

(2020) 09 TEL CK 0001
In the Telangana High Court
Case No : Writ Petition No. 947 Of 2020

Saluvadi Sumalatha

APPELLANT

Vs

Telangana Residential Educational Institutions Recruitment
Board

RESPONDENT

Date of Decision : 04-09-2020

Acts Referred:

Citation : (2020) 09 TEL CK 0001

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : J.R. Manohar Rao, K. Pallavi

Final Decision : Allowed

Judgement

1. The Telangana Residential Educational Institutions Recruitment Board (TREI-RB) issued Notification No.3 of 2018 calling for applications to make recruitment to various disciplines in Junior Lecturer cadre. Petitioner responded to the said notification by applying to the post of Junior Lecturer in Zoology. In Zone VI, there were six vacancies in Junior Lecturer (Zoology) discipline. Petitioner claiming to be local candidate of Zone VI. In the selections conducted by the 1st respondent-Board petitioner secured rank No.49 in Zone VI. Petitioner is claiming appointment against vacancy reserved for SC (Women) in Zone VI. According to petitioner Dodda Mamata-2nd respondent belongs to Zone V and she secured rank No.35 in Zone V, whereas she is selected and appointed to the post of Junior Lecturer in Zoology in Zone VI against SC (W) roster point. Challenging the selection and appointment of the 2nd respondent, this writ petition is filed.

2. Heard Sri J.R.Manohar Rao, learned counsel for the petitioner, learned Government Pleader for Education appearing for the first respondent and Smt K.Pallavi appearing for the 2nd respondent.

3. According to learned counsel Sri J.R.Manohar Rao, the post of Junior Lecturer is organized as Zonal cadre post in accordance with the A.P. Public Employment

(Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (for short 'the Presidential Order'). According to learned counsel, the post of Junior Lecturer has to be filled up in the ratio of 40:60 i.e., 40 % vacancies are thrown open to all based on the merit secured and irrespective of the local candidate status and 60% of the vacancies are exclusively to be filled up by the local candidates of particular zone. As per 40:60 ratio, only three posts of Junior Lecturer in Zoology were available for filling up in this manner in Zone VI. The 2nd respondent was the last candidate shown in the merit list in Zone VI, whereas in Zone V merit list, she secured 11th position in the over all merit. As she was not coming within the first three merit ranking positions in Zone VI, she cannot be appointed against unreserved vacancy in accordance with the Presidential Order and that vacancy has to be given to the local candidate of Zone VI. He would submit that though 2nd respondent also belongs to Scheduled Caste category, but the vacancy is required to be filled up by the local candidate of Zone VI only. Petitioner being the next meritorious candidate in Zone VI, she was entitled to be appointed. He would therefore, submit that appointment of 2nd respondent was wholly illegal and on account of illegal action of the 1st respondent, the right of petitioner to be appointed as per the merit secured by her is illegally denied.

4. Smt K.Pallavi learned counsel appearing for the 2nd respondent submitted that though the 2nd respondent belongs to Zone V; she was validly appointed against one of the vacancies reserved for Scheduled Caste (women) in Zone VI. She has contended that 2nd respondent secured more merit compared to petitioner and therefore, petitioner cannot complain against appointment of 2nd respondent. She would submit that out of 35 vacancies of Junior Lecturers in Zoology, 9 posts were reserved for Scheduled Caste open and Women in three residential societies. In Zone VI one was meant for Scheduled Caste (General) and six for Scheduled Caste (Women). As per the Presidential Order, ratio of 30:70 would apply between open to all and local candidates, and in the said manner the reservation principle was applied for locals and others. As per the Presidential Order, there was one unreserved vacancy meant to be filled up by SC (Women) candidate. She would submit that Para VIII of the recruitment notification deals with procedure of selection. As per sub-paragraph 4 of this paragraph, selection and appointment of candidates is based on the option exercised by the candidates. The first option of second respondent was Zone V and second option was Zone VI. As the 2nd respondent was the next meritorious SC (Women) candidate to be accommodated against one of the vacancies reserved for Scheduled Caste (Women) in Zone VI, as her second option was Zone VI, she was appointed to that vacancy. As this procedure is prescribed in the recruitment notification and when the same is not challenged, the petitioner is not entitled to challenge the selection of the second respondent. She placed reliance on merit list incorporated in Paragraph No.9 of the counter affidavit in the form of tabulated statement and the relative merit secured by various candidates appointed against Scheduled caste vacancies in Zones V and VI in

paragraph No.10. She submits that the 2nd respondent was selected against Scheduled Caste (Women) unreserved vacancy in Zone VI as per 30:70 ratio.

