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Andhra Pradesh High Court

Case No: Writ Petition No. 7044 of 1997

A. Somalingam and Others	APPELLANT
Vs	
Government of Andhra Pradesh and Others	RESPONDENT

Date of Decision: Sept. 16, 1997

Acts Referred:

- Andhra Pradesh Direct Recruitment for Posts of Teachers (Scheme of Selection) Rules, 1994 - Rule 15, 4, 8

Citation: (1997) 5 ALT 482

Hon'ble Judges: P.S. Mishra, C.J; J. Chelameswar, J

Bench: Division Bench

Advocate: J. Sudheer, Y. Jagan Mohan, P.A. Kamaleswari, S. Siva Prasad, V. Ajay Kumar and J.V. Prasad, for the Appellant; Advocate General, Government Pleader for School Education, P. Raghavendra Reddy for ZPP and K.S. Murthy, K. Ananda Rao, N. Indrani, A. Bala Bharathi, V.L.N.G.K. Murthy, A. Ramnarayana, D. Linga Rao, Amrudu Raja, N. Jagapthi Rao, G. Krishna Murthy, J.R. Manohar Rao, P.V. Krishnaiah and M. Bheemasenchar, for the Respondent

Final Decision: Dismissed

Judgement

J. Chelameswar, J.
Challenging the selection process of the District Selection Committee of Secondary Grade Teachers, the present batch of writ petitions are filed. The petitioners claim to be eligible candidates who are entitled to be considered for recruitment. They further allege that all of them belong to the Backward Community.

2. The posts of Secondary Grade Teachers are attached to the schools maintained by the Government and also by the Zilla and Mandal Praja Parishads. To streamline the process of recruitment of teachers in the State, the Government of Andhra Pradesh made rules called Andhra Pradesh Direct Recruitment for Posts of Teachers (Scheme of Selection)

Rules, 1994 in G.O.Ms. No. 221, Education, (Service III), dated 16-7-1994, by virtue of the power vested in it under the various enactments as mentioned in the said G.O.

3. The Scheme of the said Rules is that the Rules apply to the various categories of teachers mentioned in the Annexure to the Rules.

4. Writ Petition No. 7044 of 1997 is representative of the facts in all the writ petitions. So for the sake of convenience, we deal with the facts only in Writ Petition No. 7044 of 1997.

5. It is alleged that in 1994, a recruitment was conducted in accordance with the said Rules and whatever vacancies were notified were filled up at that time. It appears that no recruitment was made in the year 1995. The second respondent published a notification in the various newspapers on 27-1-1996. According to the said notification, vacancies have been earmarked District wise. In the case of Nalgonda District which is covered by Writ Petition No. 7044 of 1997, the vacancies are 904. The petitioners allege that they applied for the posts and appeared for the written test conducted on 2-3-1996. The list of candidates who were called for interview was published in the newspaper on 18-8-1996 category wise. The interviews were conducted from 23-8-1996 to 5-9-1996 and from 6-9-1996 to 9-9-1996 with respect to O.C. and other reserved categories respectively.

6. In the meanwhile by G.O.Ms. No. 172, Education (Prog-I) Department, dated 5-8-1996 sanction for creation of 7594 posts of teachers for primary schools were given under the Operation Block Board Scheme. Out of the said sanctioned posts, 435 posts were earmarked for Nalgonda District. The Government issued a memo on 19-8-1996 directing the second respondent to take necessary action to fill up these newly sanctioned posts also in accordance with the G.O.Ms. No. 221 mentioned above. Consequential proceedings were issued by second respondent on 20-8-1996.

7. It is alleged that, in view of the new posts becoming available to be filled up some more candidates who had passed the written examination conducted earlier were called for interviews to be conducted from 17-9-1996 to 20-9-1996. (The list of such candidates was published in the newspaper on 14-9-1996.) The interviews were in fact conducted and a common list of qualified candidates was published on 28-9-1996.

