

SUPREME COURT OF INDIA

Munja Praveen

Vs.

State of Telangana

C.A.No.10583-10585 of 2017

(Madan B.Lokur and Deepak Gupta,JJ.,)

17.08.2017

JUDGMENT

Deepak Gupta,J.,

SLP(Civil)No.36057-36059 of 2016

1. Applications for impleadment are allowed.
2. Leave granted.
3. These appeals are directed against the judgment dated 29.08.2016 whereby the Division Bench of the High Court dismissed the writ appeals filed by the present appellants and upheld the judgment of the learned Single Judge allowing the writ petitions.
4. Briefly stated, the facts of the case are that various electric supply and generation companies in the State of Telangana viz., Telangana State Transmission Company Limited, TSTRANSCO, Telangana State Northern Power Distribution Company Limited (TSNPDC), Telangana State Southern Power Distribution Company Limited (TSSPDCL) and Telangana State Generation Company (TSGENCO), hereinafter referred to as the 'Corporation(s)', issued separate advertisements inviting applications for the posts of Assistant Engineer (Electrical) and Assistant Engineer (Civil). The applications were invited online. All but one of the advertisements provided that there will be no waiting list as per G.O.Ms. No. 81, General Administration (Ser. A) Department, dated 22.02.1997. Selection was to be based only on the basis of written examination. Thereafter, on the basis of merit drawn, community wise, the candidates were to be offered selection.
5. All the tests were conducted at about the same time and the result was that the more brilliant candidates found their names in the select list of more than one Corporation. Many candidates were selected in more than one Corporation being high up in the merit list. On 01.06.2016, clarification was issued by the Government of Telangana that the Corporations

were free to fill up the left over notified (advertised) vacancies by operating the merit list downwards for each category.

6. After this clarification was issued, the private respondents (original writ petitioners) filed two writ petitions. Their main challenge was that in terms of G.O.Ms. dated 22.02.1997, which was incorporated in the advertisement, there was to be no waiting list and, hence, there was no question of operating the merit list downwards. According to the original writ petitioners, all the posts lying vacant would have to be filled up in the subsequent selection process. The High Court held that since in the advertisement the G.O.Ms. No. 81 was specifically referred to and it was mentioned that there would be no waiting list, the Corporations could not be permitted to operate the merit list downwards and the vacancies, if any left, would have to be filled in the subsequent selection process. The Court also held that the letter dated 01.06.2016 relaxing the provision, is contrary to the earlier notification and, therefore, quashed the same. Consequently, the writ court allowed the writ petitions.

7. Aggrieved by the said judgment, writ appeals were filed by the candidates, who would have been selected if the merit list was permitted to be applied downwards. These writ appeals were dismissed and, hence, the present appeals.

8. We have heard learned senior counsel/learned counsel for the parties. At the outset, it may be noted that TSNPDCL had issued advertisement for filling up 164 vacancies, TSGENCO had issued advertisement for filling up 856 vacancies, TSSPDCL had issued advertisement for 201 vacancies and TSTRANSCO issued an advertisement to fill up 206 posts. The examinations were conducted by these Corporations on 08.11.2015, 14.11.2015, 22.11.2015 and 29.11.2015 respectively. The results were declared almost simultaneously in which many of the candidates got selected in more than one Corporation. This led to a situation where the candidate selected in more than one Corporation exercised his or her prerogative to produce certificates for verification of qualification, caste etc. before one Corporation. Since the applications had been invited online, the certificates had to be produced after the written test was conducted.

9. It appears that faced with a situation where many posts would have remained vacant, the Corporations asked for a clarification from the State Government, which resulted in the letter dated 01.06.2016.

10. Since the judgment of the High Court is based on G.O.Ms. No. 81 dated 22.02.1997, we may deal with the said G.O.Ms. in detail. In the said G.O.Ms., the practice of having a long waiting list has been deprecated. We have carefully gone through the G.O.Ms. concerned. This G.O.Ms. has been issued in certain peculiar circumstances. It appears that a common test was held for a number of services comprised in Group-I, which includes Deputy Collector, Deputy Superintendent of Police, Commercial Tax Officer, Regional Transport Officers, District Panchayat Officers, District Registrar etc. Obviously, people higher up in merit chose to occupy the more coveted posts of Deputy Collector, Deputy Superintendent of Police etc. A waiting list was also prepared. The waiting list started after the last selected candidate i.e. if the post of District Registrar was the least coveted post, the waiting list

would start after this post. If some candidates higher up in the merit list did not join one of the higher posts then the person next in the waiting list would be offered appointment. This led to an anomalous situation where a person having very high marks would get the post of Deputy Superintendent of Police but a person much below him in the merit list but at Serial No. 1 or 2 of the waiting list would be appointed to the post of Deputy Collector because some person had not joined the post of Deputy Collector and there was a vacancy in the said service. Those selected candidates who had joined on the less coveted services, say Assistant Account Officer, District Registrar etc. claimed that before offering the posts to those on the waiting list, they should be permitted to change their service. This led to a large number of cases being filed and it is in this context that the G.O.Ms. was issued. Reliance has been placed by the appellants on Paras 8 and 9 of the G.O.Ms., relevant portion of which reads as follows:

“8 According to these rules, in a recruitment year, against number of notified vacancies, selection shall be made only to the equal number of posts notified and there shall be no waiting list. In other words, in a recruitment year, after selection of the candidates and after issue of appointment orders, if the candidate fails to join duty within the stipulated period that vacancy shall be notified again in the next recruitment year, this alienates the system of preparing waiting list for fall out the vacancies

9. Therefore, the Government, after careful examination has agreed with the proposal of the Andhra Pradesh Public Service Commission and accordingly direct that hence forth the list of the candidates approved/selected by the Andhra Pradesh Public Service Commission shall be equal in the number of vacancies only including those for reserved communities categories notified by the unit officers. The fall out vacancies if any due to relinquishment and non joining etc. of selected candidates shall be notified the next recruitment.”

