

THE HON'BLE SRI JUSTICE T. VINOD KUMAR
And
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

Writ Appeal No.193 of 2023

Between:

G.Rayudu Durga Rao, S/o.Pakeer Raju

.....Appellant

And

1. The State of Telangana, Rep. by its Principal
Secretary, Agriculture and Cooperation
Department and others

.....Respondents

Date of Judgment pronounced on : 21-04-2023

THE HON'BLE SRI JUSTICE T. VINOD KUMAR
And
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : **Yes**

3. Whether His Lordships wishes to see the fair copy
Of the Judgment? : Yes/No

JUSTICE T.VINOD KUMAR

THE HON'BLE SRI JUSTICE T. VINOD KUMAR
And
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

Writ Appeal No.193 of 2023

% 21-04-2023

G.Rayudu Durga Rao, S/o.Pakeer Raju

.....Appellant

Versus

\$ (1) The State of Telangana, Rep. by its
Principal Secretary, Agriculture and
Cooperation Department and others

..... Respondents

GIST:

> HEAD NOTE:

!Counsel for the Appellant : Sri K.G.Krishna Murthy, learned Senior
Counsel for Ms.K.Kiranmayee

^Counsel for the respondents : Sri M.V.Rama Rao, learned Special Govt.
Pleader for R-1, 2 and 4.

Sri S.Chalpathi Rao, learned Standing
Counsel for R-3.

? Cases referred

¹ Judgement of Supreme Court in Paradip Port Trust, Paradip and Others Vs. Their Workmen
[(1977) 2 SCC 339]. *See also* The Bengal Immunity Company Ltd. Vs. The State of Bihar and
others AIR 1955 SC 661

THE HON'BLE SRI JUSTICE T. VINOD KUMAR
And
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

Writ Appeal No.193 of 2023

JUDGMNET: *(Per Hon'ble Sri Justice T.Vinod Kumar)*

This Appeal is preferred against the order dated 06.02.2023 in I.A.No.3 of 2023 in W.P.No.1328 of 2023 whereby the learned Single Judge had vacated the interim order dated 11.01.2023 as extended on 19.01.2023 and 24.01.2023.

2. Heard Sri K.G. Krishnamurthy, learned Senior Counsel appearing for Ms. K. Kiranmayee, learned Counsel for the appellant, Sri. M.V. Rama Rao, learned Special Government Pleader for respondent Nos.1, 2 & 4 and Sri S. Chalapathi Rao, learned Standing Counsel for respondent No.3, and with their consent, the Writ Appeal is taken up for hearing and disposal at the admission stage itself.

3. The appellant herein is the petitioner in the Writ Petition filed challenging the proceedings issued vide Memo. No. D-I/490120/2022 dated 10.01.2023 issued by the respondent No.2 as being contrary to the order of this Court in W.P. No.45143 of 2022 dated 19.12.2022.

Contentions of the Appellant:

4. It is the contention of the appellant that he is working as an Agriculture Extension Officer, Grade – II (hereinafter referred to as

AEO); that the said post is a District cadre post; that he belonged to the District of Khammam; that in terms of G.O.Rt.No.1112 (Agriculture and Cooperation (AGRI – II) Department, dated 27.09.2017, the Government had accorded permission to respondent No.2 to sponsor candidates working as AEO's for pursuing B.Sc.(Honours/Agriculture) as in-service candidates; that for academic year 2022–23, the in-service candidates quota is 24 candidates; and that the candidates for such sponsorship are to be selected on the basis of District seniority i.e., (2) AEOs from each erstwhile (9) Districts and remaining (1) from any of the erstwhile District on rotation basis from 2017-18 onwards to safeguard the promotion channel for Senior Agriculture Extension Officers.

5. The appellant further contends that he joined the service as AEO on 21.09.2012 in the erstwhile Khammam District; that he is the senior most in the erstwhile Khammam District; and that he would be eligible for being sponsored as in-service candidate for pursuing B.Sc (Hons/Ag) as per G.O.Rt.No.1112 dated 27.09.2017.

