

(2024) 03 TEL CK 0027

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 30917, 31353 Of 2022

Mohammed Ghouse And 5

Others

APPELLANT

Vs

State Of Telangna And 4 Others

RESPONDENT

Date of Decision: March 26, 2024

Acts Referred:

- Telangana Police (Civil) Subordinate Service Rules, 1996 - Rule 10(ii)

Hon'ble Judges: T. Madhavi Devi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

1. In both these writ petitions, the petitioners are seeking a writ of mandamus declaring the action of the respondents in applying the amended Rule 10(ii) of Telangana Police (Civil) Subordinate Service Rules issued vide G.O.Ms.No.19, dated 06.02.2018 to the petitioners though their appointment by transfer is within 10% quota against the vacancies of the year 2014 to 2018 i.e., prior to amendment, as illegal, arbitrary, as they are depriving seniority and promotions to the petitioners and consequently to declare that the petitioners seniority cannot be effected by virtue of Amendment issued in G.O.Ms.No.19, dated 06.02.2018 and to grant all consequential benefits and to pass such other order or orders in the interest of justice.

2. Brief facts leading to the filing of the present writ petition are that some of the petitioners were initially appointed as Police Constables (A.P.Special Police Battalion) and thereafter appointed by transfer as Police Constables (Armed Reserve) and further by transfer as Police Constables (Civil) and some of them were initially appointed as Police Constable in Armed Reserve of Andhra Pradesh Police Subordinate Service and thereafter appointed by transfer/conversion as Police Constables (Civil). It is submitted that there is another police service called Andhra Pradesh Special Police Battalions (APSP) governed by the A.P.Police (Special Police

battalions) vide G.O.Ms.No.69 Home (Police-D), dated 07.04.1997. The police constables of APSP have channel of appointment by transfer into A.P.Police Subordinate Service Rules, 1959, upto 40% of the cadre strength in constable (Armed Reserve/SPL/CAR) under Rules of 1959. It is submitted that petitioners herein were called to submit their willingness for appointment by transfer as Police Constables (Civil) within 10% quota meant for Armed Reserve category in the State of Telangana. The petitioners have submitted their willingness and they were appointed by transfer as Police Constables (Civil) on various dates during the months of June, July, August and October, 2018 and have been working as Police Constables (Civil) ever since. It is submitted that in the meantime, the G.O.Ms.No.19, dated 06.02.2018 has been issued amending the Rule 10(ii) of Telangana (Civil) Subordinate Rule-1999, by way of substitution, substituting the earlier Rule with the amendment as extracted below i.e., the seniority in respect of the Police Constable (Civil) (Men) appointed by transfer (conversion) from Police Constable's (AR/SAR CPL) (Men) shall be fixed as follows:

“shall be given a weightage of one year for every completed two years of service rendered as PC(AR/SAR CPL) (Men), subject to a maximum of seven years.”

3. It is submitted that though the above amendment was issued after submission of willingness by the petitioners herein, none of the petitioners were put on notice or informed about the amendment of the Rule and without even mentioning the said G.O.Ms.No.19, dated 06.02.2018, conversion orders were issued appointing the petitioners as Police Constables (Civil) and since they were not aware that the seniority will be counted only from the date of appointment by transfer as Police Constables (Civil), they have joined the post of Police Constables (Civil) and have been working for the past four years. It is submitted that the petitioners came to know only when the provisional seniority list was issued by the respondents that they are getting the weightage as per the G.O.Ms.No.19, dated 06.02.2018 and not the seniority from the date of their initial appointment as Police Constables (APSP) or Armed Reserve, therefore, they have made representations to the respondents on 09.03.2022, but the same has been rejected on the ground that the appointment of petitioners by transfer have taken place after the issuance of G.O.Ms.No.19, dated 06.02.2018 and therefore, they are covered by its provisions.

4. Learned counsel for the petitioners submitted that the amendment made to G.O.Ms.No.19, dated 06.02.2018, was challenged before this Court in W.P.No.4636 of 2018 and batch and vide judgment dated 25.01.2022 this Court was pleased to hold that the vested right of seniority from the date of appointment in the Armed Reserve Police Constables cannot be taken away vide the amendment and therefore, the Armed Reserve Police Constables, after being appointed by transfer as Police Constables (Civil), shall be conferred seniority from the date of initial appointment in the Armed Reserve. The Court further held that the said amendment was effective only prospectively.

