



**HIGH COURT OF ANDHRA PRADESH**  
**TUESDAY ,THE ELEVENTH DAY OF JULY**  
**TWO THOUSAND AND TWENTY THREE**

**PRESENT**

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**  
**THE HONOURABLE DR JUSTICE K MANMADHA RAO**  
**WRIT PETITION NO: 4965 OF 2021**

**Between:**

1. The State of Andhra Pradesh rep by its Principal Secretary to Government,  
Dept. of School Education , 1St Floor, 4th Building Secretariat Buildings,  
Velgapudi, Guntur Dist..
2. The District Selection Committee rep. by its District Educational Officer,  
East Godavari District, Kakinada..
3. The District Collector East Godavari District at Kakinada

**...PETITIONER(S)**

**AND:**

1. SMT REHANA SULTANA W/o. Mohd. Muktar Ali,  
Aged about.41 years, R/o. H.No.6-15-8, Raja Street,  
Occ. Un-employee, Peddapuram, E.G., Dist.-533 437.
4. The Tahsildar Near Balaji Cheruvu, Kakinada Mandal, Kakinada, East  
Godavari Dist.
5. Sheik.Dadaji S/o. Subhan Saheb, aged about 38 years,  
Occ. Govt. School Teacher, Z.P. High School, Thondangi  
533 408, Tuni Mandal, East Godavari District.  
R/o. H.No.2-17, Chendredu, Rangampeta Mandal, E.G.Dist. Respondents

**...RESPONDENTS**

**Counsel for the Petitioner(s): GP FOR SERVICES III (AP)**

**Counsel for the Respondents: S ASHOK ANAND KUMAR**

**The Court made the following: ORDER**



**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**  
**AND**  
**THE HON'BLE DR. JUSTICE K. MANMADHA RAO**

**W.P. No. 4965 of 2021**

**JUDGMENT:-** (Per Hon'ble Sri Justice Ravi Nath Tilhari)

- 1) Heard Sri. K. Srinivas, learned Assistant Government Pleader for Services III, for the Petitioners.
- 2) There is no representation for the Respondent Nos. 1 and 3.
- 3) On 04.07.2023, this Court passed the following order:

*"There is no representation for the Respondents on the previous dates also.*

*The Respondents have also not filed the counter affidavit.*

*Post on 11.07.2023 finally.*

*If there is no representation for the Respondents on the next date also, the Court may proceed even exparte."*

- 4) We proceeded to hear the Petitioners' Counsel.
- 5) This Writ Petition under Article 226 of the Constitution of India has been filed, *inter alia*, to set



aside/quash the judgment and order, dated 28.01.2019, in O.A. No. 613 of 2017, filed by the present 1st Respondent.

6) The present 1<sup>st</sup> Respondent is the Claimant/Applicant. The Petitioners are the Respondent Nos. 1, 2 and 3 and the present Respondent Nos.2 and 3 are the Respondent Nos. 4 and 5 respectively in O.A. No.613 of 2017.

7) The Petitioners issued Notification No. 1863/RC-3/2011, dated 30.01.2012, (DSC-2012) inviting applications for various posts of School Assistants, Secondary Grade Teachers, Physical Education Teachers [PETs] and Language Pandits. For East Godavari, 72 posts of School Assistants (Biological Science) were notified in plain area, out of which, one post was earmarked for BC-E (General) category and BC-E (Women) category.

8) Smt. Shaik Fatimunnisa Begum was selected under BC-E (Women) category and the present Respondent No. 3 Sri. Sk. Dadaji, was selected and appointed under BC-E (General) category.



9) The Applicant/1<sup>st</sup> Respondent, submitted a representation that the present Respondent No. 3 obtained false community certificate of “Shaik Muslim Community” falling under BC-E category upon which the enquiry was initiated and his caste certificate was cancelled by the District Collector. Consequent thereupon, the appointment order was also cancelled. The 3<sup>rd</sup> Respondent filed O.A. No.2514 of 2013, which was allowed, setting aside the ‘cancellation of appointment’, on the ground that the cancellation of the caste certificate was not in accordance with law. Again, the order of termination was passed based on the cancellation of the caste certificate. The Respondent No. 3 filed O.A. 7605 of 2013, which was allowed setting aside the order of termination as the proceedings were not in accordance with law. The District Collector, finally cancelled the caste certificate vide proceedings, dated 13.06.2016, and consequential orders were issued by the District Selection Committee on 02.07.2016 terminating the services of the Respondent No. 3.



