

(2016) 11 AP CK 0009
In the Andhra Pradesh High Court
Case No : Writ Petition No. 14591 of 2006

Principal Secretary

APPELLANT

Vs

Ajmeera Raju

RESPONDENT

Date of Decision : 02-11-2016

Acts Referred:

Constitution of India, 1950 — Article 371D

Citation : (2017) 1 ALT 291 : (2017) 1 AndhLD 641

Hon'ble Judges : Sri. V. Ramasubramanian and Sri. G. Shyam Prasad, JJ.

Bench : Division Bench

Advocate : The Government Pleader for Services (Telangana), for the Petitioner;
Mr. P. Suresh Reddy, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sri. V. Ramasubramania, J. - The State has come up with the above writ petition, challenging an order of the Andhra Pradesh Administrative Tribunal passed in an application filed by the respondents herein.

2. Heard the learned Government Pleader for Services (Telangana) appearing for the petitioners, and Mr. P. Suresh Reddy, learned counsel for the respondents.

3. Pursuant to a notification issued in May, 2000 by the Director of Health, Government of Andhra Pradesh, inviting applications for appointment to the post of M.P.H.A. (Male) in backward villages in the Districts of Vizianagaram, Visakhapatnam, East Godavari, Adilabad and Warangal, the respondents applied. It was a special direct recruitment drive intended only for candidates belonging to the Scheduled Tribes.

4. Eventually, the petitioners were not appointed, on the ground that they were not residents of the specified scheduled area within the District of Warangal, despite the fact that they belonged to the Scheduled Tribes in the non-scheduled areas of the District of Warangal. Therefore, they filed an application in O.A.No.4676 of 2001 on the file of the Andhra Pradesh Administrative Tribunal.

The Tribunal allowed the application, on the ground that there cannot be a sub-classification. Aggrieved by the said order, the State is before us.

5. Before proceeding further, we must point out one thing that the opinion of the Tribunal contained in the penultimate Paragraph-15 of its order, is neither in tune with the prayer made in the original application, nor in tune with the law said to have been declared by this Court. It is stated by the learned Government Pleader for Services that by the order impugned in the writ petition, the Tribunal held G.O.Ms.No.3, Social Welfare (TW.EDN.II) Department, dated 10.01.2000, to be ultra virus the constitution. But, it appears that a Full Bench of this Court has taken a contrary view in *Pulusam Krishna Murthy v. T. Sujan Kumar* 2002 (1) ALD 423 (FB). Therefore, the first part of Paragraph-15 of the impugned order of the Tribunal should go.

6. But, the above does not have any impact upon the case on hand, as G.O.Ms.No.3, dated 10.01.2000, is specifically confined to appointment to the posts of teachers in schools situated in scheduled areas. The post, with which we are concerned in the present case, is M.P.H.A. (Male) and not the post of teacher. Therefore, G.O.Ms.No.3, dated 10.01.2000, did not fall for consideration either before the Tribunal or before this Court. Hence, we ignore G.O.Ms.No.3, dated 10.01.2000, and take up the other contentions.

7. The notification inviting applications issued in May, 2000 shows that Districts were treated as the Units of appointment for the post of M.P.H.A. (Male). Vacancies in five different Districts, including Warangal, were notified and it was indicated in Paragraph-2 of the notification that "concerned Districts appointment can be done as a unit".

8. In tune with the indication in the notification that District was the unit of appointment, the invitation from candidates was also to the persons, who belonged to the Scheduled Tribes and who were residents of the unit of appointment, namely, the Districts. It was not specified in the notification that Scheduled Tribes residing only in the scheduled areas of the Warangal District alone should apply in response to the notification.

9. But, on the basis of the Government Order in G.O.Ms.No.68, Social Welfare (V) Department, dated 16.04.1988, the State has taken a stand that only those Scheduled Tribes residing within the scheduled areas of a particular District, would be considered as eligible for appointment. In order to test the above contention, it is necessary to have a look at the notification published under G.O.Ms.No.68, dated 16.04.1988, which reads as follows:

"In exercise of the powers conferred by sub-paragraph (1) of paragraph 5 of the fifth schedule to the Constitution of India, the Governor of Andhra Pradesh hereby directs that the posts relating to the Medical and Health Department shown in the Annexure in the Scheduled areas of the State shall be filled in only by the local members of the Scheduled Tribes notwithstanding anything contained in any other order, rule or law in force."

10. As seen from the notification, it was issued under Paragraph- 5(1) of the V-Schedule to the Constitution. The expression used in the notification is "local members of the Scheduled Tribes". The expression "local members" is not defined in the Constitution. Considering the special status of the State of Andhra Pradesh, the aforesaid notification has to be read, in tune with the Presidential Order, 1974 issued, in exercise of the powers conferred by Clauses 1 and 2 of Article 371D of the Constitution. Though the Presidential Order does not use the expression "local members" it uses the expression "local candidate". Paragraph-4 of the Presidential Order defines a local candidate. This definition is in the context of what a local area is. The expression "local area" is to be understood in the context of Paragraph-3 of the Presidential Order.

11. Therefore, the term "local members" appearing in G.O.Ms.No.68, dated 16.04.1988, has to be understood in the context of the expressions "local area" and "local candidate" as indicated in the Presidential Order. The Presidential Order carves out certain posts as District Posts, Zonal Posts, Multi-Zonal Posts and State-wide Posts. If the unit of appointment is a District, the local area for appointment to such a post would be the District. If the local area for appointment to a post is a District, a person residing in that area is a local member.

12. Therefore, the final conclusion reached by the Tribunal, despite its observations with regard to G.O.Ms.No.3, dated 10.01.2000, is perfectly in order. Once it is admitted that the respondents belonged to the Scheduled Tribes and once it is admitted that they were residents of the unit of appointment, namely, the District, there cannot be a subclassification of Scheduled Tribes residing in scheduled areas of a District and Scheduled Tribes residing in non-scheduled areas of the same unit of appointment.

13. As a matter of fact, a discrimination based upon residence, is opposed to the Constitution. But, the same has been recognised in the State of Andhra Pradesh, in view of Article 371D. But, Article 371D also does not permit the application of G.O.Ms.No.68, dated 16.04.1988, de hors the unit of appointment. Therefore, the Writ Petition is devoid of merits. Hence, it is dismissed.

Consequently, interim order granted on 24.08.2006 is vacated and miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.