6. The appellant further contends the respondent No.2 without considering G.O.Rt.No.1112, whereunder it has been specifically mentioned that the in-service candidates are to be sponsored on the basis of District seniority of the erstwhile Districts, has issued

impugned proceedings dated 10.01.2023 sponsoring 24 candidates who are working as AEOs for pursuing B.Sc.(Hons/Ag) for the academic year 2022–23. It is contended that the said proceedings issued are contrary to G.O.Rt. No.1112 dated 27.09.2017 inasmuch as no District seniority on the basis of erstwhile (9) districts has been prepared, thus resulting in exclusion of the appellant's candidature for sponsorship to pursue B.Sc.(Hons/Ag) during the academic year 2022-23.

7. The appellant further contends that the action of the respondent No.2 in selecting in-service candidates on the basis of the newly formed Districts in the absence of there being any modification to G.O.Rt.No.1112 is contrary to the judgment rendered by this Court in the petitioner's case in W.P. No.45143 of 2022 dated 19.12.2022.

8. The appellant also contends that for the academic year 2021-22, the list of candidates was prepared on the basis of the erstwhile Districts of the State of Telangana, even though by then cadre allotment had taken place on the basis of newly formed Districts under G.O.Ms.No.317 dated 06.12.2021 giving effect to Presidential order of 2018 and for no good reason the respondent in particular the 2nd respondent has deviated from the previous years practice.

9. On the above basis, the appellant contends that the order dated 06.02.2023 in I.A.No.3 of 2023 allowing the said Interlocutory Application and vacating the interim order passed on 11.01.2023 is without proper appreciation of the government orders in force, and is also contrary to the order of this Court in W.P.No.45143 of 2022.

Contentions of the Respondents No. 1, 2 and 4:

10. The respondents contend that, though in terms of G.O.Rt.No. 1112 (Agriculture & Cooperation (AGRI-II) Dept, dated. 27.09.2017, candidates for pursuing B.Sc.(Hons/Ag) from in-service AEO's are to be selected as per District seniority from each of the erstwhile (9) districts, the position has undergone change with the implementation of Presidential order of 2018.

11. The respondents further contend that the respondent State has issued G.O.Ms.No.141 General Administration (SPF.II) Department dated 04.08.2021, approving the Scheme for organization of local cadre in Agriculture Department in terms of Para No.3 of the Telangana Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 2018; that as per the said Scheme the post of AEO Grade-II is organized into Zonal cadre; that since, the post has been notified as a Zonal cadre post, the list of in-service candidates has been prepared on the basis of zone wise merit

list; that the appellant having been allotted to the Zone-IV is standing at S.No.6 of the Zone Seniority list; and therefore, could not be considered as there are candidates who are seniors having been appointed earlier to the appellant.

12. The respondents by the counter affidavit filed before the learned Single Judge of this Court also contended that the copy of the judgment in W.P. No.44446 of 2022 was received by them on 05.01.2022 (to be read as 05.01.2023 correctly). However, based on the communication received from the Government Pleader for Services dated.19.12.2022, whereunder it is claimed that they were informed of the directions of this Court to prepare the seniority list in terms of G.O.Ms.No.250, dated. 06.10.2009 and G.O.Rt.No.1112 dated. 27.09.2017 and order in W.P. No. 33343 of 2017 & batch and further direction that the respondent may take into consideration G.O.Ms.No.141 dated 04.08.2021, the respondent in anticipation of receipt of judgment of this Court, prepared the Zone wise seniority list among 183 applicants; and that the copy of the judgment in the Writ Petition filed by the appellant was received on 12.01.2023.

13. The respondents further contend that none of the candidates who are provisionally selected for pursuing the B.Sc.(Hons/Ag) for the academic year 2022-23 as per the impugned proceeding under

challenge dated 10.01.2023 have been arrayed as parties to the petition and thus the learned Single Judge noting the same had rightly vacated the interim order and seeks for sustaining the same.

Contention of the Respondent No.3:

14. Learned Standing Counsel appearing on behalf of 3rd respondent would submit that they are only a formal party to the proceedings and that the candidates who are nominated by respondent Nos.1, 2 and 4 for pursuing B.Sc (Hons/Ag) as in-service candidates would be given admission during the current academic year 2022-23.

