

[2019] 15 S.C.R. 79

ANDHRA PRADESH PUBLIC SERVICE COMMISSION A

v.

KOTA LINGESWARA RAO & ORS.

(Civil Appeal No(s). 9338 of 2019) B

DECEMBER 11, 2019

**[MOHAN M. SHANTANAGOUDAR AND
K.M. JOSEPH, JJ.]**

Andhra Pradesh Public Service Commission Rules: C

r.6 (amended) and r.7 – Claim for appointment – On the post which fell vacant due to relinquishment of the same by the last selected candidate – By the candidate next in the select merit list – By filing application before Administrative Tribunal – The Tribunal dismissed the application on the ground of delay and laches – High Court set aside the order of Tribunal directing appointment of the candidate – Appeal to Supreme Court – Held: The amended r.6 has done away with the system of rank list remaining in force for a period of one year and mandates notification of such fallout vacancies in the next recruitment – Rule 7 also makes it clear that selection for the relinquished vacancy has to be as per the existing Rules – Thus, the respondent-candidate has no right to claim selection as per the Rules – Appeal allowed.

CIVIL APPELLATE JURISDICTION: Civil Appeal No.9338 of 2019. F

From the impugned final Judgment and Order dated 12.07.2018 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in W.P. No.3695/2018.

R. Basant, Sr. Adv., Ms. M.V. Rama, Mrs. Anjani Aiyagari, Advs. for the Appellant. G

J. Sudheer, Sumanth Nookala, G. N. Reddy, T. Vijya Bhaskar Reddy, Ms. Sujatta Bagadhi, Advs. for the Respondents.

A The following Order of the Court was passed:

O R D E R

1. Leave granted.
- B 2. The interpretation of Rule 6 (amended) and Rule 7 of Andhra Pradesh Public Service Commission Rules of Procedure (“the APPSC Rules”) is in question in this appeal.
 3. The brief facts leading to this appeal are that a written test and oral test were conducted for selection to the post of Junior Lecturer in Mathematics, and results were published by the appellant herein, the Andhra Pradesh Public Service Commission (“the Commission”) on 03.12.2011. Respondent No.1, who belongs to the Open Category (“OC”), secured 380.50 marks, whereas one Mr. G.V. Ramakrishna Sagar (the last selected candidate in the OC in Zone-III) secured 393.00 marks. Consequently, Mr. G.V. Ramakrishna Sagar was declared selected. The selection was finalized and the same was sent to the Unit Officers on 04.09.2012. However, Mr. G.V. Ramakrishna Sagar chose not to join the post. Respondent No. 1 herein, after waiting for four years, filed Original Application No. 3142 of 2016 before the A.P. Administrative Tribunal on 02.08.2016, claiming appointment in the vacancy created due to non-joining of Mr. G.V. Ramakrishna Sagar, since he was the candidate with the next highest marks in the select merit list. The said Original Application No. 3142 of 2016 was dismissed on the ground of delay and laches. Being aggrieved by the same, Respondent No. 1 carried the matter before the High Court by filing Writ Petition (C) No. 3695 of 2018. The High Court vide the impugned judgment found that the vacancy for the post of Junior Lecturer in Mathematics had not been filled up since the last OC candidate did not join duty, and allowed the writ petition filed by Respondent No. 1, directing the Commission to appoint Respondent No.1 to the said post.
 - G 4. Heard Mr. R. Basant, learned senior counsel appearing on behalf of the appellant/Commission and Mr. J. Sudheer, learned counsel appearing on behalf of Respondent No. 1. Learned counsel for both the parties have taken us through the material on record and the concerned rules.

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5. It is relevant to note that Rule 6 of the APPSC Rules was amended on 22.02.1997 and a notification was issued for selection to the post of Junior Lecturer in Mathematics on 26.11.2008. Before proceeding further, it is relevant to note the unamended and amended Rule 6 as well as Rule 7 of the APPSC Rules:

“Rule-6 (Prior to amendment)- The ranking list prepared by the Commission for selection in a direct recruitment shall remain in force for a period of one year from the date of which the selection list is published on the Notice Board of the Commissioner or till the publication of the new selection list whichever is earlier. The Commission may select candidates from the ranking list in force in place of those who relinquish the selection or who do not join duty within the time given and also new requisitions (sent by appointing authorities). However, the Commission shall have the right to freeze any ranking list for reasons recorded.

Rule 6: (After amendment) - The list of the candidates approved/ selected by the Commission shall be equal to the number of vacancies only including those for reserved communities/categories notified by the Unit Officers Government. The fallout vacancies if any due to relinquishment and non-joining etc., of selected candidates shall be notified in the next recruitment.

Rule 7: Any candidate whose name has been included in a selection list in a direct recruitment prepared by the Commission, on enquiry by the Commission, may relinquish his claim for appointment in writing in the Proforma prescribed by the Commission. The Commission shall there Upon remove the name of such candidate from the selection list and select any other candidate according to rules. The candidate whose name has been so removed from the selection list shall be informed of such removal by the Commission and shall have no right for the said appointment in future with reference to the said selection.”

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

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- A 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.
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- C 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.
- D 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.
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- F 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.
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- H 10. In view of the specific mandate of the amended Rule 6 of the APPSC Rules, in our considered opinion, the High Court was not justified in granting relief in favour of Respondent No. 1 ignoring amended Rule 6. Both the Rules i.e. Rule 6 (amended) and Rule 7 have to be read

harmoniously. Rule 7 will sub-serve the intention of the amended Rule 6 A
of the APPSC Rules, since it specifically mentions that selection of a new candidate, after relinquishment of a post by another candidate, shall be done in accordance with the rules, which would mean the rules in force at that time. Furthermore, it has also been brought to our notice that the Commission deleted Rule 7 by G.P. Ms. No. 139 on 28.07.2016, B
having found that the said rule, to a certain extent, was creating confusion in the selection process.

11. Be that as it may, since Respondent No. 1 has no right to claim selection as per the APPSC Rules, no relief could have been granted to him. Hence, the appeal is allowed. The impugned judgment of the C
High Court stands set aside.

Kalpana K. Tripathy

Appeal allowed.