

**THE HON'BLE SRI JUSTICE M.GANGA RAO**

**WRIT PETITION No.20745 OF 2017**

**ORDER:**

The petitioner, who is a practising advocate and party-in-person, filed this writ petition to issue a Writ of Mandamus declaring the action of the 1<sup>st</sup> respondent in passing the impugned order vide Letter No.330/Courts.A1/2016 dated 06.05.2017, rejecting his representations dated 01.12.2015 and 14.09.2016 for selection and appointment to the post of Assistant Public Prosecutor in Zone-VI under BC-D category in pursuance of the selections made with reference to Notification in Rc.No.600/R&T/Genl.1/2006 dated 29.12.2006 without taking into consideration of the orders passed in W.P.No.10277 of 2008 and Rule 22 of the Andhra Pradesh State and Subordinate Service Rules (for short 'the Rules'), as arbitrary, violative of principles of natural justice and colourable exercise of powers.

2. The brief facts of the case are that the 2<sup>nd</sup> respondent – Chairman, State level Police Recruitment Board issued notification in Rc.No.600/R&T/Genl.1/2006 dated 29.12.2006, inviting applications to fill up the post of Assistant Public Prosecutor in the erstwhile State of Andhra Pradesh. The petitioner also submitted his application in response to the said notification and he was appeared for written test and interview. He secured 179.75 marks and his

case was considered in the Open Category (OC) in Zone-VI as no post was earmarked for BC-D category in the notification, whereas the last selected candidate in OC category in Zone-VI secured 199.75 marks. In Zone-VI, total 40 vacancies were notified and 24 were filled up. The remaining 16 vacancies do not belong either to OC or BC-D category to consider the case of the petitioner. The petitioner was not entitled to be appointed in the unfilled vacancies and his request was rejected by the Chairman, State level Police Recruitment Board vide proceedings in Rc.No.299/Rect/Admn-3/old-540/2016 dated 16.05.2016. However, the petitioner filed O.A.No.10452 of 2008 before the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal') and the same was dismissed. Subsequently, he filed W.P.No.9965 of 2010 against the orders of the Tribunal seeking appointment as Assistant Public Prosecutor in the post reserved for BC-D category in Zone-VI by seeking review of the appointments made in pursuance of the earlier notifications issued in the years 1992 and 1996 on the basis of roster points treating the post of Assistant Public Prosecutor as a zonal post, whereas in the earlier recruitments, the said posts were treated as State level posts. This Court dismissed the writ petition on 07.12.2012. Thereafter, he filed review petition seeking review in Rev. WPMP No.155 of 2013 in W.P.No.9965 of 2010 and the same was dismissed on 11.06.2013, but however, on the request of the petitioner, it was left open for the petitioner

to make such representation which should be considered by the respondents in accordance with law. In pursuance of the same, he submitted representations on 01.12.2015 and 14.09.2016. The petitioner filed Contempt Case No.1183 of 2016 to punish the respondents for disobeying the orders of this Court dated 11.06.2013 in Rev. WPMP No.155 of 2013 in W.P.No.9965 of 2010 and the same was dismissed on 27.01.2017. The petitioner also submitted a representation on 14.09.2016. The petitioner filed W.P.No.41919 of 2016 along with WPMP No.51673 of 2016 seeking a direction to the respondents to pass appropriate orders on the representations. This Court by order dated 10.03.2017 in WPMP No.51673 of 2016 in W.P.No.41919 of 2016, directed the 1<sup>st</sup> respondent therein i.e., Principal Secretary, Home Department, to consider the representation of the petitioner and dispose of the same in accordance with law. Accordingly, the 1<sup>st</sup> respondent passed the impugned order stating that his request for appointment to the post of Assistant Public Prosecutor has been examined in consultation with the Chairman, Telangana State level Recruitment Board, Hyderabad and considered not feasible and hence, his request was rejected. Being aggrieved by the same, the petitioner filed the present writ petition on the ground that his request was rejected by non-speaking order contending *inter alia* that the respondents have to start roster point from '39' instead of '98' as per Rule 22 of the Rules treating the

Assistant Public Prosecutor post as a zonal post. The respondents could not follow two methods of recruitment, one for treating the Assistant Public Prosecutor as state-wide post and another for zonal post, as per the orders passed by this Court in W.P.No.10277 of 2008 and batch dated 06.09.2008.

3. Sri D.Laxminarayana, party-in-person, would contend that the 2<sup>nd</sup> respondent issued notification on 29.12.2006 inviting applications to fill up the post of Assistant Public Prosecutor in the State of Andhra Pradesh. He vehemently contended that recruitments and appointments were made to the post of Assistant Public Prosecutors in the year 1992 and 1996 basing on the roster points treating the Assistant Public Prosecutor post as state-wide post and non-locals were appointed. The post of Assistant Public Prosecutor has to be treated as a state-wide post, cannot be sustained in view of the fact that the post of Assistant Public Prosecutor was notified as specified gazetted category in Para III and IV of the Presidential Order. Therefore, the post belongs to each specified gazetted category in each zone shall be organized into a separate cadre. Based on the said contention, he requested to review the entire appointments made in pursuance of the notifications issued in the years 1992 and 1996 and review the entire selection process and send the non-locals who were appointed treating the Assistant Public Prosecutor post as a state-wide post and fill up the vacancies arise on such review by treating the Assistant Public