15. We have taken note of the respective contentions urged.

Consideration by the Court:

16. Before delving into the core issue of contentions, the admitted and undisputed position is as under:

- (i) G.O.Rt.No.1112 Agriculture & Cooperation (Agri.II) Department dt.27.09.2017 is issued subsequent to creation of new Districts in the year 2016;
- (ii) The aforesaid G.O. has neither been amended nor withdrawn as on date of the 1st respondent issuing the impugned proceedings dt.10.01.2023;

(iii) The aforesaid G.O., even though issued after creation of new Districts prescribes selection of candidates for being sponsored as in-service candidates for pursuing B.Sc (Hons/Ag) on the basis of erstwhile District seniority by considering the Districts as 9 + 1 and not on the basis of either the zones or the newly created Districts.

(iv) The orders of this Court in W.P.No.44446 of 2022 and W.P.No.45143 of 2022 both dated 19-12-2022 have attained finality in the absence of any challenge thereto.

17. On the basis of the above admitted position, it is to be seen as to whether the action of 1st respondent in issuing the impugned proceedings dt.10.01.2023 in short-listing the in-service candidates working as AEO (Grade-II) for pursuing B.Sc (Hons/Ag) is in consonance with G.O.Rt.No.1112 dt.27.09.2017 and in compliance with the directions of this Court in W.P.Nos.44446 and 45143 of 2022 dated 19.12.2022.

18. Though the 2nd respondent in the counter-affidavit filed along with vacate stay petition in W.P.No.1328 of 2023 before the learned Single Judge had contended that, he had received communication from the Government Pleader of this Court, informing about the order of this Court in W.P. No.45143 of 2022, whereby the respondents

were directed to prepare the seniority list strictly in terms of G.O.Rt.No.1112 dt.27.09.2017 and the order in W.P.No.33343 of 2017 & batch and also by taking into consideration of G.O.Ms.No.141 dt.04.08.2021, no copy of the said communication, as claimed to have been received from the learned Government Pleader, has been annexed as material papers to the counter-affidavit filed.

19. Further, it is to be noted that the 2nd respondent, by counter-affidavit, had contended that he had acted on the basis of the opinion of learned Government Pleader in preparing the seniority list by following G.O.Ms.No.141 dt.04.08.2021 while complying with G.O.Rt.No.1112 dt.27.09.2017 and the order of this Court in W.P.No.33343 of 2017 & batch. The said stand of the 2nd respondent cannot be accepted for the simple reason that if the 2nd respondent had prepared the list in compliance to G.O.Rt.No.1112 dt.27.09.2017, the same has to be on the basis of District Seniority by taking into consideration the erstwhile 9 Districts and not on the basis of zonal seniority arrived at subsequent to issuance of G.O.Ms.No.141 dt.04.08.2021, whereby the post of AEO (Grade-II) has been changed from District Cadre to Zonal Cadre. Thus, the contention of the 2nd respondent in the counter-affidavit that the seniority list is prepared by taking into consideration the District seniority in terms of

G.O.Rt.No.1112 dt.27.09.2017, does not appear to this Court as a correct statement.

20. Further, the 2nd respondent by the counter-affidavit had claimed that he had acted immediately on the basis of the orders of this Court in W.P.No.45143 of 2022 dt.19.12.2022, copy of which, it is contended as having been received on 12.01.2023, and also admits to the fact of receiving copy of the order in W.P.No.44446 of 2022 on 05.01.2023. Even accepting the contention of the 2nd respondent that he had acted immediately after receiving communication from the Government Pleader, the 2nd respondent admittedly having received the copy of the order in W.P.No.44446 of 2022 on 05.01.2023, which was also disposed of by this court on the same day i.e., 19.12.2022 as in the case of W.P.No.45143 of 2023, ought not to have proceeded in finalizing the list of in-service candidates to pursue B.Sc (Hons/Ag) on the basis of G.O.Ms.No.141 dt.04.08.2021. The said act of the 2nd Respondent in issuing the impugned notification on 10.01.2023, is contrary to the orders of this Court. Thus, the claim of the 2nd respondent of having taken steps immediately to implement the orders of this Court, does not impress this Court for being accepted inasmuch as the said action on the part of the 2nd respondent is in clear

contravention and overreaching the orders of this Court and is nothing short of contempt.