5. The learned Government Pleader supplementing the submissions made by learned counsel Smt K.Pallavi would submit that the 2nd respondent secured more merit than the petitioner and therefore, her appointment cannot be faulted. Petitioner has no manner of right to seek appointment over and above a more meritorious candidate. At any rate, petitioner cannot be appointed as she does not have appropriate merit and therefore, she has no locus standi to challenge the appointment of 2nd respondent.

6. The undisputed facts, to the extent relevant, are noted hereunder:

The first respondent resorted to make selections to the posts of Junior Lecturers in the Residential colleges. For this recruitment, the provisions of the Presidential order are applicable. As per the provisions of Presidential Order, three vacancies in the cadre of Junior Lecturers (Zoology) in Zone VI are meant to be filled up based on over all merit irrespective of the local status of the candidates. The 2nd respondent is local candidate of Zone V. She was not figuring within the top three list of meritorious candidates. Petitioner is local candidate of Zone VI. Petitioner secured rank No.49 in Zone VI and 2nd respondent secured rank No.35 in Zone V. The vacancy against which both of them are claiming employment is reserved to be filled up by SC (Women) candidate.

7. The only question requires consideration is whether, appointment of 2nd respondent against vacancy reserved for Scheduled Caste (Women) in Zone VI is valid?

8. The recruitment to Government service and service in the State Government undertakings/ societies/ corporations is governed by two kinds of reservation. Reservation for the social groups and reservation to the local candidates of a unit.

Reservation under the second category is across the board.

9. The Presidential Order created three tier hierarchical structure of posts to govern its provisions. Up to Junior Assistant, the posts are organized as District cadre posts. The Posts above Junior Assistant are organized as Zonal Cadre posts. Some of these posts are also organized as Multi Zonal Cadre Posts. At the top of hierarchy, the posts are organized as State Cadre posts. For the post organized at the District level, 80% are reserved for local candidates of the district. For the Zonal Cadre posts, 70% are reserved for local candidates. Some of these posts are also organized in the ratio of 60:40 i.e., 60 for the locals. For the posts of Junior Lecturers 60:40 ratio is applied. Four years of study up to 10th class or seven years of residence would determine the status of a person as belonging to a particular district or zone as the case may be. 20%/30%/40% posts, as the case may, are meant to be filled up based on over all merit secured in the selection process, irrespective of the local status of a candidate. The Presidential Order requires filling up the posts which are not reserved for local

candidates, first by drawing up over all merit and after filling up the vacancies in this manner, the vacancies reserved for local candidates should be filled up.

10. The Presidential order exclusively reserves 80% / 70% / 60% of vacancies as the case may be, in favour of local candidates of the unit of appointment. There can be local candidates over and above this percentage. Whereas, to fill up vacancies against 20% / 30% / 40%, as the case may be, without regard to local candidate status, outer limit is prescribed. In other words, in no circumstance appointment of persons against unreserved vacancies, as per the Presidential Order shall exceed the outer limit.

11. In the vacancies which are filled up for the unreserved category post, as per the Presidential Order, there can be local candidates appointed in the respective local cadres based on over all merit secured by them and in the final merit list the number of local candidates can be more than the percentage reserved for them. In other words, in any given recruitment, the recruiting authority has to ensure minimum representation of local candidates and in no circumstance representation of non locals can exceed the maximum prescribed limit.

12. Thus, the scheme of Presidential Order, envisages appointment of a candidate against unreserved vacancy irrespective of local candidate status but for the vacancies reserved for the local candidates, only a local candidate can be considered,. In other words, the recruiting authority/appointing authority is required to prepare two merit lists. First is the over all merit list, irrespective of the local status of the candidates, and adjust the meritorious candidates to the unreserved vacancies as per the Presidential Order. After this process is completed, he is required to draw another merit list only with the candidates answering the status of local candidates against vacancies ear marked to be filled up by local candidates of that particular cadre i.e., District/Zone.

