

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.7133 OF 2007

ORDER: (*Per Hon'ble Dr. Justice Shameem Akther*)

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking the following relief:

“For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, Order or direction, preferably one in the nature of Writ of Mandamus, declaring the impugned order dated 27-11-2006 made in O.A.No.3416/2006 on the file of the A.P. Administrative Tribunal, Hyderabad as well as the provisional selection list dated 8-5-2006 published by the respondents as arbitrary, illegal, contrary to law and set aside the same and consequently direct the respondents to follow the procedure of selection as prescribed in the Notification issued by the 1st respondent dated 10-01-2006 while making selection of candidates for recruitment to the back log vacancies of Physically Handicapped forth; and pass such other or further orders as are necessary.”

2. Heard Sri Kusuri Satyanarayana, learned counsel for the petitioners, and the learned Government Pleader for Women Development and Child Welfare, apart from perusing the material available on record.

3. The case and the contention of the writ petitioners, in brief, is that they are applicant Nos.2, 9 and 11 in the aforesaid O.A. filed before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal'). In pursuance of the notification dated 10.01.2006 issued by respondent No.1 for recruitment of backlog vacancies of handicapped, the writ petitioners have applied, appeared for the selection test and in the

provision selection list dated 08.05.2006 notified by the respondents, vide proceedings No.A/SRD/1201/2005, their names are not shown. The respondents made the said selection list only on the basis of percentage of the disability and age, without taking into consideration the merit in the qualifying examination, etc. The writ petitioners belong to Orthopaedically Handicapped category. The basis of marks obtained in the prescribed qualification (7th class) is required to be taken into account as per paragraph No.8 of the notification dated 10.01.2006, the writ petitioners would have secured 62.3%, 56% and 57.6% respectively, whereas, the selected candidates shown at serial Nos.11 to 14 of the provisional selection list dated 08.05.2006 secured only 45.96%, 45.98% and 44.51%. Thus, the selection list dated 08.05.2006 published by the respondents is improper and contrary to the averments made in paragraph No.8 of the notification dated 10.01.2006. Challenging the said selection dated 08.05.2006, the writ petitioners, along with some other candidates appeared for the test conducted by the respondents, filed O.A. No.3416 of 2006 before the Tribunal. Some other candidates filed separate O.A. No.3753 of 2006 challenging the said provisional selection list. In both the aforesaid O.As., the learned Tribunal passed interim orders on 12.06.2006 and 28.06.2006 respectively. The respondents have filed counters in both the cases along with V.M.A. No.911 of 2006 in O.A. No.3416 of 2006 and V.M.A. No.956 of 2006 in O.A. No.3753 of 2006. The learned Tribunal dismissed the said O.As. filed by the writ petitioners and some other candidates and allowed the V.M.As. filed by the respondents, vide impugned order dated 27.11.2006.

4. The contention of the respondents is that no written test, oral interviews or any other selection procedure is involved in the selection of candidates. The candidates possessing only the requisite qualification

alone are considered for selection. Due to practical difficulties in deciding the relative academic merit, the Task Force Committee decided to select the candidates by giving performance to higher degree of disability and age and the procedure adopted by the Task Force Committee was also upheld by this Court in W.P. No.3270 of 2003, vide order dated 26.08.2003. When the writ petitioners are aggrieved by the method adopted by the Task Force Committee, they have to approach the appellate authority, i.e., the Commissioner of Disabled Welfare, Andhra Pradesh, Hyderabad, but they have directly approached the Tribunal without exhausting the alternative remedy of appeal.

5. In view of the contentions put forth by both sides, the following points have come up for determination:

- (1) Whether the impugned order dated 27.11.2006 passed in O.A. No.3416 of 2006 is liable to be set aside?
- (2) Whether a direction can be given to consider the case of the writ petitioners as prayed for?

6. Point Nos.1 and 2: While dealing with this O.A., the learned Tribunal had dismissed the O.A. on 27.11.2006. The contention of the writ petitioners is that the appointment has to be made as per the averments made in paragraph No.8 of the notification dated 10.01.2006. It is pertinent to note that the backlog vacancies are meant for physically disabled persons. The writ petitioners have not made the provisionally selected candidates as respondents in the O.As. as well as in the writ petitions and wanted to set aside their provisional appointment for the post of Attenders. The petitioners wanted the authorities to consider the merit and fill up the posts in question. They are more meritorious than the

provisionally selected candidates, in terms of paragraph No.8 of the notification dated 10.01.2006.

7. It is pertinent to note that the order dated 26.08.2003 passed in W.P. No.3270 of 2003 attained finality, wherein the appointment is made by giving preference to higher degree of disability. The minimum educational qualifications prescribed for the post of Attenders was 7th Class. Some of the candidates have studied 10th class, the D.E.O. concerned has expressed his inability to verify 7th class records of the candidates stating that the relevant records were destroyed and some certificates are bogus. After the notification, the Committee has decided to give preference to the higher degree of disability, since the backlog vacancies for the post of Attenders are required to be filled up by the disabled persons. When the backlog vacancies are meant for disabled persons, there is nothing wrong in giving preference to higher degree of disability. The merit will not play key factor to complete the selection and appointment process, as contended by the petitioners.

8. The Committee has evolved a system by which not only the severity of disability but also age and seniority in the employment exchange was considered for the appointment. When the provisionally selected candidates are not made as parties either to the Original Application or to the Writ Petition, it is not appropriate to set aside the appointment of the provisionally selected candidates, without putting them to notice and hearing. The Tribunal had given elaborate reasons and ultimately dismissed the O.A. There is no perversity in the order passed by the Tribunal. The writ petition is devoid of merits. In these circumstances, the impugned order is liable to be confirmed and the writ petition is liable to be dismissed.

9. In the result, the Writ Petition is dismissed, confirming the impugned order dated 27.11.2006 passed in O.A. No.3416 of 2006 by the Tribunal. No order as to costs.

10. As a sequel to dismissal of the Writ Petition, miscellaneous petitions pending, if any, shall also stand dismissed.

SURESH KUMAR KAIT, J

Dr. SHAMEEM AKTHER, J

Date: 30- 06-2017.

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HON'BLE SRI JUSTICE SURESH KUMAR KAIT

And

HON'BLE Dr. JUSTICE SHAMEEM AKTHER



WRIT PETITION No.7133 OF 2007

(Order of the Division Bench prepared by
Hon'ble Dr. Justice Shameem Akther)

Date. 30-06-2017

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