
(2001) 07 AP CK 0086

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18786 of 1995

V. Venkata Subrahmanyam

APPELLANT

Vs

District and Sessions Judge, Nellore District and others

RESPONDENT

Date of Decision : 20-07-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 371
Evidence Act, 1872 — Section 106

Citation : (2001) 5 ALT 403

Hon'ble Judges : S.B. Sinha, C.J

Bench : Single Bench

Advocate : Mr. S.V. Muni Reddy, for the Appellant; Mrs. M. Bhaskara Lakshmi, Mr. O. Manohar Reddy, Mr. K. Muralidhar Reddy and Mr. Surender Rao, for the Respondent

Judgement

1. This matter has been referred to this Bench in view of the difference of opinion between two learned Judges of this Court - S.R Nayak, J. and S. Ananda Reddy, J., - as regards quashing or otherwise of the order dated 19-6-1995 of the 1st respondent appointing the respondent No.2 as Record Assistant and respondents 3 to 5 as Attenders,

2. The factual matrix of the matter is as under:

The petitioner has passed SSC in March, 1983 and also studied two years vocational course during the years 1983-85 and got his name registered with the Employment Exchange, Nellore, bearing Reg. No.5612/1983 on 6-7-1983. He is a resident of Nellore District and thus a local candidate within the meaning of Para 7 of Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (for short "the Recruitment Order").

3. The District and Sessions Judge, Nellore issued a notification on 16-2-1995 calling for applications from the eligible candidates for the posts of one Record

Assistant and five Attenders in the District Unit of Nellore Judicial Department. The petitioner being qualified and eligible for the same, applied for the said posts on 20-2-1995. He was interviewed along with others, but he was not selected and by the impugned proceedings dated 19-6-1995 while the 2nd respondent was appointed as Record Assistant, respondents 3 to 5 were appointed as Attenders. The petitioner challenged the said proceedings alleging that since respondents 2 to 5 are not local candidates within the meaning of the recruitment order, the impugned order is illegal and contrary to the recruitment order. It is also alleged that the 2nd respondent is a resident of Kumool and the employment registration number furnished by her does not relate to Nellore District. Similarly, respondents 3 to 5 also do not belong to Nellore District and thus they are not local candidates. The Employment registration numbers furnished by them do not substantiate that they are on the rolls of Employment Exchange, Nellore. The appointment of respondents 2 to 5 is contrary to the Circular of the High Court dated 23-12-1987. Respondents 2 to 5 have neither resided nor studied in Nellore District at any point of time.

4. In the counter-affidavit, the 1st respondent tried to justify the appointments of the respondents 3 to 5 stating that selection to the said posts need not be necessarily from local candidates only and a candidate possessing the requisite eligibility criteria can be appointed even though he is not a local candidate but is sponsored by Employment Exchange. It is further stated that the appointment of respondents 3 to 5 is based on their qualifications and performance in the interview, which is relatively superior and meritorious than the petitioner.

5. The High Court of Andhra Pradesh issued a Circular dated 25-6-1992 in Roc No.3475/91/C1 framing fresh norms and guidelines regulating the appointments to the post of Junior Assistant, Steno-typist, Typist, Examiners, Readers, Copyists, Amins, Drivers, Record Assistants and Attenders in the Subordinate Courts. As per the said circular, the appointing authority is the District Judge and the method of appointment shall be by direct recruitment from the candidates sponsored by the Employment Exchange and those who apply pursuant to the notification issued by the appointing authority.

6. It is not in dispute that the President of India in exercise of the powers conferred by clauses (1) and (2) of Article 371-D of the Constitution has issued by Recruitment Order, 1975. "Local Area" defined in Para 6 of the said order so far as it is relevant for the purpose of this case reads thus:

Local areas :--(1) Each district shall be regarded as a local area-

(i) for direct recruitment to posts in any local cadre under the State Government comprising all or any of the posts in any department in that district belonging to the category of Junior Assistants or to any other category equivalent to or lower than that of a Junior Assistant.

(ii) For direct recruitment to posts in any cadre under any local authority within that district, carrying a scale of pay the minimum of which does not exceed the

minimum of the scale of pay of a Junior Assistant or a fixed pay not exceeding that amount.