11. According to us, the High Court has totally misconstrued the above G.O.Ms. The portion of the G.O.Ms. quoted above clearly lays down that there shall be no waiting list and the selection shall be made equal to the number of posts notified. The purpose was that the vacancies arising due to people leaving the posts must be filled up by subsequent selection and not on the basis of a waiting list. It was clarified that after selection of the candidates and after issue of appointment orders, if the candidate fails to join within the stipulated period, that vacancy should be notified again. This portion of the G.O.Ms. admits of only one interpretation that after appointment order is issued and the person appointed does not join, then the vacancy cannot be filled up on the basis of the waiting list or by operating the merit list downwards. This is also clear from clause 9 of the G.O.Ms., which also clarifies that fall out vacancies due to relinquishment or non-joining of the selected candidates may be notified in the next recruitment. This obviously means that the clause will apply after issue of letter of appointment. There can be no relinquishment and non-joining unless an appointment letter is issued.

12. The position before us is totally different. As pointed out earlier, some of the candidates, who got selected in more than one of the Corporations, were called for verification of their certificates. No appointment order had been issued till this stage. In the meantime, the State issued a clarification, as set out in the letter dated 01.06.2016, relevant portion of which reads as under:

“ I am to invite attention to the above subject and reference cited and inform the Government after careful examination of the matter hereby relaxes the provision, as a special case under the circumstances, of calling for the candidate on basis for verification of certificates as contained in their notifications as one time option and permits the TRANSCO, TS SPDCL and TS NPDCL to fill up the left over notified (advertised) vacancies of Assistant Engineers of their respective utility duty operation the merit list downwards for each category by following other rules prescribed in their respective notification ”

13. We see nothing wrong in this letter. In fact, this is in consonance with the G.O.Ms. dated 22.02.1997. The State and the Corporations have supported the case of the appellants. Their stand is that a large number of posts are lying vacant and if fresh selection have to be made, the filling up of the posts shall be delayed. We may also note that the original writ petitioners are obviously below the appellants in the merit list. They cannot be selected in this selection even if the merit list is operated downwards. They cannot be permitted to urge that persons, who are more meritorious than them should not be selected and fresh selection should be made. When the entire G.O.Ms. of 1997 is read as a whole, it is amply clear that it will have application only after appointment orders are issued and the posts not filled up after issue of appointment letters shall be notified in the next recruitment.

14. Even otherwise also, we are of the view that this is the only logical way to interpret the G.O.Ms. The G.O.Ms. obviously has been issued, keeping in mind a single selection process. Here, we are dealing with a multiple selection process for different Corporations. The more brilliant candidates were selected in more than one of the Corporations. They obviously cannot join in more than one Corporation. Therefore, if the top four candidates have been selected in all four Corporations, they could only join one of the Corporations and twelve posts would remain vacant, if the interpretation given by the High Court is accepted. This would lead to a position where large number of vacancies would not be filled up.

15. On a conjoint reading of clause 8 and 9 of the G.O.Ms. dated 22.02.1997, we are clearly of the view that this was not the purpose of the G.O.Ms. According to us, the G.O.Ms. would come into operation only after appointment letters were issued and, therefore, if a person, who is at number one position, goes to one of the Corporations and is given the appointment letter, he may not go to other three Corporations for verification of the certificate. That does not mean that the first post in all the Corporations should now lie vacant.

16. We may also add that the High Court did not note an earlier Division Bench judgment of the Andhra Pradesh High Court in the case of *Government of A.P. & Others v. Ms. Bhagam*

*Dorasanamma & Another*¹ wherein the High Court had correctly interpreted the G.O.Ms. in the following manner:

“19. The process of recruitment starts from the date of notifying the vacancies and attains finality with the act of issuing appointment order, offering the post to the selected candidate. In the absence of reaching the said finality of issuing appointment order in respect of subject vacancy, the question of either relinquishment or non-filling of the same does not arise. The interpretation sought to be given by the authorities for denying appointment to the applicant/1st respondent herein is contrary to the very spirit and object of service jurisprudence and we find total lack of justification on the part of the petitioner authorities and such action undoubtedly tantamounts to transgression of Part III of the Constitution of India in the event of testing the same on the touchstone of Article 16 of the Constitution of India.”

17. Normally, the aforesaid judgment should have been followed, but no reference has been made to the same in the impugned judgments.

18. We are also of the view that the Government was justified in issuing the letter dated 01.06.2016 in the larger public interest.

19. In view of the above discussion, we allow the appeals, set aside the judgments of the Division Bench and learned Single Judge of the High Court and consequently dismiss the writ petitions. The Corporations may fill up the posts as directed in the letter dated 01.06.2016 and in the light of the interpretation of clause 8 and 9 of G.O.Ms. given by us. Pending application(s), if any, stand(s) disposed of.

Judgment Referred.

¹*W.P. No.24944 of 2013*