

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No.16005 OF 2019

Between:

Mutyala Gautam

... Petitioner

And

State of Telangana 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.16005 OF 2019****% 19.01.2023****Between:****# Mutyala Gautam****... Petitioner****and****\$ State of Telangana and others****.....Respondents****< Gist:****> Head Note:****! Counsel for the Petitioner : Sri L. Prabhakar Reddy****^Counsel for Respondents 4 to 9: Sri S.Lakshmikanth****^Counsel for respondent No.2 : Sri M.V.Rama Rao
Standing counsel****^ Counsel for respondent No.1 : G.P. for Home****? Cases Referred:**

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

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 16005 of 2019****ORDER:**

Heard learned counsel for the petitioner learned standing counsel for the 2nd respondent and learned counsel appearing for respondents 4 to 9.

2. This writ petition is filed to issue an writ, order or direction more particularly one in the nature of Writ of Mandamus to direct the respondent authorities to consider the claim of the petitioner for appointment to the post Code Nos.11 to 19 under Ex-Servicemen Quota as per the notification Rc.No.89/Rect./Admn.-1/2018 dated 31.05.2018 issued by the 2nd respondent herein, by declaring the action of the respondent authorities with regard to the manner of conducting tests and reducing the vacancies after conducting examination, as illegal, arbitrary, and in violation of Art.14 and 16 of Constitution of India and contrary to the provisions of Telangana State & Subordinate Service Rules, 1996 consequently set aside the improper selection of the respondent nos. 4 to 9 under ex-servicemen quota.

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

a) The Petitioner is a Ex-servicemen and is challenging the manner and method of selection process by the 2nd respondent for selection of posts notified vide Rc.No.89/Rect./Admn.1/2018 dated 31.05.2018 under ex-servicemen quota.

b) The Petitioner is a local candidate of Zone – V comprising Adilabad, Karimnagar, Warangal, and Khammam districts and had worked in the past in:

1. On 08.08.1996 – Joined in Indian Air Force as Aircraftsmen.
2. On 1997 – Posted to Bikaner in Rajasthan and worked up to 2001.
3. On 1999 – Took part in Kargil war and also received appreciation letter by Station Commander in 2004.

c) The petitioner also received letter of appreciation from Air Officer Commanding in the year 2005 and 2007 for discharging his duties sincerely, efficiently and professionally and after working for 20 years, he has retired as Sergeant in the year 31.08.2016.

d) The 2nd Respondent has issued recruitment notification through online vide proceedings no. 89/Rect/Admn.-1/2018 dated 31.05.2018 for filling up of various posts:

- a. Sub-Inspector of Police – 710.
- b. Reserve Sub-Inspector of Police – 275
- c. Reserve Sub-Inspector of Police, TSSP – 275 and
- d. Other posts – in all 1217, code 11 to 19, through direct recruitment in Zone – V, VI and city of Hyderabad.

e) The petitioner has applied having the eligibility through online for the supra mentioned posts and was assigned with registration no. 11209851. **The process of selection consists of 5 stages i.e., Preliminary Written Test, Physical Measurement Test, Physical Efficiency Test, Final Written Examination followed by Final Selection. The Selection for posts of Code No. 11 – (Sub-Inspector of Police, selection will be made based upon merit scores in the final written examination subject to reservation. The Selection for posts of Code No. 12 – (Reserve Sub-Inspector of Police), the selection will be made both on merit scored in the final written examination and also upon the Physical Efficiency Test**

subject to reservations and the process for other code is different.

f) The Post Code – (Reserve Sub-Inspector of Police) of Zone V was shown as 166 and Zone VI as 109. However, after the completion of all the tests, the 2nd Respondent has brought an amendment to the supra “Notification in Rc No. 89/Rect./Admn-1/2018 dated 31.05.2018” vide Rc.No.89B/Rect./Admn-1/2018 dated 12.07.2019 reducing the number of posts from 166 to 109 in Zone – V and adding the same to Zone VI, assigning no reason whatsoever.

g) The Rule 24 of the notification deals with, who can claim reservation as ex-servicemen and the conditions to satisfy to claim such reservation mentioned in Rule 2(16) of Telangana State Subordinate Service Rules, 1996 and the explanation of the said rule is given at length. As per Rule 22E(c) of Telangana State Subordinate Service Rules, 1996 out of every 50 posts in the Police Subordinate Service, 2 posts shall be reserved for direct recruitment of ex-servicemen i.e., the Roster point No. 13 to 37. As per the original Notification dated 31.05.2018, the number of notified

vacancies for Zone V relating to post Code No. 12 were 166 vacancies, out of which, ex-servicemen will be getting 4 posts.