10) The Applicant/1<sup>st</sup> Respondent then filed O.A. No.3767 of 2016 seeking a direction to the Respondents to consider her case in the vacancy of BC-E (General) category due to termination of the services of Respondent No.3.

11) The O.A. No. 3767 of 2016 was disposed of by Order, dated 22.09.2016, granting liberty to the Applicant/1<sup>st</sup> Respondent to make a representation, seeking selection as “School Assistant (Biological Science)” in pursuance of DSC-2012, with a direction to the Respondents therein to consider such representation and pass appropriate orders.

12) The representation of the 1<sup>st</sup> Respondent was rejected on 27.10.2016. The Claimant/Respondent No. 1, filed O.A. No. 613 of 2017, which was allowed by Order, dated 28.01.2019, impugned in the present writ petition.

13) Learned Government Pleader submits that, one post reserved for BC-E (W) was already filled up with better rank candidate and there was no post left to consider the Applicant/1<sup>st</sup> Respondent under the category of BC-E(W).



He submits that, under Rule 16(5) of the A.P. Direct Recruitment for the Posts of Teachers (Scheme of Selection) Rules, 2012, [**Rules 2012**] the number of candidates selected shall not be more than the number of vacancies notified and even if any post remains unfilled, for any reason whatsoever, that is to be carried forward for the future recruitment.

14) Learned Government Pleader further submits that, the Respondent No. 3 was appointed on the post under BC-E (General) category and in view of cancellation of the caste certificate, his services were terminated on 24.10.2013. As such the vacancy which arose, was a fresh vacancy, against which the Tribunal could not direct to consider 1<sup>st</sup> Respondent holding that the selections were not completed.

15) Learned Government Pleader further submits that once the Tribunal set-aside the Order, dated 27.10.2016, on the ground that it suffered from non-application of mind and vice of arbitrariness and directed the Respondents to consider the Respondent No. 1 herein to the post of School Assistant (Biological Science) in the vacancy under BC-E



(G) category, as per her merit, within a specified time, at the same time, the Tribunal had no jurisdiction to issue further directions to hold the applicant entitled for the appointment on the post on notional basis from the date of cancellation of the appointment of Respondent No. 3 and to grant seniority and notional benefits etc., as allowed in the impugned order.

16) Learned Government Pleader further submits that, on consideration of the case of the Respondent No. 1, an Order, dated 14.03.2019, was passed; thereby her case was rejected, finding that the request of the Respondent No. 1 for appointment on the post of School Assistant, was not feasible. He submits that, the 1<sup>st</sup> Respondent has not challenged the Order, dated 14.03.2019.

17) We have considered the submissions advanced by the learned Government Pleader and perused the material on record.

18) The Tribunal has taken the view that the selection of the Respondent No. 3 against the vacancy meant for BC-E



(General) was found to be invalid as he was selected based on an invalid caste certificate of BC-E, which was later on cancelled. The Tribunal took the view that, it is to be treated as 'no selection' in respect of that vacancy and next meritorious candidate in that category had to be considered and till then, it was to be treated that the selections were not completed.

19) The selection was made in the year 2012. The appointment of the Respondent No. 3 was made on BC-E (General) on 27.12.2012, on which post he also joined. His services were terminated on 24.10.2013, but again under the order of the Tribunal in O.A. No. 2514 of 2013, he was given appointment. Thereafter, due to cancellation of his caste certificate on 13.06.2016, his services were again terminated on 02.07.2016. The vacancy thus arising due to termination of the services of the selected candidate, would in our view be a fresh vacancy, against which the order for consideration of the 1<sup>st</sup> Respondent pursuant to DSC-2012 recruitment could not be given and particularly when as per Rule 16(5) of the Rules 2012, number of the candidates





selected shall not be more than the number of vacancies notified and there shall be no waiting list.

