

**HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD**

TUESDAY, THE THIRTIETH DAY OF APRIL  
TWO THOUSAND AND TWENTY FOUR

**PRESENT**

**THE HON'BLE SRI JUSTICE SUJOY PAUL  
AND  
THE HON'BLE SRI JUSTICE N.TUKARAMJI**

**WRIT PETITION (TR) No.4617 OF 2017**

**Between:**

E. Nirmala Jyothi, D/ o Swamy, Aged about 37 years, working as Typist, O/o MPDO Sarangapur, Adilabad. R/o Maddipadaga Village, Kadern Mandal, Adilabad District.

**...PETITIONER**

**AND**

1. The Telangana State Public Service Commission, rep., by its Secretary, Nampally, Hyderabad.
2. The State of Telangana, rep. by its., Principal Secretary, Woman Development and Child Welfare Department, Secretariat Buildings, Hyderabad - 500022
3. The Andhra Pradesh Public Service Commission, rep., by its Secretary, Hyderabad.
4. K.Kavita Choudary, D/o Krishna Rao aged about 38 years R/o polavaram post, Mundlamuri Mandal Prakasam District 523 265. A.P
5. Police Kavitha Devi, D/o G. Manohar Aged about 38 years R/o D.No 20/208, Prabhakar Street Old Town Ananthapur-515001. A.P
6. Marithala Sreelatha, D/o M. Purushothamma Reddy Aged About 37 years R/o Nakkalapalli village Simhadripuram Mandal, Kadapa 516 484 A.P

Respondent Nos.4 to 6 are impleaded as per Court Order dated 02/09/2022 vide I.A.No.1 of 2018 in WP(TR)No. 4617 of 2017

**...RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to declare the action of the Respondents, in selecting the meritorious candidates meant for Open Category, in the Reserved SC category and also publishing the key with wrong answers for Question No.107, 108, 112 100 and 80 in General Studies paper-I and Question No.150, 82, 4, 94, 84, 39 and 62 in

Sociology paper-It and also not awarding marks to the applicant even though she has bubbled correct answers pursuant to Recruitment Notification No.25/2012, dt.29.12.2012 as illegal, arbitrary, discriminatory violative of Article 14 and 16 of the Constitution of India and consequently direct the Respondents, to follow the Correct procedure of selecting the candidates by filling up of the vacancies meant for open category at the first instance with meritorious candidates and then to fill up the vacancies in the Local Reserved category and further award marks to the applicant for the Correct answers given by her after necessary corrections to the key published in respect of disputed questions and further finalize the selection process and appoint the applicant to the post of CDPO on par with others, with all service and monitory benefits.

**IA NO: 1 OF 2020**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to expedite the hearing of the W.P.(TR) No. 4617/2017 by fixing an early date of hearing of the writ petition in the interest of justice.

**Counsel for the Petitioner: SRI G. VIDYA SAGAR, SENIOR COUNSEL  
REPRESENTING Ms. PRIYANKA SINGH**

**Counsel for the Respondent No.1: SRI M. RAMGOPAL RAO, S.C. FOR TSPSC**

**Counsel for the Respondent No.2: SRI B. MUKHERJEE, STANDING COUNSEL**

**Counsel for the Respondent No.3: SRI S. SATHYANARAYANA,  
S.C. FOR APPSC**

**Counsel for the Respondent Nos.5 & 6: SRI M. SRINIVASA RAO**

**Counsel for the Respondent No.4: --**

**The Court made the following: ORDER**

**THE HON'BLE SRI JUSTICE SUJOY PAUL**  
**AND**  
**THE HON'BLE SRI JUSTICE N.TUKARAMJI**

**WRIT PETITION (TR) No.4617 of 2017**

**ORDER:** *(Per Hon'ble Sri Justice Sujoy Paul)*

1. This petition was originally filed before Andhra Pradesh Administrative Tribunal (Tribunal) and was registered as O.A.No.4310 of 2015. Since the Tribunal was abolished, the matter was transferred to this Court and was re-registered as W.P. (TR) No.4617 of 2017.

