
(2013) 3 ALD 680 : (2012) 2 ALT 455

Andhra Pradesh High Court

Case No: Writ Petition No. 29468 of 2011

P. Veera Raghavulu

APPELLANT

Vs

Government of Andhra
Pradesh and Others

RESPONDENT

Date of Decision: March 9, 2012

Citation: (2013) 3 ALD 680 : (2012) 2 ALT 455

Hon'ble Judges: V. Eswaraiah, J; K.G. Shankar, J

Bench: Division Bench

Advocate: N. Ashwani Kumar, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.G. Shankar, J.

The order of the Andhra Pradesh Administrative Tribunal, Hyderabad (the Tribunal, for short) in O.A. No. 3894 of

2011 dated 17-8-2011 dismissing the request of the petitioner herein, is assailed through this writ petition. The petitioner was the applicant before

the Tribunal. The respondents 1 to 3 herein were the respondents before the Tribunal. The selection of the petitioner as Stipendiary Cadet Trainee

Police Sub Inspector (Civil), (SCT Sub Inspector, for short) came up to be questioned on the ground that the petitioner was suffering from colour

blindness. The Tribunal declined to interfere with the rejection of the selection of the petitioner through its orders upholding the rejection orders

dated 16-5-2011. Aggrieved by the same, the petitioner filed the present writ petition.

2. The petitioner initially applied for the post of SCT Sub Inspector in response to the notification dated 15-9-2006. Considering that the petitioner

was over aged, his case was not considered. The petitioner"" unfortunately was over aged by a day. The petitioner filed O.A. No. 6481 of 2006

before the Tribunal seeking relaxation of the age limit. The petitioner was granted interim relief but O.A. No. 6481 of 2006 however was

subsequently dismissed.

3. The petitioner thereafter made a representation to the Government to relax the age limit. As the petitioner was within the zone of consideration

for the vacancies reserved for BC-A category, the Government issued G.O.Ms. No. 21, Home Department, dated 01-02-2008 relaxing the

upper age limit in favour of the petitioner.

4. The petitioner however was not sent for medical examination. The petitioner chose to file O.A. No. 4159 of 2009 before the Tribunal and

obtained a direction from the Tribunal that he be sent for medical examination and training in view of the age relaxation provided through G.O.Ms.

No. 21. However, the orders in O.A. No. 4159 of 2009 were not implemented, forcing the petitioner to file a contempt petition in CA. No. 391

of 2009. CA. No. 391 of 2009 was closed on 30-7-2009 as the respondents reported that the orders of the Tribunal were complied with.

5. The petitioner was directed to attend for medical examination through proceedings dated 29-7-2009. The petitioner fared well in the medical

examination. The petitioner however was referred to Sarojini Devi Eye Hospital, Hyderabad. The petitioner was successful in the medical

examination before Sarojini Devi Eye Hospital satisfying all the parameters required with reference to his eye sight etc.

6. The petitioner however was subjected to 2nd medical examination. Aggrieved by the same, the petitioner preferred application in O.A. No.

11780 of 2009 seeking a direction to refer him for fresh medical examination before any other hospital.

The Tribunal directed the respondents to refer the petitioner to the Medical Board of Gandhi Medical Hospital or Osmania Medical Hospital. To

frustrate the orders in O.A. No. 11780 of 2009 filed by the petitioner, the 2nd respondent issued orders on 06-11-2009 cancelling the provisional

selection of the petitioner for the post of SCT Sub Inspector.

7. The cancellation of the provisional selection of the petitioner led to the 4th application by the petitioner in O.A. No. 12011 of 2009. A common

order was passed by the Tribunal in O.A. No. 11780 of 2009 and O.A. No. 12011 of 2009 on 15-02-2010. The order dated 06-11-2009

cancelling the provisional selection was set aside. The order directing the petitioner to be subjected to fresh medical examination either in Gandhi

Medical Hospital or Osmania Medical Hospital was confirmed by the Tribunal.

8. Challenging the same, the respondents preferred W.P. No. 24612 of 2010 on the file of this Court. On 26-10-2010, the writ petition was

disposed of by setting aside the order of the Tribunal. The petitioner was directed to submit his application for re-medical examination in L.V.

Prasad Eye Institute, Jubilee Hills, Hyderabad. The petitioner was subsequently examined by L.V. Prasad Eye Institute on 25-11-2010. The

petitioner was found fit in Ischihara test.

9. However, the petitioner was unnecessarily subjected to D-15 test wherein it was found that the petitioner was suffering from red green colour

vision defect. On the basis of the result that the petitioner was suffering from colour blindness, his candidature for the post of SCT Sub Inspector

was rejected. Aggrieved by the same, the petitioner preferred O.A. No. 3894 of 2011.