h) Due to by passing the selection process and due to improper reduction of number of posts of Reserve Sub-Inspector of Police Posts (Post code No. 12) in Zone – V from 166 to 109, the number of posts for ex-servicemen fell from 4 to 2 and the petitioner would have been automatically selected by virtue of his rank if there was no change in vacancies. Even though, the 2nd respondent reserves his right to notify the required modification in any aspect of the recruitment, that does not apply in the present instance usually, the number of vacancies could be increased before the commencement of examination, but in this particular incident, the Final Written Examination was held on 21.04.2019 and the amendment to the notification was brought on 12.07.2019 which is arbitrary, improper and such reduction is to be set aside.

i) Under an R.T.I application addressed by Respondent No. 3 to Respondent No. 2, it has been submitted that, no

verification/cross-verification of certificates of the certificates is being done by Respondent No.2. Had the reduction in ex-servicemen not happened due to arbitrary reduction in Posts of Reserve Sub-Inspector of Police (Post code No. 12), and verification/cross checking of certificates of Respondents 4 to 9 would have been done, the respondents 4 to 9, would not have been selected as eligible candidates and by virtue of next in highest marks, the petitioner would have been selected under the said posts to Zone-V.

j) Respondent no. 4 was unwilling to continue in service against shelter appointment under item No. III (V) of Army Rule 13(3) and is also drawing disability pension from the Army is not eligible for post Code 11 to 19 and that respondent No. 4 is ineligible as he already got selected in the post of Junior Panchayath Secretary and also Group – IV under direct recruitment, under ex-servicemen quota, as the same is against the Office Memorandum No. 36034/1/2014-Estt.Govt. of India dated 14.08.2014.

k) Respondents 4 to 8 are selected and working as Junior Panchayath Secretary and those who have already availed

once the benefit of ex-servicemen quota, are not eligible for claiming benefits once again as per Office Memorandum. Respondent No. 9 having not obtained valid and proper NOC, one year before the retirement of service as required under Rule 2(16) of Telangana State Subordinate Service Rules, 1996 and is still continuing as JE is MES and is not retired from service and hence, he is ineligible to claim the benefits of Reservations under Ex-servicemen quote for the said posts.

l) An application dated 22.07.2019 under R.T.I. Act has been made to the 3rd Respondents seeking clarification with respect to eligibility of ex-servicemen to avail second time reservation under the rules and instructions, which is still pending before the concerned authority. The 3rd respondent, who is having overall responsibility for resettlement of ex-servicemen personnel including officers and their families, apart from advising Central Government in matters relating to assisting the welfare of ex-servicemen.

m) No marks were shown to the petitioner in the individual login and only some of the candidates marks were uploaded. Till date, the marks and rank of the petitioner is not uploaded

in the individual login. The petitioner made a representation on 13.07.2019 for the same. A vague reply was given that the petitioner secured 182 marks out of 400 and 67.5 marks in PET. Hence, this writ petition.

4. Counter affidavit filed by respondent 4 to 9, in brief, is as follows:

a) The petitioner is insisting the Recruiting Agency, the mode of selection as per his whims and fancies which is untenable in the eye of law and such the contentions of the Petitioner in the writ petition are baseless and far from the truth.

b) Para 4 of the Office memorandum dated 14.08.2014 reads as under:

"The matter has, therefore, been considered in consultation with Department of Ex-servicemen, Ministry of Defence. It has now been decided that, if an ex-serviceman applies for various vacancies before joining any civil employment, he/she can avail of the benefit of reservation as ex-serviceman for any subsequent employment. However, to avail of this benefit, an ex-serviceman as soon as he/she joins any civil employment, should give self-declaration/undertaking to the concerned employer

about the date-wise details of application for various vacancies for which he/she had applied for before joining the initial civil employment. Further, this benefit would be available only in respect of vacancies which are filled on direct recruitment and wherever reservation is applicable to the Ex-servicemen."

c) In view of the above, respondents 4 to 8 submitted the declaration that they have also applied for the subject respective posts pursuant to the notification dated 31.05.2018. Respondents 4 to 8 issued no objection certificates enabling them to appear for the selection process and respondent No.9 permitted the same in terms of Telangana State and Subordinate Service Rules.

d) Respondent No.9 was permitted by his Unit Officer duly granting 'no objection certificate' dated 31.10.2018 in terms of Telangana State and Subordinate Service Rules. As per the said rules a person category of Ex-serviceman can be permitted to appear for re-employment one year before the completion of the specified terms of engagement and avail. Therefore, the

selection and appointment of respondents 4 to 9 is well within the four corners of law. As the petitioner is an unselected candidate cannot question the selection of respondents 4 to 9. Hence, the writ petition is liable to be dismissed.

