

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**W.P. No. 24417 OF 2018**

Between:

K.Yadagiri

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 05.06.2023

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
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 24417 OF 2018****% 05.06.2023****Between:**

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< **Gist:**> **Head Note:****! Counsel for the Petitioner : Mr S.Rahul Reddy****^ Standing Counsel for the Respondents:****Mr D.Balakishan Rao****? Cases Referred:**

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 24417 OF 2018****ORDER:**

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. This Writ is filed to issue a Writ of Mandamus declaring the action of the respondents in not notifying the vacancy meant for the post of disabled persons under 3% quota for the post of Veterinary Assistant in Category (4) of Class-A in Medak District under Notification No.30/2017 dated 02.06.2017 in 1st Respondent Department, and further not indicating the backlog vacancies from the earlier recruitment and roster point as illegal, without jurisdiction, violative of Articles 14, 16 and 21 of Constitution of India and consequently direct the Respondents to consider and appoint the Petitioner against the vacancy meant for disabled persons under 3% quota or any other unfilled backlog vacancies as per Rule 22 of Telangana State and Subordinate Service Rules 1996 for the post of Veterinary Assistant in Category (4) of Class-A in Medal District under Notification No.30/2017 dated

02.06.2017, as per eligibility and merit with all consequential reliefs.

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

- a) The Petitioner, belongs to BC(A) Community and is Orthopaedically handicapped and possesses all requisite qualifications for the post of Veterinary Assistant in Category (4) of Class-A.
- b) The 2nd respondent issued Notification No.30/2017, dated 02.06.2017 for the said post and the petitioner had applied for the same. The petitioner had taken the examination on 23.07.2017 and had qualified in the Written Exam and was called for verification of certificates on 04.10.2017 and had given the web option on 11.10.2017.
- c) On 26.08.2018, the 2nd respondent had released the provisionally selected candidates mark list and the hall ticket number of the petitioner had not been mentioned. The 2nd Respondent further, issued a Press Note on 26.06.2018 that out of 541 vacancies notified, 462 vacancies were filled up and 76 vacancies remained unfilled due to non-availability of

eligible candidates in category of Women, PH, Agency, and Communities in some districts.

d) The petitioner had made a representation to the 2nd respondent on 18.06.2018 to interchange other physically handicapped vacancies and when the petitioner had approached the office of the 2nd respondent for enquiring about the roster points, the petitioner had been informed that fresh roster points are being followed, as this was the first recruitment after the formation of Telangana State and that only 489 vacancies are pertaining to this vacancies and the remaining vacancies are backlog vacancies.

e) The petitioner had requested the 2nd respondent to include 1 (One) OH Vacancy as per Rule 22, appointing the petitioner in the said post of Veterinary Assistant as per eligibility and merit and the action of 2nd respondent in not notifying the 3% vacancies pertaining to disabled persons is contrary to law.

f) Total 78 posts were notified in Medak and as per 100 point roster under Rule 22 of Telangana State Subordinate Service Rules, 1996, three physically handicapped vacancies

should have been notified i.e., 1-VH at roster No.6, 1-HH at roster No.31 and 1-OH at roster No.56, instead only one VH and HH vacancy were notified which is in violation of Rule 22 of Telangana State Subordinate Service Rules, 1996 and Article 14 of Constitution of India.

g) If, a fresh roster is being followed for the newly formed Telangana state, then the 2nd Respondent ought to have seen that 3 disabled vacancies are to be notified and it appears that no roster point system is being followed.

h) The 2nd respondent had not indicated the backlog vacancies to disabled persons, pertaining to Medak District and the same is illegal and violative of Articles 14 & 16 of Constitution of India and further, the 2nd respondent had not notified the OH Vacancy thereby denying the petitioner, the right to employment, depriving the petitioner of livelihood, which is in violation of Article 21 of Constitution of India.

i) The Petitioner and his family had invested a lot of time and money in preparation and the family of the petitioner is dependent on the Petitioner and hence, the Writ Petition is filed.

