

IN THE HIGH COURT OF ANDHRA PRADESH: AT AMARAVATI

WRIT PETITION Nos.4884, 7065 AND 12290 OF 2020

W.P.No.4884 of 2020:

M. Naveen Babu, S/o. Nageswara Rao,
Aged: 35 Years, R/o. D.No.3-112/2,
Vidireswaram Post, Ravulapalem Mandal,
East Godavari District.

... Petitioner

Vs.

1. The State of Andhra Pradesh,
Rep. by Public Prosecutor,
Social Welfare Department,
Secretariat Building, Velagapudi,
Amaravai, Guntur District.
2. Andhra Pradesh Social Welfare Residential
Educational Institutions Society, Rep. by its
Secretary, Tadepalli, Guntur District.

... Respondents

W.P.No.7065 of 2020:

Joseph Kumar Akurathi, S/o. A. Rajaiah,
Aged: 41 Years, R/o.H.No.13-199, Kothapet,
Phiringipuram, Guntur District & 17 others

... Petitioners

Vs.

1. The State of Andhra Pradesh, Rep. by its Principal
Secretary, Social Welfare Department,
Secretariat Building, Velagapudi,
Amaravai, Guntur District.
2. Andhra Pradesh Social Welfare Residential
Educational Institutions Society, Rep. by its
Secretary, A.P. Amaravati.

... Respondents

W.P.No.12290 of 2020:

1. Nagarjuna K, S/o. Nagaraju K, Aged: 32 Years,
R/o. H.No.8-124, Eguvakuravanka, Madanapalle,
Madanapalle Mandal, Chittoor District.
2. R. Joel Kumar, S/o. R. Sanjeeva Raju, Aged: 40 Years,
R/o.H.No.40-449, Rockwood School Compound, N.R.Peta,
Kurnool, Kurnool District.

... Petitioners

Vs.

1. The State of Andhra Pradesh, Rep. by its Principal Secretary, Social Welfare Department, Secretariat, Velagapudi, Amaravai, Guntur District.
2. Andhra Pradesh Social Welfare Residential Educational Institutions Society, Rep. by its Secretary, A.P. Amaravati.

... Respondents

JUDGMENT PRONOUNCED ON : 05-01-2022

HON'BLE SRI JUSTICE B. KRISHNA MOHAN

- | | | |
|---|--|-----|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | --- |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes |

JUSTICE B. KRISHNA MOHAN

*** HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

+ WRIT PETITION Nos.4884, 7065 AND 12290 OF 2020

% 05-01-2022

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Educational Institutions Society, Rep. by its
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... Respondents

! Counsel for the Petitioner

in WP No.4884 of 2020	:	Sri M. Vijaya Kumar
in WP No.7065 of 2020	:	Smt. Kavita Gottipati
in WP No.12290 of 2020	:	Smt. Kavita Gottipati

! Counsel for Respondent No.1

in WP No.4884 of 2020	:	G.P. for Social Welfare
in WP No.7065 of 2020	:	G.P. for Social Welfare
in WP No.12290 of 2020	:	G.P. for Social Welfare

Counsel for Respondent No.2

in WP No.4884 of 2020	:	Sri L.V.S. Nagaraju
in WP No.7065 of 2020	:	Sri L.V.S. Nagaraju
in WP No.12290 of 2020	:	Sri G. Simhadri

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> Head Note:

? Cases referred:

1991 (3) SCC 47

HON'BLE SRI JUSTICE B.KRISHNA MOHAN**WRIT PETITION Nos.4884, 7065 AND 12290 OF 2020****COMMON ORDER :**

Heard the learned counsel for the petitioners and the learned Standing Counsel for the 2nd respondent.

2. These Writ Petitions are filed seeking a direction to the 2nd respondent to consider the cases of the petitioners for the posts of TGTs in Biological Sciences and other subjects notified in Zone-II under SC(G) category.