20) Rule 16 of the Rules 2012 is reproduced as under:-

**“16. PREPARATION OF SELECTION LISTS:**

*(1) The rule of reservation to local candidates is applicable and the provisions of Andhra Pradesh Public Employment (OLC&RDR) Order (Presidential Order) 1975 and amendments thereto shall be followed strictly.*

*(2) The rule of special representation in the matter of appointment of candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, Physically Challenged, Ex-service Men and women is applicable as per the Andhra Pradesh State and Subordinate Service Rules 1996 as amended from time to time.*

*(3) The rules issued from time to time by the Department of Disabled Welfare shall be followed in respect of special representation for differently abled (physically challenged) persons.*

*(4) Local Schedule Tribe candidates shall only be considered for selection and appointment against the vacancies in Schedule Areas. They shall also be considered for selection to the posts notified in Plain area if they come up for selection.*



*(5) The number of candidates selected shall not be more than the number of vacancies notified. There shall be no waiting list and posts if any unfilled for any reason whatsoever shall be carried forward for future recruitment.*

*(6) After due verification of the originals of all relevant certificates, selection of the candidates for the posts of Government/Local Bodies/Tribal Welfare Department shall be made together as per the roster of each unit of appointment and selected candidates shall exercise their option as per roster cum merit and the District Educational Officer, shall allot the candidates to the respective unit accordingly.*

*(7) The District Selection Committee concerned shall approve the selection lists prepared as per Rules. The same list shall be displayed on the Notice boards at O/o District Collector, O/o District Educational Officer and on the internet for the information of candidates.”*

21) The vacancy caused due to the termination of the services of the Respondent No. 3, would be a fresh vacancy. The Tribunal legally erred in holding that the vacancy on the post of BC-E (General) was not filled as it cannot be said that the selection had been completed in view of cancellation of the caste certificate of Respondent No. 3, though his services were terminated almost after more than 3 ½ years.



22) In **Andhra Pradesh Public Service Commission Vs. Kota Lingeswara Rao and others**<sup>1</sup>, where also Rule 6 of the A.P. Public Service Commission Rules, provided that the list of the candidates approved/selected by the Commission shall be equal to the number of vacancies and the fallout vacancies, if any, due to relinquishment and non-joining etc. of selected candidates shall be notified in the next recruitment, it was held that the Commission did not have the power to invite the next selected candidate, if the last selected candidate did not opt to join the post and the Commission must publish the vacant post in the next recruitment only. It was further held that in view of the specific mandate of the amended Rule 6 of the APPSC Rules, the High Court was not justified in granting relief in favour of Respondent No. 1 therein who had no right to claim selection as per the APPSC Rules.

23) It is apt to refer paras 6 to 9 of **Kota Lingeswara Rao** (supra) as under:

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<sup>1</sup> (2020) 18 SCC 413



*“6. The unamended Rule 6 of the APPSC Rules stated that the ranking list prepared by the Commission for selection in a direct recruitment would remain in force for a period of one year from the date of publication of the selection list, or till the publication of the new selection list, whichever was earlier. It further provided that it would be open for the Commission to select the candidates from the ranking list in place of those who relinquished the selection or who did not join duty within the time given. Thus, the ranking list would in effect function as a waiting list for one year (maximum). After the amendment of Rule 6, such waiting period has been given a go by. The amended Rule 6 of the APPSC Rules specifies that the list of the candidates approved/selected by the Commission shall be equal to the number of vacancies. It further specifies that the fallout vacancies, if any, due to relinquishment and non- joining etc. of selected candidates shall be notified in the next recruitment, clearly indicating that the process of issuance of waiting list has been discontinued.*

*7. Rule 7 of the APPSC Rules further makes it clear that in case a candidate relinquishes his claim for appointment in writing, the Commission shall remove the name of such candidate from the selection list and select any other candidate according to the Rules. Thus, it is clarified in Rule 7 that selection must be as per the existing Rules.*