21. It is to be seen that G.O.Ms.No.141 dt.04.08.2021 relates to Organization of Local Cadres in Agriculture Department. Whereas, G.O.Rt.No.1112 dt.27.09.2017 is issued specifically in relation to selection of in-service candidates for being sponsored to pursue B.Sc (Hons/Ag). Further, a reading of G.O.Ms.No.141 dt.04.08.2021 would indicate that the same neither deals with sponsoring of in-service candidates for pursuing B.Sc (Hons/Ag), nor there is any reference to G.O.Rt.No.1112 dt.27.09.2017 in G.O.Ms.No.141 dt.04.08.2021, to contend that the said G.O. is made applicable even in relation to sponsoring of in-service candidates for pursuing B.Sc (Hons/Ag). Thus, 2nd respondent cannot contend that the district seniority cannot be taken into consideration for sponsoring in-service candidates after implementation of G.O. Ms. No.141 dated 04.08.2021, when the same has neither considered nor dealt with the subject covered under G.O.Rt.No.1112 dt.27.09.2017.

22. The maxim *generalia specialibus non derogant*¹ connotes that specific shall prevail over general. If the said maxim is applied to the

¹ Judgement of Supreme Court in Paradip Port Trust, Paradip and Others Vs. Their Workmen [(1977) 2 SCC 339)]. See also The Bengal Immunity Company Ltd. Vs. The State of Bihar and others AIR 1955 SC 661

facts of the present case, G.O.Ms.No.1112 being the G.O. issued for sponsoring in-service candidates for pursuing B.Sc (Hons/Ag) from the erstwhile District Seniority 9 + 1 districts would be have to be considered as specific over G.O.Ms.No.141 as issued subsequent to issuance of G.O.Ms.No.124, which deals with only cadre allocation. Thus, no reliance can be placed on G.O.Ms.No.141 for recommending in-service candidates for pursuing B.Sc (Hons/Ag) on the basis of alleged Seniority.

23. In view of the above, the contention of the 2nd respondent in the counter-affidavit filed in W.P.No.1328 of 2023, that the orders of this Court in W.P.Nos.44446 and 45143 of 2022 were implemented, since the appellant stands below the other candidates as per the zonal seniority list prepared after the implementation of G.O.M.S.No.141 dated 04.08.2021, which is in consonance with the principle of seniority referred in G.O.Rt.No.1112 dt.27.09.2017, does not merit consideration for being accepted. On the other hand, as the impugned proceedings dated 10.01.2023 issued by the 2nd Respondent are wholly contrary to the spirit of G.O.Rt.No.1112 dated 27.09.2017, the same cannot be sustained.

24. Further, it is to be seen in G.O.Ms.No.141 dt.04.08.2021 a reference is made at Sl.No.1 to G.O.Ms.No.124, General

Administration (SPF-MC) Department dated 30.08.2018, which was issued to give effect to the Presidential Order, 2018. Upon issuance of G.O.Ms.No. 124 dated 30.08.2018, the 1st Respondent herein had issued G.O.Ms.No.141 in relation to organization of local cadres in the Agriculture Department, While G.O.Ms.No.317 General Administration (SPF-I) Department dt.06.12.2021 was issued to provide a detailed scheme for organization of local cadres.

25. Under G.O.Ms.No.317 dt.06.12.2021, District Cadre employees, who were working in the erstwhile District of Khammam are eligible to be allotted to new Districts specified at Sl.No.4 of Annexure-I viz., Bhadradi-Kothagudem, Mahabubabad (part) and Mulugu (Part). Thus, the AEO (Grade-II), which was a District Cadre post, the employees who were working in such District Cadre posts prior to issuance of G.O.Ms.No.317 would become eligible for being allotted to only 4 Districts mentioned in Annexure-I and not outside the Districts mentioned therein even though the said District Cadre post has now been converted into Zonal Cadre Post falling in new Zone-IV – Bhadradi-Kothagudem consisting of Bhadradi-Kothagudem, Khammam, Mahabubabad, Warangal and Hanumakonda and selecting the candidates from amongst the employees falling in Zone-IV.