5. Learned counsel for the petitioners, while reiterating the above submissions, submitted that the issue is squarely covered by the various judgments of this Court as well as the Andhra Pradesh High Court and that the Hon'ble Supreme Court has repeatedly held that the rules of the game cannot be changed after the game has begun. Since the willingness of the petitioners has been obtained prior to the amendment of Rule 10 (ii), but the appointments were made subsequent to the amendments, the said Rules cannot be applied to the petitioners herein without putting the petitioners on notice of the same.

6. Learned Special Government Pleader for the respondents relied upon the averments made in the counter affidavit and submitted that since the petitioners have been appointed to the post of Police Constable (Civil) by transfer after the amendment of Rule 10 (ii), the said Rule would be applicable and the petitioners' seniority was conferred accordingly.

7. Having regard to the rival contentions and the material on record, this Court finds that the amendment of the Rule 10(ii) has been made on 06.02.2018. Therefore, undisputedly that can only be made applicable to the subsequent transfers. However, in this case, it is seen that the transfers were made after the amendment, but the willingness was obtained much prior to the amendment. Admittedly, the petitioners were not put on notice about the G.O.Ms.No.19. As held by the Hon'ble Supreme Court in Civil Appeal No. 9746 of 2011, the rule of the game cannot be changed after the game has begun. Having received the options or willingness of the petitioners for transfer to the post of Police Constable (Civil) in the year 2016, their seniority cannot be changed without their consent or without putting them on notice. The G.O.Ms.No.19, is dated 06.02.2018 i.e., much later to the options exercised by the petitioners. Therefore, the amended rule cannot be made applicable to the petitioners herein as held by the Division Bench of this Court in W.P.No.4636 of 2018 and batch, dated 25.01.2022. For the sake of ready reference relevant Paras are reproduced hereunder:

2. The petitioners before this Court who are serving in the posts of Constables under the Telangana Police (Civil) are aggrieved by the G.O.Ms.No.19, Home (Legal) Department, dated 06.02.2018, issued by the State Government by which the recruitment rules, known as the Special Rules for the Telangana Police (Civil) Subordinate Service Rules issued in G.O.Ms.No.374, Home (Pol.C) Department, dated 14.12.1999, have been amended.

49. In the considered opinion of this Court, as the Recruitment Rules provided for transfer only to the extent of 10% posts, the petitioners at the relevant point of time opted for transfer to Civil Police and they would have certainly received promotions by now in the parent organization. The Amendment in the Recruitment Rules, i.e., G.O.Ms.No.19, dated 06.08.2018 has been introduced and for the first time, a weightage formula has been introduced by the State Government under the Recruitment Rules governing the field, meaning

thereby, wiping the past seniority and therefore, once a right which has accrued in favour of the petitioners, cannot be wiped out by the impugned Amendment and the Amendment is certainly not at all applicable with retrospective effect. The question of depriving the petitioners by making the Amendment applicable with retrospective effect does not arise. Therefore, this Court is of the considered opinion that all those constables who have come prior to 06.02.2018 are certainly entitled for grant of seniority and all those constables who have come on transfer after 06.02.2018 shall be governed by the Amended Recruitment Rules.

7(1). Further in the case of P.Brahma Sai vs. The State of Andhra Pradesh in W.P.No.45816 of 2018, the Division Bench of the Andhra Pradesh High Court in paras 11 & 12 are held as under:

11. It is settled principle of law, as laid down in the above referred judgments, cited by the learned counsel for the petitioners, that the rules of the game cannot be changed in the middle and, in the instant case, the respondent authorities followed the said rule in breach. It is also pertinent to note, in this context, that in the letter, dated 20.01.2017, addressed by the second respondent herein to the State Government, in unnumbered paragraph No.3 of the last page of the said letter, the second respondent expressed his opinion that it is desirable to entrust all future recruitments of Horticulture Officers to the APPSC but eventually recommended for entrustment of 36 Horticulture Officer posts, including the posts notified vide notification, dated 01.09.2016, to the APPSC and all future recruitments also to the APPSC. In this context, it would be appropriate to refer to certain paragraphs in the said letter of the second respondent, which would read as under:

"As could be seen from the above, the 15 marks being awarded for the experience has become a crucial factor and may change the fortunes of the candidates for the post of Horticulture Officers. Moreover, this is an appointment in the department on permanent basis. Therefore, the selection should be based on merit of the candidates.

