

APHC010584632023



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI**

Bench
Sr.No:- SL-2
[3446]

WRIT PETITION NO: 30343 of 2023

Chandu Nagarjuna, S/o. Harshavardhan,
D.No.24-28/1-38/16, Punaiah colony, 2nd line,
Near Modern Super Market, Gulabithota,
Vijayawada (Urban) Krishna A.P.-520003

... Petitioner

Versus

Chief Commissioner of Land Administration and
Spl. Chief Secretary to Government of A.P. Secretariat,
Velagapudi, Guntur District, 522237 and twelve others.

...Respondents

Harsha Vardhana Rao C, Advocate(s) for Petitioner(s)

GP for Services I, V.Venkata Naga Raju (SC FOR APPSC), Ravi Kiran
Kumar Kolusu (SC for SAAP), N Pramod, S Murali Mohan, Advocates for
Respondents.

**CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE R RAGHUNANDAN RAO**

DATE : 3rd May, 2024.

PER DHIRAJ SINGH THAKUR, CJ:

The Andhra Pradesh Public Service Commission issued an
advertisement notice dated 28.12.2021, inviting applications from eligible

candidates for the posts of Junior Assistant-cum-Computer Assistant in A.P. Revenue Department in Group-IV Services. The petitioner claiming himself to be eligible, has applied for the said post under the sports category.

2. According to the advertisement notice, the candidates within the age group of 18 to 42 years as on 01.07.2021 were eligible to apply for the advertised posts. The notification further envisages that candidates seeking appointment under the sports category should have represented at least a university from Andhra Pradesh state in the inter-university competition at national/zonal/regional level in one of the recognized games/sports and should submit the certificate of participation along with the application form.

3. The post for which the petitioner had applied is governed by the Andhra Pradesh State and Subordinate Services Rules, 1996 (hereinafter referred to as "Rules"). Rule 22(d) thereof envisages as under:

"22(d): The unit of appointment for the purpose of direct recruitment shall be hundred vacancies, of which two shall be reserved for meritorious sportspersons horizontally in all categories of posts."

4. Notwithstanding the fact that the petitioner has applied under the sports category, he is aggrieved by Government Order bearing G.O.Ms.No.8, Youth Advancement, Tourism and Culture (Sports) Department, dated 23.11.2020, which envisages as under:

“The Candidate appointed under sports quota must represent the department in which he is appointed for at least 5 years from the time of appointment. Ten (10) years of sports performance of the applicant preceding to the date of notification for recruitment will be considered for eligibility.”

5. It appears from the record that Government Order No.8, dated 23.11.2020, amended the earlier Government Order No.74 which envisaged as under:

“The Candidate appointed under sports quota must represent the department in which he is appointed for at least 5 years from the time of appointment.”

6. According to the petitioner, the certificates obtained by him on account of his participation in archery, based upon which he seeks consideration for appointment under the sports quota, were obtained in the years 2005-06 and 2007, which would not entitle him to claim the benefit in view of the impugned Government Order No.8, dated 23.11.2020.

7. Counsel for the petitioner would urge that although the Government had framed the sports policy, as evident from Government Order bearing G.O.Ms.No.74, Youth Advancement, Tourism and Culture (Sports) Department, dated 09.08.2012, yet the same was not implemented till 2018 when Rule 22(d) was incorporated, formally permitting 2% reservation for

meritorious sportspersons in all categories of posts. The argument is that the Government Order, inasmuch as it envisages to consider the sports performance of the applicant only limited to ten years preceding the date of notification for recruitment, is illegal, arbitrary, and violative of Article 14 of the Constitution of India. It was also urged that restricting the consideration of sports performance to ten years from the date of notification for recruitment, would take away the benefit of reservation prescribed under Rule 22(d) of the Rules, which otherwise prescribes horizontal reservation for meritorious sportspersons.

8. In the reply affidavit filed by the Government justifies the condition under challenge in the following manner:

“35) ...It is the endeavour of the State that the person qualified/appointed in various departments under sports quota needs to represent the concerned department at various levels of competition and In view of the same the State inducted Rule-3 in G.O.Ms.No.8, YAT&C(S) Department, dt:23.11.2020 by considering those meritorious and able sport persons to participate in the Selection / Recruitment process under sports quota with a condition that the said candidate so appointed must represent the department, atleast for the period of 5 years from the date of appointment and the said candidates sports performance will be considered for the preceding 10 years as on the date of notification. The above amendment is carried out, keeping in view and the need of the Government department/entities of the State and the requirement of fresh sports blood to compete on behalf of the respective

departments/entities in the competitions and bring laurels to the said department or entities.”