3. The learned counsel for the petitioner in W.P.No.4884 of 2020 submitted that the petitioner is a Post Graduate in Zoology with 70% marks having B.Ed., qualification with Biology and English as Methodology subjects and he belongs to SC Community coming under Zone-II area. While so, the 2nd respondent issued a Notification No.1 of 2019 dated 14.02.2019 to fill up the posts of District Coordinator, Principal Grade-II, Trained Graduate Teacher and Caretaker. Consequently the petitioner has applied for the post of Trained Graduate Teacher as he is fully qualified and eligible for the said post under the above said qualification. Annexure-A to the above said qualification shows that 14 vacancies in Zone-II for Biological Sciences, out of which 10 posts are reserved for women in that subject. Similarly, Annexure-B of the above said qualification shows the vacancy position basing upon the community-wise and subject-wise in the respective counts. According to it one vacancy is for SC(G) and one vacancy is for SC(W), three vacancies are for OC(G) and remaining are for the other categories. The petitioner would compete for the three vacancies under OC(G) and one vacancy of SC (G) category with the above said qualification by participating in the recruitment process

with Hall Ticket No.190007063. The written test is comprising of Paper-I in English and Paper-II in the relevant subject with a qualifying marks of 60% in the English subject. The written test was conducted on 28.03.2019 and the petitioner was qualified in English paper and he secured 65.87 in total i.e., written test 20% of TET score. Accordingly, he stood at rank 32 in Biological Sciences subject in all zones as per the common ranking list. But he is No.3 amongst the SC category in Zone-II.

The learned counsel for the petitioner further submits that the candidates who are in the Zone of consideration of selection were called for verification of certificates on 20.12.2019 and provisional merit list was published subsequently in the website. But the petitioner could not find his place as one candidate by name Mr. Suresh Jonnakuti got 66.4% of marks with rank number of 27 was shown to be selected under SC (G) vacancy. But at the time of issuance of appointment order on or about 16.02.2020 the petitioner noticed that the above said SC (G) vacancy was left unfilled and on verification the petitioner came to know that the above said person did not turn up for counselling and thereafter for receiving the appointment orders and posting orders. Though, the petitioner is available immediately next to him in the order of merit under the SC category, he was not considered to attend the counselling and compliance of other formalities for the above said vacancy.

4. The learned counsel for the petitioners in W.P.No.7065 of 2020 and W.P.No.12290 of 2020 submits that the details of the petitioners herein with regard to the seeking of appointments for the posts of TGTs in various subjects are shown as hereunder pursuant to the above said notification only under different categories and zones:

A.P.S.W.R.E.I. SOCIETY - RECRUITMENT - 2019, ANDHRA PRADESH

WP/7065/2020

A.P.S.W.R.E.I. SOCIETY - RECRUITMENT - 2019, ANDHRA PRADESH														
WP/7065/2020														
	NAME OF THE NEXT MERIT (SECOND MERIT)CANDIDATE								NAME OF THE FIRST MERIT CANDIDATE					
S.NO	POST	ZON E	SUBJECT	HALL TICKET NO	COMM UNITY	S.R.NO IN MERIT LIST	Secured Marks	NAME	NAME	HALL TICKET NO	Secured Marks	Serial NO. IN T.G.T MERIT LIST	COMMU NITY	REMARKS
1	T.G.T (Trained Graduate Teacher)	Z- III	ENGLISH	190006365	B.C-B	4631	64.13	Joseph Kumar Akurathi s/o A.Rajaiah	NASUM SRINIVASA RAO	190008255	71.6	4541	B.C-B	ATTENDED FOR ONLY CERTIFICATE VERIFIATION BUT NOT FOR COUNSELLING
2	T.G.T (Trained Graduate Teacher)	Z-III	SOCIAL STUDIES	190044186	S.C	6919	62.53	Dola Venkateswarlu s/o Ramanaiah	USUPETLA DASU	190038880	67.2	6880	S.C	ATTENDED FOR ONLY CERTIFICATE VERIFIATION BUT NOT FOR COUNSELLING
3	T.G.T (Trained Graduate Teacher)	Z-IV	TELUGU	190010207	O.C	275	60.13	K.Vanajamma d/o K.Nagi Reddy	1.MACHIREDDY KAVITHA , 2.G.YAMUNA RANI	1)190005163 2)190022950	64.80, 63.47	86, 137	O.C, O.C	ATTENDED FOR ONLY CERTIFICATE VERIFIATION BUT NOT FOR COUNSELLING .
4	T.G.T (Trained Graduate Teacher)	Z-IV	TELUGU	190036131	S.C	361	58.53	Kurakula Rama Laxmamma d/o Bojjanna	DARSHANAM KRISHNAVENI	190018400	66.27	51	S.C	ATTENDED FOR ONLY CERTIFICATE VERIFIATION BUT NOT FOR COUNSELLING .
5	T.G.T (Trained Graduate Teacher)	Z-III	ENGLISH	190039169	B.C-E-W	5391	48.93	Gousia Begum d/o SK. DastagirI	SK.MOBEENA BEGUM	190029079	49.2	5378	B.C-E-W	ABSENT FOR CERTIFIATE VERIFICATION ITSELF.
6	T.G.T (Trained Graduate Teacher)	Z-IV	MATHS	190037517	O.C	5833	64.4	Bhumaraju Nirmaladevi d/o Rangaswamy	VALLELA SUPRAJA	190041773	64.53	115	O.C	ATTENDED FOR ONLY CERTIFICATE VERIFIATION BUT NOT FOR COUNSELLING .
7	T.G.T (Trained Graduate Teacher)	Z-IV	TELUGU	190004921	S.C	414	57.73	Rajeswari Allugundu d/o Krishna A	M.REKHA	190011527	61.33	227	S.C	ATTENDED FOR ONLY CERTIFICATE VERIFIATION BUT NOT FOR COUNSELLING .
8	T.G.T (Trained Graduate Teacher)	Z-IV	TELUGU	190037761	B.C-B	38	66.8	Neeli Nagaraju s/o N.Prahalada	1.UPPALA NAGARATNAMM A	190006039	70.13	7	B.C-B	ATTENDED FOR ONLY CERTIFICATE VERIFIATION BUT NOT FOR COUNSELLING .

