

Vallampati Sathish Babu vs The State Of Andhra Pradesh on 19 April, 2022

Author: M.R. Shah

Bench: B.V. Nagarathna, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2473 OF 2022

Vallampati Sathish Babu

...Appellant(s)

Versus

The State of Andhra Pradesh & Ors.

...Respondent(s)

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Andhra Pradesh at Amravati in Writ Petition No. 12144 of 2015 by which the High Court has allowed the said writ petition preferred by the State and has quashed and set aside the order passed by the A.P. Administrative Tribunal, Hyderabad in O.A. No. 4916 of 2013, the original applicant has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:-

2.1 That the appellant herein participated in the selection process carried out by the respondents for recruitment of Teachers under the Notification dated 30.01.2012 called as DSC-2012. Thirty-three (33) posts were notified and the recruitment process was initiated for the notified 33 vacancies. The appointments were governed by the Andhra Pradesh Direct Recruitment for the post of Teachers (Scheme of Selection) Rules, 2012 (hereinafter referred to as "Rules, 2012"), which were framed in exercise of the powers conferred by Article 309 of the Constitution of India r/w sub-sections (3) and (4) of Section 169, sub-

sections (3) and (4) of Section 195 and Section 243 of the Andhra Pradesh Panchayat Raj Act. Rule 16 of the Rules, 2012 provided for preparation of selection lists. As per sub-rule (5) of Rule 16 the number of candidates selected shall not be more than the number of vacancies notified. It also

specifically provided that there shall be no waiting list and posts, if any, unfilled for any reason whatsoever shall be carried forward for future recruitment.

2.2 That vide G.O. Ms. No. 91 dated 03.11.2012, the State issued detailed guidelines. Clause 8 provided for verification of certificates and preparation of select lists (which shall be dealt with hereinbelow). 2.3 The appellant participated in the said selection process, however, secured 58.08 marks and placed at 34 th position. The respondents declared that the candidates upto serial No. 33 (notified vacancies) in the merit list are being selected in the available vacancies and accordingly invited the 33 candidates to appear for counselling. One candidate, who secured 18th rank with 60.83 marks did not turn up for counselling that was held on 28.12.2012. Consequently, one post in general category remained unfilled due to the non-participation of the said candidate. The appellant made a representation before the respondents seeking for consideration of his candidature relying upon para 8 of the Guidelines issued under G.O. Ms. No. 91 dated 03.11.2012. As the appellant was not offered the employment, the appellant approached the Tribunal by filing O.A. No. 4916 of 2013 seeking a direction to the respondents to appoint him as Secondary Grade Teacher (S.G.T.) in the unfilled vacancy. The Tribunal allowed the said O.A. holding that the appellant is entitled for appointment as per para 8 of the Guidelines issued under G.O. Ms. No. 91 dated 03.11.2012.

2.4 Feeling aggrieved and dissatisfied with the order passed by the Tribunal, the State preferred writ petition before the High Court and by the impugned judgment and order, the High Court has allowed the said writ petition and has quashed and set aside the order passed by the Administrative Tribunal.

2.5 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original applicant has preferred the present appeal.

3. Ms. V. Mohana, learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that in the present case, 33 posts were notified; therefore, until 33 posts are filled in, it cannot be said that the selection process is complete.

3.1 It is submitted that as per Rule 16(5) of Rules, 2012, the number of candidates selected shall not be more than the number of vacancies notified. Hence, in the present case, the selection was incomplete since one of the candidates did not turn up for counselling and receiving the order of selection. Therefore, the appellant being the next candidate as per merit namely, at the 34th position, was entitled to the appointment out of 33 notified vacancies, as one of the candidates did not turn up even for counselling and the vacancy had to be filled by the next meritorious candidate, namely the appellant herein.