9. Counsel for the respondent State would further urge that the Government Order impugned was issued as a result of an exercise conducted by experts in the field of sports and that the conditions prescribed, which are under challenge in the present petition, did not suffer from the vice of arbitrariness. It is further stated that the classification was based upon an intelligible differentia between those sportspersons who had obtained their certificates beyond a period of ten years as against the class of sportspersons who had obtained their certificates within a period of ten years from the date of the advertisement notification.

10. In the backdrop of the aforementioned settled legal position, it can be seen that the Government had earlier issued Government Order No. 74 dated 09.08.2012, envisaging a quota of 2% for meritorious sportspersons. Subsequently, the Government of Andhra Pradesh released the Sports Policy for 2017-2022, a reference to which, in our opinion, would be apt to make at this stage as it defines the purpose for which the State had enacted the policy and the benefits of encouraging people to take up sports.

11. The relevant paragraphs of the Sports Policy can be reproduced hereunder:

“3. Paradigm Shift.

...Very usually, Sports has been appreciated from the perspective of winning medals in National and International events. It is significant that in those countries with highest sports participation, human development and happiness were noticed to be very high. Hence, it becomes relevant today to broaden the approach and image of Sports to make it more inclusive for all citizens of the state.

12. Policy Vision.

...Implicit in the vision is the notion that AP is a new state where all citizens can pursue sport to the extent of their abilities and interests, including performing at the highest competitive levels; and where sport delivers benefits, for increasing numbers, to promoting one's health and well-being, contributes to Socio-economic outcomes and creates pathways to meet happiness in life. Policy thus envisages having a better quality and accessibility to sports experience for all citizens.

13. Core Principles.

4. Recognises that sport is a powerful unifying force that serves to promote healthy competition, goodwill, tolerance, good physical, intellectual and moral qualities and strengthens the discipline of our people.

7. Affirms that sport and recreational activities foster a healthy lifestyle, and keeping youth away from tobacco, alcoholism, drugs and anti-social activities.

8. Involves local communities for improving their health, providing employment, physical education, overall welfare, free skills training and to meeting of social needs.

9. Athlete Incentives:

...Jobs will be ear-marked for sports persons in the govt. Priority will be given in Sports and Physical Literacy jobs. Also former sports persons with coaching degrees will be provided an opportunity to start sports enterprises or coaching academies with support of Land/loan from Govt. Re-payment process could be through interest-free process or from an assessment of quality players produced from such centres at national/international level. State is keen to leverage the experience of its Sports persons in developing future sports stars. Also efforts will be made to get ex-sportspersons working in other Govt. deptts and Public sector, back to Sports Coaching jobs through deputations and inter-departmental collaborations.

18. Expected Outcomes:

- *Increased participation in recreational, community and competitive sport will enhance the Happiness index of the State.*
- *Creation of peaceful, safer, stronger and united communities.*
- *Increased participation of all age groups will enhance health, wellness and prosperity of all.*

19. Conclusion.

Swarna Andhra Vision of 2029' is the driving force of this policy, as stated above. The state intends to be the catalyst in the growth and happiness of the citizens of the state of Andhra Pradesh. State intends to use this policy to lay pathways for its citizens to better their happiness by pursuing sports and physical training. Sheer participation will ensure greater happiness to larger numbers as the policy ensures access to play facilities for all age groups by 2029.

...'Swarna Andhra' vision will thus usher in more participation in elite sports with better performance in international events; and higher

population showing inclination for physical activities to be happy in life.”

12. Reference to the aforementioned paragraphs from the policy would thus make it clear that the entire purpose behind encouraging sports in the state is a solemn one inasmuch as according to the policy document, the level of participation of citizens in sports in a country determines the health and happiness index of its citizens. Not only this, the policy document reflects that in countries where there is significantly higher participation in sports, human development was noticed to be very high. In a country as diverse as India, sports, as per the policy document, would prove to be a powerful unifying force that would promote healthy competition, goodwill, and tolerance, apart from good physical, intellectual, and moral qualities, while strengthening and promoting discipline amongst our people. The avowed purpose for promoting sports and recreational activities is to promote a healthy lifestyle, which would also keep the youth away from tobacco, alcoholism, drugs, and other anti-social activities.

13. It would be naive for anybody to not accept the stark reality that a large number of our youth in most of the states in the country are today addicted either to drugs, alcohol, or other substances. Promoting sports in a big way would channelize their energies in a more productive manner. Needless to

say, the productivity quotient of a nation is directly proportional to the health of its citizens. A citizen who is addicted to any form of addiction, be it drugs or alcohol, not only loses his potential to contribute to the progress of the nation but also becomes a burden on the society, which then has to cater to the rehabilitation of such a person, involving a tremendous amount of resources by the State Government at every level, be it a village or a city.