9	T.G.T (Trained Graduate Teacher)	Z-I	MATHS	190007852	B.C-D	5746	70.13	Goddu Manmadha Rao s/o Appayya	VARRE VANAJA	190000510	75.07	5726	B.C-D	ATTENDED FOR ONLY CERTIFICATE VERIFICATION BUT NOT FOR COUNSELLING
10	T.G.T (Trained Graduate Teacher)	Z-IV	PHYSICAL SCIENCE	190016953	O.C	6201	62.53	Kurukundu L. Deepika d/o Venkataramana	BADABAGNI REDDY SAI	190018176	69.2	6171	B.C -A	ATTENDED FOR ONLY CERTIFICATE VERIFICATION BUT NOT FOR COUNSELLING .
11	T.G.T (Trained Graduate Teacher)	Z-IV	TELUGU	190001589	O.C	270	60.27	Kesavareddy Swathi d/o Narayana Reddy	G.BHARATHI	190017978	65.6	66	O.C	NOT ATTENDED FOR CERTIFICATE VERIFICATION
12	T.G.T (Trained Graduate Teacher)	Z-IV	ENGLISH	190009646	B.C- B	4693	61.6	Nakkalolu Reddamma, d/o N. Reddappa	1.DUDEKULA SARADA, 2. KARRE ANURADHA	190017595, 190020129	64, 61.73	4637, 4685	B.C-B, B.C-B	ABSENT FOR CERTIFICATE VERIFICATION .
13	T.G.T (Trained Graduate Teacher)	Z-I	TELUGU	190038105	B.C-D	77	65.07	Karri Gouru , D/o K.Tirupati Naidu	SEETHAMAHALA KSHMI.D	190019841	70.53	5	B.C-B	SHE IS SELECTED FOR OPEN WOMAN (III ZONE) CATEGORY ATTENDED FOR ONLY CERTIFICATE VERIFICATION BUT NOT FOR COUNSELLING .
14	T.G.T (Trained Graduate Teacher)	Z-I	ENGLISH	190015099	B.C- D	4587	66.27	Someswara Rao Majji s/o AppalaNaidu	VENKATA RAMANA B	190008598	74.8	4536	BC-D	ATTENDED FOR ONLY CERTIFICATE VERIFICATION BUT NOT FOR COUNSELLING .
15	T.G.T (Trained Graduate Teacher)	Z-IV	TELUGU	190010104	BC-B	57	66.13	VADAKA VENKATESULU	HIMACHALAM CHAMANCHULA	190014882	67.33	31	BC-B	ATTENDED FOR ONLY CERTIFICATE VERIFICATION BUT NOT FOR COUNSELLING .
16	T.G.T (Trained Graduate Teacher)	ZONE 4	TELUGU	190040388	SC	99	64.27	OBILI VENKATAIAH	UPPALA NAGARATHNAM MA	190006039	70.13	7	BC-B	ATTENDED FOR ONLY CERTIFICATE VERIFICATION BUT NOT FOR COUNSELLING .
17	T.G.T (Trained Graduate Teacher)	ZONE 2	Maths	190016979	SC	6096	64.27	KAMALAKAR KATURI	SONGA CHIRANJEEVI	190036243	60.13	5900	SC	ATTENDED FOR ONLY CERTIFICATE VERIFICATION BUT NOT FOR COUNSELLING .
18	T.G.T (Trained Graduate Teacher)	ZONE 2	Maths	190047071	OC	5803	66.40	GOPALA KRISHNA CHALLA	Kadali venkata ramesh	190003610	66.53	5798	BC-B	ATTENDED FOR ONLY CERTIFICATE VERIFICATION BUT NOT FOR COUNSELLING .

A.P.S.W.R.E.I. SOCIETY - RECRUITMENT - 2019, ANDHRA PRADESH														
WP/12290/2020														
NAME OF THE NEXT MERIT (SECOND MERIT)CANDIDATE														
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S.NO	POST	ZON E	SUBJECT	HALL TICKET NO	COMM UNITY	S.R.NO IN MERIT LIST	Secured Marks	NAME	NAME	HALL TICKET NO	Secured Marks	Serial NO. IN T.G.T MERIT LIST	COMM UNITY	REMARKS
1	T.G.T (Trained Graduate Teacher)	Z-IV	TELUGU	190008579	B.C-C	440	57.33	R.JOEL KUMAR	DARA RAJASHEKAR	190032874	57.87	396	B.C-C	ATTENDED FOR CERTIFICATE VERIFICATION ONLY.
2	T.G.T (Trained Graduate Teacher)	Z-IV	ENGLISH	190000141	B.C-A	4574	67.2	K.NAGARJUNA S/O NAGARAJU	THALARI RAMACHANDRA	190021769	70.13	4551	B.C-A	ATTENDED FOR ONLY CERTIFICATE VERIFICATION BUT NOT FOR COUNSELLING .

5. On the other hand, the learned counsel for the 2nd respondent submitted that the above said notification No.1 of 2019 dated 14.02.2019 prescribes the requisite qualifications for the post of TGT as follows:

1. *A 1st Class Post Graduate degree in the subjects shown at Annexure-C from any University recognized by UGC with not less than 60% marks in the relevant subject.
(In case of SC, ST, BC Candidates not less than 55% marks in Post Graduation)*
2. *A B.Ed., degree or equivalent qualification from UGC.NCTR recognized University with relevant subject as one of the methods of teaching.*
3. *Must have passed TET Paper II conducted by State Government.*

As per the Annexure - A of the Notification, 14 vacancies in Biological Sciences in Zone-II are notified and (10) posts are notified reserved for women in that subject. Out of the said 14 vacancies, 6 are reserved for OC, 1 for BC-C, 1 for BC-A, 1 for BC-BW, 1 for OV-VH-W, 1 for ST-W, 2 for SC, 1 for OC - Ex-servicemen. He further admits that the petitioner in W.P.No.4884 of 2020 appeared in the written test in TGT recruitment with Hall Ticket No.190007063 and secured 65.87 marks. Similarly he did not dispute with regard to the details mentioned by the other writ petitioners in the above said table.

