

IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI
HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE R.RAGHUNANDAN RAO

Writ Petition No.8648 of 2019 along with W.P. Nos.6853, 6855, 6861, 6863, 6866, 6870, 6873, 6875, 6876 & 7760 of 2019; 36864 of 2022

W.P.No.8648 of 2019:

Shaik Mahaboob John

... Petitioners

Vs.

The High Court of Andhra Pradesh,
Represented by its Registrar General,
Amaravathi and 2 others.

... Respondents

Mr. J. Sudheer, counsel for the petitioners in W.P.Nos.6853, 6855, 6861, 6863, 6866, 6875 of 2019; Ms. Jyothi Eswar Gogineni, counsel for the petitioners in W.P.Nos.8648 of 2019 and 36864 of 2022; Mr. Srinivasa Rao Narra, counsel for the petitioner in W.P.No.6870 of 2019, Mr. P.V.N. Kiran Kumar, counsel for the petitioners in W.P. Nos.6873, 6876, 7760 of 2019.

Mr. Maheswara Rao Kuncheam, Standing Counsel for the respondents.

Dt.:10.05.2024

Per DHIRAJ SINGH THAKUR, CJ:

In all the aforementioned 12 writ petitions, since common questions of law and fact arise, we propose to deal with them by way of a common

order. Facts in W.P.No.8648 of 2019 are being referred to, for the sake of convenience.

W.P.No.8648 of 2019 has been filed challenging the decision taken by the High Court of Andhra Pradesh in cancelling the entire selection process made to various posts including the 8 posts of typists, 11 posts of copyists and 1 post of Personal Assistant for the unit of the District Judge, Guntur. The decision is challenged primarily on the ground that the same suffered from the vice of arbitrariness as no reasons at all were given as to why the entire selection process was cancelled.

2. With a view to understand the controversy in the correct perspective, it is apt to refer to the material facts in brief:

The District Judge, Guntur, issued notifications *inter alia* for 8 posts of Typists vide the notification No.3, dated 22.10.2011, 11 posts of Copyists vide the notification No.4, dated 22.10.2011, and the notification No.2, dated 22.10.2011, for the post of 1 Personal Assistant for the unit of the District Judge, Guntur, inviting applications from the eligible candidates for direct recruitment as per the A. P. Judicial Ministerial Service Rules, 2003.

3. It appears that the petitioners being eligible responded to the aforementioned three notifications and were subjected to objective type test based on OMR basis as also skill test which was conducted on

23.01.2016 and 24.01.2016 respectively. The interviews were scheduled on 26.01.2016 and were accordingly conducted. The list of candidates selected was sent for approval by the learned District Judge to the High Court on administrative side in accordance with the Presidential Order vide para 4 of Annexure appended to G.O.(P) No.763, GA (SPF-A) Department, dated 15.11.1975, and instructions issued by the High Court vide R.O.C.No.665/2005-RC, dated 10.06.2006. The High Court then vide proceedings, dated 10.06.2016, ordered the re-notification of one post of Copyist earmarked for O.C. (Ex-Serviceman) against Roster Point No.37 in the next recruitment to be filled up by a local candidate only to make it in accordance with the presidential orders. After the approval by the High Court, the District Court, Guntur, published the list of provisionally selected candidates for the post of 11 Copyists vide the notice, dated 16.06.2016.

4. Similarly, as against the list of 8 Typists sent to the High Court for approval, the High Court vide letter, dated 10.06.2016, approved the selections made for 7 out of 8 posts in regard to the notification No.3, dated 22.10.2011, while directing re-notification of one post of typist to O.C. (Ex-Serviceman) in the next recruitment for filling up only by a local candidate as per the presidential orders. It appears that on receipt of the approved list, the District Court, Guntur, published the list of provisionally selected candidates for the post of 7 Typists vide the notice No.3841, dated 16.06.2016.

5. The attestation forms of the provisionally selected candidates were also sent to the respective Police authorities and the Additional Director General of Police Intelligence for submission of verification reports within the stipulated time. A letter bearing No.7553, dated 24.11.2016, was also addressed to the High Court seeking permission to enable the District Court to issue appointment orders to the selected candidates subject to the receipt of police verification reports.

6. In response to the letter, dated 24.11.2016, the Registrar (Recruitment) on the directions of the High Court vide communication dated 06.12.2016 instructed the learned District Judge to await further orders, as regards the issuance of the appointment orders to the approved and selected candidates. Finally, by virtue of the impugned communication, dated 18.04.2019, issued by the Registrar (Recruitment), the learned Principal District and Sessions Judge, Guntur, was informed about the decision to cancel the selection made *inter alia* for 11 posts of Copyists and 7 posts of Typists with a further direction to initiate a fresh recruitment process with appropriate age relaxations to be given to the applicants who had applied pursuant to the notifications mentioned therein.

7. Learned counsel for the petitioners challenges the impugned communication primarily on the ground that the impugned notice had been issued without assigning any reason. It was urged that cancelling

the selection process after the entire process of selection initiated pursuant to notifications issued in 2011, after a period of 8 years, was highly prejudicial to the interest of the selected candidates as most of them would be ineligible to apply yet again and that merely because a provision had been made in regard to age relaxation in their favour yet they had become over aged for other job opportunities.

