

Andhra High Court

M. Praveen Reddy And Ors. vs Govt. Of A.P., Education ... on 6 March, 2003

Equivalent citations: 2003 (6) ALT 439

Author: B Nazki

Bench: B Nazki, G Yethirajulu

JUDGMENT Bilal Nazki, J.

1. These Writ petitioners have been filed seeking quashing of the order passed by the Andhra Pradesh Administrative Tribunal in O.A.No. 562 of 2002 and batch. All the O.As filed before the Tribunal relate to selection process of D.S.C. 2001 for the posts of Secondary Grade Teachers/School Assistants/Language Pandits etc., in the State of Andhra Pradesh. The petitioners challenged the Government Order contained in G.O.Ms.No. 8, GA (SPF-A) Department, dated 8-1-2002 as bad in law, in the alternative they also sought a declaration that the selections made and finalized by D.S.C. 2001 were illegal to the extent of recruiting candidates on the basis of reservation for non-local candidates. They sought the direction that 20% of the posts reserved for non-locals should be filled up on the basis of merit alone and there should not be any reservation for those 20% vacancies. The O.As were dismissed by the Tribunal therefore the Writ Petitions have been filed.

2. Before going to the pleadings and arguments of the parties it may be worthwhile to mention that, although in the O.As G.O.Ms.No. 8 dated 8-1-2002 has been challenged being bad in law the learned Senior counsel Mr. S. Ramachandra Rao appearing for the petitioners relied on G.O.Ms.No. 8 to canvass before us that the 20% posts reserved for non-locals in each district have to be filled up on the basis of merit alone by virtue of this G.O.

3. The controversy is short. It is admitted position that in terms of law and in terms of various Presidential Orders 80% of the posts have to be filled up by local candidates for each district. District is taken as a unit and 20% of posts are thrown open for local as well as non-local candidates, non-local candidates being candidates belonging to the other districts. The controversy is, whether the reservation in terms of Rule 22 of A.P. State and Subordinate Service Rules would be available for all the posts or only for 80% of posts. The contentions raised by Mr. S. Ramachandra Rao, Senior Advocate are that, the advertisement was issued in May, 2002 which gave the description of the posts available in each district, Note (i) to the advertisement read as; "The rule of reservation to local candidates is applicable." Keeping in view Note (i) of the advertisement the learned counsel contended that Rule-22 of the A.P. State and Subordinate Service Rules is not an absolute rule and under Rule 22(1) exemptions can be granted and according to him because Note (i) stated that the rule of reservation would be applicable to local candidates that means the non-local candidates were excluded from rule of reservation. In this connection he also relied on G.O.Ms.No. 8 dt. 8-1-2002 which lays down;

"In terms of para-8 of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct recruitment) Order, 1975, i.e., Presidential Order, referred to in the reference first read above, in the case of District Cadres, 80% of the posts under Direct Recruitment are reserved for local candidates, as defined in para-7 of the Presidential Order. The remaining 20% of the posts are open posts for which local and non-locals have to be considered on the basis of

combined merit. This aspect has already been clarified in the U.O. Note fourth read above. The Government have also issued instructions in the G.O. third read above on the manner in which the posts have to be filled up.

2. Government have reexamined the matter of filling up of the posts as prescribed in the G.O. third read above. Accordingly it is decided that while filling up of the posts under the Direct recruitment, the first 20% of posts should be filled following combined merit list of locals and non-locals and, thereafter, the remaining 80% of the posts shall be filled up by locals only. However, while filling up of the posts the special representation under Rule 22 of the A.P. State and Subordinate Service Rules shall be followed suitably."

Rule 22 of A.P. State and Subordinate Service Rules reads as under:

"Rule 22. Special representation (Reservation):- (1) Reservations may be made for appointment to a service, class or category in favour of Scheduled Castes, Scheduled Tribes, Backward Classes, Woman, Physically handicapped, Meritorious Sportsman, Ex-servicemen and such other categories, as may be prescribed by the Government from time to time, to the extent and in the manner specified hereinafter in these rules or as the case may be, in the special rules. The principle of reservation as hereinafter provided shall apply to all appointments to a service, class or category-

(i) by direct recruitment, except where the Government by a General or Special order made in this behalf, exempt such service, class or category.

(ii) Otherwise than by direct recruitment where the special rules lay down specifically that the principle of reservation in so far as it relates to Scheduled Castes and Scheduled Tribes only shall apply to such services, class or category to the extent specified therein.

(2)Not needed.....

The contention of the learned counsel is that, if Rule 22(1) and G.O.Ms.No. 8 are read together and the Note (i) in the advertisement is kept in mind it becomes clear that the 20% of posts which were to be filled by non-local candidates were exempted from rule of reservation. He also referred to some clarifications made by some authorities. We are not making a reference to those clarifications because rules have to be applied as they are and any clarification by anybody would not change the nature or meaning of the rules.

