

**IN THE HIGH COURT FOR THE STATE OF TELANGANA,
HYDERABAD**

*** * ***

Writ Appeal No.746 of 2022

Between:

The State of Telangana,
represented by its Principal Secretary,
Health, Medical and Family Welfare Department,
Secretariat, Hyderabad; and others

Appellants

Versus

Ms. Valusa Nagajyothi and others

Respondents

JUDGMENT PRONOUNCED ON : 11.11.2022

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HON'BLE SRI JUSTICE E.V. VENUGOPAL

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : **Yes**

ABHINAND KUMAR SHAVILI, J

E.V. VENUGOPAL, J

***THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

AND

THE HON'BLE SRI JUSTICE E.V. VENUGOPAL

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Represented through its Principal Secretary,
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... Appellants

And

Ms. Valusa Nagajyothi and others

... Respondents

!Counsel for the appellants : Special Government Pleader,
appearing on behalf of learned
Additional Advocate-General.

^Counsel for the respondents : Mr. S. Satyanarayana Rao

< Gist:

> Head Note:

? Cases referred:

1. (2019) 20 SCC 17
2. (2008) 1 SCC 362

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

AND

THE HON'BLE SRI JUSTICE E.V. VENUGOPAL

Writ Appeal No.746 of 2022

JUDGMENT: *(Per Hon'ble Justice Abhinand Kumar Shavili)*

This Writ Appeal is filed by the appellants assailing the order passed by a learned Single Judge of this Court in Writ Petition No.3972 of 2019, dated 07.02.2022.

2. Heard learned Special Government Pleader, appearing on behalf of learned Additional Advocate-General, appearing for the appellants; and Mr. S. Satyanarayana Rao, learned counsel for the respondents.

3. Learned counsel for the appellants contended that respondents herein have possessed Diploma in Pharmacy and they are also registered with the Pharmacy Council and working on contract basis with the appellants as Pharmacists Grade-II in the Government Hospital, viz., M.G.M. Hospital, Warangal, Warangal District at various Primary Health Centres; and the respondents have completed 18 years, 14 years, 12 years, 6 years and 16 years of continuous service, respectively.

4. Learned counsel for the appellants contended that the respondents herein are unemployed youth and were fully qualified and eligible to be appointed to the post of 'Pharmacist'; the Telangana State Public Service Commission had issued Notification No.04/2018 dated 25.01.2018 **(for short, 'the notification')** inviting applications for the post of Pharmacist Grade-II; the respondents herein responded to the said notification for the post of Pharmacist Grade-II, and the last date for submission of application for the said post was 28.02.2018; thereafter, written examination was conducted in the month of May, 2018 and final key was also published in the month of June; the grievance of respondents is that some of the Pharmacists, who were working on outsourcing basis and after participation in the selection process, approached this Court claiming weightage of marks for the services rendered by them on outsourcing basis; in the said notification, the method of selection for the appointment to the post of 'Pharmacist' is based on (70) weightage points for written examination and (30) weightage points for Government Service (Experience); the service weightage would be extended to Pharmacists

who were already working on contract basis, and in respect of the unemployed candidates, (i.e., the respondents herein) there is no weightage, and they have to compete along with Pharmacists working on contract basis, and certain weightage of marks were earmarked for them; therefore, the outsourcing employees were not entitled for grant of service weightage.

5. Learned counsel for the appellants has further drawn the attention of this Court to the Rules issued by the State Government *vide* G.O.Ms.No.166, Health, Medical & Family Welfare (B1) Department, dated 09.09.2017, which was issued by the State Government based on selection; the Notification dated 25.01.2018 and the Rules framed in G.O.Ms.No.166, dated 09.09.2017, make it very clear that there is no service weightage for persons working on outsourcing basis, and service weightage was extended only in respect of workers who were working on contract basis; the respondents have not participated in the selection process, and having appeared for the written examination, they have turned around and were claiming service weightage of marks by filing Writ Petition No.3972 of 2019 before this Court; and a learned Single Judge of

this Court allowed the said Writ Petition *vide* order dated 07.02.2022 by directing the appellants to extend service weightage in respect of respondents also who are working on outsourcing basis.

6. Learned counsel for the appellants further contended that if service weightage is extended to outsourcing employees, then the posts have to be filled up by in-service candidates i.e., persons who were working on contract basis as the Rules have provided service weightage in respect of contract employees only and then no post would be left to be filled-up by fresh candidates; even if the respondents herein had secured good marks, then also their cases will not be considered as all the posts would be filled up by the in-service candidates who were working on contract basis / outsourcing basis; and the said fact was not properly considered by the learned Single Judge in Writ Petition No.3972 of 2019, dated 07.02.2022.

7. Learned counsel for the appellants further contended that the Rules, issued *vide* G.O.Ms.No.166, dated 09.09.2017, fell for consideration before a Full Bench of this Court in Writ Petition No.40157 of 2017; the Full Bench, *vide* order dated 18.09.2020, was pleased to uphold

the Rules which would mean that service weightage was upheld by the Full Bench, and the Rules issued in G.O.Ms.No.166, dated 09.09.2017, never granted any entitlement of service weightage to the outsourcing employees; therefore, the order passed by the learned Single Judge in Writ Petition No.3972 of 2019, dated 07.02.2022, is contrary to law; the learned Single Judge had not examined the case from the perspective of 'unemployed youth' who are aspirants for the said post; and therefore, prayed this Court to pass appropriate orders in the Writ Appeal by setting aside the order passed by the learned Single Judge in Writ Petition No.3972 of 2019, dated 07.02.2022, and allow the Writ Appeal.