26. Further it is also to be seen that while Annexure-I specifies that erstwhile District Cadre employees working in the erstwhile Khammam District being eligible to be allotted only to new Districts mentioned in Annexure-I, the consideration of their candidature for being selected by taking into consideration the new Districts forming part of Zone-IV would result in new candidates who were working in Warangal and Hanumakonda becoming eligible for being considered for selection while on the other hand, the candidates not eligible for being allotted to the new Districts which are included in Zone-IV of Bhadradri-Kothagudem District. Thus, the employees who are working in the District Cadre basis in erstwhile District of Khammam would be in a disadvantageous position on two counts viz., (i) while their allotment is restricted to 4 new Districts mentioned in Annexure-I and (ii) they were also required to compete with the candidates who are working in erstwhile District of Warangal. Thus the entire exercise undertaken by the 2nd respondent applying Zonal seniority by considering the post of AEO (Cadre-II) as Zonal post for the purpose of sponsoring in-service candidates to pursue B.Sc (Hons/Ag) runs contrary to the spirit of G.O.Rt.No.1112 dt.27.09.2017 and judgments of this Court in W.P.No.33343 of 2017 & batch, W.P.No.45143 of 2022 and W.P.No.44446 of 2022 for the impugned proceeding to be held valid.

27. Further, the contention of the respondents that G.O.Ms.No.141 dt.04.08.2021 and also G.O.Ms.No.317 dt.06.12.2021 have been issued for implementation of the Presidential Order of 2018, has not been brought to the notice of this Court at the time of disposal of W.P.No.45143 of 2022 dt.19.12.2022, does not appeal to this Court for acceptance for the reason that in the order passed by this Court in W.P.No.44446 of 2022 dt.19.12.2022 while considering the submissions made on behalf of 2nd respondent with regard to G.O.Ms.No.141 dt.04.08.2021, this Court specifically rejected the said contention urged on behalf of the Respondent and on the other hand directed the respondents to follow G.O.Rt.No.1112 dt.27.09.2017 and order of this Court in W.P.No.37349 of 2017 & batch; by which the respondents are only required to prepare seniority list on the basis of erstwhile 9 + 1 districts and not on the basis of new Districts created in the year 2016 or the change of the post from District Cadre to that of Zonal cadre and the Districts forming part of such Zone i.e. Zone-IV as in the facts of the present case.

28. Insofar as the contention with regard to the selected candidates not being made a party to the Writ Petition is concerned, it would be evident from the averments of the Writ Petition that the appellant herein had approached this Court immediately on the following day

after the 2nd Respondent passed the impugned proceedings, and this Court had granted an interim order on the same day. Thus, there was no occasion for the respondents to give effect to the impugned proceedings, by which the selected candidates can claim to be interested parties for them to be arrayed as respondents in the Writ Petition.

29. Thus, considered from any angle, the order of the learned Single Judge of this Court vacating the interim order dt.11.01.2013 passed in I.A.No.1 of 2023 in W.P.No.1328 of 2023 giving effect to the impugned proceedings of the 2nd respondent dt.10.01.2023 cannot by any stretch of imagination be held as having been passed on due consideration of all aspects of the matter for it to be sustained.

30. Accordingly, the Writ Appeal is allowed; and the interim order dt.06.02.2023 passed by the learned Single Judge of this Court in I.A.No.3 of 2023 in W.P.No.1328 of 2023 is hereby set aside.

31. However, having regard to the fact that this Court having now found that the action of 2nd respondent in preparing the seniority list under the impugned proceedings dt.10.01.2023 is not in accordance with G.O.Rt.No.1112 dt.27.09.2017 as well as orders of this Court in W.P.Nos.44446 and 45143 of 2022 and W.P.No.37349 of 2017, this Court is of the considered view that the 2nd respondent is to be

directed to prepare the seniority list of the candidates on the basis of erstwhile 9 + 1 Districts only and not by making reference either to G.O.Ms.No.141 dt.04.08.2021 or G.O.Ms.NO.317 dt.06.12.2021 under the pretext of implementation of Presidential Order of 2018 and forward the same to the 3rd respondent for grant of admission.

32. Further, in view of urgency expressed by the learned Senior Counsel appearing for the appellant, the 2nd respondent is directed to undertake the above exercise of selection of candidates from and among AEO Grade-II on the basis of the erstwhile district seniority, within a period one week from the date of receipt of a copy of this order and forward the said list to the 3rd respondent for providing admission to the said selected candidates. No order as to costs.

33. As a sequel, miscellaneous petitions, if any pending, shall stand closed.

T. VINOD KUMAR, J

NAMAVARAPU RAJESHWAR RAO, J

Date : 21-04-2023.

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