5. The counter affidavit filed by the 2nd respondent, in brief, is as follows:

a) The marks secured by the petitioner are less than the cut off marks for all the posts, under ex-serviceman category. In the final written examination the petitioner secured 182 marks, for the post of SCT SI (Civil)/Station Fire Officer and Dy.Jailor. For the post of RSI Armed Reserve he secured 167.53 and for the post of SCT RSI SAR CPL/TSSP it is 158.50 marks.

b) On the basis of zone/unit/District wise vacancies as furnished by the DGP, TS, DG, Fire Services etc., the Chairman TSLPRB issued the notification. As per the revised figures, vacancies for ex-servicemen for the post Code 12 in Zone V are 2 and the same have been filled as per the merit and the provisional selection list was issued on 12.07.2019.

The contention of the petitioner that vacancies were added to Zone VI to favour the candidates of Zone VI is not correct.

c) No application under RTI Act was received from the petitioner by the 2nd respondent office. There are no Government instructions for verifying the certificates of Ex-servicemen with the 3rd respondent about its genuineness before issuing provisional selection list. The 9th respondent submitted no objection certificate dated 31.10.2018. As per explanation given in Sub Rule 16 of Rule 2 of the Telangana State and Subordinate Service, the persons serving in the Armed Forces of the Union, who retired from service, would come under the Category of ex-servicemen, and they may be permitted to apply for re-employment one year before the completion of the specified terms of engagement and avail. Therefore, there are no merits in the writ petition and hence, the same is liable to be dismissed.

PERUSED THE RECORD :

6. The main grievance of the Petitioner in the present Writ Petition is with regard to the action of the Respondent authorities in reducing the vacancies after

conducting examination as illegal, arbitrary and in violation of Article 14 and 16 of the Constitution of India and further Petitioner is aggrieved by the action of the Official Respondents herein with regard to the manner of conducting tests and selection of candidates. Petitioner's prayer in the Writ Petition is to consider the case of the Petitioner for appointment to the Post Code Nos.11 to 19 under Ex-Servicemen Quota as per the Notification RC No.89/Rect/Admn-1/2018, dt. 31.05.2018 issued by the 2nd Respondent.

7. Counter affidavit filed by the 2nd Respondent relevant Paras 5 & 6 read as under :

Para 5 : It is submitted that pursuant to the above Notification Rc.No.89/Rect./Admn.1/2018, dated 31.05.2018, the Petitioner applied for SCT SI Civil and/or equivalent Posts and participated in the Recruitment Process vide Registration No.1209851. In the Final Written Examination the Petitioner secured 182 Marks, for the Post of SCT SI (Civil)/Station Fire Officer and Dy. Jailor. For the Post of RSI Armed Reserve he secured 167.53 and for the Post of SCT RSI SAR CPL/TSSP it is 158.50 marks. The marks secured by the Petitioner are less than the Cut Off Marks for all the Posts, under Ex-Serviceman Category.

Para 6 : It is submitted that at Para 9, 11, 12-14 of the Writ Petition the Petitioner has contended that in the Notification the vacancies for Post Code No.12 (RSI AR) in Zone-V was Notified as 166 and the same was reduced to 109 through a supplementary Notification due to this reason the Post for Ex-Servicemen were reduced in Zone-V. In this regard it is submitted that the TSLPRB is a recruiting agency. On the basis of Zone/Unit/District wise vacancies as furnished by the DGP, TS, DG, Fire Services etc., the Chairman TSLPRB issue the Notification. For this Recruitment the DGP Office furnished the vacancies of RSI AR as 166 for Zone-V and 109 for Zone-VI. The same was mentioned in the Notification dated 31.05.2018 issued by Chairman, TSLPRB. Through U.O. Note No.222/Plg-I/2017, dt.05.07.2019 the DGP, TS informed the Chairman, TSLPRB that earlier vide U.O.Note dt. 03.04.2017 for Post Code 12 distribution of 275 Posts of SCT RSI was inadvertently shown as Zone-V-166 and Zone-VI-109. The Chairman, TSLPRB was requested to issue corrigendum with revised vacancies as Zone-V-109 and Zone-VI-166. Accordingly, vide Supplementary Notification dt. 12.07.2019 the vacancies for the Post Code 12 (SCT RSI AR) was modified. As per the revised figures, vacancies for Ex-Servicemen for Post Code-12 in Zone-V are 2 and the same have been filled as per merit and the Provisional Selection List was issued on 12.07.2019. The contention of the Petitioner that

vacancies were added to Zone-VI to favour the candidates of Zone-VI is not correct.