10. The respondents filed a counter before the Tribunal. The respondents contended that the Regional Medical Board of the Government General

Hospital, Guntur sent a letter on 30-7-2009 that the petitioner was not able to identify Ischihara charts, so much so, the petitioner was referred to

Sarojini Devi Eye Hospital, Hyderabad. They further stated that Sarojini Devi Eye Hospital sent a letter on 13-8-2009 to the 3rd respondent

stating that the colour vision of both the eyes of the petitioner was defective and that the petitioner was unfit for employment. As the petitioner was

suffering from colour blindness, he was found to be unfit for employment. However, in view of the orders of this Court in W.P. No. 24612 of

2010 and W.P. No. 24600 of 2010, the petitioner was referred to L.V. Prasad Eye Institute. The Eye Institute submitted a medical report on 24-

10-2010 that the colour vision testing of Ishihara plates of the petitioner was normal and that D-15 test, however, disclosed that the petitioner

was suffering from defective eye vision of red and green colours. Thus, the petitioner was found to be suffering from colour blindness, so much so,

he was unfit for appointment as SCT Sub Inspector. The order dated 16-5-2011 rejecting the candidature of the petitioner for the post of SCT

Sub Inspector therefore is just, proper and cannot be questioned.

11. The whole case revolves round D-15 test. Sri D.V. Sitarama Murthy, learned Senior Counsel, representing Sri N. Ashwani Kumar, learned

counsel for the petitioner, contended that what was contemplated was Ishihara test to determine the colour blindness and that D-15 test was

necessary for employments like Air Pilots. He further contended that none of the candidates selected for SCT Sub Inspector was subjected to D-

15 test and that the petitioner was a solitary case, which was done with a view to disqualify the petitioner on medical grounds.

12. The learned Government Pleader for Services II appearing for the respondents 1 to 3, on the other hand, contended that it is evident from D-

15 test that the petitioner has been suffering from colour blindness and that when the petitioner has been suffering from colour blindness, he would

not be fit to discharge the functions of a police officer. He further urged that while D-15 test was not done in the routine course, in the case of the

petitioner, D-15 test had to be conducted to determine whether the petitioner was free from colour blindness as the petitioner missed as many as

four Ishihara plates out of six plates during the medical examination at the Government General Hospital, Guntur.

13. As already pointed out, the case revolves round the question whether the petitioner was liable to be subjected to D-15 test. There is no

controversy regarding the facts. The primary facts are that the petitioner was found to be maintaining the normal eye vision in Ischihara test when

he was subjected to the same by L.V. Prasad Eye Institute. However, when the petitioner was subjected to D-15 test, he was not successful in

establishing that he was not suffering from any colour blindness. It is also true that in one of the earlier Ischihara tests, the petitioner missed as many

as four Ischihara plates. These are the uncontroverted facts.

14. The learned Senior Counsel for the petitioner contended that once the petitioner was successful in Ischihara test before L.V. Prasad Eye

Institute, he could not be subjected to D-15 test and that so far as the petitioner is concerned, D-15 test is non est.

15. The learned Government Pleader for Services II contends that it became necessary to subject the petitioner to D-15 test to make sure about

the vision of the petitioner in view of the track record of the petitioner and that the result of D-15 test cannot be ignored for the purpose of the

medical examination of the petitioner.

16. The High Court of Delhi had occasion to deal with Ischihara test in Mohd. Faisal v. Govt. of NCT of Delhi 2006 (7) AD (Del.) 646. It was

observed thus:

11. We may also at this stage refer to Dr. Kunal Kumar v. Union of India, a decision by one of us (Manmohan Sarin, J) in CW. No. 4608/2002.

In the said case, the Court had the occasion to consider the question of validity of disqualification of a MBBS Doctor to the MD course in

Pathology his being colour blind. The Court considered the nature and meaning of colour blindness. It was observed as under:-

Colour blindness is a misnomer as it refers to blindness which is normally understood inability to see. In case of a colour blind person, the person is

able to see colours, but has a reduced spectrum and there is inability or deficiency to distinguish colours. Colour blindness is a malfunction of the

retina, which converts light energy that is then transmitted to the brain. This conversion is accomplished by two types of photoreceptor cells in the

retina; rods and cones. The retina has about 120 million rods and about 6 million cones. Colour blindness occurs when the cones, which are used

for distinguishing colours either become deficient or some of them, are non-functional. It should appropriately be called colour vision deficiently,

rather than colour blindness. Colour deficient patients are not completely red or green blind. Compared to persons with normal colour vision, they

have some troubles differentiating between certain colours, but the severity of the colour deficiency is variable.

