

***THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

+W.A. No.1085 OF 2023

% 14-02-2024

The State of Telangana represented by its Principal Secretary to Government, Home Department, Hyderabad, and others.
....Appellant

Vs.

\$ Kadthala Mahesh

....

Respondent

!Counsel for the appellant : Govt. Pleader for Services-I

Counsel for the respondent : Ramesh Chilla

<Gist :

>Head Note:

? Cases referred:

(2022) SCC 394

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

W.A. No.1085 OF 2023

Between:

The State of Telangana represented by its Principal Secretary to
Government, Home Department, Hyderabad, and others.
....Appellant

Vs.

Kadthala Mahesh

Respondent

....

ORDER PRONOUNCED ON: 14.02.2024**THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

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

NAMAVARAPU RAJESHWAR RAO, J

**THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

WRIT APPEAL No.1085 OF 2023

JUDGMENT: *(Per RRN,J)*

This Writ Appeal is filed by the appellants-State aggrieved by the order dated 14.07.2023 in W.P.No.18093 of 2020 passed by the learned Single Judge of this Court.

2. Heard learned Government Pleader for Services-I appearing for the appellants and Sri Ramesh Chilla, learned counsel for the respondent-writ petitioner.

3. Learned Government Pleader appearing for the appellants contended that pursuant to the Notification vide Rc.No.88/Rect./Admn.1/2018, dated 31.05.2018 issued by the Chairman, TSLPRB, Hyderabad, for filling up the vacancies of SCT PCs (Civil) and/or equivalent posts as per the Special Rules, called as "T.S. Police (Stipendiary Cadet Trainee), Rules 1999, issued vide G.O.Ms.No.315, Home (Police) Department, dated 13.10.1999, along with the amendments made from time to time, the respondent herein was provisionally selected for the

post of SCT PC (Civil) from Cyberabad/RR Unit and after verification of antecedents, he was subjected to Medical Examination at Osmania General Hospital, Hyderabad on 24.10.2019, wherein he was declared unfit due to vision problem. As per the report dated 24.01.2020 submitted by the Superintendent, Sarojini Devi Eye Hospital, Hyderabad, the respondent was examined by the Medical Board consisting of three doctors (Ophthalmologist) and his distant vision of right eye was recorded as '6/18' and left eye as 6/19 as such, declared him unfit for the said post. As per the amendment of SCT Rules issued vide G.O.Ms.No.97, dated 01.05.2006, distant vision should be '6/6' of both right eye and left eye and the same was mentioned in para 16-E of the Recruitment Notification dated 31.05.2018. Since the respondent was declared unfit by the Medical Board of Sarojini Devi Eye Hospital, subsequently based on report, the respondent was issued a show-cause notice dated 10.03.2020 calling for his explanation as to why his provisional selection should not be cancelled. Pursuant to the said show-cause notice dated 10.03.2020, the respondent submitted his explanation on 19.03.2020 stating that he took laser treatment and got cured

of his sight problem, and hence, requested to refer him to another hospital for re-examination. Having not been satisfied with the said explanation, the provisional selection of the petitioner was cancelled vide Memo No.213/Rect.Genl.2/2019, dated 07.09.2020. Aggrieved by the same, the respondent herein filed W.P.No.18093 of 2020, and a learned Single Judge of this Court allowed the said writ petition vide order dated 14.07.2023 observing as follows :-

“Having regard to the submission made and in view of the peculiar facts and circumstances of this case, the Memorandum in Rc.No.213/Rect./Genl.2/2019, dated 07.09.2020 issued by the Respondent No.2 is set aside, insofar it relates to the petitioner herein. The respondents are directed to conduct re-medical examination to the petitioner with regard to his vision and if he is found medically fit, consider his candidature for provisional selection to the post of SCT PC (Civil) in Cyberabad/RR Unit in Recruitment Notification-2018. It is made clear that this case shall not be treated as precedent, as I have decided it purely on the facts and in the peculiar circumstances of the case”.

4. Aggrieved by the same, the present Writ Appeal is filed by the State.

5. Learned Government Pleader appearing for the appellants-State further contended that the learned Single Judge ought to have seen that in the Notification dated 31.05.2018, it was clearly mentioned that in order to avert getting disappointed at a later stage, the candidates were advised to have themselves examined by a Civil Surgeon before applying for the examination to ensure that they meet the prescribed physical and medical standards. As per SCT Rules, the provisionally selected candidates shall be referred to the District Head Quarter Hospital for medical examination/fitness. For any expert opinion, candidates shall be referred to the Osmania/Gandhi Hospital based on the recommendations made by the District Headquarters Hospital. Candidates who are declared unfit in eye related issues shall be referred to Sarojini Devi Eye Hospital, Hyderabad, based on the recommendations made by the District Head Quarters Hospital. The candidates can be referred only once for such recommendations. However, in view of the false information furnished by the respondent/writ petitioner, the learned Single Judge allowed the writ petition. In fact, no candidate will be referred thrice for medical examination based on the

recommendations made by the District Head Quarters Hospital. The learned Single Judge ought to have seen that the respondent/writ petitioner took laser treatment after he was declared unfit in the second Medical Examination conducted by the Sarojini Devi Eye Hospital. The respondent/writ petitioner was first examined on 24.10.2019 at Osmania General Hospital, and after a gap of three months, he was again examined at Sarojini Devi Eye Hospital on 24.10.2020. Only after he was declared unfit by the Medical Board of Sarojini Devi Eye Hospital, he appears to have taken treatment and filed the writ petition. The learned Single Judge ought to have seen that the process of 2018 recruitment was completed long back and the candidates selected therein have already completed the Induction training and were appointed on a regular basis. Further, there are no vacancies available in respect of the Notification issued in 2018, and thereafter, another Notification was issued on 25.04.2022 and it is in the final stage of completing the selection process.