14. We also cannot ignore the fact that a person who dedicates his time towards participation in sports invariably suffers on the academic front. His performance in academics, as a necessary consequence of his devoting more time to sports, would suffer. However, a meritorious sportsperson, by his performance, not only brings laurels to his institution, be it a college or a university, but also enhances the prestige of the state to which he belongs if it is an event at the national level, and further improves the image of the nation internationally if he excels in international events. Any country that performs well in events organized at the international level is respected among its international peers, which brings about tremendous associated benefits to the country on account of having attained that image.

15. In our opinion, by issuing Government Order No.8, dated 23.11.2020, to the extent it restricts the consideration of sportspersons based on their

performance to not more than ten years from the date of issuance of the notification for the posts, the Government is taking a very myopic view of the purpose for which the reservation had been provided. The reservation had certainly not been provided for the purpose of enabling a particular department to utilize the services of sportsmen only for enhancing the image of that department in which he is recruited, but on account of such persons having excelled in the field of sports in the past.

16. In our view, the explanation rendered to justify the Government Order as is reflected in the counter affidavit, that the amendment through Government Order No.8, dated 23.11.2020, was carried out keeping in view the need of the Government departments/entities of the state for "fresh blood" to compete on behalf of the respective departments in competitions and bring laurels to the said department or entities, is totally against the spirit and concept based upon which such a reservation was provided for sportspersons.

17. In any case, the impugned Government Order, to the extent to which it is under challenge, is flawed, and it can be explained by way of simple examples:

Example 1: A candidate obtains a gold medal at the age of 20 and applies for a government post at the age of 29. He would be eligible to be considered based on his performance as it would be within ten years from the date of notification. However, he would be ineligible at the age of 31.

Example 2: A candidate obtains a gold medal at the age of 25 and applies for a government post at the age of 34. He would be eligible to be considered based on his performance as it would be within ten years from the date of notification. However, he would be ineligible at the age of 36.

Example 3: A candidate obtains a gold medal at the age of 30 and applies for a government post at the age of 39. He would be eligible to be considered based on his performance as it would be within ten years from the date of notification. However, he would be ineligible at the age of 41.

18. All these examples have reference to the outer age limit of 42 years prescribed for candidates in terms of the notification dated 28.12.2021, issued by the APPSC.

19. The explanation rendered by the State to justify the Government Order No.8, dated 23.11.2020, does not appear to be rational inasmuch as if the State was only looking for "fresh blood" to represent the department in which the candidate is to be recruited, then while a person at the age of 39 in

Example 3 would be eligible, a candidate aged 31 in Example 1 or aged 36 in Example 2 would be ineligible. Thus, the "fresh blood" test propounded by the Government to justify the Government Order No.8, dated 23.11.2020, does not appear to have any rational basis whatsoever.

20. Counsel for the State would urge that G.O.Ms.No.8, dated 23.11.2020, was in the nature of a policy document and therefore, the Court should not venture to question the same. Reliance was placed upon **Parisons Agrotech (p) Ltd. Vs. Union of India¹, Directorate of Film Festivals vs. Gaurav Ashwin Jain² and State of Punjab and others vs. Ram Lubhaya Bagga and others³**. While it is true that the Courts in exercise of the power of judicial review, do not ordinarily interfere with the policy decisions of the executive, yet equally settled is the principle that if the policy suffers from unfairness, arbitrariness or can be faulted on mala-fides irrationality or perversity, the same could render the policy unconstitutional.

21. In the present case, the G.O. impugned does not lay down the policy but the policy document is one carried by the Government for the years 2017-2022, which has been referred to in the preceding paragraphs. The G.O. in fact, provides for something which has the effect of defeating what the policy document envisioned, assuming that the G.O. impugned did lay down the

¹ (2015) 9 SCC 657

² (2007) 4 SCC 737

³ (1998) 4 SCC 117

policy. We have no hesitation in holding that the same is flawed, is arbitrary, perverse, and irrational.

22. The twin test laid down by the Apex Court in the case of **Ram Krishna Dalmia vs. S.R. Tendolkar**⁴ cannot be said to have been satisfied by the State, inasmuch as the classification is arbitrary and does not meet the rational nexus test under Article 14 of the Constitution. The Apex Court in the case of **Ram Krishna Dalmia vs. S.R. Tendolkar** held as under:

“It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguished persons or things that are grouped together from others left out of the group and, (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.”

⁴ 1959 SCR 279

23. For the reasons mentioned hereinabove, the petition is allowed. Government Order bearing G.O.Ms.No.8, Youth Advancement, Tourism and Culture (Sports) Department, dated 23.11.2020, to the extent it restricts the consideration of sports performance to a period of ten years preceding the date of notification for recruitment as a condition of eligibility, is quashed. The respondents are directed to consider the certificates/achievements/performance of the petitioner in the field of sports without reference to the time when the same were acquired. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ.

R. RAGHUNANDAN RAO, J.

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