The learned counsel for the 2nd respondent relies upon the *ad hoc* rule issued by the Government of Andhra Pradesh vide G.O.Ms.No.544 dated 04.12.1998 which says that fallout vacancies if any due to relinquishment and non-joining etc., of selected candidates shall be notified in the next recruitment. In view of the same, it is not possible

for consideration of the cases of the petitioners for the posts of TGTs, under the above said notification treating them as next meritorious/ waitlisted candidates for the “fallout vacancies”.

6. In reply, the learned counsel for the petitioner relies upon the decision of the Hon’ble Supreme Court of India reported in *Shankarasan Dash v. Union of India*¹ wherein it was held at para 7 that:

*“It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha and Others*, MANU/SC/0400/1973: (1973) IILLJ266SC; *Miss Neelima Shangla v. State of Haryana and others*. MANU/SC/0472/1986 : [1986]3SCR785 and *Jitendra Kumar and Others v. State of Punjab and Others*, [1985] 1 SCR 899.”*

¹1991 (3) SCC 47

He also relies upon the Judgment of the Division Bench of the erstwhile High Court of Andhra Pradesh in W.P.No.1320 of 2016 dated 15.03.2017 wherein it was held at paras 15, 16 and 17 that:

15. As seen from the record, with regard to the status of the candidate at serial No.94 and Roster Point No.94-Sk.Rahmath Pasha, he did not attend for the verification of certificates, his vacancy is not filled up, the same is clearly mentioned by the respondents in the counter affidavit in paragraph No.18 and the same is abstracted as hereunder:

“I respectfully submit that that no posts in the category of BC-E left unfilled, all the three (3) candidates have already been appointed to the post of JPA in their respective slots and all of them have joined at KTPP, Warangal. Sri Sk.Rahmath Pasha (RP.No.94) is not reported yet.”

16. The candidates relating to BC-E category, whose school certificates said to have been found forged, on subsequent development and on final verification of the records were given approval for appointment and they have joined duty and working at KTPP. The learned Single Judge also while dealing with the issue, determined that all vacancies are filled up, failed to notice the averment mentioned in paragraph No.18 of the counter affidavit filed on behalf of the respondents, as indicate in the above paragraph No.15. In view of the same, it can be safely concluded that the appointment order relating to BC-E category vacancy, shown in the provisional selection list at serial No.94 and Roster Point No.94, has not been issued and no candidate joined in that vacancy. The impugned G.O. has no application and this vacancy cannot be notified in next recruitment notification.

Under these circumstances, a mandamus can be issued to fill up that vacancy by a suitable candidate next in the merit list.

17. In the result, the Writ Appeal is allowed, setting aside the impugned order dated 10.08.2016 passed in W.P. No.27836 of 2014, consequently, directing the respondents to fill up the vacancy, relating to BC-E category, shown at serial No.94 and Roster Point No.94 in the provisional selection list, with a suitable candidate next in the merit list, within a period of two months from the date of receipt of a copy of the order, and on such appointment, his seniority shall be reckoned on par with the candidates appointed pursuant to the impugned notifications.

7. In reply, the learned counsel for the petitioners in W.P.No.7065 of 2020 and W.P.No.12290 of 2020 also submitted that the procedure followed by the respondents in respect of the selections of TGTs is discriminatory from that of procedure followed in respect of selections of care takers under the very same notification.

