

(2013) 06 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4864 of 2011 and WVMP No. 3525 of 2012

The State of Andhra Pradesh

APPELLANT

Vs

Samiulla Shareff, M. Bhupathi Reddy and The Andhra Pradesh
Administrative Tribunal
 Samiulla Shareef and M.
Bhupathi Reddy Vs The Govt. of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 78, 99
Constitution of India, 1950 — Article 309

Citation : (2013) 6 ALD 241 : (2014) 1 ALT 165

Hon'ble Judges : R. Subhash Reddy, J;A.V. Sessa Sai, J

Bench : Division Bench

Advocate : C. Raja Sekhar Reddy for Respondent No. 1 and 2 and None
Appeared, for the Respondent

Final Decision : Allowed

Judgement

R. Subhash Reddy, J.—This writ petition is filed by the State of Andhra Pradesh represented by its Secretary, Education Department and three others, questioning the order dated 4th October 2010, passed by the A.P. Administrative Tribunal, Hyderabad, allowing O.A. No. 10647 of 2008 filed by respondents 1 and 2 herein. In the aforesaid O.A., respondents 1 and 2 herein have questioned the order dated 30.10.2008, passed by petitioner No. 4 herein, in Proceedings Rc. No. 9874/B4/(B7)/2004-2008, rejecting the claim of applicants for appointment to the post of Secondary Grade Teacher in Medak District.

2. Respondents 1 and 2/applicants, have applied for appointment to the post of Secondary Grade Teacher in response to the notification issued by the District Selection Committee, in the year 2001. Both of them have appeared for the written test and the 1st respondent herein has secured 62.80 marks and the 2nd respondent has secured 62.50 marks under "OC" category. The results were declared in 2002 and selections were made in the year 2003. In the said

notification, 265 posts of Secondary Grade Teacher were notified and filled. When a complaint was made against 16 candidates out of the 265 selected candidates alleging that the B.Ed., certificates produced by them were bogus, after conducting inquiry, the services of said 16 candidates were terminated by order dated 12.03.2004. Respondents 1 and 2 herein have earlier approached the Tribunal by filing O.A. No. 4154 of 2004, seeking directions to consider their case for appointment to the post of Secondary Grade Teacher in the 16 vacancies which arose on account of termination of services of the persons appointed earlier. The said O.A. was disposed of, directing the petitioners herein to consider the cases of applicants and pass appropriate orders. Against such orders, petitioners have earlier approached this Court by filing W.P. No. 20933 of 2005 and the same was dismissed. In view of the directions issued by the Tribunal to consider the candidature of respondents 1 and 2 herein, petitioners have considered their cases and passed a detailed order, rejecting their claim by recording a finding that the vacancies, which arose on account of termination of services of the appointed candidates, cannot be termed as left-over vacancies. In the said proceedings, reference is made to Rule 13(1) of the Rules framed under G.O.Ms. No. 72, Education (Services-VI) Department, dated 03.07.2000, and as per the said Rule, the number of candidates selected shall not be more than the vacancies notified. It is stated that in the absence of any provision for maintaining waiting list, as per the orders of the Government in Memo No. 20796/Ser.VI.03/2002, dated 02.06.2003, resultant vacancies are to be notified in the next DSC, and further, as subsequent selections were also made in DSC-2003 and DSC-2006, respondents 1 and 2/applicants are not entitled for appointment.

3. Against the said order dated 30.10.2008, passed in Proceedings Rc. No. 9874/B4/(B7)/2004-2008, by the District Educational Officer, Medak, the present O.A. is filed in O.A. No. 10647 of 2008. The Tribunal, by referring to the directions issued in earlier O.A. No. 4154 of 2004, held that there were positive directions to appoint respondents 1 and 2 herein in the vacant posts which arose on account of the termination of services of 16 candidates, and as the petitioners have filled up only 249 posts, the remaining vacancies cannot be termed as resultant vacancies. With the said observations, allowed the above O.A. by setting aside the impugned order therein, with a further direction to consider the case of the applicants for appointment.

4. Heard learned Government Pleader for Services-I, appearing for petitioners and Sri C. Rajasekhar Reddy, learned counsel appearing for respondents 1 and 2.

5. In this writ petition, it is contended by the learned Government Pleader appearing for petitioners that as all the vacancies notified in DSC-2001 were already filled up, the Tribunal, at this point of time, should not have issued any directions to consider the case of respondents 1 and 2 for appointment, more particularly, in view of the subsequent selections which were made by DSC-2003 and DSC-2006. It is the contention of the learned Government Pleader that the said recruitment of Teachers by the District Selection Committee are governed by

the Rules framed under G.O.Ms. No. 72, Education (Services-VI) Department, dated 03.07.2000, in which, there is a specific Rule to the effect that there shall not be any waiting list and selection shall be confined to the number of vacancies, and in that view of the matter, respondents 1 and 2 herein, only on the ground that they secured 62.80 and 62.50 marks, are not entitled for any direction for appointment. It is submitted that in the said selections, the last candidate selected was with 63 marks and as respondents 1 and 2/applicants have not come up for selection in the said selections having secured less than 63 marks, they cannot seek for appointment at this stage. In support of the above argument, the learned Government Pleader has placed reliance on the judgments of the Hon'ble Supreme Court in the case of Bihar State Electricity Board Vs. Suresh Prasad and Others, and in the case of Pradip Gogoi and Others Vs. State of Assam and Others,