4. The 1st respondent filed counter affidavit, in particular, paras 4, 5, 6 and 7 reads as under:

"4. It is submitted that, as per the Roster Register of Mens District (78) Veterinary Assistant posts were notified by the 2nd Respondent. Out of (78) vacancies there are (03) carry forward vacancies other than Disabled Vacancies .. Roster Point No.8 ST(W), 22 SC (W), 33 ST, 47 SC (M), 45 BC-A (W), 58 ST (W), 59 OC (W), 64 BC-D (W), 65 OC (W). 66 SC (W), 68 BC-D, 69 BC-E, 71 OC (W). As seen from the above there are no carry forward vacancy in respect of disabled candidates who are governed by rule (4) of G.O.Ms.No.26, dated:20.06.2004.

5) I submit that, there are (65) regular vacancies from Roster Point No.73 to 100 and in Cycle No. I and Roster Point No. 7 to 37 in Cycle-II.

6) I submit that, as per Service Rules issued in G.O Ms. No. 26 AH DD & F (AH.II) Department, dated 20-06-2004 Rule 4 (i) The rule of Special Representation (General Rule 22 & 22A) shall apply to appointments by direct recruitment to various posts in this service. Reservation for physically handicapped persons in respect of the posts of veterinary Assistant shall be made, provided they fulfil the following: -

(d) In the Orthopedically handicapped category, the defect shall be minimum and the selection committee satisfies that the selected candidate can perform his duties without any difficulty.

7) I submit that, according to Roster Register there are no carry forward vacancies in the category of Disabled at the time of Notification. The vacancy position notified by the 2nd Respondent is placed below.

5. The 2nd respondent filed counter affidavit, in particular, paras 6, 7 and 8, reads as under:

"6) In this connection, I respectfully submit that, as indented by the Animal Husbandry Department, total 78 vacancies in which roster points & 22, 33, 45, 47, 58, 59, 64, 65, 66, 68, 69 & 71 are carried forward vacancies from previous recruitment. Hence, no PH carry forward vacancies are notified in this recruitment. The Government have issued guidelines to follow continuous Roster Points from next Roster at which, the preceding Roster ended for the post for District / Zonal posts. As such, including the 13 carry forward vacancies, remaining 65 vacancies are fresh vacancies and the Rosters for these vacancies started from 73 to 100 of 1st cycle and 01 to 37 of second cycle. Therefore, only one VH (G)-L at Roster Point 06 (2 Cycle) and one HH (W)- at Roster Point 31 (2 Cycle) are notified from fresh vacancies strictly following the Rule of Reservation envisaged under Rule-22 of State and Subordinate Service Rules and G.O. Ms. No. 99, General Admin (Ser.D) Department, dated: 04-03- 2013, which was in force at the time of issuance of Notification. **The**

Roster points earmarked for OH is not touched either in carry forward vacancies or in fresh vacancies due to the reason that the Commission followed continuous Roster points as per the guidelines of the Government.

7. In view of the above, it is clear that, there are (1) fresh VH-L and (1) fresh HH (W)-L vacancies notified, however, there is no post notified in the category of Orthopedically Handicapped (OH) category for which petitioner is claiming. More importantly, there are no posts carried forward from previous recruitment in Medak District in Physically Handicapped category i.e. **VH/HH/OH. As such, the petitioner's contention to consider him under OH category is not possible as there is no post notified under this category and the petitioner's contention to consider him by interchanging the carried forward vacancy is also not possible as there are no carried forward vacancies notified in this Notification as it is the initial Notification for PH vacancies and interchangeability of PH categories applicable only when PH vacancies are carried forward to succeeding recruitment due to the reason of non-availability of the eligible candidates in initial recruitment.** Hence, it is clear that the petitioner is making arguments for his convenience and to seek berth in the recruitment.

8. Further, I respectfully submit that, the GO Ms. No. 99, dated: 04-03-2013 is in force that the time of issuance of Notification for the posts of Veterinary Assistants, dated: 02/06/2017. The GO was issued by General Admin. (Services- D) Department, Govt. of Andhra Pradesh by making amendments to the Rule-22 of the Andhra Pradesh State & Subordinate Service Rules and the amendment is as follows:

"The 6" 31" and 56th turns in each cycle of hundred (100) vacancies shall be allotted to the Blindness or Low Vision (Visually Handicapped). Hearing Impaired (Hearing Handicapped) and Loco motor Disability or Cerebral Palsy (Orthopedically Handicapped) person respectively as stated above and where qualified and suitable candidates are not available from among them, the turn allotted for them in the unit referred to above shall be carried forward to the succeeding recruitment year for being filled from the same category."