"Local candidate" as defined in Para 7 of the said order is to mean:

Local Candidate :--(1) A candidate for direct recruitment to any post shall be regarded as a local candidate in relation to a local area-

(a) in cases where a minimum educational qualification has been prescribed for recruitment to the post-

(i) if he has studied in an educational institution or educational institutions in such local area for a period of not less than four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination; or

(ii) where during the whole or any part of the four consecutive academic years ending with the academic year in which he appeared or as the case may be, first appeared for the relevant qualifying examination he has not studied in any educational institution, if he has resided in that local area for a period of not less than four years immediately preceding the date of commencement of the qualifying examination in which he appeared or as the case may be, first appeared.

(b) In cases where no minimum educational qualification has been prescribed for recruitment to the post, if he has resided in that local area for a period of not less than four years immediately preceding the date on which the post is notified for recruitment.

(2) A candidate for direct recruitment to any post who is not regarded as a local candidate under sub-paragraph (1) in relation to any local area, shall-

(a) In cases where a minimum educational qualification has been prescribed for recruitment to the post-

(i) if he has studied in educational institutions in the State for a period of not less than seven consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination, be regarded as local candidate in relation to-

(1) such local area where has studied for the maximum period out of the said period of seven years; or

(2) where the period of his study in two or more local areas are equal, such local areas where he has studied last in such equal periods;

(ii) if during the whole or any part of the seven consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination, he has not studied in the educational institutions in any local area, but has resided in the State during the whole of the said period of seven years, be regarded as a local candidate in

relation to:

(1) such local area where he has resided for a maximum period out of the said period of seven years; or

(2) where the periods of his residence in two or more local areas are equal, such local area where he has resided last in such equal periods;

(b) in cases where no minimum educational qualification has been prescribed for recruitment to the post, if he has resided in the State for a period of not less than seven years immediately preceding the date on which the post is notified for recruitment, be regarded as a local candidate in relation to-

(i) such local area where he has resided for the maximum period out of the said period of seven years; or

(ii) where the periods of his residence in two or more local areas are equal such local area where he has resided last in such equal periods.

Explanation :--For the purposes of this paragraph-

(i) "educational institution" means a University or any educational institution recognised by the State Government, a University or other competent authority;

(ii) "relevant qualifying examination" in relation to a post means-

(A) the examination, a pass in which is the minimum educational qualification prescribed for the post;

(B) the Matriculation examination or an examination declared by the State Government to be equivalent to the Matriculation examination; whichever is lower;

(iii) in reckoning the consecutive academic years during which a candidate has studied, any period of interruption of his study by reason of his failure to pass any examination shall be disregarded.

(iv) the question whether any candidate for direct recruitment to any post has resided in any local area shall be determined with reference to the places where the candidate actually resided and not with reference to the residence of his parents or other guardian.

7. G.O. Ms. No.729, General Administration (SPF-A) Department dated 1-11-1975 has been issued by the President of India, wherein it has been provided:

10.....In a rare case where no minimum educational qualification has been prescribed for direct recruitment to any post, a candidate shall be regarded as a local candidate in relation to local area if he has resided in that local area for a period of not less than four years immediately preceding the date on which the post was notified for recruitment.

Para 11 of the said order provides:

The extent of reservation prescribed in favour of local candidates for filling posts by direct recruitment is set out in Para 8 of the Order. The percentage of reservation varies depending upon the category of posts they being greater in the case of lower categories and smaller in the case of higher categories. The position in indicated below:

Category	Percentage of reservation	Remarks
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1(a)	Lower Division clerks or posts equivalent to or lower than Lower Division Clerk under the State Government	
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80%		
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The benefit of reservation will go to local candidates of the district or the City, as the case may be.

(b) Posts in any local authority carrying a scale of pay, the minimum of which or the fixed pay of which, does not exceed the minimum of the scale of pay of Lower Division Clerk.

8. It is not in dispute that in the matter of appointment to the category of Record Assistants/Attenders, the ratio of reservation that has to be followed between the local candidates and non-local candidates is 80:20. The learned Judges were ad idem to the effect that if the unofficial respondents are not-locals their appointment would be illegal being violative of the mandatory provisions issued by the President of India under Article 371-D of the Constitution of India.