8. In the backdrop of the above said rival contentions and submissions it is to be seen that the petitioner in W.P.No.4884 of 2020 became eligible and qualified for the above said post by securing 65.87 marks with Hall Ticket No.190007063 for consideration on merit in the SC(G) category standing next to one Mr. Suresh Jonnakuti who got higher marks of 66.4, as the latter did not turn up for counselling held on 6th and 7th February, 2020 he expected to be called for the said counselling by the 2nd respondent herein to comply with the other formalities, but in utter surprise the said vacancy was not filled up by closing the selection process

under the guise of G.O.Ms.No.544 dated 04.12.1998 which is reproduced as hereunder:

“Notwithstanding anything contained in the Andhra Pradesh State and Sub-ordinate Service Rules/Special Rules or Adhoc Rules governing maintenance and operation of waiting list for all the Direct Recruitments for the posts under the State and Subordinate Services and Last Grade Services that are being taken up by various recruiting agencies and also through Employment Exchange, the maintenance and operation of waiting list for all the recruitments shall be dispensed with and the list of candidates approved/selected in any recruitment by any recruiting agency in the State in any Department for such posts shall be equal to the number of vacancies notified for that recruitment only including those meant for reserved community/category notified by the Unit Officers. The fallout vacancies, if any, due to relinquishment and non-joining etc., of selected candidates shall be notified in the next recruitment”.

The stand of the 2nd respondent is similar even in the cases of the other petitioner in the above said two writ petitions in not calling them for counselling though they stand as next meritorious candidates due to non attendance of the above meritorious candidates for counselling by closing the selection process.

9. In the considered view of this Court, the cases of the petitioners cannot be treated as “wait listed candidates” and the available vacancies due to non attendance of some of the provisional selection list candidates for counselling as “fallout vacancies” in order to apply the above said G.O. In these cases the candidates above them who stood in the merit list

were neither an approved nor selected candidates as they were not given offers of appointments at any stage admittedly as they did not turn up for the “counselling” itself as provisional select list candidates and the authorities abruptly stopped the selection process to the said posts without calling the next meritorious (like the petitioners) candidates immediately available in line for the said counselling for the respective posts in order to complete the selection process. Insofar as the said posts are concerned which are not filled up due to the non attendance of provisionally selected candidates for counselling and compliance of other formalities to receive the offer of appointments as T.G.Ts it amounts to undertaking of an “incomplete selection process” by the authorities concerned and the said available vacancies do not become part of “fallout vacancies” due to relinquishment and non-joining etc., of the selected candidates for the purpose of applying the above said G.O. dated 04.12.1998. The candidates who stood above the petitioners in the merit list for the respective posts when not turned up for “counselling” cannot be treated as selected/approved candidates to treat those vacancies as fallout vacancies. To treat the selection process complete there shall be a “provisional merit list”, attendance of candidates from the said “provisional merit list” to the counselling and compliance of other formalities to receive offers of appointment orders becoming themselves as approved/selected candidates for the respective posts/vacancies. After such exercise only, if the vacancies still exist due to relinquishment and non-joining etc., they can be treated as “fallout vacancies” as per the above said G.O. dated 04.12.1998.

10. In the result, the 2nd respondent is directed to consider the cases of the petitioners for issuance of appointment orders for the posts of T.G.Ts. if they are found to be next meritorious candidates in their respective categories by placing them in the provisional selection list and call them for counselling and compliance of other formalities and issue the offer of “appointment orders” for the said posts if they become approved/selected candidates in the “vacancies available” due to non-attendance of the above meritorious candidates to the petitioners for the above said/previous counselling without reference to the G.O.Ms.No.544 dated 04.12.1999 in order to fill up all the notified vacancies of T.E.T. posts under Notification No. 01 of 2019 dated 14.02.2019 with the approved/selected candidates.

11. Accordingly, the Writ Petitions are disposed of. No costs.

As a sequel, miscellaneous petitions, if any pending in these cases, shall stand closed.

JUSTICE B. KRISHNA MOHAN

Dt.05-01-2022

Note : L.R. Copy to be marked.

B/o

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