13. In the post of Junior Lecturer (Zoology) in Zone VI, seven vacancies were notified, out of which, three were meant to be filled up based on over all merit. The first respondent admits that the 2nd respondent is the local candidate of Zone V and has not secured merit to be accommodated against three vacancies ear marked to be filled up based on the over all merit without regard to the local category status of the candidate. That being so, first respondent sought to justify appointment of second respondent in Zone VI in Paragraph Nos.10 and 11 of the counter affidavit filed by the 1st respondent. They read as under:

"Para 10 :The candidates at Sl.Nos.26, 28, 29, 30 and 31, who are SC (W) from Zone VI have been selected against the SC

23. local reserved posts in Zone VI with ranks 39 (Marks 114.50), 42 (Marks 111.00) in TSWREI Society, 45 (Marks 100.75) in TMREIS, 46 (Marks 97.00) & 47(Marks 94.00) in TTWREI Society respectively.

Para 11.The cut off marks of SC female candidate in Zone V was 124.75 with rank 27 and there was no vacancy available in Zone-V for the next below rank SC

Woman local candidate to get selection in Zone-V. Hence, the next available SC Woman candidate with Rank 35 and marks 121 who exercised her second option to Zone VI at the time of submission of her application on online was taken into account and she has been selected against the available SC (W) unreserved vacancy in Zone-VI under SC(W) Unreserved vacancy arose in TMREI Society."

14. Ms Pallavi, learned counsel for second respondent emphasized on two aspects to support the appointment of second respondent. Firstly, she secured more merit compared to petitioner, therefore she was appointed against one of the unreserved vacancies earmarked for SC (W) candidates in Zone VI; and Secondly, as per paragraph VII sub paragraph 4 of recruitment notification, based on merit a candidate is entitled to be considered as per the option exercised. As second respondent secured more merit compared to petitioner and exercised Zone VI as second option, she was validly appointed vacancy of SC category (Women) in Zone VI. against available

15. At page No. 36 of the counter affidavit of first respondent, final selection list is filed. At serial No. 24, name of second respondent is shown. Her appointment is reflected against Zone VI. In the next column it is shown as UR i.e, Unreserved and her local zone is shown as Zone V and she is stated to have been adjusted against roster point No.2 which is reserved for SC (Women).

16. At page 37, first respondent included the list of 9 candidates belonging to SC category and their rank in the final selection list. Out of the nine included in this list, two are shown as appointed in Zone V and seven in Zone VI. At page 39 final selection list of Zone VI is filed containing the names of candidates belonging to SC category. Second respondent is placed at serial no.2. Column number 11 deals with roster point. Against this column all persons except the first name are shown against roster point no.2, which is earmarked for SC (women).

17. Along with the writ petition, petitioner enclosed the recruitment notification no. 3 of 2018 as Ex.P-1. The break up of vacancies is shown at page 21. It shows as: OC General-2; OC Women-1; SC General-1; SC Women-1; BC-A-1; PH-VH-1. Total three are for open to all and four are reserved for women. Out of this four, three are meant to be filled up without regard to the local candidate status and based on over all merit. In annexure Ex-P3 at page 28, petitioner enclosed tabulated statements of merit list of Zone V and Zone VI. In this tabulated statement, second respondent is shown against serial no.23 in Zone VI. At page 23 of the writ petition paper book, he has filed list of candidates selected to respective zones. From this list, it is seen that in Zone VI, name of second respondent is shown at serial no.6 treating her as adjusted against roster point no.2 in Zone VI. It contains five names, first and second person secured merit numbers 2 and 4; fourth and fifth persons secured merit numbers 23 and 24 and all of them belong to Zone VI. This list does not disclose the final merit list of Zone VI arranged in the order of roster and local candidate and non-local candidate status. Paragraph 9 of the counter affidavit explains how the merit list was drawn for Zone VI.

18. According to first respondent, in the 35 vacancies of Junior Lecturer in Zoology notified, nine are reserved for Scheduled Caste. In Zone VI one was meant for SC General and six meant for SC (Women). Though, it is not explained how such reservation is made, it is stated that out of those seven, one of them is unreserved for SC (Women), meant to be filled up without reference to local candidate status, in accordance with Presidential Order. Table appended to this paragraph shows 32 names, the societies, allotted zones, local status, hall ticket number, rank secured and social status. In this list serial numbers 1, 2, 4, 6, 8, 9, 11 to 13, 16. to 18, 20, 25 to 31 are shown as allotted to Zone VI. From this list, it is seen that first four persons are the four rank holders who are allotted to Zone VI. First person is OC; Second person is SC; third person is BC-C; and fourth person is BC-B. Out of the total vacancies notified in Zone VI, three are meant to be filled up based on overall merit without regard to the local candidate status. Identification of persons who can be appointed in this manner shall be based on the over all merit secured. From the tabulated statement in paragraph-9 of the counter affidavit, it is apparent that the first three names shown are the most meritorious candidates allotted to Zone VI. Thus, they filled the three slots available for being filled based on the over all merit and in this manner the vacancies meant to be filled up without regard to the local candidate status stands exhausted. Admittedly, second respondent is not fitting into the higher merit slot and her overall rank is rank number 24.