**Background facts:**

2. The admitted facts between the parties are that the petitioner belongs to reserved/Scheduled Caste (SC) category. She along with other eligible candidates preferred her candidature pursuant to Notification No.25/2012 dated 29.12.2012, for selection for the post of Child Development Project Officer (CDPO) in Women Development and Child Welfare Services Department. The petitioner could clear written examination, which was followed by an oral interview, which was held on 21.04.2014. On 06.05.2014, the selected list was displayed, wherein the petitioner's name was missing. The

petitioner secured 323 marks (294 marks in written examination and 29 marks in oral interview). The petitioner preferred representation dated 07.05.2014 to the respondents to provide information with regard to marks secured by her and by the candidates, who were ultimately selected. Since the grievance of the petitioner was not settled at departmental level, she filed O.A.No.4310 of 2015 before the Tribunal, which came on transfer before this Court as present Writ Petition.

3. During the course of hearing, it is admitted by the learned counsel for the parties that three SC candidates have secured 351.612, 346.112 and 340.612 marks and accordingly should have secured berth in Open Category (OC). Since last OC candidate secured 336.235 marks, these SC category candidates, who secured more marks than last Open Category candidate ought to have been treated as OC candidates and appointed in Open Category. The respondents by ignoring merit of three SC candidates above last OC candidate treated and placed them in the list of reserved category candidates, which deprived three reserved category candidates to occupy seats in their own category as per merit within the category. Putting it differently, if three more meritorious SC category

candidates would have been placed in OC merit list, three reserved vacancies would have fallen in SC category. One of which could have been occupied by the present petitioner being most meritorious SC candidate, who secured less marks than last OC candidate.

4. The ground of the learned counsel for the petitioner is that even if benefit of relaxation of age is given to one reserved category candidate that will not mean that he/she cannot be considered in OC category. For this purpose, reliance is placed on judgment of Division Bench of this Court in the case of **The Andhra Pradesh Public Services Commission vs. R. Shreedevi**<sup>1</sup> and it is submitted that against the said judgment of this Court, SLP (C) No.15897 of 2018 was preferred which was dismissed on 15.11.2019. By placing heavy reliance on the judgment of Constitution Bench of the Hon'ble Supreme Court in the case of **R.K.Sabharwal vs. State of Punjab**<sup>2</sup> *ratio decidendi* of which was followed in the judgments of Hon'ble Supreme Court in the cases of **State of Tamil Nadu vs. K. Shobana**<sup>3</sup> and **Bharat Sanchar Nigam Limited vs. Sandeep Choudary**<sup>4</sup>, the learned counsel for the petitioner strenuously

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<sup>1</sup> 2018 SCC OnLine Hyd 47

<sup>2</sup> (1995) 2 SCC 745

<sup>3</sup> (2021) 4 SCC 686

<sup>4</sup> 2022 (11) SCC 779

contended that proper course that should have been adopted by the Andhra Pradesh Public Service Commission (APPSC) was that they should have first prepared a general merit list and that list should have been first filled up followed by filling up of backlog vacancy of particular reserved category and remaining reserved vacancies for the current year to be filled up thereafter. In the instant case, the respondent had filled up backlog vacancy first and then OC and reserved category vacancy. If Open Category vacancy would have been filled up first, the SC category meritorious candidates, who have secured more marks than Open Category would have secured berth in Open Category. Resultant vacancies would have fallen within SC category and could have been occupied by meritorious SC category candidates. Since respondents did not follow the procedure which was clearly laid down by the Hon'ble Supreme Court in case of **K. Shobana** (cited 3<sup>rd</sup> supra), the petitioner despite having right to be considered on merits in her own reserved category could not be considered and was deprived for no fault on her part.

**Stand of respondents:-**

5. This matter was heard for sometime on the last date of hearing. During the course of hearing, the learned counsel for

unofficial respondents informed that respondent No.4 herein resigned in the year 2015. If petitioner succeeds, she may be adjusted against said vacancy and this method would save the entire exercise of undoing the entire selection process by selecting the persons by adopting different steps as laid down by the Apex Court in the case of **K. Shobana** (cited 3<sup>rd</sup> supra).

6. Learned counsel for Telangana State Public Service Commission (TSPSC) i.e., respondent No.1 obtained written instructions and submits that when notification was issued and selection took place, it was in undivided State of Andhra Pradesh. Hence, the TSPSC has no role. Instead, it is APPSC, which is answering respondent and should take care of the petitioner's grievance.