6. In support of his contentions, the learned Government Pleader appearing for the appellants relied upon the judgment of the Hon'ble Apex Court in **STATE OF**

GUJARAT AND OTHERS Vs. R.J.PATHAN AND OTHERS¹,

wherein the Hon'ble Apex Court held as follows :-

“16. From the impugned order [R.J. Pathan Project Implementation Unit v. State of Gujarat, 2021 SCC OnLine Guj 2467] passed by the Division Bench of the High Court it appears that the High Court has observed hereinabove that in the peculiar facts and circumstances of the case, it is directed that the order of absorption and regularisation and if necessary, by creating supernumerary posts, will not be treated as a precedent in other cases. Even such a direction could not have been passed by the Division Bench of the High Court as there were no peculiar facts and circumstances which warranted the above observation. No such order of absorption and/or regularisation even if required for creating supernumerary posts and not to treat the same as precedent could have been passed by the High Court in exercise of powers under Article 226 of the Constitution of India”.

7. Learned Government Pleader further contended that the learned Single Judge, while passing the order impugned in the present appeal observed that *“this case shall not be treated as precedent, as I have decided it purely on the facts and in the peculiar circumstances of this case”*. As observed by the Hon'ble Apex Court in the above judgment, no such power is available

¹ (2022) 5 Supreme Court Cases 394

to the High Court under Article 226 of the Constitution of India to issue a direction or grant relief considering the 'peculiar facts and circumstances', which is not to be treated as a precedent. As such, the learned Single Judge ought not to have passed the impugned order. Therefore, appropriate orders be passed in the Writ Appeal by setting aside the impugned order passed by the learned Single Judge.

8. *Per contra*, learned counsel appearing for the respondent-writ petitioner submits that the respondent has submitted a representation dated 29.01.2020 to the appellants requesting them to conduct the re-medical examination. However, there was no response from the authorities concerned. There are several candidates who were afforded three opportunities to undergo medical examination. Therefore, the appellant authorities are not justified in rejecting the candidature of the respondent on the sole ground that his vision did not correspond to the norms prescribed in the recruitment notification. However, the learned Single Judge, after hearing both sides and after considering the material on record, has rightly allowed the writ petition and there are no

grounds to interfere with the order passed by the learned Single Judge. Therefore, the Writ Appeal is liable to be dismissed.

9. This Court, having considered the rival submissions made by learned counsel for the respective parties, is of the view that the learned Single Judge allowed the writ petition observing at para '6' of the order as follows :-

"... The respondents might also be true in contending that there cannot be any further medical examination as per the convenience of the petitioner and if such procedure is permitted, there will be no finality with the selection process. But however, in view of the fact that the petitioner underwent surgery for correcting his vision and the re-medical examination was conducted just after six days from the date of his surgery, and as such his vision was not completely rectified and also in view of the fact that the petitioner could have been selected as SCT PC (Civil) but for his medical invalidation due to vision problem, which was subsequently got rectified by the petitioner, this Court is of the considered opinion that the ends of justice would be met if the petitioner is given one more opportunity to undergo medical examination in order to comply the vision standards prescribed by the respondent Board for his selection to the post of SCT PC (Civil)."

10. The above observations made by the learned Single Judge are incorrect because, on one hand, the learned Single

Judge is accepting the contention of the respondents therein and on the other hand, the learned Single Judge is accepting the contention of the petitioner therein while allowing the writ petition. Further, the process of 2018 recruitment has already been completed long back and another Notification was also issued on 25.04.2022 as submitted by the learned Government Pleader and in view of the said circumstances, the learned Single Judge ought not to have allowed the writ petition. The observations made by the learned Single Judge are contradictory to each other. Based on the recruitment Notification issued in 2018, already the petitioner was referred two times for medical examination, therefore, the question of referring him a third time for medical examination does not arise. If such a process is going on, everybody will opt for a medical examination repeatedly and it would become an endless process and it is not proper with regard to recruitment. Moreover, as observed by the Hon'ble Apex Court in **R.J. Pathan and others** (1 supra), it is not for the High Court exercising its jurisdiction under Article 226 to consider the peculiar facts and circumstances of the case and grant relief, which is not to be treated as a precedent. Therefore, the

impugned order passed by the learned Single Judge is liable to be set aside and it is accordingly set aside.

11. Accordingly, the Writ Appeal is allowed setting aside the impugned order dated 14.07.2023 in W.P.No.18093 of 2020 passed by the learned Single Judge. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Appeal, shall stand closed.

ABHINAND KUMAR SHAVILI, J

NAMAVARAPU RAJESHWAR RAO, J

Date: 14.02.2024

Prv

Note:-

L.R.copy to be marked

(B/o)

Prv