8. The relevant paras of the Counter Affidavit filed by the Unofficial Respondents i.e., 4 to 9 portion of para 6 and 7 read as under :

Para 6 : The Petitioner being unselected candidate cannot make such baseless allegations. Further it is submitted that Respondent No.4 did not join to the post of Junior Panchayat Secretary. As far as the Office Memorandum No.36304/1/2014-Estt.(Res), dated 14.08.2014 issued by the Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training, Government of India, is concerned it reads as follows :

Para 4 : The matter has, therefore, been considered in consultation with Department of Ex-serviceman, Ministry of Defence. It has now been decided that, if an ex-serviceman applies for various vacancies before joining any civil employment, he/she can avail of the benefit of reservation as ex-serviceman for any subsequent employment. However, to avail of this benefit, an ex-serviceman as soon as he/she joins any civil employment, should give self-declaration/undertaking to the concerned employer about the date-wise details of application for various vacancies for which he/she had applied for before joining the initial civil employment. Further, this benefit would be available only in respect of vacancies which are filled on direct recruitment and wherever reservation is applicable to the Ex-servicemen.

Para 7. In view of the above the Respondent No.4 to 8 have submitted the declaration as contemplated in the above para of the office memorandum dated

14.08.2014 of Government of India declaring that, they have also applied for the subject respective posts pursuant to the notification issued by Telangana State Level Police Recruitment Board (TSLPRB) dated 31.05.2018. It is also pertinent to mention here that, the respective District Panchayat Officers i.e., Respondent No.4 to 8 have issued the 'No Objection Certificates' enabling them to appear for the selection process of TSLPRB. As such the Selection and Appointment of the answering respondents is within the four corners of law and the petitioner has no right to say anything. The selections made by the competent authority after following the due process of law.

DISCUSSION & CONCLUSION :

9. In so far as the main grievance of the Petitioner in the present Writ Petition is concerned it is two fold :

Firstly

(i) with regard to the action of the Respondent authorities in reducing the vacancies after conducting examination as illegal, arbitrary and in violation of Article 14 and 16 of the Constitution of India.

ii) A bare perusal of the relevant portion of the Notification dt. 31.05.2018 vide Rc.No.89/Rect./Admn-1/2018, issued by the 2nd Respondent herein reads as under :

"The number of vacancies indicated above is only tentative and is liable to change without any notice. TSLPRB reserves the right to notify

required modifications with regard to any aspect of recruitment during the process of recruitment”.

10. A bare perusal of the extract of the above Notification dt. 31.05.2018 clearly indicates that the 2nd Respondent has a right to notify required modifications and the circumstances that led the 2nd Respondent Authority to revise figures/vacancies are very clearly explained at Para 6 of the counter affidavit filed by the 2nd Respondent herein as extracted above.

11. In so far as the performance of the Petitioner is concerned in the final written examination it is clearly stated at Para 5 of the counter affidavit filed by the 2nd Respondent herein that the Petitioner secured marks less than the cutoff marks for all the posts under Ex-Servicemen category.

Secondly :

(i) in so far as the second grievance of the Petitioner i.e., The action of the Official Respondents herein with regard to the manner of conducting tests and selection of candidates. This Court opines that the Petitioner being unselected candidate and having participated in

the written examination cannot turn back and make baseless allegations. The petitioner admittedly having participated in the selection process and declared as unselected for his own demerits, the Petitioner cannot complain about the manner of conducting tests and selection of candidates.

ii) 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.

iii) 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."

iv) 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".

12. **The petitioner's prayer in the Writ Petition is to consider the case of the Petitioner for appointment to the Post Code Nos.11 to 19 under Ex-Servicemen Quota as per the Notification RC No.89/Rect/Admn-1/2018, dt. 31.05.2018 issued by the 2nd Respondent, the said prayer cannot be granted in view of the fact that the marks secured by the Petitioner are less than the cutoff marks for all the posts under Ex-servicemen category as specifically averred at para 5 of the counter affidavit filed by the 2nd Respondent.**

13. Taking into consideration the principle laid down by the Apex Court referred to and extracted above and all the above referred facts and circumstances of the case and also the contentions specifically contended in the counter affidavit filed by 2nd Respondent at paras 5 and 6 (extracted above) and the contentions specifically contended in the counter affidavit filed by the unofficial Respondents at para 6 (extracted above),

this Court opines that the Writ Petition is devoid of merits and the same is accordingly dismissed.

Miscellaneous petitions, if any, pending shall stand dismissed.

SUREPALLI NANDA, J

Date: 19.01.2023

Note: L.R. copy to be marked

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