6. The petitioner filed the Additional affidavit, in particular, para 4, reads as under:

"4. I humbly submit that as per the information given by the Public Information Officer the last roster point for vacancies of Veterinary Assistant posts in the last direct recruitment in 2008 ended with roster number 84 OC (Women). Therefore, under the present recruitment

against vacancies of 78 falling to Medak District, the roster if followed from the last recruitment should have started from roster No.85 i.e. BC(B) and end with roster No.162 i.e. SC(General), in which case roster point No.106-VH(Gen), 131-HH(W) and 156-OH(Gen) would fall against the Physically disabled category. I submit that as seen from the Notification instead of above mentioned 3 physically disabled vacancies, only 2 vacancies of one VH(Gen) and HH(W) were notified in violation of the Rule of Reservation under Rule 22 of Telangana State and Subordinate Rules 1996."

7. PERUSED THE RECORD :

i. Para 5(9) of the Notification No.30/2017, dated 02.06.2013 issued by the Telangana State Public Service Commission, Hyderabad, for recruitment of Veterinary Assistant in Category (4) of Class-A in Animal Husbandry Department, which deals with important legal provisions governing the recruitment process reads as under :

Reservation : (i) The Reservation and eligibility in terms of General Rule 22 & 22(A) of State and Subordinate Service Rules are applicable.

(ii) Reservation to Disabled persons is subject to their eligibility to any of the above category of posts and shall be subject to fulfillment of Special Rules of the Department governing the posts. The required extent of

deformity and the genuineness of the Medical Certificate and in the case of ambiguity or doubt, the same shall be referred to the Appellate Medical Boards as per the instructions of the Government.

ii. **The important note in the Notification reads as under :**

IMPORTANT NOTE :

The number of vacancies in Departments are subject to variation on intimation being received from the Appointing Authority.

DISCUSSION AND CONCLUSION :

8. The Petitioner in the Writ Petition challenges the impugned action of the Respondents in not notifying 3% vacancies pertaining to disabled persons as contrary to law and the Rule of Reservation governing the recruitment process as notified in the Notification No.30/2017 dated 02.06.2017.

9. On 27.07.2018 this Court while directing notice before admission further directed counter to be filed in 2 weeks by the Government explaining the reasons for not notifying the vacancies of orthopedically handicapped candidates, and

accordingly counter affidavit has been filed by the 1st and 2nd respondents.

10. A bare perusal of the list of roaster point and other points in respect of carry forward vacancies at para 9 of the counter affidavit of the 1st Respondent clearly indicates that the 2nd Respondent submitted merit list to the 1st Respondent in respect of the candidates and the 1st Respondent after considering the roaster list by that date after deterring the carry forward posts as per the relevant roaster point categories started fresh list and the 1st Respondent had commenced the serial number 73 of the cycle and since there was no orthopedically handicapped disabled points within the 65 posts which are to be placed from 73 to 100 of the first cycle and 1 to 37 of the second cycle and therefore the orthopedically handicapped roaster point was at 56 of 100 point cycle. Therefore the plea of the petitioner in the Additional Affidavit that the roaster if followed from the last recruitment should have started from roaster No.85 i.e., BC(B) and end with roaster No.162 i.e., SC(Gen) is factually incorrect.

11. Taking into consideration the important note notified in the Notification No.30/2017, dated 02.06.2017 that the number of vacancies in Departments are subject to variation on intimation being received from the Appointing Authority and the averments made in paras 6, 7 and 8 of the counter affidavit filed by the 2nd Respondent and also the specific averments made in paras 4 to 7 in the counter affidavit filed by the 1st Respondent (referred to and extracted above), wherein it is clearly explained that there is no OH vacancy notified in the notification and the question of inter changing the category did not arise in this initial notification as there is no post carried forward to the present notification from the previous recruitment in Medak District in physically handicapped category i.e., VH/HH/OH, this Court opines that the Petitioner cannot claim for himself interchanging of available unfilled vacancies caused due to non-availability of eligible candidates and to consider the Petitioner for OH vacancy which is not

notified and hence the Writ Petition is dismissed since the same is devoid of merits.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 05.06.2023

Note: L.R. copy to be marked

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