

***THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY**

+ W.P.No.26262 of 2025

% 06.11.2025

Between:

Katru Rekha,

...Petitioner

And

State of Andhra Pradesh, , rep. by its Prl. Secretary to
Government, School Education Department,
Secretariat, Velagapudi, Guntur.

...RESPONDENT(S)

Counsel for the Petitioner: Sri. M SOLOMON RAJU

Counsel for the Respondent(S): G.P. for Services -II

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> Head Note:

? Cases Referred:

¹ (2014) 5 SCC 438

² 2023 SCC Online TS 1688

³ 2024 SCC OnLine Cal 5920

⁴ 2022 SCC OnLine Mad 92

⁵ 2025 Livelaw(Ker) 30

APHC010510042025



IN THE HIGH COURT OF ANDHRA PRADESH

AT AMARAVATI

[3460]

(Special Original Jurisdiction)

THURSDAY, THE SIXTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

WRIT PETITION NO: 26262/2025

Between:

1. KATRU REKHA, D/O VENKATAYYA, AGED 32 YEARS, OCC-
UNEMPLOYED, R/O JANGAREDDYGUDEM VILLAGE AND
MANDAL ELURU DISTRICT.

...PETITIONER

AND

1. STATE OF ANDHRA PRADESH, , REP. BY ITS PRI. SECRETARY
TO GOVERNMENT, SCHOOL EDUCATION DEPARTMENT,
SECRETARIAT, VELAGAPUDI, GUNTUR.

2. DIRECTOR OF SCHOOL EDUCATION, O/O THE STATE
PROJECT DIRECTOR, KBC ZILLA PARISHAD BOYS HIGH
SCHOOL, PATAMATA, VIJAYAWADA.

3. DISTRICT SELECTION COMMITTEE, REP. BY DISTRICT
COLLECTOR CUM CHAIRMAN, WEST GODAVARI DISTRICT.

4. DISTRICT EDUCATIONAL OFFICER, WEST GODAVARI
DISTRICT.

...RESPONDENT(S):

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 topleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not selecting the petitioner for the post of School

Assistant (L) Hindi despite securing 678th rank in the District in Notification No 01/Mega DSC-TRC-1/2025 Dated 20.04.2025 issued by the 2nd respondent and not notifying vacancies for Transgenders, as illegal, irregular, irrational and arbitrary and violative of Articles 14 and 21 of Constitution of India and contrary to NALSA Judgment and clause 17 and 18 of GO Ms.No- 20 dated 30.12.2017 issued by Women and Child Welfare Department and consequently direct the respondents to select and appoint the petitioner as School Assistant (L) Biology post by creating supernumerary post for Transgender Woman, since vacancies are not notified in the Mega DSC notification and to pass

IA NO: 1 OF 2025

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 direct the respondents to select and appoint the petitioner as School Assistant (L) Biology post by creating supernumerary post for Transgender Woman, since vacancies are not notified in the Mega DSC notification pending disposal of the above writ petition and to pass

IA NO: 2 OF 2025

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 permit the petitioner herein to amend the typographical error from School Assistant (L) Biology to School Assistant (L) Hindi, in para 20, main prayer and interim prayer and in interim applications, pending disposal of the above writ petition and pass

Counsel for the Petitioner:

1.M SOLOMON RAJU

Counsel for the Respondent(S):

1.GP FOR SERVICES II

The Court made the following:

HON'BLE SRI JUSTICE NYAPATHY VIJAY

W.P.No.26262 of 2025O R D E R:

“Seldom, our society realises or cares to realise the trauma, agony and pain which the members of transgender community undergo, nor appreciates the innate feelings of the members of the transgender community, especially of those whose mind and body disown their biological sex. Our society often ridicules and abuses the transgender community and in public places like railway stations, bus-stands, schools, workplaces, malls, theatres, hospitals, they are side-lined and treated as untouchables, forgetting the fact that the moral failure lies in the society's unwillingness to contain or embrace different gender identities and expressions, a mindset which we have to change.”

2. This is the opening paragraph in the Judgement of Hon'ble Supreme Court in the ***National Legal Services Authority v. Union of India***¹ while dealing with the issues concerning the transgender community.

3. The Petitioner is a Transgender (Woman). As the petitioner had requisite qualification, she applied for the post of School Assistant (Language) Hindi post and also TGT (Language) Hindi notified for recruitment under Notification No.01/Mega DSC-TRC-1/2025, dated 20.04.2025. The Petitioner had secured 678th rank in DSC-2025 examination of Eluru District, However, she is not being considered for appointment as no vacancies were notified. Hence,

¹ (2014) 5 SCC 438

the present Writ Petition is filed questioning the non-notification of vacancies for transgenders as being contrary to the mandate of Hon'ble Supreme Court in ***National Legal Services Authority's*** case (1 supra).