8. Reply has been filed on behalf of the Principal District Judge, Guntur, in which nothing is forthcoming as regards the reasons for cancellation of the selection process. However, all that is stated in the reply affidavit is that the petitioners did not have any indefeasible right to claim appointment based upon the selection process so conducted inasmuch as there was a specific clause in the advertisement notice that the selection was liable to be cancelled without assigning any reason.

9. We have heard learned counsel for the parties.

10. Law with regard to the rights of candidates who participate in a selection process and may even find their names in the selection list based upon such a selection process is no longer *res integra*. It is settled that mere participation in the selection process does not give any indefeasible right to a candidate to get appointed and while the authorities have the right to abandon the selection process, yet the same can be done by giving proper reasons and justification and not arbitrarily.

11. Since the reasons for cancellation of the selection process initiated pursuant to notification Nos.2, 3 & 4, dated 22.10.2011, were not forthcoming from the reply-affidavit filed by the District Judge, Guntur, and since the orders of cancellation had emanated from the High Court, we summoned the relevant record from the High Court. From the record, it can be seen that there was no inquiry conducted in the allegations made in the written complaint by a group of five advocates questioning the fairness and sanctity of the selection process. It can also be seen that there is nothing on record, which would suggest that the complaint had been got inquired by the High Court much less is there anything on record, which would suggest that even a *prima facie* view has been expressed on the subject before ordering cancellation of the selection process. No reasons at all are forthcoming from the record except the complaint, which was received on 27.06.2016. The High Court in its reply-affidavit also has been unable to support its decision regarding cancellation of the selection process in question and has only reiterated the principle of law that the petitioners based upon their participation in the selection process alone did not have any indefeasible right to claim appointment.

12. The Apex Court in **Neelima Shangla v. State of Haryana & Others**¹ first laid down the principle that pursuant to the completion of a process of selection, it would be open to the Government not to fill up all

¹ (1986) 4 SCC 268

the vacancies for a valid reason. In **Shankarsan Dash v. Union of India & Others**², the Apex Court held that if a number of vacancies are notified for appointment, the successful candidates do not acquire an indefeasible right to be appointed but the decision not to fill up the vacancies had to be taken up bona fide for appropriate reasons. What was stated by the Apex Court was thus:

“7.....Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.”

13. In **Union Territory of Chandigarh v. Dilbagh Singh and Others**³, while following the principle of law laid down in **Neelima Shangla (supra)**, the Apex Court upheld the decision of the Chandigarh administration ordering cancellation of the selection process for the post of conductors in Chandigarh Transport Undertaking (CTU) based upon primarily the fact that there was an inquiry conducted by the Chandigarh administration regarding the select list of 32 candidates prepared by the selection board, revealed that the members of the selection board has

² (1991) 3 SCC 47

³ (1993) 1 SCC 154

made use of interview marks awardable by them at interview to eliminate meritorious candidates from the list and had diverted demerit into merit.

14. In **East Coast Railway and Another v. Mahadev Appa Rao and Others**⁴, the Apex Court emphasized the need to record a *prima facie* satisfaction before proceeding to order cancellation of a selection process. This was a case where the competent authority had ordered cancellation of a type test conducted for making selection to the post of Chief Typists based upon the allegation that to some of the unsuccessful candidates, defective typewriting machines were provided which had placed them at a disadvantage as against the candidates, who were declared successful. The Apex Court, in those circumstances, held:

“29. There may be cases where an enquiry may be called for into the allegations, but there may also be cases, where even on admitted facts or facts verified from record or an enquiry howsoever summary the same maybe, it is possible for the competent authority to take a decision, that there are good reasons for making the order which the authority eventually makes. But we find it difficult to sustain an order that is neither based on an enquiry nor even a *prima facie* view taken upon a due and proper application of mind to the relevant facts. Judged by that standard the order of cancellation passed by the competent authority falls short of the legal requirements and was rightly quashed by the High Court.”

15. In our opinion, while it may be true that the process of selection can be abandoned, yet the same can be done only for valid reasons. Following the principles of law as held in the cases of **Neelima Shangla**,

⁴ (2010) 7 SCC 678

Shankarsan Dash and East Coast Railway, we don't find any basis for sustaining the order of cancellation of the selection process in question. The order impugned, dated 25.04.2019, being unsustainable in law, is accordingly set aside. The respondents are directed to take the process of selection to its logical conclusion and issue orders of appointment in accordance with merit within a period of two months. The Writ Petitions are disposed of accordingly. No costs.

Pending miscellaneous applications, including dispense with/leave to file counter, if any, shall stand disposed of.

DHIRAJ SINGH THAKUR, CJ

R.RAGHUNANDAN RAO, J

kbs/akn

**HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE R.RAGHUNANDAN RAO**

WRIT PETITION No.8648 of 2019 & batch

(per Dhiraj Singh Thakur, CJ)

Dt:10.05.2024

Kbs/akn