

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

(SPECIAL ORIGINAL JURISDICTION)



THURSDAY, THE SEVENTH DAY OF APRIL TWO THOUSAND AND TWENTY TWO

:PRESENT:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION NO: 28946 OF 2021

Between:

1. Smt. M Radhika, D/o. Late M. Chengaiah, Aged about 53 years, Senior Assistant, S.V.U. College of Science, Tirupati, Chittoor District.
2. Smt. V. Devika, W/o. Late B. Gopal Rao, Aged about 38 years, Senior Assistant, Department of Home Science, S.V.U. College of Science, Tirupati, Chittoor District.
3. Smt. O. Nagamaheswari, D/o. O.Subramanyam Chetty, Aged about 42 years, Senior Assistant, Finance & Accounts Branch, S.V.U. Office, Tirupati, Chittoor District.
4. K. Sankaraiah, S/o. Eshwaraiah, aged about 53 years, Senior Assistant, Examinations Branch, S.V.U. Office, Tirupati, Chittoor District.
5. Smt M. Suryaprabha, D/o. M.Yerra Reddy, Aged about 54 years, Senior Assistant, S.V.U. College of Science, Tirupati, Chittoor District.
6. N. Rajesh, S/o. Sudhakar, Aged about 38 years, Senior Assistant, S.V.U. Engineering Department, Tirupati, Chittoor District.
7. P. Karunakara Reddy, S/o. Rajendra Reddy, Aged about 42 years, Senior Assistant, Finance & Accounts Branch, S.V.U. Office, Tirupati, Chittoor District.
8. S. Md. Azeem, S/o. Mohd. Ibrahim, Aged about 57 years, Senior Assistant, Examinations Branch, S.V. University, Tirupati, Chittoor District.
9. M. Jayachandra, S/o. M. Chengaiah, Aged about 54 years, Senior Assistant, S.V.U. College of Engineering Hostel, Tirupati, Chittoor District.
10. Smt. K. Latha, W/o. K. Nagaraja Naidu, Aged about 52 years, Senior Assistant, Finance & Accounts Branch, S.V. University, Tirupati, Chittoor District.
11. V. Jayaramaiah, S/o. V.Gazaiah, Aged about 57 years, Senior Assistant, Finance & Accounts Branch, S.V.U. Computer Centre, Tirupati, Chittoor District.
12. P. Balaji, S/o. Parusuramaiah, Aged about 37 years, Senior Assistant, SVU Engineering Department, Tirupathi, Chittoor District.

...Petitioners

AND

1. The State of Andhra Pradesh, Rep by its Principal Secretary, Higher Education Department, Secretariat Buildings, Velagapudi, Amaravathi, Andhra Pradesh.
2. The Sri Venkateswara University, Rep by its Vice Chancellor, Tirupati, Chittoor District.
3. The Registrar, Sri Venkateswara University, Tirupati, Chittoor District.
4. The Andhra Pradesh State Council for Higher Education, (A Statutory Body of the Govt. of A.P.), I & II Floors, C-Block, Sree Mahendra Enclave, Tadepally-522 501, Guntur District, Rep. by its Secretary.

...Respondents

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 an order or orders more particularly one in the nature of the Writ of Mandamus, declaring that the passing of the Executive Council Resolution dated 09.01.2020, resolved to give promotion to the eligible employees of the University for this time only, however, 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 now, else they will be reverted back and consequently issuance of Notice No.E.1 (2) /Deptl.Test/ 2020, dated 01.12.2021, to the petitioners herein, as to why their services should not be reverted from their posts, on the ground of non-passing of the Departmental Test of Part-I and Part-II conducted by the Andhra Pradesh Public Service Commission, as illegal, improper, arbitrary, unjust, non-application of mind,

violative of principles of natural justice, violative of Articles 14, 16, 19 and 21 of the Constitution of India and unconstitutional and set aside the same, by holding that the promotions already made to the petitioners are proper and legal.

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to direct the respondents 2 and 3, to continue the services petitioners in respective posts in the 2nd Respondent-University, without reference to the individual Notices issued to the petitioners herein, vide Notice No. E.1(2)/Deptl.Test/2020, dated 01.12.2021, issued by the 2nd respondent, pending disposal of WP 28946 of 2021, on the file of the High Court.

IA NO: 1 OF 2022

Between:

1. Sri Venkateswara University, Rep by its Vice Chancellor, Tirupati, Chittoor District.
2. The Registrar, Sri Venkateswara University, Tirupati, Chittoor District.