Prosecutor post as a zonal post and resultant vacancies by the local candidates as per Rule 22 of the Rules duly starting the roster point from '1' in the cycle of '100'. But, the respondents notified 40 vacancies in Zone-VI and filled only 24 vacancies and remaining 16 vacancies have not filled. If the roster cycle is started from '1' by newly introducing zonal system, the point No.39 which is reserved for BC-D category would arise and treating that if the notification was issued after exercising such review, then there should be a vacancy reserved for BC-D could have been notified. The respondents committed illegality and arbitrariness in not notifying the vacancy for BC-D reserved category in the notification dated 29.12.2006. Then, that vacancy could have been filled by the petitioner as he was subjected to written test and interview and got 179.75 marks in Zone-VI. But, he was treated as open category candidate as no vacancy was available in the BC-D category and last open category candidate selected in Zone-V secured 199.75 marks, thereby he was deprived of his selection and appointment to the post of Assistant Public Prosecutor in BC-D category. He further contended that the whole exercise of bringing up the vacancies in the recruitment for the years 1992 and 1996 and thereafter in the present notification, treating the Assistant Public Prosecutor post as state-wide post instead of zonal post as stated in the Presidential Order. The post of Assistant Public Prosecutor was notified as specified gazetted category in Para 3 and 4 of

the Presidential Order. The each specified gazetted category in each department zone thereby organized into a separate category as a zonal post. Hence, the impugned order is liable to be set aside and he is entitled to be appointed as an Assistant Public Prosecutor in the category of BC-D.

4. Per contra, the learned Assistant Government Pleader appearing for the respondents would contend that in the notification dated 29.12.2006 issued to fill up the post of Assistant Public Prosecutor, there is no post reserved for BC-D category and having participated in the entire selection process, he could not turned down the entire notification as no post of Assistant Public Prosecutor under category BC-D was notified. He unsuccessfully fought all these years by filing several writ petitions before this Court and also before the Tribunal and all the writ petitions were dismissed on the very self same grounds.

He relied on a decision reported in *Dhananjay Malik and others Vs. State of Uttaranchal and others*<sup>1</sup> for the proposition that the petitioners having participated in the selection process without any demur about the notification, they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules, they could have challenged the notification and

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<sup>1</sup> (2008) 4 SCC 171

selection process without participating in the selection process. This has not been done.

Hence, the contentions of the petitioner herein do not merit consideration and the writ petition is liable to be dismissed.

5. Having heard the party-in-person and the learned Assistant Government Pleader and in the facts and circumstances of the case and in considered view of this Court, it is found that the petitioner having participated in the selection process for the post of Assistant Public Prosecutor in pursuance of the notification dated 29.12.2006 in the State of Andhra Pradesh estopped from challenging the notification, on ground of non-reserving the post for BC-D category. As on the date of notification, the petitioner was well aware that there is no post reserved for BC-D category. He participated in the selection process as a general candidate and obtained 179.75 marks, whereas the selected OC (general) category candidate in Zone-VI secured 199.75 marks. Having not selected and appointed for the post in the general category, the petitioner resorted to file O.As before the Tribunal and writ petitions before this Court by raising untenable grounds that the respondents have filled up the post of Assistant Public Prosecutors in pursuance of the notifications issued in the year 1992 and 1996 treating the post as state-wide post instead of zonal post as per the

presidential order and the respondents could have selected and filled up the post of Assistant Public Prosecutor in pursuance of the notification dated 29.12.2006 treating the post of Assistant Public Prosecutor as zonal post. The respondents ought to have filled the posts by starting from roster point '1' instead of '98'. If they have started roster points from '1' at point No.39 in cycle of 100 points, there is a reserved post meant for BC-D category as the respondents have filled 40 vacancies in Zone-VI and at point No.39, BC-D category post is available. In that vacancy, he could have selected and appointed. In the earlier round of litigation fought by the petitioner in the writ petition No.9965 of 2010, the same grounds were considered and rejected.

6. This Court found that the notification was issued in the year 2006 and the entire process of selection was completed and thereafter, the petitioner started litigating the selection process and to review the selections made in pursuance of the notifications issued in the years 1992 and 1996 to accommodate the petitioner and appoint him as Assistant Public Prosecutor under BC-D category, which is even not notified in the notification issued. The petitioner has not challenged the notification dated 29.12.2006, but he has participated in the selection process and due to non-selection, he started litigation ventilating his grievance, which were considered and rejected in the earlier litigations fought by the petitioner.



7. The contention of the petitioner does not merit consideration as contended by the learned Assistant Government Pleader that the petitioner having participated in the selection process without any demur estopped from complaining that the selection process was not in accordance with the Rules as held by the Hon'ble Supreme Court in the case of *Dhananjay Malik* (1 supra). Hence, the writ petition is liable to be dismissed. The petitioner also not made the selected candidates as party-respondents to this writ petition. For non-joining of proper and necessary parties also, the writ petition is liable to be dismissed.

8. Hence, the Writ Petition is dismissed. No order as to costs.

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



**JUSTICE M.GANGA RAO**

31-08-2018  
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