7. Learned counsel for APPSC i.e, respondent No.3 has obtained written instructions and submitted the same for perusal of this Court. In the instructions received, it is stated as under:

"However to implement that at this point of time may lead to cascading effects. Incidentally to overcome the above situation the vacancy that has been arisen due to the resignation of one candidate i.e., 4<sup>th</sup> respondent selected under Open Category against Roster point No.34 as informed by the Counsel for 5<sup>th</sup> respondent, in that vacancy the petitioner may be accommodated to meet the ends of justice."

(Emphasis Supplied)

8. The parties confined to the arguments to the extent indicated above.

9. We have heard at length and perused the record.

**Findings:-**

10. The factual matrix of the case as projected by the learned counsel for the petitioner and methodology and steps taken by the APPSC was not disputed by the learned counsel for the respondents. They candidly admitted that there were three SC candidates, who secured more marks than the last OC candidate. It was also not disputed that present petitioner is most meritorious SC candidate within SC category. The marks obtained by the candidates and referred hereinabove are not in dispute. The methodology and steps adopted by the APPSC is also not in dispute. The Apex Court in the case of **K. Shobana** (cited 3<sup>rd</sup> supra) considered its previous judgment and opined as under:

“27. We may also note that the manner of filling up the seats has been well enunciated in the judgment in *K.R. Shanthy case* [*K.R. Shanthy v. State of T.N.*, 2012 SCC OnLine Mad 5451 : (2012) 7 MLJ 241 paras 14, 18 and 19: SCC OnLine Mad paras 14 & 18-23, incidentally authored by S. Nagamuthu, J., as he then was, though of course the principle of promissory estoppel cannot apply while he raises his contentions!] by the Madras High Court itself and appears to have been consistently followed. May be the peculiarity of the situation arising in Chemistry subject (which is in question) gives rise to this problem in the current year and



such a problem had not apparently arisen earlier. In fact, there is no manner of doubt after the latest judgment of this Court in *Saurav Yadav case* [*Saurav Yadav v. State of U.P.*, (2021) 4 SCC 542] which again refers to the steps which have to be taken to fill in those vacancies. The steps are clear in their terms: in the given facts of the case, application of those principles or steps would imply:

(a) the general merit list to be first filled in;

(b) the backlog vacancies of the particular reserved category to be thereafter filled in "first"; and

(c) the remaining reserved vacancies for the current year to be filled thereafter."

11. If we examine the methodology adopted by APPSC and steps admittedly taken by them in the impugned selection, it will be clear like cloudless sky that they have taken steps contrary to the law laid down in **K. Shobana** case (cited 3<sup>rd</sup> supra). Instead of preparing a general merit list, they filled up the backlog vacancies first. They should have filled up the regular vacancies, which they have not done. Apart from this, they treated one of the SC candidate as reserved candidate despite the fact that she secured more marks than the marks obtained by last OC candidate merely because she got benefit of age relaxation. This similar action was found fault by this Court in **R. Shreedevi** case (cited 1<sup>st</sup> supra) at para Nos.8 and 10, which are reproduced for ready reference:

"8. In *Jitendra Kumar Singh*, the Supreme Court rejected the contention that relaxation in age would deprive candidates belonging to the reserved categories of an opportunity to

compete against general category candidates. It was pointed out that reserved category candidates have not been given any advantage in the selection process by such relaxation, as all candidates would have to appear in the same written test and face the same interview. The relaxation, per the Supreme Court, is only to enable certain candidates belonging to reserved categories to come into the zone of consideration and does not, in any manner, tilt the balance in their favour in so far as preparation of the final merit list is concerned. The Supreme Court pointed out that if a reserved category candidate gets selected on the basis of merit, he cannot be treated as a reserved candidate. On facts, the Supreme Court found that the concession availed by reserved category candidates in age relaxation had no relevance to the determination of the inter se merit on the basis of the final written test and interview and held that reserved category candidates must be included in the general category candidates on the basis of merit. The observations of the Supreme Court in para 75 are of relevance:

75. In our opinion, the relaxation in age does not in any manner upset the level playing field. It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 16(1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfill the eligibility conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination. With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the preliminary test as also in the physical test. It is only thereafter that successful candidates have been permitted to participate in the open competition.