6. On the other hand, it is submitted by Sri C. Rajasekhar Reddy, learned counsel appearing for respondents 1 and 2 that while filling up 265 vacancies, petitioners have considered the claim of 16 candidates who were not eligible as they were not possessing valid B.Ed. certificates, as such, it cannot be said that all the posts were filled up. It is submitted that as the last candidate selected in "OC" category was with 63 marks and as respondents 1 and 2 herein have secured 62.80 and 62.50 marks respectively, if the 16 vacancies which arose on account of termination of services of selected candidates are filled up, they will come up for selection. It is submitted that in any event, for no fault on their part, respondents 1 and 2 cannot be deprived of selection in view of the marks secured by them. It is further submitted that when directions were issued by the Tribunal in O.A. No. 4154 of 2004, the order passed in the said O.A. was questioned by the petitioners before this Court in W.P. No. 20933 of 2005, but the same was dismissed. It is submitted that in view of the said judgment and further judgment of a Division Bench of this Court in W.P. No. 21306 of 2006, dated 04.09.2006, respondents 1 and 2 being meritorious candidates as per the marks secured by them, are entitled for consideration for appointment in the vacancies that arose due to termination of services of 16 candidates who produced fake B.Ed. certificates from Magadha University.

7. Before dealing with the arguments advanced by the learned counsel for the parties, we deem it appropriate to refer to the Rules, governing the appointment of Secondary Grade Teachers in the State of Andhra Pradesh. The Government, in exercise of powers under proviso to Article 309 of the Constitution of India, and under Sections 78 and 99 of the Andhra Pradesh Education Act, 1982 and also under Rule making powers conferred under A.P. Panchayat Raj Act, 1994 and the A.P. Municipalities Act, 1965, have framed Rules titled as "The Andhra Pradesh Direct Recruitment of Teachers (Scheme of Selection) Rules, 2000. The relevant rules for the purpose of disposal of this writ petition are Rules 13 and 14, which read as under:

13. PREPARATION OF SELECTION LISTS:

- 1) The number of candidates selected shall not be more than the number of vacancies notified. There shall be no waiting list.
- 2) The selection lists shall be prepared separately for the different units of appointment.
- 3) The District Selection Committees concerned shall approve the selection lists prepared as per rules. The same list shall be displayed on the Notice boards at the O/o the District Collector and the O/o the District Educational Officer concerned.

14. COMMUNICATION OF SELECTION LISTS TO APPOINTING AUTHORITIES:

The selection lists prepared separately for the different units of appointment shall be communicated to the respective appointing authorities along with the application forms of the candidates by the Secretary, District Selection Committee.

8. In this case, it is to be noticed at the outset that so far as Medak District is concerned, 265 posts of Secondary Grade Teacher were notified during DSC-2001. Selections were made for the entire 265 posts and the last candidate selected in "OC category, has secured 63 marks. When a complaint was lodged stating that 16 persons out of the appointed candidates submitted bogus certificates of B.Ed., an inquiry was conducted, and when it was found that such certificates were bogus, the services of such 16 appointed candidates were terminated vide order dated 12.03.2004 and the appointment orders of such candidates were cancelled. It is the case of respondents 1 and 2 herein that in view of such termination order, there was valid appointment only to 249 posts, as such, as they have secured very near marks to the last selected candidate, they are entitled for consideration for appointment in the vacancies that arose due to termination of services of 16 candidates.

9. It is true that at first instance, in earlier round of litigation, directions were issued by the Tribunal to consider the case of respondents 1 and 2 herein, but as held by the Tribunal in the impugned order, there was no direction for their appointment. The direction was only to consider their case and pass appropriate orders. In view of such direction, it is always open for the petitioners herein to pass appropriate orders in accordance with rules. Having regard to the directions issued in O.A. No. 4154 of 2004, it cannot be said that there was positive direction for appointment, but the only direction issued by the Tribunal is to consider the claim of applicants for appointment. The judgment in O.A. No. 4154 of 2004 was based on a judgment of a learned Single Judge of this Court in the case of Dr. T. Rajeswari Vs. Vice-Chancellor-cum-Chairman, Sree Venkateswara University, Selection Committee, Tirupathi and others, . In the aforesaid case, when the status of the last selected candidate as Scheduled Tribe was not accepted, a direction was issued by a learned Single Judge of this Court to consider the case of the next candidate, who undisputedly belongs to Scheduled Tribe category. The said judgment was made basis for earlier directions of the