8. The petitioners further allege that some 5074 posts of School Assistants have been sanctioned in G.O.Ms. No. 22, Education, dated 25-1-1996 of B.Ed. Assistants for upper primary schools which are to be filled up partly (i.e.,30%) by direct recruitment and partly (i.e.,70%) by promoting Secondary Grade Teachers. The consequential vacancies in the posts of Secondary Grade Teachers are to be filled up by direct recruitment in accordance with the procedure prescribed under G.O.Ms. No. 221. Some more vacancies arose as a consequence of retirement of some Secondary Grade Teachers prior to 5-2-1997. Even for the above-mentioned posts, interviews were sought to be conducted on 12th and 13th of March 1997. Accordingly, IIIrd list of the candidates to be interviewed was published in the newspaper on 7-3-1997. About 365 candidates were interviewed as

per schedule.

9. Questioning this final list, the present writ petition is filed on the ground that the process adopted by the respondents violates the reservation policy and the rights guaranteed to the petitioners under Articles 14 and 16(4) of the Constitution of India.

10. The learned Counsel for the petitioners made the following submissions:

(1) Under Rule 15, the waiting list shall not exceeds 5% or 50 whichever is less of the available vacancies; according to the petitioners, "the waiting list can be operated only for one exigency that is to fill up the fall out vacancies, no provision is made to maintain a waiting list to fill up the vacancies which arose subsequently."

(2) Calling a second set of qualified candidates for interviews from out of the already prepared list Would create a situation whereby the candidates belonging to O.C. (non-reserved category) who secured marks lesser than the cut off marks obtained by the Backward Class candidates in the first list (sic. are selected).

(3) The recruitment for vacancies arising out of as a consequence of promotion of the Secondary Grade Teachers as School Assistants in the month of February 1997 cannot be made on the basis of 1996 selection list and these vacancies are to be notified afresh for recruitment and the petitioners are entitled to compete for them. By operating the 1996 list, the petitioners were denied of such an opportunity.

11. It is necessary to examine the Scheme of Andhra Pradesh Direct Recruitment for Posts of Teachers (Scheme of Selection) Rules, 1994.

Rule 4 calls upon the District Educational Officer to make an estimate of the number of Vacancies existing on the 1st April and also vacancies likely to arise up to the end of September of that year in the Government Schools in respect of each category of posts specified in the Annexure to the Rules.

A similar exercise is required to be done by the Chief Executive Officer of Zilla Praja Parishad with reference to the schools under the Zilla Parishads and Mandal Praja Parishads within the District, under Rule 5.

Under Rule 6, the Member-Convenor of the District Selection Committee is called upon to notify the vacancies on receipt of the estimates contemplated under Rules 4 and 5.

Rule 7 requires the concerned District Employment Exchange to communicate the list of eligible candidates to the Member-Convenor.

Rule 8 requires the Director of School Education to issue notification inviting applications in four newspapers.

Rule 9 deals with the submission of applications.

Rule 10 deals with the issue of hall-tickets.

Rule 11 deals with setting up of question papers.

Rule 12 deals with written test.

Rule 13 provides the minimum marks required to be obtained by the candidates to be eligible to be called for interview and allied matters.

Rule 14 prescribes the final selection process.

Rule 15 deals with the preparation of selection list and waiting list.

Rules 16 to 19 deal with the matters subsequent to the preparation of selection list i.e., allotment, appointment, deletion from the list and apprenticeship.

12. The whole scheme appears to be that having regard to the fact that in view of large number of teachers employed by the various schools either under the Government or under the Zilla or Mandal Praja Parishads, some teachers are likely to retire every year and some teachers are likely to leave their job for various reasons like that of getting a better opportunity or on medical grounds etc. These vacancies are to be filled up periodically to meet the requirements of the various educational institutions in which such vacancies arise. Necessarily, the vacancy position must be monitored from time to time and suitable action taken to cause the vacancies filled up. This duty is entrusted to the Selection Committee created under the above-mentioned rules. For filling up the vacancies periodically, the Selection Committee must necessarily know how many vacancies are there to fill up. Such information is to be given by a procedure contemplated under Rules 4 to 6 above. Rationale behind the Rules seems to be to fill up such vacancies periodically by following an established procedure.