3.2 It is submitted that as per the Guidelines, the verification has to be done of the candidates in the provisional selection list and finally, after counselling, the final list will have to be published. It is submitted that, however, a reading of clauses of the Guidelines together with the Rule show that until all selections are made, i.e., all vacancies are filled, the final selection list is not complete and the process is incomplete. 3.3 It is further submitted that Rule 16(5) of the Rules, 2012 provides preparation of selection list. It is submitted that as per the said Rule selection has to be made equal

to the number of vacancies. However, there will be no waiting list and if there is any vacancy due to some other reason, then that will be carried forward. It is submitted that the situation contemplated in that Rule is like resignations, non-joining after getting an appointment order, untimely death after joining etc. It is submitted that however, in the present case, there was no appointment order issued to one of the selected candidates and hence the selection was not complete. It is submitted that on a fair, meaningful and combined reading of the Rule along with the Guidelines, it shows that the final selection list could have been prepared and finalized only after verification and counselling and that the number of selected candidates cannot exceed the total number of vacancies.

3.4 It is further submitted by Ms. Mohana, learned Senior Advocate appearing on behalf of the appellant that the very same rule which existed under the Rules, 2000 and Rule 13 was the subject matter of interpretation before the High Court in Writ Petition No. 21306 of 2005 – (District Educational Officer & Member Convenor, District Selection Committee, Nizamabad & Ors. Vs. B. Annapurna), wherein it was held that due to the mistake on the part of the employer; a prospective and potential candidate cannot be allowed to suffer. It is submitted that in the said decision, it was held by the High Court that if there is any unfilled vacant post, the same is necessarily to be filled, subject to the number of vacancies vis-à-vis the number of candidates so selected on merit. It is submitted that the Special Leave Petition against the said judgment has been dismissed by this Court. 3.5 It is further submitted that in the present case, the appellant immediately approached the Tribunal seeking redressal of his grievance without any delay. That the appellant approached the Tribunal since he came to know that one of the candidates had not appeared for counselling and one post remained unfilled. That the learned Tribunal passed a correct and reasoned order allowing the O.A. Therefore, the High Court ought not to have interfered with the findings of the Tribunal. 3.6 It is contended that the learned Division Bench of the High Court has merely relied upon the decision of the High Court in the case of State of Andhra Pradesh, rep. by its Secretary, Education Department and Ors. Vs. Samiula Shareef and Ors., 2014 (1) ALT 165 DB, but the said judgment is clearly distinguishable on facts of the present case. That was a case where the allegations against the respondents were made much after the appointment and pursuant to an enquiry, their services were terminated and against which vacancies, the appointments were sought to be made by the unsuccessful candidates. It is submitted that in the present case, no appointment order was issued in respect of one post and therefore selection remained unfilled. Therefore, the Division Bench of the High Court has clearly erred in quashing and setting aside the well-reasoned judgment and order of the Tribunal by solely relying upon the decision in the case of Samiula Shareef (supra), which is not correct.

3.7 It is further urged by Ms. Mohana, learned Senior Advocate appearing on behalf of the appellant that the appellant having crossed the age limit for appearing in any further examination, this Court may direct the respondents for considering his case as a one-time measure.

4. Present appeal is vehemently opposed by Shri Mahfooz Ahsan Nazki, learned counsel appearing on behalf of the respondents. A detailed counter affidavit is also filed on behalf of the State. 4.1 It is vehemently submitted by Shri Nazki, learned Counsel appearing on behalf of the State that, in the present case, the State has followed the detailed procedure provided under Rule 8, which reads as under:-

(i) Under Rule 8 (a), a provisional list of vacancies is to be notified and a venue is to be fixed for verification of candidates;

(ii) Thereafter, Rules 8(a) to 8(d) provide the procedure for verification;

(iii) In terms of Rule 8(e), the provisional list is required to be re-

drawn in case any candidate is found to be ineligible in the process envisaged under Rules 8(a) to 8(d);

(iv) Under Rule 8(f), a further verification is envisaged in respect of such candidates who may have been included as a result of revision of the provisional lists under Rules 8(a) to 8(e);

(v) Rule 8(g) envisages publication of a final selection list upon completion of the verification process.

4.2 It is submitted that in the present case, a provisional list was notified on 01.12.2012. Thereafter verification of candidates took place. Upon verification of the candidates, the provisional list was revised and a revised provisional list was published on 12.12.2012. Subsequently, pursuant to further verification, a final select list was drawn under Rule 8(g). It is submitted that in terms of Rule 8(g), once the final selection list is published, there can be no waiting list.