4. Now, Rule 22 of A.P. State and Subordinate Service Rules is a rule of reservation where the State is bound to make reservations for appointment to a service, class or category in favour of certain classes of people mentioned in the rule itself. This rule also makes its application mandatory to all appointments to a service, class or category. Under Clause (i) to Sub-rule (1) the Government can exempt by special order any service, class or category from application of rule of reservation under Rule 22. So, in order to have an exemption there are two prerequisites. One, there should be a special order made in that behalf by the Government and secondly there should be special rules which lay down specifically that the principle of reservation in so far as it relates to Scheduled Castes

and Scheduled Tribes only shall apply to such services, class or category. A note in an advertisement cannot by any stretch of imagination be a Special order by the Government. The exemption from application of rule of reservation for a service, class or category can be given only by a special order. The learned Additional Advocate General argued that, though the 'service' has been defined in the rules but class or category has not been defined. But, the A.P. School Educational Subordinate Service Rules which are also applicable gives a schedule. 'Service' is defined in the rules, then there are Classes, Class-I, Class-II, Class-III etc., within the Classes there are categories. For instance in Class-III category-I is Joint Deputy Inspector of Schools, Category-2 is Secondary Grade Teachers, category-3 is Language Pandits Gr-II. He contends that, if an exemption has to be given, it can be given to a particular category but not to a portion within the same category. The posts which are to be filled up are the posts in same category. Therefore, 80% could not be made subject to reservations and 20% of the same category of posts could not be exempted from application of rule of reservation. The learned Additional Advocate General further contended that even the note to which a reference has been made by the learned counsel for the petitioners does not exclude non-local candidates from applicability of the rule of reservation. He read Note (ii) and (iii) of the advertisement which reads as under;

"(ii) The rule of special representation in the matter of appointment of candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, P.H.C. Ex-servicemen and Women is applicable as per Andhra Pradesh School Educational Subordinate Service Rules and Rule 22 of Andhra Pradesh State and Subordinate Service Rules.

(iii) Local Scheduled Tribe candidates shall only be considered for selection and appointment to the vacancies in Scheduled Area."

He submitted that, when Note (i) and (ii) are read together it makes it clear that the rule of reservation would be applicable to local candidates as well as non-local candidates. We find ourselves in agreement with the learned Additional Advocate General on both the scores. He also contends that G.O.Ms.No. 8 and the Note (i) and (ii) are read together it would make it clear that the rule of reservation under Rule 22 of the A.P. State and Subordinate Service Rules had to be followed in both the cases.

5. Mr. S. Ramachandra Rao, Senior Advocate laid emphasis on the following line in para-1 of the G.O.Ms.No. 8.

"The remaining 20% of the posts are open posts for which local and non-locals have to be considered on the basis of combined merit."

Mr. Ramachandra Rao submits that the G.O. did not specify that these 20% posts shall be filled up after following the rule of reservation but it only stated that they will be filled up on the basis of combined merit. But, for correct interpretation of the G.O. it has to be read completely and if one reads para-2 which has been reproduced herein above and the relevant portion is reproduced again;

"Accordingly it is decided that while filling up of the posts under Direct Recruitment, the first 20% of posts should be filled following combined merit list of locals and non-locals and, thereafter, the remaining 80% of the posts shall be filled up by locals only. However, while filling up of the posts the special representation under Rule 22 of the A.P. State and Subordinate Service Rules shall be followed suitably."

this G.O. in itself lays down that all the posts shall be filled up after following the reservations as laid down under Rule 22 of the A.P. State and Subordinate Service Rules. As a matter of fact this G.O. is in favour of the respondents and the petitioners had challenged this G.O. before the Tribunal, but before us the learned Senior counsel relied on this G.O. to canvass before us that an exemption had been created for the 20% of the posts.

6. As a result of this discussion, we find that the 20% of posts of non-local candidates were never exempted from application of Rule 22 of A.P. State and Subordinate Service Rules and Rule 22 would be applicable to those posts also.

7. A judgment of Full Bench of this Court in Registrar, N.T.R. University of Health Sciences v. Dr. G. Babu Rajendra Prasad, (F.B.) is pressed into service, but in the facts and circumstances of the case it is not necessary to go to the judgment.

8. For these reasons, we do not find merit in the Writ Petitions and accordingly the Writ Petitions are dismissed.

9. During the hearing, however, we were told that although one examination was conducted for the whole State for recruitment of Teachers in all the districts but a candidates at the time of making himself available for the recruitment has to declare as to for which district he is applying and if he applies in the native district he would be considered a local candidate and in fact he has to himself mention whether he is claiming a post as a local candidate or non-local candidate and if he opts for a nonlocal post he will be considered only for 20% posts and he will loose all his rights in his local district where he could be considered for 80% of posts. Some candidates feel that some of the districts are smaller districts where level of competition would be low therefore they do not apply in the local district but volunteer to apply in a district which is non-local for them. We think, this is not fair. The Government needs to frame a policy where a candidate could be considered for both his local district as well as one of the non-local districts. However, this is for the State Government to look into the matter because the candidate is forced to gamble at the time of making application seeking appointment.

10. With these observations, these Writ Petitions are dismissed.