

THE HON'BLE SRI JUSTICE R.RAGHUNANDAN RAO
WRIT PETITION Nos.21322 of 2019 and 5373 of 2020

COMMON ORDER:-

The petitioners in W.P.No.21322 of 2019 are members of Schedule Tribes, who are aggrieved by the manner in which the Rule of Reservation is being implemented for the selection process for Group-I Services under the Notification No.27/18, dated 31.12.2018. Similarly, the petitioner in W.P.No.5373 of 2020 is a visually handicapped candidate, who has similar objection to the manner in which Rule of Reservation is being implemented. As both petitioners are raising similar grounds both the writ petitions are being disposed by this common order.

2. A few facts are necessary before going into the issues raised in the writ petitions. The Andhra Pradesh Public Service Commission, arrayed as 2nd respondent, had issued NotificationNo.27/18, dated 31.12.2018 inviting applications for recruitment to the posts falling in Group-I Services for a total of 44 carry forward vacancies and 125 fresh vacancies. The relevant conditions set out in the notification are:

4.1. There will be reservations in direct recruitment in respect of Schedule Tribes, Scheduled Castes, backward Classes, Women and Meritorious Sports Persona as per Rule 22 and 22 (A) of A.P.State and Subordinate Service Rules. However, Women reservation is not applicable for the post code nos.04 &05, as per Departmental Special Rules.

4.2. *There will be reservations in direct recruitment in respect of Physically Challenged Persons, as per Rule 22 and 22 (A) of A.P State and Subordinate Service Rules, and read with Departments Special Rules except Post Code Nos.03, 04, 05, 07 & 08. However, PH reservation for Post Code No.02 is restricted to HH & OH only. (As per G.O.Ms.No.203, Revenue (CT.I) Dept., dated 10.03.2010) and for Post Code No.06 is restricted to O.H. only (As per Departmental Special Rules).*

15.4 *As per G.O.Ms.No.5 General Administration (Ser-A) Dept., dated 05.01.2018 “Government here by permit the Andhra Pradesh Public Service Commission to pick up candidates who obtains such minimum qualifying marks in Screening Test / Preliminary Examination as may be fixed by the Commission at its discretion shall be admitted to the Main Examination in all direct recruitment examinations. The APPSC is further permitted to select candidates belonging to the Scheduled Caste or Scheduled Tribes or Backward classes or Physically Challenged candidates for Main Examination by applying relaxed standards in the Screening Test / Preliminary Examination, if the Commission is of the opinion that sufficient number of candidates from these communities are not likely to be eligible for main examination on the basis of general standard in Screening Test / Preliminary Examination in order to fill up the vacancies reserved for them”. Candidates who will come up for selection due to relaxed standards shall be considered against reserved category only.*

15.5 *The minimum qualifying marks for consideration of a candidate to the selection process are 40% for OCs, 35% for BCs, and 30% for SCs, STs and PHs or as per rules. In the event of Schedule Caste & Schedule Tribe candidates not coming up for selection with the existing minimum prescribed for selection in the competitive examination conducted by the APPSC their selection shall be considered on the basis of rank with reference to their performance in the written and / or oral competitive examination irrespective of the marks secured.*

3. Rule 22 of the Andhra Pradesh State Subordinate Service Rules reads as follows:

Special representation (Reservation):-

(1) Reservations may be made for appointments to a service, class or category in favour of Scheduled Castes, Scheduled Tribes, Backward Classes, Women, Physically handicapped, Meritorious Sportsman, Ex-Servicemen and such other categories, as may be prescribed by the Government from time to time, to the extent and in the manner specified hereinafter in these rules or as the case may be, in the special rules. The principle of reservation as hereinafter provided shall apply to all appointments to a service, class or category.

4. Rule 22(A) provides for a similar rule of reservation for Women.

5. In accordance with the said recruitment, a total of 12 seats were reserved for members of Schedule Tribes out of the 169 vacancies. The petitioners do not dispute that the said 12 vacancies are in accordance with Rule 22. Similarly, four (4) vacancies were kept aside for physically handicapped persons.

6. Selection process is done in three (3) stages i.e., Preliminary Examination, Main Examination and Interview. The Preliminary Examination is a screening examination to short list candidates appearing for the Main Examination in the ratio of 50 candidates for every vacancy. The Preliminary Examination consists of two (2) papers where the candidates are tested on various parameters by way of objective multiple choice questions. The Preliminary Test was conducted on 26.05.2019 where about 50 thousand candidates including petitioners herein had appeared for the test. The results of the Preliminary Test were published on 01.11.2019, wherein about 8,351

candidates were short listed for sitting in the Main Examination. All the petitioners had failed to pass the Screening Test and were not cleared to sit for the main examination.

