

OHIGH COURT OF ANDHRA PRADESH

MAIN CASE No:W.P.No.28946 OF 2021

PROCEEDING SHEET

Sl. No	DATE	ORDER	OFFICE NOTE.
5.	07.04.2022	<u>RNT,J</u> 1. Heard Sri Ch.Venkata Raman, learned counsel for the petitioners, learned State Counsel for respondent No.1, Sri Butta Vijaya Bhaskar, learned counsel for the respondent Nos.2 and 3 and learned counsel for the respondent No.4 on the application for vacation of the interim order. 2. The petitioners have challenged the proceedings of the University dated 01.12.2021 whereby the petitioners were granted time to file response to the notice as to why they be not reverted to their lower posts, from which they had been promoted after 01.04.2004, as that they did not succeed in the Departmental Test conducted by Andhra Pradesh Public Service Commission (APPSC). 3. Learned counsel for the petitioners submits that the Executive Council of the respondent No.2/University <i>vide</i> resolution dated 03.02.2006 exempted the non-teaching staff appointed into the University Service before 01.04.2004 from passing the Departmental Test, despite that, they were required to undergo the Departmental Test in the year 2020 and now on the ground that they have not passed the test, notice was issued to revert them. 4. Learned counsel for the respondent Nos.2 and 3 submits that the Andhra Pradesh State Council of Higher Education (APSCHE) <i>vide</i> letter dated 09.04.2018 (Page No.9 of counter affidavit) directed to follow the stipulations as mentioned therein, in promoting the non-teaching employees to the next higher post and pursuant thereto the Executive Council of the University passed resolution dated 09.01.2020 resolving <i>inter alia</i> that all the employees, who got promotions after 2004, should qualify the Departmental	

		Tests Part-I and Part-II, conducted by the APPSC, within two consecutive attempts starting from the date of the resolution, else they would be reverted back. 5. The impugned proceedings are passed referring to Rule 15 (a) of the Andhra Pradesh State and Subordinate Rules 1996, which reads as under: "15. (a) <i>Time to pass newly prescribed tests:-</i> <i>Where a test is newly prescribed by the special rules of a service for any class, category or post thereof, a member of the service who has not passed the said test, but is otherwise qualified and suitable for promotion to such category or post may be promoted thereto and he shall be required to pass the said test or tests within the period of probation or within one year or in one of the first two examinations held after such promotion, whichever is later. If he fails to pass the tests he shall be reverted to the class, category or post from which he was promoted and he shall not again be eligible for consideration for promotion unless he passes the tests.</i> <i>A person who is so reverted shall not by reason only of his promotion under this rule, be regarded as entitled to any preferential claim to future promotion to the category, grade or post, as the case may be, to which he had been promoted under this rule.</i> <i>Explanation:-</i> <i>This rule shall be applicable even to appointment by transfer in the direct line, for example, for appointment by transfer of Superintendents to the post of Assistant Director (Administration), for appointment to which the passing of departmental tests has been newly prescribed as a pre-requisite qualification.</i> <i>Note:-</i> <i>This Concession will be available only for a period of three years from the date on which the test has been newly prescribed."</i> 6. Learned counsel for the petitioners placing reliance on Rule 15 (b) & (c) of the Andhra Pradesh State and Subordinate Service Rules, 1996 contends that Rules contain the provision for	
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		relaxation/concession regarding passing of the test and examinations on the ground of age. He submits that once the relaxation was granted in the year 2006, unless that resolution was cancelled, there should be no requirement of appearing and passing of the Departmental Test as provided by Rule 15 (a). The notice as such is nothing but arbitrary exercise of power. 7. In view of Rule 15 (a) of the Rules 1996, there should be special rules of service prescribing the test. Such a test, can be relaxed in view of Rule 15 (b) & (c). Admittedly the relaxation was provided vide resolution dated 03.02.2006. 8. Learned counsel for the respondents at this stage seeks time to bring on record, the relevant special rules governing the service conditions of the petitioners with respect to the Departmental Test and the power to grant relaxation from Departmental Test. 9. This Court is satisfied <i>prima facie</i> with the submissions advanced by the learned counsel for the petitioners that once the candidates like the petitioner were exempted from appearing in the Departmental Test <i>vide</i> specific resolution dated 03.02.2006 and such exemption is permissible under Rule 15 (b) and (c) of the Rules 1996, and the resolution dated 03.02.2006 not having been cancelled, the show cause notice, <i>prima facie</i> appears to be bad in law. 10. This Court on consideration of the resolution of the Executive Council dated 03.02.2006 as also the subsequent resolution dated 09.01.2020 granted interim order on 17.12.2021 directing the respondent/University not to take any <i>coercive</i> action for a period of six (06) weeks, which interim order was extended from time to time and is operative till today. 11. List in the week commencing 13.06.2022. 12. Let the affidavit be filed by the respondents before the next date of listing, as prayed.	
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