13. However, factually there can be another contingency by which vacancies can occur. In a welfare State, it is the primary responsibility of the Government to provide educational facilities to the students. Depending upon the needs of the time the Government may create new schools or increase the strength of the teaching staff and the students in the existing schools. It is a matter of policy of the Government of which only the Government is the best judge to take the decision. If the Government decides to create new posts, at a given point of time, and in fact creates such posts, those posts also will have to be filled up by appropriate procedure and until such filling up takes place those posts also would be vacant and they are also "vacancies".

14. If vacancies contemplated under Rules 4 and 5 are only those vacancies that occur in the existing posts, the law would be silent as to how the new posts created by the Government from time to time are to be filled up.

15. Looked from this angle, at the facts of the present case, the second set of vacancies numbering 435 created by the Government through G.O.Ms. No. 172 dated 5-8-1996 are not "vacancies" existing on the date i.e., 27-1-1996 when the original notification for recruitment of teachers was made. Nor would it have been possible for the District Educational Officer to anticipate the creation of such posts. But in fact such "vacancies" arose by virtue of the operation of the law before the end of September 1996. Therefore they are "vacancies" within the meaning of the Rules. With respect to which "vacancies" neither any estimate was made nor could have been made.

16. The objection of the petitioners by not notifying these vacancies afresh, injustice is caused to them is not acceptable, for the reason that they have already appeared for the written examination and on their own admission they were also called for interviews where they were disqualified.

17. We do not understand how they would benefit by giving a fresh notification with respect to the filling up of these newly sanctioned posts. If at all, if a fresh process is to be initiated again, they would once again be called to write the written examination and if they obtain the qualifying marks there, they would be called for an interview and depending on their performance in the interview and the overall marks obtained by them they would be considered for appointment. The whole thing is dependent on a chance and probability, subject to so many variable factors. No concrete objection, as to how the procedure adopted in the instant case would violate their legal or constitutional rights is placed before this Court.

18. The argument that under the Rule 15, waiting list can only consist of 5% or 50 of the existing vacancies and the respondents by resorting to call a second set of candidates out of the selection list have violated the mandate of Rule 15 is untenable.

19. Rule 15 only postulates that if the total number of vacancies is fixed by a process of identification as contemplated in the preceding rules, and excess of 5% of such identified vacancies should be created as a waiting list for meeting the contingencies like, some of the candidates selected not ultimately accepting the appointment and some unforeseen vacancies arising due to death or resignation of some candidates. But in the instant case, the vacancies as explained earlier in our Judgment are created for the first time and they are not the vacancies as contemplated under Rule 15. That is why Rule 8(b) positively prescribes "the number of vacancies notified are subject to variation at any time." When Rule 15 says that the number of candidates selected shall be equal to the number of "vacancies" notified, it means as notified from time to time as permitted under Rule 8. Looked at this point of view, Rule 15 is not in any way offended by the process of selection adopted in the present case in so far as the second list of candidates are concerned.

20. Learned Counsel for the petitioners relied upon a judgment in Prem Singh and Others Vs. Haryana State Electricity Board and Others, for the proposition that selection of

candidates beyond the number of posts advertised is illegal. The said judgment considered various earlier judgments of the Supreme Court and other High Courts on this topic. After reviewing the entire case law, the Supreme Court held as follows:

"... it becomes clear that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of posts only, the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in the emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the Court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case."