19. In paragraph 10 of the counter affidavit justification shown is there was one unreserved SC vacancy in terms of Presidential Order and second respondent is adjusted against the said vacancy. To appreciate this contention, the recruitment notification is scanned through. Nowhere in the recruitment notification, it is shown that there is one vacancy which is unreserved meant to be filled up without regard to the local candidate status. At any rate, three vacancies meant to be filled up in this manner were already filled up and none of them were replaced. Strange reason is assigned in paragraph-11, which apparently is a post decisional justification made to support their decision by stating that the second respondent's second option is Zone VI.

20. Exercise of option to a particular zone is relevant only when candidate secures merit for inclusion in the merit list against unreserved vacancy in accordance with Presidential Order. For example, the top meritorious candidate though actually belongs to Zone VI but gives first option for appointment in Zone V that person is entitled to be appointed to unreserved vacancy of Zone V even though that person does not belong to Zone V. Vice versa can also happen. Once unreserved vacancy in accordance with Presidential Order is exhausted, the option exercised by other candidates has no relevance. The vacancies reserved to be filled up by local candidates of a particular zone have to be filled up only by persons belonging to that local unit.

21. Thus, admittedly, the second respondent was not fitting into first three ranks in the merit list to be adjusted against unreserved vacancies as per the

Presidential Order meant to be filled up in Zone VI in the cadre of Junior Lecturer (Zoology) and three top meritorious candidates were shown against those three vacancies. There was no other vacancy available to accommodate second respondent in Zone VI. Further, as second respondent did not secure top merit position to be adjusted against three vacancies meant to be filled up without regard to the local candidate status, giving second option for appointment in Zone VI has no relevance. Thus, either way, inclusion of second respondent against SC (Women) vacancy in Zone VI meant to be filled up by local candidate in Zone VI, by treating her second option as valid option and treating the vacancy as unreserved, without supporting material, is ex facie illegal. It is in clear violation of the Presidential Order. Petitioner is entitled to the relief of direction sought in the writ petition.

22. At this stage, learned counsel for respondent no.2 contended that there are unfilled vacancies and she can be continued in service even after accommodating the petitioner. No opinion can be expressed on this plea. As per the settled principle of law on recruitment and operation of merit list, it is clear that merit list has to be drawn to the extent of vacancies notified, keeping in mind principle of reservation as per social reservation and as per the Presidential Order. Once merit list is exhausted and all the candidates included in the merit list are appointed, the recruitment process comes to end. If a person on appointment does not join the post or joins, but relinquishes the post, they become resultant vacancies and required to be notified whenever next recruitment takes place. A next meritorious candidate can stake claim against notified vacancies, if no appointment order was issued/provisional selection and appointment is cancelled/ candidate appointed found to be ineligible to fill a particular slot (as in this case). It is for the 1st respondent to verify and take appropriate action.

- However, liberty is granted to 2nd respondent to file an application before the 1st respondent to consider her appointment as Junior Lecturer (Zoology) in any existing vacancy and it is for the 1st respondent to consider such request. It is made clear that the decision in this case is confined to validity of appointment of 2nd respondent against vacancy reserved for SC (Women) in Zone-VI though she is not a local candidate of Zone-VI.

- The Writ Petition is accordingly allowed. The selection and appointment of the 2nd respondent as Junior Lecturer in Zoology in Zone-VI is set aside. The 1st Respondent is directed to redraw the merit list for the post of Junior Lecturer [Zoology] in Zone-VI comprising local candidates of Zone-VI only, to the vacancies earmarked to be filled up by local candidates of Zone-VI and if the petitioner is found to be the next meritorious candidate, to appoint her against the said post. Pending miscellaneous petitions, if any, shall stand closed.