

APHC010357792003



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3506]

THURSDAY, THE FOURTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN

WRIT PETITION NO: 15879/2003

Between:

1.T.S.S.A.V.S.R.SWAMY NAIDU, S/O. T.VEDANARAYANA RAO R/O.
PANDARIPURAM, GUNTUR, GUNTUR DISTRICT.

...PETITIONER

AND

1.GOVERNMENT OF A P ITS PRINCIPAL SECRETARY, REP. BY THE
PRINCIPAL SECRETARY, HIGHER EDUCATION DEPARTMENT,
SECRETARIAT BUILDINGS, HYDERABAD.

2.THE COMMISSIONER AND DIRECTOR OF INTERMEDATE
EDUCATION, ANDHRA PRADESH, HYDERABAD.

3.B H H G JUNIOR COLLEGE, REP. BY ITS SECRETARY AND
CORRESPONDENT, GUNTUR.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the proceedings in L.Dis.No.187/JC5-3/991, dt.19.1.2002 issued by the Second respondent and the subsequent order of the first respondent issued in Memo. No.8652/IE-II/200-0, dt.6.5.2003 as arbitrary, illegal, improper, unjust and violative of the principles of natural

justice and further declare that the petitioner is eligible and entitled for the post of Typist in the third respondent Junior College, since he was selected and appointed after due process of selection and appointed after due process of selection by the Selection Committee and consequently direct the respondents to approve the appointment of the petitioner with all consequential benefits and pass

IA NO: 1 OF 2003(WPMP 19680 OF 2003)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents to forthwith pay the petitioner arrears of pay from 18-1-1999 till now, pending disposal of the above Writ Petition and pass

IA NO: 2 OF 2003(WPMP 19681 OF 2003)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the third respondent to continue the petitioner in service as Typist in the College, pending disposal of the above Writ Petition

Counsel for the Petitioner:

1.P V VIDYASAGAR

Counsel for the Respondent(S):

1.GP FOR HIGHER EDUCATION

2.P R PRASAD

3.P SRIDHAR REDDY

The Court made the following:

THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN

WRIT PETITION NO: 15879 of 2003

ORDER:

The present writ petition is filed, seeking the following relief:-

“....to issue a Writ Order or Direction more particularly one in the nature of Writ of Mandamus declaring the proceedings in L.Dis.No.187/JC5-3/99-1, dated 19.01.2000 issued by the second respondent and the subsequent order of the first respondent issued in Memo. No.8652/IE-II/200-8, dated 06.05.2003 as arbitrary, illegal, improper, unjust and violative of the principles of natural justice and further declare that the petitioner is eligible and entitled for the post of Typist in the third respondent Junior College, since he was selected and appointed after due process of selection and appointed after due process of selection by the Selection Committee and consequently direct the respondents to approve the appointment of the petitioner with all consequential benefits and pass....”

2. The petitioner initially was appointed on *ad-hoc* basis as a Typist in the 3rd respondent/College. The 3rd respondent is a recognized Aided Junior College. As a regular vacancy arose, on account of the existing Typist being promoted as a Junior Assistant, the 3rd respondent/Institution sought for prior approval of 2nd respondent for filling up of the said post, on regular basis. The 2nd respondent by Proceedings, dated 05.01.1998 accorded such permission, for filling up of the vacancy. By following the rules and procedure in vogue, the 3rd respondent issued Notification, dated 14.08.1998, by publishing both in

a local newspaper and also calling for, sponsoring from the Employment Exchange, for the purpose of filling up the post of the Typist. The Selection Committee constituted on evaluating the applications received, ultimately selected the petitioner. He was issued Order of Appointment, dated 12.01.1999, putting him on a pay scale of Rs.1,745/- -- Rs.3,420/-. The 3rd respondent/Institution addressed a letter to the 2nd respondent, seeking for approval of the appointment, so made. The petitioner stated to have reported to duty from 18.01.1999. As petitioner's selection was intimated to the Employment Exchange, his registration got cancelled. The 3rd respondent/Institution, while addressing the 2nd respondent, in fact, stated to have also brought to their notice that as the post of Typist being a single solitary post in the said Institution, the same does not fall under the purview of communal roster and therefore, requested the 2nd respondent to approve the selection and appointment so made. However, the 2nd respondent, by Proceedings, dated 19.01.2000, rejected the selection of petitioner by holding it to be irregular and contrary to rule of reservation. The petitioner challenged the said order of rejection, in W.P.No.3909 of 2000. This Court by an Order, dated 10.03.2000, relegated the petitioner to avail the remedy of appeal before the Government. The said order has been further appealed in Writ Appeal No.409 of 2000. The Division Bench, by confirming the Order of the learned Single Judge, by its Order, dated 07.06.2000, permitted the petitioner