4.3 It is further submitted that in the instant case, after the final selection list was published on 25.12.2012, one candidate, whose name was mentioned in the final list failed to appear at the time of counselling. It is submitted that his failure to appear for counselling was only after the final selection list was published. That the respondents are bound by Rule 8(g) in terms whereof, there can be no waiting list and thus, no appointment order was issued in favour of the appellant. 4.4 Relying upon the decision of this court in the case of Bihar State Electricity Board Vs. Suresh Prasad & Ors., (2004) 2 SCC 681, it is vehemently submitted by Shri Nazki, learned counsel appearing on behalf of the respondents - State that as held by this Court in the aforesaid decision where the Rules do not envisage drawing up of a waiting list, no wait listed candidate could be appointed as a result of non-joining of a selected candidate.

4.5 Making the above submissions and relying upon the aforesaid decision, it is prayed to dismiss the present appeal.

5. Heard the learned counsel for the respective parties at length.

6. The selection process was carried out by the respondents for recruitment of teachers. 33 posts were notified and therefore the recruitment process was started for the notified 33 vacancies. The merit list/select list of 33 candidates was published. However, one of the selected candidates did not appear for counselling and therefore, one post remained vacant. The appellant herein being the next meritorious candidate, being at Serial No. 34, is claiming the appointment to the post which remained unfilled due to one selected candidate, who did not appear for counselling. The Tribunal

allowed the said claim. However, the High Court by the impugned judgment and order has set aside the order passed by the Tribunal and has held that considering the relevant statutory provisions and the Guidelines for the purpose of preparation of the select list, the appellant shall not have any claim to the post, which remained unfilled, as there was no provision for the waiting list. Therefore, the short question, which is posed for the consideration of this Court is, whether, to the post which remained unfilled due to one selected candidate not appearing for counselling, the appellant is entitled to the appointment on the said post.

7. While considering the aforesaid issue/question, the relevant statutory rule and the Guidelines are required to be referred to. 7.1 Rule 16 of the Rules, 2012 is in respect of preparation of the select list. Sub-Rule (5) of Rule 16 of the Rules, 2012, which is relevant for the purpose of this case reads as under:-

“(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.” 7.2 The Guidelines have been issued by the State Government for selection process including the preparation of selection list, conduct of counselling and issue of appointment and posting orders to the selected candidates under G.O. Ms. No. 91 dated 03.11.2012. Paragraph 8 of the said Guidelines is relevant for our purpose, which reads as under:-

“8. Verification Of Certificates:

a) The District Educational Officer shall prepare with the approval of the District Selection Committee a provisional list to the extent of vacancies notified, for each category of post notified in DSC – 2012 on the basis of the merit list and publish the same on the notice boards of the offices of the District Collector and District Educational Officer and also on the designated website, along with the date, time and venue fixed for verification of certificates.

The District Educational Officer shall also issue a press note in the local news papers for wide publicity in this regard.

b) As the processing of applications for DSC-2012 is made online so far, the process of verification of certificates of candidates included in provisional list may, in certain cases, also result in, i. Failure of the candidate to attend for verification of certificates.

ii. Failure of the candidate to produce the original certificate/s relevant to his/her eligibility and selection.

iii. Inclusion of a candidate in the provisional list of more than one category.

c) As regards b(i) above, the District Educational Officer shall send a personal intimation to the address furnished by the candidate, to attend along with all relevant original certificates on the date

fixed for the said purpose, as a final chance.

d) In case the candidate fails to attend even on the date so fixed, he/she shall forfeit his/her right to be considered for selection.

e) In the event of b(ii) & b(iii) and (d) above, the provisional list shall be redrawn by the District Selection Committee drawing next candidate/s from the merit list to the extent necessary, however, subject to the condition that the number of candidates included shall not be more than the number of vacancies notified for that particular category. In so far as the candidate covered by b(iii) above, this exercise shall be done only after obtaining the option of such candidate at the time of verification of certificates itself.

f) The further verification of certificates, if any required as under (e) above shall be done, after due intimation to the candidates concerned, on the date fixed for the said purpose.

g) After due completion of the above exercise the District Selection Committee shall prepare the final selection list of the candidates for all categories of the teachers. Once the final selection list is prepared, there shall be no waiting list and posts if any unfilled for any reason whatsoever shall be carried forward for future recruitment as per sub rule (5) of Rule 16 of the Andhra Pradesh Direct Recruitment for the posts of teachers (scheme of selection) Rules, 2012.” 7.3 On a fair reading of Rule 16 of the Rules, 2012 read with the Guidelines referred to hereinabove, once the final selection list is prepared, there shall be no waiting list and posts, if any, are unfilled for any reason whatsoever, shall be carried forward for future recruitment as per sub-Rule (5) of Rule 16 of the Rules, 2012.