From the above passage it appears that, though recruitment in excess of the notified vacancies is normally held to be bad - the Supreme Court did not lay down any inflexible rule that in all cases (where) the number of candidates selected is more than the number of vacancies advertised, the selection is bad. Their Lordships clearly held that the State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances, but such a deviation from the advertisement must be supported by policy decision of the State. Applying these principles to the present case, the second set of vacancies were created for the first time in the month of August 1996. There can be two ways of filling up of these vacancies. The first method is by advertising these posts afresh and following all the subsequent steps as contemplated under the Andhra Pradesh Direct Recruitment for Posts of Teachers (Scheme of Selection) Rules, 1994 which would take a considerable period of time, at least two to three months in which case the teachers recruited would not be useful for 1996-97 academic year and perhaps can only start functioning from 1997-98 academic year. Keeping such large number of vacancies unfilled in our view, would adversely affect the educational system and the students. Apart from that, selection process for the first set of vacancies was initiated and not concluded by the time of the creation of second set of vacancies (new posts). Having regard to the large number of candidates who had participated in the selection process for the said first set of vacancies, the probability of the candidates acquiring qualification subsequent to the last date of submitting applications as notified for the purpose of filling up of the first set of vacancies would be very low when compared to the number of candidates who participated in the process. That being so it would be impractical and uneconomical for the State to repeat the whole process of selection for the sake of a relatively small number of candidates. Assuming that by not following the process prescribed under the rules as interpreted by the

petitioners offends the rights of such candidates who acquired the eligibility later, this Court would be very reluctant to interfere with the selection process completed, to such large number of posts and disturb the education system, more particularly when the number of such claimants before this Honourable Court is very low. In fact only candidate who is petitioner in Writ Petition No. 12370 of 1997 falls under this category.

21. The second method is, as is done in the present case. It must be remembered that Rules are made to create an uniform and fair procedure for the purpose of selecting teachers to the various schools as discussed earlier. The purpose behind the Rules is, to create fair, transparent and efficient system of selection of teachers to the schools functioning under the Government or under the local bodies, in consonance with the scheme of Articles 14, 15 and 16 of the Constitution of India i.e., all the eligible candidates must be given an opportunity to compete for employment under the State. The Rules provide such an opportunity. All candidates who were eligible on the date of the selection were considered including all the petitioners herein. From the scheme of the Rules and in the light of the Supreme Court Judgment referred to earlier (1st supra), it can be observed that the Rules are more directory in nature than mandatory.

22. Therefore, the Government was right in giving directions to the respondents to fill up these newly sanctioned posts from out of the list of candidates who had already appeared for the written examination and obtained qualifying marks. 47,551 candidates got qualified in the written examination, out of 98,056 candidates who appeared for the written examination in the entire State.

23. Coming to the second submission of the petitioners that calling a second set of qualified candidates for interviews from out of the already prepared list would create a situation whereby the candidates belonging to O.C., (non-reserved category) who secured marks lesser than the cut off marks obtained by the Backward Class candidates in the first list, except for the allegation in the writ petition, no material is placed before this Court as to how the petitioners arrived at such a conclusion and what is the basis for such allegation. In the absence of any factual basis for such an allegation, we are not inclined to decide this question on a hypothetical basis.

24. Coming to the last submission, at the outset, it must be said that the pleadings in this regard are very vague and general in nature. The facts categorically mentioned by the petitioners are that the third list of the candidates interviewed was published in the newspaper. 364 candidates were interviewed on the notified date. According to the petitioners, these interviews were conducted to fill up the vacancies which arose out of a consequence of the promotion of Secondary Grade Teachers as School Assistants. In fact, the advertisement dated 27-1-1996 Note (ii) reads as follows:-

"(ii) Out of 5074 School Assistants posts sanctioned under OOB for Upper Primary Schools, 30% of Posts are notified for direct recruitment, the remaining posts will be filled by way of promotion from the feeder categories and the resultant vacancies in the feeder

categories are thrown open for direct recruitment."

25. The petitioners in their affidavit submit that the posts of School Assistants have been filled up by considering the Secondary Grade Teachers for promotion in the month of February 1997. So, the consequent vacancies in the posts of Secondary Grade Teachers, according to the petitioners, are sought to be filled up by calling the candidates from the select list for the interview on the third occasion along with some vacancies that occurred due to retirement of Secondary Grade Teachers prior to 5-2-1997.