4. Learned counsel for the Petitioner submits that out of the proposed posts of 16,000 under the DSC-2025 Notification, not a single transgender was being accommodated and the same is contrary to the Judgment of the Hon'ble Supreme Court in ***National Legal Services Authority's*** case (1 supra).

5. The learned Government Pleader Sri Gurram Ramachandra Rao would submit that the issue of providing special reservation to the transgenders is a policy decision to be taken by the State, and in the absence of a policy decision, the recruitment cannot be faulted.

6. Heard Sri M.Solmon Raju, learned counsel for the Petitioner, and learned Government Pleader for Higher Education for the Respondents.

7. ***Reasoning:*** One of the most underprivileged communities in this country is the transgender community. Historically and to the present day, transgender individuals have been shunned by society. In ***National Legal Services Authority's*** case (1 supra) the Hon'ble Supreme Court examined the grievances of the Transgender

community. In the said Judgment, references to transgenders in Ramayana, Mahabharata, Jain Texts, the Ottoman Empire and Mughal rule in medieval India, and their deterioration during colonial rule on account of the Criminal Tribes Act, 1871 were made.

8. Further, Article 6 of the Universal Declaration of Human Rights, 1948 and Article 16 of the International Covenant on Civil and Political Rights, 1966 (ICCPR), Judgements of foreign Courts regarding transgender individuals and legislation were also referred. Coming to the Indian Scenario, specifically concerning employment, there was a direction to the States to take affirmative action under Article 16 of the Constitution of India at paragraph 67. The Transgenders *vis-a-vis* Articles 15 and 16 of the constitution of India were from paragraphs 63 to 68 of the judgement and the same are extracted below:

“Articles 15 and 16 and Transgenders

63. *Articles 15 and 16 prohibit discrimination against any citizen on certain enumerated grounds, including the ground of “sex”. In fact, both the Articles prohibit all forms of gender bias and gender-based discrimination.*

64. *Article 15 states that the State shall not discriminate against any citizen, inter alia, on the ground of sex, with regard to*

“15. (2)(a) *access to shops, public restaurants, hotels and places of public entertainment; or*

(b) *the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.”*

The requirement of taking affirmative action for the advancement of any socially and educationally backward classes of citizens is also provided in this Article.

65. Article 16 states that there shall be equality of opportunities for all the citizens in matters relating to employment or appointment to any office under the State. Article 16(2) of the Constitution of India reads as follows:

“16. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.”

Article 16 not only prohibits discrimination on the ground of sex in public employment, but also imposes a duty on the State to ensure that all citizens are treated equally in matters relating to employment and appointment by the State.

66. Articles 15 and 16 sought to prohibit discrimination on the basis of sex, recognising that sex discrimination is a historical fact and needs to be addressed. The Constitution-makers, it can be gathered, gave emphasis to the fundamental right against sex discrimination so as to prevent the direct or indirect attitude to treat people differently, for the reason of not being in conformity with stereotypical generalisations of binary genders. Both gender and biological attributes constitute distinct components of sex. The biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one's self-image, the deep psychological or emotional sense of sexual identity and character. The discrimination on the ground of “sex” under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity. The expression “sex” used in Articles 15 and 16 is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male nor female.

*67. TGs have been systematically denied the rights under Article 15(2), that is, not to be subjected to any disability, liability, restriction or condition in regard to access to public places. **TGs have also not been***

afforded special provisions envisaged under Article 15(4) for the advancement of the socially and educationally backward classes (SEBC) of citizens, which they are, and hence legally entitled and eligible to get the benefits of SEBC. State is bound to take some affirmative action for their advancement so that the injustice done to them for centuries could be remedied. TGs are also entitled to enjoy economic, social, cultural and political rights without discrimination, because forms of discrimination on the ground of gender are violative of fundamental freedoms and human rights. TGs have also been denied rights under Article 16(2) and discriminated against in respect of employment or office under the State on the ground of sex. TGs are also entitled to reservation in the matter of appointment, as envisaged under Article 16(4) of the Constitution. State is bound to take affirmative action to give them due representation in public services.

68. Articles 15(2) to (4) and Article 16(4) read with the directive principles of State policy and various international instruments to which India is a party, call for social equality, which TGs could realise, only if facilities and opportunities are extended to them so that they can also live with dignity and equal status with other genders.