to file appeal before the Government and in turn, the Government to dispose of, the same in accordance with law. Further insofar as, the petitioner's service was concerned, the parties were directed to maintain *Status quo* till the disposal of the Appeal. Eventually, the 1st respondent passed Order, dated 06.05.2003, rejecting the Appeal and confirmed the orders of the 2nd respondent. Assailing the same, the present Writ Petition is filed.

3. The respondent Nos.1 & 2 filed counter-affidavit by supporting the orders of the 2nd respondent, as confirmed by the 1st respondent/appellate authority. Even 3rd respondent also filed counter-affidavit. But strangely supported the plea raised by respondent Nos.1 & 2, contrary to their own previous act of selection and also the letter addressed to the 2nd respondent, seeking for approval and conditional appointment made in favour of writ petitioner. It is also pleaded in the counter-affidavit that merely, because the 2nd respondent granted permission for filling up of vacancy, the 3rd respondent could not have compromised with the rule of reservation, which otherwise is required to be followed, particularly considering that the college was meant for girls, hence, the requirement of Rule 22-A of Andhra Pradesh State and Subordinate Service Rules, which envisaged application of reservation in favour of women ought to have been strictly complied with.

4. Heard Sri P.V. Vidya Sagar, learned counsel for the petitioner, learned Government Pleader for Higher Education appearing on behalf of respondent No.1 and Sri P. Sridhar Reddy, learned counsel for the respondent No.3.

5. Learned counsel for petitioner fiercely contended that inasmuch as the Notification is conspicuously silent, regarding the post being filled up only by women candidates, in the selection process, the respondents are not justified to restrict the selection only to women candidates and thereby, reject the case of petitioner, who otherwise stood meritorious in the process of selection. He further contended that as admittedly the 3rd respondent/Institution had only one post of Typist Higher Grade, and for such solitary post, the rule of reservation clearly would not apply. Hence, the order of rejection by the 2nd respondent holding the selection and appointment, to be irregular, is completely illegal and not supported by any statutory rule or regulation. To buttress his argument regarding the exclusion of reservation to solitary post, reliance has been placed on the judgment of the Hon'ble Apex Court, in the case of ***S.R. Murthy Vs. State of Karnataka and others***¹.

6. Per *contra*, learned Government Pleader refuting the aforesaid contentions, vehemently opposed the Writ Petition. He contended that Rule 22-A of Andhra Pradesh State and Subordinate Rules, has issued in G.O.Ms.65, dated 15.02.1997, envisaged reservation in favour of women,

¹ (1999) 8 SCC 176

inasmuch as the existing post which was sought to be filled up, got vacated on account of a women candidate being promoted to the post of Junior Assistant, the said post is required to be filled up with the same category of candidate. Therefore, the very issuance of Notification and selection is vitiated being contrary to the aforesaid Rule. He further contended that even the Selection Committee constituted for selection of the candidates to the vacancy that arose, did not consist Government Nominee and therefore, the process of selection is also vitiated.

7. Sri P. Sridhar Reddy, learned counsel appearing on behalf of 3rd respondent/Institution, while supporting the stand of Government Pleader would further reiterate that even if the 2nd respondent had granted permission to the 3rd respondent/Institution for filling up of vacancy, the selection so made cannot ignore the rule of reservation and hence, the 2nd respondent was duly justified in holding that selection of the petitioner to be irregular and contrary to the Rules.

8. The petitioner was selected and appointed as a Typist Higher Grade in due selection process. The assertion of the petitioner is that the college did have only one post of typist higher grade, which was not denied by the respondents. On the other hand, the 3rd respondent/Institution had addressed the 2nd respondent seeking approval of the selection and appointment made

in favour of petitioner, by mentioning that the college had only single solitary post of Typist, therefore, the rule of reservation would not apply for such scenario.

9. A perusal of the Order passed by the 2nd respondent, which refused to recognize the selection and appointment made in favour of the petitioner, would indicate that inasmuch as the rule of reservation was not followed, the selection has been held to be irregular and therefore, the post was directed to be filled up once again, after seeking fresh permission from the competent authority.