12. The various tests, which are available to assess colour blindness are Edridge Green Colour Lantern test, Ishihara test and Nagels

Anamaloscope Colour test. In the instant case, it is sufficient to notice that the report only mentions "partially colour blind". As such, in the absence

of comprehensive report based on the above tests, it cannot be predicted with any degree of certainty as to the nature of deficiency. However, it

could be a mild colour deficiency, which has led the hospital to report it as partial colour blindness. The colour deficiency may be confined to a

particular hue of colour. Considering these factors and specially that the petitioner was an aspirant only for the post of Constable (Executive), we

find that the decision of the Authorities to debar him on ground of colour blindness, apart from being contrary to the provisions of Rule 24 read

with Appendix, has resulted in unjustly depriving the petitioner to a post, to which he has been selected.

17. It is the contention of the learned Senior Counsel on the strength of this decision that the selection of the petitioner cannot be thwarted

subjecting the petitioner to D-15 test.

18. The basic contention of the learned Senior Counsel for the petitioner that no selected candidate is subjected to D-15 test does not appear to

be in dispute. Equally true is the point that every provisionally selected candidate shall pass through Ishihara test. Both Ishihara test and D-15

test relate to the determination of colour blindness, as can be seen from the medical report dated 25-11-2010 and the medical report dated 06-

01-2011 issued by L.V. Prasad Eye Institute. Curiously, what was recorded in the two medical reports is ""In view of normal Ishihara test D-15

test was performed which showed red green colour vision defects in both eyes"". In other words, the eye institute admits that D-15 test was

performed since the result of Ischihara test was normal eye vision. This is evident from the expression in the medical reports as ""In view of normal

Ishihara test....."". As rightly submitted by the learned Senior Counsel for the petitioner, it would appear that the intention of L.V. Prasad Eye

Institute is to some how or other show that the petitioner was not fit for appointment as SCT Sub Inspector. This is also indicated by the medical

report dated 06-01-2011 wherein the eye institute not only stated that the petitioner did not pass D-15 test but went further to add that the partial

colour vision deficiency of the petitioner would be in the way of the functioning as a Sub Inspector. We are afraid that it would be for the

appointing authority to decide whether colour blindness or failure to pass D-15 test would come in the way for the appointment. It is not for the

eye institute to determine the fitness of the petitioner. From the over all circumstances, there is any amount of suspicion that efforts were made to

show that the petitioner was medically unfit for appointment as SCT Sub Inspector. We do not wish to go to the extent of declaring that there was

a deliberate attempt on the part of the appointing authority to take steps to disqualify the petitioner. At the same time, we make it clear that it is

abnormal to resort to D-15 test to hold that the petitioner was suffering from colour blindness.

19. The learned Government Pleader for Services II tried to justify D-15 test by referring to the two medical reports. It was recorded in the

medical reports that when Dr. Subhadra Jalali conducted Ishihara test, the petitioner missed four Ishihara plates in respect of both his eyes and that

albeit his vision was normal in the test on 25-11-2010, he was subjected to D-15 test in view of the earlier test by Dr. Subhadra Jalali. We are

afraid that the method adopted by L.V. Prasad Eye Institute in this context cannot be supported. If the test conducted at one time disclosed

defective eye vision and the subsequent test revealed normal eyesight, at best, the petitioner should be subjected to the test once again for

confirmation of the result. The petitioner cannot be subjected to an entirely different test (from Ishihara test to D-15 test) to disown their own

results. We deem it appropriate to hold that the petitioner was not liable to be subjected to D-15 test, to which none of the other provisionally

selected candidates was subjected to. In the absence of D-15 test, Ishihara test alone would determine the capability of the eye vision of the

petitioner. As Ishihara test did not disclose any colour blindness, we are constrained to hold that to the extent of the employment of the petitioner

as SCT Sub Inspector is concerned, the petitioner has not been suffering from any colour blindness.

20. The Tribunal did not appreciate the question of the petitioner being subjected to D-15 test and held that as the petitioner did not succeed under

D-15 test, he was not eligible for appointment. The Tribunal lost sight of the fact that the requisite test was Ishihara test and not a finer D-15 test.

For these reasons, we are unable to agree with the finding of the Tribunal.

21. The order of the Tribunal is accordingly set aside. The petitioner is found to be fit for appointment as SCT Sub Inspector. The respondents are

directed to send the petitioner for training along with the next batch of selected SCT Sub Inspectors of Police (Civil). The writ petition is

accordingly allowed. No costs.