9. While Sri S.R. Nayak, J held that the writ petitioner has failed to substantiate that the unofficial respondents are non-locals having regard to the standard of pleading necessary for obtaining a writ of mandamus in the light of the decision of the Apex Court in Bharat Singh and Others Vs. State of Haryana and Others, . Ananda Reddy, J., held that having regard to the facts and circumstances of the case and further having regard to the fact that neither the District Judge in his affidavit specifically denied and disputed the allegations made by the petitioner that the respondents 2 to 5 are not local candidates nor the unofficial respondents came forward to prove that they were local candidates, an adverse inference should be drawn against them.

10. The difference of opinion between the two learned Judges of this Court, therefore, lies in a very narrow compass. It is true, as has been observed by S.R. Nayak, J., that pleading and proof should be combined in a writ petition. But, it is equally true that the writ Court is not only a Court of Law but also a Court of equity. The Court while exercising its jurisdiction under Article 226 of the Constitution of India must bear in mind the salient principles governing the Rule of Equity as also burden of proof.

11. It is now trite that by reason of doctrine of non-traverse, allegations which are not denied, would be deemed to be admitted. It is further trite that the

burden of proof to prove a negative would be shifted to a person who had the requisite knowledge of the fact. Section 106 of the Indian Evidence Act stipulates that the burden of proof would be on the person who has special knowledge of relevant facts. It was, thus, for the unofficial respondents to show that they were local-candidates within the meaning of Para 7 of the Recruitment Order quoted above as they are in possession of their educational certificates or any other certificates relevant for the purpose of Para 7 of the Presidential Order and this, in my view, clinches the basic issue involved in the writ petition. Documents such as study certificates issued by the educational institutions where they have studied in the local area and certificates evidencing their educational qualifications etc., are the crucial documents relevant for the purpose of determining the "local" or "non-local" nature of a candidate as required under Para 7 of the Recruitment Order. Neither the 1st respondent nor the respondents 2 to 5 have filed such documents before the Court. When allegations are made challenging the very validity of the appointment of respondents 2 to 5 on the ground that they are non-locals, the burden lies on them to dispel the same and prove that they are locals within the meaning of Para 7 of the Recruitment Order. Further, they have not even furnished their permanent residential addresses in their applications and they had merely furnished their care of addresses in Nellore District, which are as under:

1. Smt. G. Varalakshmi, C/o Nirmala & Co., Nellore. 2. Sri K. Bhaskara Reddy, S/o. Rajagopala Reddy, C/o Sirajuddin, A.B.M. Compound, Nellore.

3. Sri T, Venkataramana, C/o. G. Madhusudhana Rao, Lakshmi Prasanna Floor Mills, Bogolu Bazar, Bitragunta, Nellore District.

4. Sri J. Dev Singh, C/o A. Raghava Reddy, Chevurivari Thota, Kavali, Nellore District.

12. No materials have been placed before the Court evidencing that they are residents of Nellore District and had studied in the said district and thus fulfilled the requisite conditions for being treated as local candidate under Para 7 of the Recruitment Order. In this view of the matter, the possibility that the unofficial respondents are not local candidates cannot be ruled out.

13. An appointment obtained illegally can neither be sustained nor such appointment can be encouraged by a Court of Law far less in a Judicial Department. The recruiting authorities particularly the District Judges are under a constitutional and moral obligation to see that strict adherence to the rules is made while making recruitment. In the instant case, it does not appear that the learned District Judge while making recruitment had at all applied his mind to these aspects of the matter nor has taken enough care to prepare two select lists, one for the local candidates and the other for non-local candidates.

14. Those who had obtained appointments by giving false addresses cannot be permitted to retain the fruits of illegal appointments. It is well settled principle of law that even Article 14 of the Constitution of India, which is a positive concept,

cannot be applied in a case of illegality. I am therefore, in agreement with the opinion rendered by S. Ananda Reddy, J., and, with great respect, disagree with the opinion rendered by S.R Nayak, J.

15. Therefore, the learned District Judge - 1st respondent is hereby directed to conduct an enquiry as regards the allegations made by the petitioner and record a finding whether the unofficial respondents 2 to 5 fulfill the criteria of local candidature in terms of Para 7 of the Presidential Order upon giving an opportunity of hearing to the parties to adduce evidence in that regard. In the event it is found that the unofficial respondents 2 to 5 are not local candidates, appropriate consequential orders may be issued.

16. The writ petition is disposed of with the aforementioned directions.