(emphasis is ours)

9. ...

10. The aforesaid observations strengthen us in our conviction that age relaxation does not constitute a reservation in itself. It merely allows those falling in a disadvantaged category the right to be brought within the zone of consideration so as to compete with others. Once a reservation category candidate competes for selection, be it by availing age relaxation or otherwise, he would be on par with an open category candidate if he figures in the select list on the strength of his own merit. The understanding of the APPSC that a reservation category candidate who avails age relaxation cannot aspire for an open category post therefore defies logic and is contrary to the Constitutional scheme. The Tribunal rightly appreciated the legal position and allowed the O.A. This Court therefore finds no error in the order under challenge.”

(Emphasis Supplied)

12. We find substantial force in the argument of the learned counsel for the petitioner. The respondents should have first prepared a general merit list of OC candidates, in that event, meritorious SC category candidates, who secured more marks than last OC candidate i.e., 336.235, would have secured positions in Open Category. Consequently, vacancy would have fallen in SC category and the petitioner could have been selected in one of such vacancy.

13. If we strictly follow the law laid down in **K. Shobana** case (cited 3<sup>rd</sup> supra) it will certainly have cascading effect. Considering the aforesaid stand of the APPSC that was reflected in the written instructions that were passed on to this Court, since respondent No.4 herein left the job by tendering resignation, that vacancy is

lying vacant and the petitioner can be considered against the same. This method will not have any cascading effect. Leaned counsel for APPSC has obtained written instructions and fairly admitted that this option is workable and in the peculiar facts and circumstances of this case the same can be adopted.

14. Thus, in the peculiar facts and circumstances of this case, we deem it proper to interfere because the APPSC has not prepared the selection list by adopting steps correctly. The petitioner had a valuable right to be considered as per her own merit in SC category. The respondent must consider her as meritorious SC category candidate in her own category by treating one post as lying vacant. It will be open for the respondents to treat meritorious SC category candidate, who secured more marks than OC candidate as OC candidate in accordance with law. In view of the instructions received by APPSC and availability of one vacant post, we are not directing to undertake the entire exercise of redoing the exercise of preparation of selection list in the manner laid down by the Apex Court in **K. Shobana** case (cited 3<sup>rd</sup> supra). Instead, we deem it proper to direct the respondent to treat one SC category post as vacant and consider the case of the petitioner on her own merit. If

the petitioner is found to be suitable, she shall be given appointment on notional basis from the date her counter parts were appointed. This entire exercise shall be completed within 60 days from the date of production of copy of this order. It is made clear that the petitioner will get notional benefits of appointment, seniority and pay fixation, but this order will not reap any actual benefit i.e., arrears of salary and other actual benefits. It shall be the duty of both the States i.e., respondent Nos.1 to 3 to coordinate and ensure that this order is translated into reality within aforesaid time. The compliance report be filed by respondents before the Registry on or before 30.07.2024 failing which, the Registry shall list the matter before the Bench for initiating appropriate action.

15. With the above directions, this Writ Petition stands **allowed**.

There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

//TRUE COPY//

SD/-A.V.S.PRASAD  
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Secretary, Telangana State Public Service Commission, Nampally, Hyderabad.
2. The Principal Secretary, Woman Development and Child Welfare Department, State of Telangana, Secretariat Buildings, Hyderabad - 500022
3. The Secretary, Andhra Pradesh Public Service Commission, Hyderabad
4. One CC to Ms. PRIYANKA SINGH, Advocate [OPUC]
5. One CC to SRI M. RAMGOPAL RAO, S.C. for TSPSC [OPUC]
6. One CC to SRI B. MUKHERJEE, Standing Counsel [OPUC]

7. One CC to SRI S. SATHYANARAYANA, S.C. for APPSC [OPUC]
8. One CC to SRI M. SRINIVASA RAO, Advocate [OPUC]
9. Two CD Copies

MP  
GJP Yr

**HIGH COURT**

**DATED:30/04/2024**



**ORDER**

**WP(TR).No.4617 of 2017**

**ALLOWING THE WRIT PETITION (TR)  
WITHOUT COSTS**

11 Copies  
for  
6/5/24