Tribunal to consider the candidature of respondents 1 and 2, which was confirmed by this Court, but as there was a direction only to consider their cases, it is always open for the petitioners herein to reject the request of respondents 1 and 2/applicants by a reasoned order. In the order dated 30.10.2008, issued in Proceedings Rc. No. 9874/B4(B7)/2004-2008, which is impugned in the O.A., in clear terms, it is stated that as per the rules framed in G.O.Ms. No. 72, Education (Services-VI) Department, dated 03.07.2000, the number of selected candidates shall not be more than the vacancies notified and there shall be no waiting list. It is also not in dispute that after selections were made pursuant to DSC-2001, further selections were made in DSC-2003 as well as DSC-2006. It is the specific case of the petitioners herein that there are no vacancies, as the vacancies which arose on account of the termination of 16 candidates, were filled up in the subsequent selections made in DSC-2003 and DSC-2006. In view of the specific reasons recorded in the order, the only question ought to have been considered by the Tribunal was, whether, in the absence of any rule for preparing waiting list, and in view of the specific rule under Rule 13(1) of the Rules which indicate that the number of candidates selected shall not be more than the vacancies notified, is there any legal right for respondents 1 and 2 to seek for appointment on account of termination of the services of selected candidates.

10. Coming to the judgment relied on by the learned Government Pleader in Bihar State Electricity Board Vs. Suresh Prasad and Others, , in the said judgment, the Hon"ble Supreme Court has held that even in case the candidates selected for appointment have not joined, in the absence of any Statutory rule to the contrary, the employer is not bound to offer the unfilled vacancies to the candidates next below the said candidates in the merit list. It is also held that in the absence of any provision, employer is not bound to prepare waiting list in addition to the panel of selected candidates and to appoint the candidates from the waiting list in case the candidates in the panel do not join. The said case fully supports the case of petitioners herein. Rule 13 of the Andhra Pradesh Direct Recruitment of Teachers (Scheme of Selection) Rules, 2000 makes it amply clear that the selection list shall be confined only to the number of vacancies notified and there shall not be any waiting list. In view of the specific provision in the rules and in the absence of any provision for preparation of waiting list, the candidates, merely on the ground that they secured marks very near to the last selected candidate, cannot seek for appointment in the vacancies which arose on account of termination of the services of 16 candidates in the year 2004. As much as in the selected list which was prepared for 265 candidates, the last candidate selected in "OC" category was with 63 marks, in the absence of any placement in the selected list and in the absence of any waiting list, only on the ground that the appointments of certain candidates were cancelled on the complaint made by a third party, respondents 1 and 2, cannot, as a matter of right, seek for consideration of their candidature for appointment.

11. Further, in Pradip Gogoi and Others Vs. State of Assam and Others, a direction to fill up the posts from the waiting list of the last recruitment was

disapproved. The said judgment also supports the case of petitioners herein. In this judgment, the Hon"ble Supreme Court has held that only on the ground that the vacancies are not filled up, candidates in the waiting list cannot seek for any direction to consider their candidature for appointment. Coming to the facts of the case on hand, it is to be noticed that there is a provision not to prepare the waiting list and the selection shall be confined only to the number of vacancies.

12. The learned counsel for respondents 1 and 2/applicants also brought to our notice, the judgment dated 04.09.2006, of a Division Bench of this Court in W.P. No. 21306 of 2006. It is a case relating to appointment of Telugu Pandits, wherein, the selection of a candidate who was selected as a local candidate, was cancelled subsequently when it was established in the inquiry that she was a non-local. In such circumstance, the directions issued by the Tribunal to consider the candidature of the next meritorious candidate, were approved by a Division Bench of this Court. However, it is to be noticed that the merit list, selected list and the list of appointees are different concepts altogether. The merit list is only the list of candidates prepared as per the merit, selected list is the list of candidates who came up for selection, and ultimately, based on such selected list, final list of candidates who are entitled for appointment, will be issued. In the absence of any waiting list, only basing on the merit list, no direction can be granted as prayed by respondents 1 and 2 herein, for their appointment. Further, in the case on hand, it is to be noticed that the vacancies arose only after passing of termination order on 12.03.2004, and there were also selections made subsequent to DSC-2001, by DSC-2003 and DSC-2006. In any event, in view of Rule 13 of the Andhra Pradesh Direct Recruitment of Teachers (Scheme of Selection) Rules, 2000 and the judgments of the Hon"ble Supreme Court relied on by the learned Government Pleader, it is implicit that unless there is a waiting list, no candidate can claim for appointment, as a matter of right, only on the ground that the appointment of a candidate is subsequently set aside for one reason or the other. In that view of the matter, we hold that respondents 1 and 2/applicants are not entitled to seek for any direction to consider their candidature for appointment in the vacancies which arose on account of termination of the services of 16 candidates. Accordingly, the writ petition is allowed and the order, dated 04.10.2010, passed by the Tribunal in O.A. No. 10647 of 2008, is set aside. No costs.

The miscellaneous applications, if any pending in this writ petition, shall stand closed.