26. Prima facie filling up of any vacancy which arose subsequent to September 1996 from out of the candidates of the selected list prepared earlier, is against the scheme of the Rules. But, these vacancies were created as a consequence of creation of 5074 posts of B.Ed., Assistants. Initially, by G.O.Ms. No. 22, dated 25-1-1996 orders were issued, that such posts would be attached to upper primary schools and upper primary sections attached to High schools. Later the Government of India seems to have clarified that, the posts created under the Operation Block Board Scheme were attached only to upper primary schools and not to upper primary sections attached to High schools. In view of such clarification, the Government again issued revised orders in G.O.Ms. No. 141 dated 13-6-1996 creating 5074 posts of B.Ed., Assistants for upper primary schools only in the State.

27. 30% of these vacancies are to be filled up by direct recruitment and the balance of 70% of vacancies are to be filled up by promoting Secondary Grade Teachers. This is a fact admitted even by the writ petitioners. The consequential vacancies that arise by filling up 70% of posts out of 5074 school assistants by promoting Secondary Grade Teachers gave rise to Jot of vacancies in the posts of Secondary Grade Teachers. Unfortunately, both the writ petitions and the counter-affidavit filed are absolutely inadequate of details as to when the vacancies of the school assistants have been filled up and the consequential vacancies of the Secondary Grade Teachers arose. The fact admittedly is, that all the vacancies that arose upto 5-2-1997 were sought to be filled up from out of the qualified candidates who appeared in pursuance of the advertisement dated 27-1-1996. It can be seen from whatever material available on the record that the promotions mentioned above created a large number of consequential vacancies for the posts of Secondary Grade Teachers.

28. From a perusal of the counter-affidavit, it can be gathered that the whole selection process for filling up of these various posts of either Secondary Grade Teachers or School Assistants had been delayed for various reasons like the elections to the Lok Sabha held in the month of May 1996 and again in the month of September 1996 in view of bye-elections to various Assembly segments in the various Districts (11) in the State. Had the selection process been completed without any interruption perhaps the 3rd set of vacancies which are being attacked would also have arisen before September 1996 and perhaps would have been beyond the scope of challenge, but selection process. was delayed for reasons beyond the control of the State Government. Therefore, these

consequential vacancies in large number seem to have arisen after September 1996. The filling up of these vacancies from out of the selection list prepared earlier would in the normal course be illegal as they should have been carried forward to the next year. But the reality is that about 4000 (approximately) vacancies in the posts of Secondary Grade Teachers all over the State arose as a consequence of the promotion of the Secondary Grade Teachers to School Assistants under Operation Block Board Scheme. Leaving these posts unfulfilled to the next academic year and starting the exercising of estimating these vacancies and filling up of these vacancies in accordance with the rules would have been taken once again considerably long time thereby disturbing the educational system in the entire State effecting large number of school going children. In view of that, the State Government took the decision to fill up all these vacancies as on 5-2-1997 from out of the 1996 selection list. Undoubtedly, this is an extraordinary situation as envisaged by the Supreme Court in Prem Singh"s case (1 supra). In view of such a situation and in view of the further fact, that none of the selected candidates are before us as respondents, we are not inclined to disturb the selection process.

29. Before parting with this case, we would like to record our unhappiness about the way in which the counter-affidavits are prepared by the Government in important matters like this. To say the least, the common counter-affidavit filed in this case is, absolutely unsystematic leaving lot of gaps to be filled up, which necessarily requires the Court to look into lot of other documents although public documents in an important matter like this, we would have expected, a more responsible and senior officer of the Government to swear to the affidavit than an Assistant Secretary to the Government who has sworn to the counter-affidavit in the present case. With the eternal hope, that this situation would improve atleast in future.

30. We dismiss the writ petitions without costs.