8. On the other hand, learned counsel for the respondents contended that though the respondents are called as 'out-sourcing employees', the respondents were also subjected to regular selection process, and only the nomenclature is different; the appellants have appointed the respondents on outsourcing basis, instead of appointing them on contract basis; the action of appellants in granting weightage to contract employees and not granting weightage to outsourcing employees amounts to

discrimination; the respondents are also working as outsourcing employees in Government Hospitals, and the State cannot discriminate between a 'contract employee' and 'outsourcing employee' since the nature of duties performed by a contract employee as well as outsourcing employee is one and the same; in the Notification, dated 25.01.2018, nowhere it is stated that weightage would be extended to contract employees; in the said notification, it was specifically mentioned that service weightage would be extended to the persons who have rendered service in Government Hospitals; admittedly, the respondents were working in Government Hospitals with a nomenclature of 'outsourcing' and not 'contract' employees.

9. Learned counsel for the respondents further relied on a judgment rendered by the Hon'ble Supreme Court in **Dr.(Major) Meeta Sahai vs. State of Bihar**¹, and contended that the Hon'ble Supreme Court had dealt with the very same issue and came to the conclusion that Doctors who are working in Government Hospitals and in Institutions run by the instrumentalities of the State cannot be discriminated; therefore, applying the same

¹ (2019) 20 SCC 17

principle, the outsourcing employees who were working in the Government Hospitals also should be extended service weightage as that of contract employees.

10. Learned counsel for the respondents further relied on the judgment of the Hon'ble Supreme Court in **B. Ramakichnin @ Balagandhi Vs. Union of India²**, and contended that experience gained after acquiring qualification, either before or after, should not be looked into, and the only issue would be if an employee is having relevant experience, and that experience should be taken into account; admittedly, in the instant case, the respondents are working on outsourcing basis for several years, and as per the Notification dated 25.01.2018, the respondents are entitled for service weightage, and there cannot be any discrimination between a 'contract employee' and an 'outsourcing employee' working in Government Hospitals.

11. In support of his contentions, learned counsel for the respondents has further drawn the attention of this Court to G.O.Rt.No.4271, dated 01.11.2008, wherein elaborate guidelines were framed by the State as to how an employee

² (2008) 1 SCC 362

has to be appointed on outsourcing basis and how remuneration has to be paid; a perusal of the said G.O. makes it abundantly clear that the respondents herein were appointed to their respective posts after following due process; and having extracted the work from the respondents for several years, and now, at the time of selection, they cannot be discriminated by the appellants for grant of service weightage; and therefore, prayed this Court to pass appropriate orders in the Writ Appeal by directing the appellants to grant service weightage for the services rendered by the respondents on par with the contract employees pursuant to the subject notification.

12. This Court, having considered the rival submissions made by the parties, is of the considered view that the learned Single Judge ought not to have allowed the Writ Petition No.3972 of 2019, dated 07.02.2022, as admittedly the respondents were working on outsourcing basis though the Rules as well as Notification did not provide for grant of service weightage to outsourcing employees. Further, a Full Bench of this Court, *vide* Writ Petition No.40157 of 2017, dated 18.09.2020, had considered the very same issue as to whether outsourcing employees are entitled to

service weightage or not, and the Full Bench also upheld the Rules issued *vide* G.O.Ms.No.166, dated 09.09.2017, and negated the contentions raised by the respondents and declined to grant relief to the respondents; the learned Single Judge was not justified in granting relief to the respondents, as the learned Single Judge had not considered the case of the appellants from the point of unemployed youth, that if service weightage is extended to outsourcing employees as well as contract employees, all the posts would have to be filled up by in-service candidates, thereby no post would be left for the unemployed youth.

13. Further, this Court is also of the considered view that no doubt, the contentions raised by the respondents are justified, but however there is a larger discrimination being meted out to unemployed youth; and moreover, the outsourcing employees herein are not prevented from consideration and they are also eligible to compete among the posts which are meant for 'Direct Recruitment', and the outsourcing employees also can compete for the post earmarked for 'Direct Recruitment' which would mean that the right to be considered for appointment is not taken

away in respect of outsourcing employees. As far as the aspect of discrimination between 'outsourcing' and 'contract' employee is concerned, the notification was issued based on the Rules issued in G.O.Ms.No.166, dated 09.09.2017, wherein Rule 9(b) of Andhra Pradesh State and Sub-Ordinate Rules were relaxed which would mean that relaxation has been given only in respect of contract employees. Since the said notification was issued in tune with G.O.Ms.No.166, dated 09.09.2017, the appellants were justified in giving service weightage to contract employees though it is contrary to Rule 9(b) of the State and Subordinate Rules. But the State has taken enough care to ensure that Rule 9(b) is relaxed in G.O.Ms.No.166, dated 09.09.2017, and the said G.O. was also upheld by a Full Bench of this Court in Writ Petition No.41907 of 2018, dated 19.11.2018. Moreover, the learned Single Judge also failed to appreciate that the respondents herein have participated in selection process in pursuance to the said notification, and thereafter, the respondents herein cannot turn around and claim benefit of service weightage contrary to the said notification. On this ground also, the

order passed by the learned Single Judge cannot be sustained, and the same is liable to be set aside.

14. Accordingly, the Writ Appeal is allowed and the impugned order passed by the learned Single Judge in Writ Petition No.3972 of 2019, dated 07.02.2022, is set aside. No costs.

15. However, it is made clear that if the respondents come within the zone of consideration as per their merit, the appellants shall consider their case for appointment to the various posts which would be notified by the Telangana State Public Service Commission.

16. As a sequel, miscellaneous applications pending if any in this Writ Appeal, shall stand closed.

ABHINAND KUMAR SHAVILI, J

E.V. VENUGOPAL, J

Date : 11.11.2022

Note : Mark the LR Copy

B/o.

Ndr / Prat