*8. In the matter on hand, Respondent No. 1, as mentioned supra, approached the A.P. Administrative Tribunal for appointment four years after the date of relinquishment of the post by Mr. G.V. Ramakrishna Sagar. Firstly, he has to be non-suited due to delay and laches. Secondly, even*



*on merits, we do not find any ground to show leniency in favour of Respondent No.1 inasmuch as the selection, if made in favour of Respondent No. 1, would go against the Rules.*

*9. As discussed above, after the amendment of Rule 6, the system of a waiting list remaining in force for a period of one year has been done away with. The Rule also makes it clear that the fallout vacancies, if any, due to relinquishment and non-joining etc. of the selected candidates shall be notified in the next recruitment. Hence, the Commission does not have the power to invite the next selected candidate if the last selected candidate does not opt to join the post, and must publish the vacant post in the next recruitment only. In view of the same, Respondent No. 1 being a non-selected candidate, cannot urge the Commission to select him based on the unamended Rule 6 of the APPSC Rules. He is bound by the amended Rule 6 of the APPSC Rules, inasmuch as Rule 6 was amended on 22.02.1997.”*

24) In the present case also in view of Rule 16(5) of the Rules, the 1<sup>st</sup> respondent has no right to claim the selection after the cancellation of the appointment of the 3<sup>rd</sup> respondent, after more than three and half years of his joining.



25) With respect to the second submission, the relevant part of the judgment of the Tribunal, in para 7 and 8 reads as under:-

*“7. Therefore, in my considered view the impugned order in File No. DEO-SE-CCOCCDS (CCA1)2/2016-SA-A1 (DEO-EG), dated 27.10.2016 is passed with non application of mind and hence suffers from vice of arbitrariness. Hence, it is liable to be set aside and is accordingly set aside. Consequently, the respondents are directed to consider the applicant to the post of School Assistant (Biological Science) in the vacancy under BC-E (G) category as per her merit and shall pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order. It is further directed that the applicant is entitled for appointment to the post on notional basis from the next date, that is the date on which the selection of the 5<sup>th</sup> respondent was cancelled from 03.07.2016 onwards. She is entitled for seniority and notional benefits from that day and entitled for monetary benefits from the 1<sup>st</sup> day of the academic year 2017-18 in which year the OA is filed.*

*8. The OA is accordingly allowed. In the circumstances no costs.”*

26) The above quoted part makes it evident that the Tribunal held that, the order, dated 27.10.2016, impugned before the Tribunal was passed with non-application of



mind and suffered from vice of arbitrariness and that the Applicant/1<sup>st</sup> Respondent was entitled to be considered being the next candidate in the merit in BC-E (General) if she was otherwise suitable and eligible. But at the same time, the Tribunal issued further directions as quoted hereinabove in para 7 of its judgment.

27) We are of the further considered view that once the Order, dated 27.10.2016, was set-aside by the Tribunal on the ground that it was passed without application of mind and direction was issued to the Petitioners to consider the case of 1<sup>st</sup> Respondent, as per her merit and pass appropriate orders, any further direction of the nature, as has been issued could not have been legally issued by the Tribunal.

28) In any event, pursuant to the order of the Tribunal, the Petitioners, on consideration of the case of the Respondent No. 1 have passed a detailed order, dated 14.03.2019, finding her not feasible for such appointment.



29) In the result, the impugned order of the Tribunal, dated 28.01.2019, is quashed. But, as under the direction to consider the case of Respondent No. 1, the same has already been considered and rejected by the Petitioners by passing the fresh order, dated 14.03.2019, the writ petition is ***partly allowed.***

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

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**RAVI NATH TILHARI, J**

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**DR. JUSTICE K. MANMADHA RAO**

Date: 11.07.2023

**Note**

L.R. copy to be marked.

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**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI  
AND  
THE HON'BLE DR. JUSTICE K. MANMADHA RAO**

**W.P. No. 4965 of 2021**

**Date: 11.07.2023**

SM/...