9. The Parliament, acknowledging the judgment in ***National Legal Services Authority's*** case (1 supra), enacted ***The Transgender Persons (Protection of Rights) Act, 2019*** addressing issues regarding discrimination and the rights of the transgender community.

10. However, no quota in employment or in educational institutions was provided to the transgender communities by the

State despite telling observations and enactment of law by the Parliament. It cannot be a matter of dispute that the transgender community is at the bottom of social backwardness.

11. Acknowledging the social backwardness, the Division Bench of the High Court of Telangana in ***V. Vasanta Mogli v. The State of Telangana and Ors.***² had directed the respective State Government to provide reservation to transgender community till a law is enacted. The relevant portion of the judgment at paragraph 53 is extracted below:

53. Summing up our discussions, we issue the following directions:

(1) The Telangana Eunuchs Act, 1329 Fasli is declared as ultra vires the Constitution of India and accordingly is struck down as unconstitutional;

(2) The benefits of Aasara Pension Scheme introduced by the Government of Telangana vide the G.O.Ms. No. 17 dated 05.1.2014 shall be extended to the transgender persons as a class;

(3) State of Telangana is directed to issue government orders/administrative instructions providing for reservation to persons belonging to the transgender community in matters of admission into educational institutions and recruitment to Government and public services;

² 2023 SCC Online TS 1688

(4) State Welfare Board for transgender persons, Telangana State shall co-opt Member Secretary, Telangana State Legal Services Authority as one of its members. It shall be a permanent body though individual members may have a limited tenure; and (5) State Welfare Board for transgender persons, Telangana State shall monitor the various steps taken by the Government of Telangana for upliftment of the transgender community including the proper and effective implementation of the Transgender Persons (Protection of Rights) Act, 2019 and the Transgender Persons (Protection of Rights) Rules, 2020.

12. The State of Karnataka in obedience to the Judgements of Karnataka High Court, amended the Service Rules providing 1% Horizontal reservation to the transgender community under ***Karnataka Civil Services (General Recruitment) (Amendment) Rules, 2021*** by amending Rule 9 of the Karnataka Civil Services (General Recruitment) Rules, 1977.

13. The High Court of Calcutta in ***Mrinal Barik v. The State of West Bengal and Ors.***,³ following the dictum of the ***National Legal Services Authority's*** case (1 supra), directed the State of West Bengal to provide 1% reservation to transgenders in all public employments in the State.

14. The High Court of Madras in ***Saratha v. The Member Secretary, Tamil Nadu Uniformed Services Recruitment Board***

³ 2024 SCC OnLine Cal 5920

and Ors.⁴ strongly recommended to the Government of Tamil Nadu for providing a specified percentage of special reservation for the TGs in matters of future public employments, apart from other relaxations and concessions extended to the socially and economically backward classes.

15. A Division Bench of the High Court of Kerala in **Kabeer C. V. State of Kerala**⁵ acknowledging that no reservations were provided to the Transgenders despite the **National Legal Services Authority's** case (1 supra), Judgment directed the State Government to provide reservations within a period of six (6) months vide Judgment dated 28.11.2024.

16. As the origin of the problems of transgender persons in India lies in stigma and discrimination they face in family and society, resulting in their exclusion from the socio-economic-cultural-political spectrum, there is a dire need to mainstream them and the adoption of an inclusive approach in all spheres of life including affirmative action by the State in public employment.

17. The purpose of carving out an exception to the right of equal opportunity in employment by the introduction of Article 16(4) and 16(4A) of the Constitution of India is only to ensure that socially and

⁴ 2022 SCC OnLine Mad 92

⁵ 2025 Livelaw(ker) 30

economically backward communities are also allowed to come into the forefront of society and ensure intergenerational equality. The transgender community is not only socially and economically backward, but has also been abandoned by society. In these circumstances, the State has a moral obligation under the Constitution to take affirmative action on behalf of such communities. The ***National Legal Services Authority's*** case (1 supra) was rendered by the Hon'ble Supreme Court more than ten (10) years ago, and the State cannot dodge this issue any further.

18. In such circumstances, the Writ Petition is disposed of, directing the State Government to provide reservations to transgenders in public employment within six months from the date of receipt of a copy of this judgment and consider the case of the petitioner for appointment to the post of School Assistant. No order as to costs.

As a sequel, the miscellaneous petitions, if any, shall stand dismissed.

NYAPATHY VIJAY, J

Date: 06.11.2025

Note: L.R. copy be marked

KLP