7.4 In the present case, the final selection list of 33 candidates was prepared. Thereafter all the selected candidates were called for counselling, but one of the candidates did not report for counselling. The aforesaid event took place after the final selection list was prepared and published. As there was no requirement of preparation of a waiting list, the appellant claiming to be the next in the merit cannot claim any appointment as his name neither figured in the list of the selected candidates nor in any waiting list as there was no provision at all for preparation of the waiting list. Sub-rule (5) of Rule 16 is very clear. Therefore, the post remained unfilled due to one of the candidates in the final list did not appear for counselling and/or accepted the employment. Hence, that post has to be carried forward for the next recruitment. 7.5 The appellant could have claimed the appointment to the post which remained unfilled provided there is a provision for waiting list as per the statutory provision. In absence of any specific provision for waiting list and on the contrary, there being a specific provision that there shall not be any waiting list and that the post remaining unfilled on any ground shall have to be carried forward for the next recruitment. The appellant herein, thus, had no right to claim any appointment to the post which remained unfilled.

7.6 In the present case, the first provisional list was published on 01.12.2012. Thereafter, a revised provisional list was published on 12.12.2012 and subsequently a final selection list was published on 25.12.2012 of 33 selected candidates and the candidate, who did not appear for counselling was one of the candidates in the final selection list dated 25.12.2012. Therefore, once there was no provision

for waiting list, the post, which remained unfilled due to one of the candidates in the final selection list not appearing for counselling will have to be carried forward to the next recruitment as per sub-rule (5) of Rule 16.

8. Now, the submission on behalf of the appellant that as per sub-rule (5) of Rule 16, all the 33 posts notified are required to be filled is concerned, the same has no substance. Sub-rule (5) of Rule 16 is required to be read as a whole and in its entirety and the same is required to be read alongwith the Guidelines issued. What is provided under sub-rule (5) of Rule 16 is that the number of candidates selected shall not be more than the number of vacancies notified. However, it further provides that there shall be no waiting list and posts, if any, unfilled for any reason whatsoever shall be carried forward for future recruitment. Therefore, there shall not be any appointment of more than the number of vacancies notified but that does not mean to prepare and operate the waiting list, which otherwise is specifically not provided for under the Rules, 2012.

8.1 An identical question came to be considered by this Court in the case of Suresh Prasad and Ors. (supra). In the said decision, it is specifically observed and held that even in case candidates selected for appointment have not joined, in the absence of any statutory rules to the contrary, the employer is not bound to offer the unfilled vacancy to the candidates next below the said candidates in the merit list. It is also further held that in the absence of any provision, the employer is not bound to prepare a waiting list in addition to the panel of selected candidates and to appoint the candidates from the waiting list in case the candidates from the panel do not join. The aforesaid decision of this Court has been subsequently followed by the Andhra Pradesh High Court in the case of Samiula Shareef and Ors. (supra)

9. Applying the law laid down by this Court in the case of Suresh Prasad and Ors. (supra) to the facts of the case on hand and considering the statutory provisions contained in Rule 16 of the Rules, 2012 read with the Guidelines, we are of the view that the appellant cannot claim appointment on the unfilled vacancy being next below the candidate in the merit list. If the submission on behalf of the appellant is accepted, in that case, it will lead to providing for preparation of a waiting list, which otherwise is not permissible as per sub-rule (5) of Rule 16. If the same is permitted, in that case, it will be directing the respondents to act contrary to the statutory provisions. Therefore, the High Court has not committed any error in refusing to appoint the appellant to the post which remained unfilled due to one of the selected candidates in the final selection list not appearing for counselling. The impugned judgment and order passed by the High Court is absolutely in consonance with the relevant statutory provisions with which we agree.

In view of the above discussion and for the reasons stated above, present appeal fails and the same deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

..... J .
[M.R. SHAH]

NEW DELHI;
APRIL 19, 2022.

..... J.
[B.V. NAGARATHNA]