sponsored by the Employment Exchange for direct recruitment.

11. Basing on the orders issued in G.O.Ms.No. 614, dated 27-6-1989, Board has passed the resolution on 3-6-1991 which reads as under:

"Though it is not laid down in the said orders of the Government that an in service qualified person shall invariably be within the age ceiling prescribed for the post in question for direct recruitment, it appears to be implied that the in service candidate shall have to fulfil all requisites that are prescribed for direct recruitment. Here comes the actual problem as most of the in service candidates will be over aged by the time they equip themselves with the required qualifications. Thus the concession that is sought to be extended through G.O. Ms. No. 614, dated 27-6-1989 becomes an illusory one as it does not reach all equally. The very spirit of the G.O. becomes defeated as a line is sought to be drawn on the basis of age ceiling among the qualified in service employees.

Therefore, it is desirable to exempt the qualified in service employees from the

operation of age rule for competing with the candidates sponsored by the respective employment agencies."

12. It appears that by exercising the powers under Rule 5(i), the above resolution has been approved.

13. It is relevant at this stage to go through the provisions of Rule 5(i) of the Rules, which reads as under

"All powers assigned to the Government under the aforesaid rules shall be exercised by the Board of Trustees. All powers vested in the Head of Department in the above rules shall be exercised by the Executive Officer, Tirumala Tirupathi Devasthanams. The Executive Officer shall be the appointing authority in respect of all posts except the posts for which the Government is the appointing authority."

14. With regard to the relaxation of age, proviso to Rule 11 of the Rules enunciates thus:

"Provided that the orders issued by Government from time to time regarding the general relaxation of the age and age relaxation in respect of person belonging to reserved categories such as Scheduled Caste, Scheduled Tribe and Backward Class shall apply."

15. In the instant case, the basis on which the age of the in service candidates is relaxed, is G.O. Ms. No. 614, which merely exempts the in service candidates of T.T.D who possess the requisite qualifications from the purview of Employment Exchange, to compete with the fresh candidates sponsored by the Employment Exchange for direct recruitment. Rule 4 of the Rules lays down thus:

"The Tirumala Tirupathi Devasthanams Employees shall be governed by the following rules and such of the orders and clarifications issued on these rules by Government of Andhra Pradesh in respect of the employees of State Government from time to time insofar as they are not inconsistent with the act and the rules made thereunder:

i to vi.....xxxxx

vii A.P. State and Subordinate Service Rules.

16. Section 5(i) of the Rules clearly enunciates that, all powers assigned to the Government under the aforesaid rules, shall be exercised by the Board of Trustees.

17. But contrary to Rule 5 (i) and order of the Government in G.O. Ms. No. 614, the resolution dated 3-6-1991 has been approved, and, as such, it cannot override the statutory rules governing the recruitment. It amounts to misinterpretation of the statutes and misuse of powers.

18. Now coming to the facts of the case, admittedly, both the writ petitioners and the 3rd respondent were short listed for interview and among them, the 3rd

respondent was issued appointment order. Admittedly, the 3rd respondent is over aged by the date of notification. For the reasons in the foregoing paragraphs, the application of the 3rd respondent should have been rejected at the threshold itself, and, as such, the appointment of the 3rd respondent is illegal.

19. In the facts and circumstances of the case and rules, I am of the considered view that the powers exercised by the official respondents by way of circulars and resolutions, cannot override the statutory rules governing the recruitment, and, they are in violation of the powers conferred under Rules 4 and 5(i) of the Rules, and, their action amounts to misinterpretation of statutes and misuse of powers. Therefore, the appointment order of appointment of the 3rd respondent is liable to be quashed.

20. In the result, the above writ petitions are allowed and. the order of appointment of the 3rd respondent as A.P.R.O is set aside. However, respondents 1 and 2 are directed to consider the cases of the writ petitioners in accordance with the ranks assigned to them in the interview held on 15-2-2002 and appoint the eligible candidate.