In the present system, the candidate with lesser merit, often getting an edge of advantage over the candidates with higher merit because of the weightage allowed for experience and seniority. The candidates with higher merit are left out due to lack of weightage marks. Further, the experience so rendered is either purely on outsourcing basis of contract basis and for such appointments, no rational selection procedure or merit is followed. Therefore, merit candidates should not be deprived of the benefit of a fair chance of selection for want of experience.

Accordingly, through various notifications (91) posts of Horticulture Officers were already filled in the Department. At present, out of the total sanctioned

posts of (territorial) posts of Horticulture Officers in the Department, 36 posts are vacant.

Therefore, filling up of (36) Horticulture Officer posts vacant as on date may be entrusted to APPSC and all future recruitments shall be done by the APPSC".

12. It is very much obvious from a reading of the above portion of the letter of the second respondent that he expressed certain possibilities of change of fortunes because of stipulation of certain qualifications in the notification. In the considered opinion of this Court, the said assumptions and presumptions cannot be the basis and foundation for the respondents herein to change the rules of the game in the middle of the process of selection.

7(2). Further in W.P.No.15291 of 2021 and batch, the Andhra Pradesh High Court has also considered the case of the persons who have given options prior to the amendment and were appointed subsequent to amendment and has held as under:

34. In view of the law laid down in the judgments cited by the learned counsel for the writ petitioners, referred to supra, in the preceding paragraphs, the said contention of the learned Special Government Pleader and the learned counsel for the unofficial respondents in W.P.No.10593 of 2022 is liable to be rejected. The fact remains that, except the issuance of the appointment orders, the rest of the process came to an end by the time the amendment came into force. It is a settled and well established principle of law that the rules of the game cannot be changed in the middle of the game. In this context, it may also be pertinent to note that, when a similar amendment was made by the State of Telangana vide G.O.Ms.No.19 dated 06.02.2018, the aggrieved filed a batch of Writ Petitions vide W.P.No.4636 of 2018 and batch before the High Court for the State of Telangana. A Division Bench of the High Court for the State of Telangana, while categorically holding that a right, which has accrued, cannot be wiped out by amending the statute when the applicability of the statute is not in retrospective effect and that the State Government was not able to point out the public interest involved in the matter, held that the constables, who came on transfer after 06.02.2018, were required to be governed by the amended recruitment Rules. In the case on hand, the reality remains that, as mentioned supra, the process of recruitment, by transfer of the writ petitioners started anterior to the impugned amendment. It is equally true that the writ petitioners submitted their willingness for being posted as Police Constables (Civil) much anterior to the impugned amendment.

35. Since the writ petitioners, admittedly, applied in terms of the notification issued under the unamended Rule and as they expressed willingness for being appointed as Police Constables (Civil) in terms of the unamended Rule, in the considered opinion of this Court, the action of the respondent authorities in denying the benefit/right accrued to the writ petitioner under the unamended

Rule, cannot stand for judicial scrutiny and the said action is a clear infraction of the Fundamental Rights guaranteed under Chapter 3 of the Constitution of India. Admittedly, the impugned amendment came to be carried out by placing reliance on the judgment of the Composite High Court of Andhra Pradesh in W.P.No.26765 of 2011 and batch, dated 08.10.2013. In the considered opinion of this Court, the respondents grossly erred in making the said judgment as the basis as the issues in the said batch of Writ Petitions would not relate to the subject category of posts. In the considered opinion of this Court, the impugned amended Rule cannot be made applicable to the cases of the petitioners.

8. In view of the above, both the writ petitions are allowed. There shall be no order as to costs.
9. Miscellaneous petitions, if any, pending in these writ petitions, shall stand closed.