10. The material on record discloses that the institution did have only one post of Typist. Therefore, in such scenario, whether the rule of reservation to be applied or not, is the issue that would fall for consideration.

11. The Hon'ble Apex Court, while dealing with Single Post cadre, held as follows:-

“3. The Constitution Bench of this Court in the case of Post Graduate Institute of Medical Education and Research v. Faculty Assn. has held, after discussing all decisions on this question, that;

34. In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent percent reservation for the backward classes is not permitted within the constitutional frame work.

4. In the light of this ratio, since the post in question was a single post, the application of the roster for the purpose of promotion was not permissible.”

Following aforesaid ratio, even in the present case also, as there was only a single post and even the Notification also proposed to fill up the said single post, question of application of roster for the purpose of reservation, would not arise.

12. Yet, another submission has been made by the learned counsel for the respondents contending that Rule 22-A of Andhra Pradesh State and Subordinate Service Rules, envisages that in case, vacancy arises on account of a women candidate being promoted to higher post, the post, which has been vacated, should be filled up only by women candidate and not by any other. A close reading of Rule 22-A of Andhra Pradesh Subordinate Service Rules, only postulates that, in a matter of direct recruitment to the post, for which the women or better situated than men, preference normally should be given to women and even the proviso to the said Rule states that, such absolute preference to women should normally not lead to total exclusion of men in any category of post.

13. This Court is not impressed with the contention so raised, inasmuch as the Rule really do not place any such exclusive right on the women candidates for being selected and appointed, in case, where the post has

otherwise held by women candidate and promoted to higher post. One other significant aspect which needs to be noticed herein is that, the very same 3rd respondent/Institution, which was also a party in the process of selection of petitioner and made recommendation for approval of appointment of the petitioner, has later made somersault and took a completely divergent stand in the counter, to toe the line of the respondent Nos.1 & 2, who took view that, such appointment was irregular on account of non-following of the Rule of Reservation. In view of the observations made above, though, such a divergent stand has been pleaded by the 3rd respondent/Institution, the same is not sustainable and is clearly unfounded.

14. Coming to the last aspect of the contention that the constitution of Selection Committee without a Government Nominee, is incompetent to make selection and thereby, render the appointment in favour of the petitioner to be invalid. As seen from the pleading made in the Writ Petition, the petitioner has clearly asserted that one of the Members of the Selection Committee was a Government Nominee and besides the 2nd respondent, while it refused to approve the selection and appointment in favour of the 3rd respondent/Institution, never took such objection and rather, the rejection was on sole ground that the process of selection did not comply the rule of reservation. Therefore, the contention now raised is without any basis and made as an afterthought. Even otherwise, it is well-settled law that the order of rejection

should speak for itself and nothing can be imported into it, much less by elaborating and explaining the reasons by way of counter.

15. In view of the aforesaid findings and observations of this Court, the Writ Petition has to succeed. The 3rd respondent/Institution has taken a stand in the counter-affidavit that the petitioner has stopped attending to the office after 30.11.2001, which has been denied by writ petitioner. However, it has been stated that the petitioner was prevented to attend to the duties and that, there was no proceeding as such, terminating his services.

16. Be that as it may, the fact remains that the petitioner was permitted to continue to attend the duties by virtue of the *Status quo* order issued by the Hon'ble Division Bench of this Court, *vide* Order, dated 07.06.2000, till the disposal of the Appeal before the 1st respondent and evidently, the Appeal came to be disposed only on 06.05.2003. There is some amount of ambiguity with respect to petitioner attending his duties thereafter.

17. Considering the facts and circumstances of the case, this Court is inclined to allow the present Writ Petition. Accordingly, the Order, dated 19.01.2000 passed by the 2nd respondent, confirming the Order, dated 06.05.2003, passed by the 1st respondent, stands set-aside and the 2nd respondent is directed to approve the selection of the petitioner to the post of Typist Higher Grade with effect from the date of his appointment *i.e.*,

12.01.1999. The petitioner shall be reinstated into service forthwith, with notional service, however without any back wages. The 2nd respondent is directed to pass orders of reinstatement within a period of four (04) weeks from the date of receipt of a copy of this order.

18. Accordingly, this Writ Petition is allowed. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any pending and the Interim order granted earlier, if any, shall stand closed.

JUSTICE CHALLA GUNARANJAN

Date: 04.12.2025
CVD