

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No.20428 OF 2006

Between:

T.Jashva

... Petitioner

And

The National Institute of Technology and others

... Respondents

JUDGMENT PRONOUNCED ON: 19.01.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No.20428 OF 2006****% 19.01.2023****Between:****# T.Jashva****... Petitioner****and****\$ The National Institute of Technology and others****.....Respondents****< Gist:****> Head Note:****! Counsel for the Petitioner : Sri T.P.Acharya****^ Counsel for respondent : G.P. for Higher Education****? Cases Referred:**

- 1. 2009) 5 SCC 511**
- 2. (2013) 11 SCC 309**

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No.20428 of 2006****ORDER:**

Heard the learned counsel for the petitioner and the learned Standing Counsel representing the respondents.

PERUSED THE RECORD

2. The petitioner in the present Writ petition is seeking the relief as follows:

"to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of respondents 1 and 2 in accepting the applications of respondents 3 to 5 who are not possessing the qualifications for the posts of Mechanic 'C' Grade and Mechanic 'D' Grade and permitting them to write the examination as arbitrary, illegal and declare that respondents 3 to 5 are not eligible to hold the posts of Mechanic 'C' Grade and mechanic 'D' Grade and consequently direct respondents 1 and 2 to consider the candidature of the petitioner for appointment either for the post of Mechanic 'C' Grade or for Mechanic 'D' Grade in the 1st respondent institute."

3. The case of the petitioner, in brief, is as follows:

a) The Petitioner had passed Craft Instructor in the Respondent Institute and his name was registered vide

registration No. VI/1989/05018 with Employment Exchange, Warangal on 17.05.1989.

b) The respondents vide R.O. No. 96/2006 dated 26.06.2006 had decided to fill up certain backlog vacancies of SC/ST under a special recruitment drive for SC/ST and had called for applications from employees, possessing the qualifications mentioned in the above notification, which was also notified in the Employment Exchange.

c) As the name of the petitioner was not being mentioned in the Employment Exchange, the petitioner filed W.P No. 13772 of 2006 to direct the respondent to interview the petitioner without insisting the name in the Employment Exchange. Accordingly, interim orders were passed on 07.07.2006 and on such direction, petitioner's name was sponsored by the Employment Exchange. Petitioner was allotted a code number for the posts of Mechanic "D" & Mechanic "C" and was asked to appear for Written Examination on 19.08.2006.

d) The unofficial respondents i.e., 3 to 5, were working in the respondent institute as Head Cook & Attenders, were assigned Code No. 583, 585, 586 to appear for written test.,

even though, the unofficial respondents do not possess the requisite qualification as mandated under the notification issued and the petitioner was eliminated intentionally and deliberately from the written test to favour the unofficial respondents, is the specific case of the petitioner.

e) If the mark list of the unofficial respondents and the entire file of written/Skill test was brought on record, which would prove the favoritism of the respondents and also the fact that the respondents have violated G.O.Ms.No.214 General Administration (Ser.A) Department, dated 08.05.2001.

f) Petitioner is over aged and has the last opportunity for employment and is compelled to file this Writ Petition, to point out the favoritism shown by the 1st and 2nd respondents towards the unofficial respondents i.e., 3 to 5. Hence, the Writ Petition.

4. The Counter affidavit filed on behalf of Respondents 1 and 2, in particular, paras 8, 9, 12 and 13 reads as under:

"8. In reply to the averments in Para 7, it is submitted that the 3^d respondent was working as

Store Assistant, the 4th Respondent as Attender and the 5th Respondent as Assistant Cook. In as much as, they possess necessary qualification, they applied for the post of Mechanic 'C/D' Grade.

9. *.....It is submitted that Respondents No. 3 to 5 have passed 10th Class and have IT Certificate in Fitter, Turner and Fitter Trade respectively. For the post of Mechanic 'C/D' Grade in SC Category, call letters were sent to 86 candidates sponsored by the employment exchange as also internal candidates. Of these, 64 appeared for the written test/skill test conducted on 19.08.2006. The petitioner also attended the said test. The candidates were short listed on the basis of their performance in the written/skill test as per their trade. 20 candidates were short listed for 4 posts. The list was displayed on the notice board of the Institute on 26.08.2006. In as much as the petitioner did not qualify, his name was not included in the short list. The contention that the petitioner and others were eliminated at the stage of written test for the reason that if allowed for skill test, Respondents 3 to 5 would not be able to compete with him as they do not have required technical knowledge and thus intentionally and deliberately petitioner was eliminated at the stage of written test is not correct. The petitioner was allowed to take the skill test, but unfortunately he could not qualify.*

12. *The allegations and contentions in Para 11 are untenable and without merit. It is unfortunate that the petitioner had become over aged and loses opportunity for employment in future. In as much as, he failed to qualify in the limited recruitment even though the rigour of general recruitment is not adopted. The allegation that favouritism shown by Respondents 1 and 2, particularly this Respondent towards Respondents 3 to 5 deprived the petitioner of employment and livelihood is untenable and without merit. Only the 4th respondent was selected. Selection was*

conducted objectively and as per the performance in written/skill test and oral interview. Allegations of partiality and favouritism are baseless apart from being vague.

13. The allegations and contentions in Para 12 are untenable and without merit. It is submitted that this Respondent did not permit any person without qualification to take the test. In as much as the petitioner failed to qualify in the Written/skill test, his candidature could not be considered for appointment. The Writ petition is devoid of merits and is liable to be dismissed."

5. The Apex Court in a judgment reported in (2009)

5 SCC 511 in K.A.Nagamani v. Indian Airlines & Others

at para 54 observed as under :

"The Appellant having participated in the selection process along with the contesting respondents without any demur or protest cannot be allowed to turn around and question the very same process having failed to qualify for the promotion."

6. The Apex Court in a judgement reported in (2013)

11 SCC 309 in Ramesh Chandra Shan and Others v. Anil

Joshi and others at para 18 observed as follows :

Para 18 : "It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome".

7. Taking into consideration the specific averments made in the counter affidavit filed by respondent Nos.1 and 2 at paras 8, 9, 12 and 13 and also the principle laid down by the Hon'ble Apex Court in the Judgments (extracted to and referred above), this Court opines that the present Writ petition is devoid of merits and the same is dismissed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 19.01.2023

ksl

Note: L.R. copy to be marked.