7. At this stage, the petitioners have approached this Court with the contention that the Rule of reservation would apply not only in the filling up of the vacancies, but would also be applicable at all stages of selection. The contention of the petitioners is that as the ratio selected for the examination was 1:50, the same ratio would have to be applied for the 12 vacancies available for members of the Schedule Tribes community and 4 members of the visually handicapped category and 600 members belonging to Schedule Tribes should be cleared for the Main Examinations and about 200 physically handicapped candidates should be cleared for the Main Examinations. The contention of the petitioners is that since this exercise was not conducted, the entire process has to be set aside or in the alternative the members of the candidates belonging to the Schedule Tribes and Physically Handicapped candidates to that extent should again be permitted to appear for the Main Examination.

8. Sri S.Gopal Rao and Sri T.D.Phani Kumar, learned counsel appearing for the petitioners submit that a conjoint reading of condition 15.4 and 15.5 would show that the process of reservation needs to be followed at every stage and as such the Writ Petitions need to be allowed on that ground. Sri T.D.Phani Kumar, learned counsel relied upon two Judgments

of the Hon'ble Supreme Court being the Judgment dated 08.04.2009 in Civil Appeal No.2244 of 2009 in **Andhra Pradesh Public Commission vs. Baloji Badhavath**¹ and **Buddilla Srinivasa Sharma vs. Chrysolite**² decided on 21.11.2013 in Civil Appeal No.10492 of 2013.

9. I have gone through both the Judgments and do not find either of the Judgment supporting the stand of the petitioners. The Judgment of the Hon'ble Supreme Court in **Baloji Badhavath's case (1st cited supra)** was arose on appeal filed against the Judgment of a Division Bench of erstwhile High Court of Andhra Pradesh wherein the Hon'ble High Court had directed reservation in the manner sought by the petitioners. The Hon'ble Supreme Court after reviewing the case Law, had allowed the appeal and set aside the order of this Court. The Hon'ble Supreme Court considered the Judgments of the erstwhile High Court of Andhra Pradesh in the case of **S.Jaffer Saheb vs. State of Andhra Pradesh**³.

10. The observation of the Hon'ble Supreme Court in paragraph 28 of this Judgment which reads as follows:

"It is bound to devise some procedure to short list the candidate. Rule 4 of the Andhra Pradesh Public Service Commission Rules of Procedure which refers to Rule 22 and 22-A of the A.P.State and Subordinate Service Rules 1996 would apply only where short listing is done".

¹ (2009) 5 SCC page 1

² (2013) 11 SCC page 35

³ 1985 (2) APLJ 380

11. This would clearly mean that the Hon'ble Supreme Court has also held that the Rule of reservation would come into play only after the short list exercise (the screening test) has been completed.

12. This Judgment was again considered in the case of ***Buddilla Srinivasa Sharma's case (2nd cited supra)*** from paragraph 15 onwards. The Hon'ble Supreme Court after considering the above Judgment had held that the decision of the High Court which was under appeal was decided correctly that the fixation of different cut off marks for different categories of candidates was permissible. There is nothing in either of these cases to hold that the Hon'ble Supreme Court had approved or held that the Rule of Reservation would be applicable even for the purposes of calculating the proportionate number of candidates under each category at the stage of the screening test also.

13. Both the learned counsel for the petitioners and the learned counsel for the respondents-Commission had relied upon G.O.Ms.No.5, dated 05.01.2018.

14. A perusal of the said G.O. shows that the earlier system followed under G.O.Ms.No.103, dated 03.02.1967 was to allow candidates to appear in the written examination of Group-I services in the ratio of 1:50. Subsequently, the Secretary, Andhra Pradesh Public Service Commission had written a letter to the Government stating that there would have to be a cutoff point to ensure minimum quality. There upon, Government

modified its earlier directions issued in G.O.Ms.No.103, dated 03.02.1967 permitting the Public Service Commission to consider only candidates, who obtained minimum qualifying marks and further gave discretion to the Public Service Commission to consider selection of candidates belonging to reserved categories by applying relaxed standards if sufficient number of candidates from these communities were not available. This G.O cannot be considered to mean that Rule of Reservation is to be applied for purposes of sending proportionate number of candidates under each category to the Main examination.

15. Sri R.V.Mallikharjuna, learned counsel relied upon the Judgment of erstwhile High Court of Andhra Pradesh in the case of S.Jaffer Saheb's case which has already been considered by the Hon'ble Supreme Court in the case mentioned above.

16. In these circumstances, I am of the view that the contentions of the petitioners are without merit.

17. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

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

JUSTICE R.RAGHUNANDAN RAO

Date : 22-10-2020
RJS

THE HON'BLE SRI JUSTICE R.RAGHUNANDAN RAO

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