...Petitioners/Respondents No.2 & 3

1. Smt. M Radhika, D/o. Late M. Chengaiah, Aged about 53 years, Senior Assistant, S.V.U. College of Science, Tirupati, Chittoor District.
2. Smt. V. Devika, W/o. Late B. Gopal Rao, Aged about 38 years, Senior Assistant, Department of Home Science, S.V.U. College of Science, Tirupati, Chittoor District.
3. Smt. O. Nagamaheswari, D/o. O.Subramanyam Chetty, Aged about 42 years, Senior Assistant, Finance & Accounts Branch, S.V.U. Office, Tirupati, Chittoor District.
4. K. Sankaraiah, S/o. Eshwaraiah, aged about 53 years, Senior Assistant, Examinations Branch, S.V.U. Office, Tirupati, Chittoor District.
5. Smt M. Suryaprabha, D/o. M.Yerra Reddy, Aged about 54 years, Senior Assistant, S.V.U. College of Science, Tirupati, Chittoor District.
6. N. Rajesh, S/o. Sudhakar, Aged about 38 years, Senior Assistant, S.V.U. Engineering Department, Tirupati, Chittoor District.
7. P. Karunakara Reddy, S/o. Rajendra Reddy, Aged about 42 years, Senior Assistant, Finance & Accounts Branch, S.V.U. Office, Tirupati, Chittoor District.
8. S. Md. Azeem, S/o. Mohd. Ibrahim, Aged about 57 years, Senior Assistant, Examinations Branch, S.V. University, Tirupati, Chittoor District.
9. M. Jayachandra, S/o. M. Chengaiah, Aged about 54 years, Senior Assistant, S.V.U. College of Engineering Hostel, Tirupati, Chittoor District.
10. Smt. K. Latha, W/o. K. Nagaraja Naidu, Aged about 52 years, Senior Assistant, Finance & Accounts Branch, S.V. University, Tirupati, Chittoor District.
11. V. Jayaramaiah, S/o. V.Gazaiah, Aged about 57 years, Senior Assistant, Finance & Accounts Branch, S.V.U. Computer Centre, Tirupati, Chittoor District.
12. P. Balaji, S/o. Parusuramaiah, Aged about 37 years, Senior Assistant, SVU Engineering Department, Tirupathi, Chittoor District.

.....Respondents/Writ Petitioners

13. The State of Andhra Pradesh, Rep by its Principal Secretary, Higher Minority Welfare Department, A.P., Secretariat Buidlings, Velagapudi, Amaravathi, Guntur District, Andhra Pradesh.
14. The Andhra Pradesh State Council for Higher Education, (A Statutory Body of the Govt. of A.P.), I & II Floors, C-Block, Sree Mahendra Enclave, Tadepally-522 501, Guntur District, Rep. by its Secretary.

...Respondents

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to vacate the interim order dated 17.12.2021 granted in W.P.No.28946 of 2021 to meet ends of justice, pending disposal of WP 28946 of 2021, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and the order of the High Court, dated 17.12.2021 & 11.03.2022 made herein and upon hearing the arguments of Smt. Padmavathi Fadnavis, learned counsel representing for Sri Butta Vijaya Bhaskar, Standing Counsel for Petitioners, Sri Ch Venkat Raman, Advocate for the Respondent Nos.1 to 12, learned GP for Higher Education for the Respondent No.13, and Smt.S.Parineeta, Advocate for Respondent No.14, the Court made the following;

ORDER:

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 vide 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) vide 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 inter alia 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) Time to pass newly prescribed tests:- 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.

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.

Explanation:- 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. Note:- This Concession will be available only for a period of three years from the date on which the test has been newly prescribed."

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 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 prima facie 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 vide 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, prima facie 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 coercive 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.

13. Considering the aforesaid, interim order granted earlier is made absolute to continue until further orders of the Court.

SD/-B.PRASAD RAO
ASSISTANT REGISTRAR

//TRUE COPY//

For ASSISTANT REGISTRAR

To,

1. The Principal Secretary, Higher Education Department, State of Andhra Pradesh, Secretariat Buildings, Velagapudi, Amaravathi, Andhra Pradesh.
2. The Vice Chancellor, Sri Venkateswara University, Tirupati, Chittoor District.
3. The Registrar, Sri Venkateswara University, Tirupati, Chittoor District.
4. The Secretary, Andhra Pradesh State Council for Higher Education, (A Statutory Body of the Govt. of A.P.), I & II Floors, C-Block, Sree Mahendra Enclave, Tadepally-522 501, Guntur District. (1 to 4 by RPAD)
5. One CC to Sri. CH Venkat Raman, Advocate [OPUC]
6. One CC to Sri Butta Vijaya Bhaskar, Standing Counsel [OPUC]
7. One CC to Smt.S.Parineeta, Standing Counsel [OPUC]
8. Two CCs to GP for Higher Education, High Court of Andhra Pradesh. [OUT]
9. One spare copy.

SRL

HIGH COURT

RNT,J

DATED:07.04.2022

ORDER

WP.No.28946 of 2021

DIRECTION

