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Surendra Kumar Singh and Another Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Mar-15-2001

Reported in : 2001(2)AWC1158; (2001)2UPLBEC1065

Judge : S.R. Singh, J.

Acts : [Constitution of India](#) - Artiles 14, 142, 234 and 320(3); Uttar Pradesh General Clauses Act, 1904 - Sections 6; Uttar Pradesh State Services (Age Limit) Rules, 1972 - Rule 6; Uttar Pradesh Transport (Subordinate) Technical Service Rules, 1980 - Rule 10; Uttar Pradesh State Service (Age Limit) 5th Amendment Rules, 1984; Uttar Pradesh Subordinate Services Commission Act, 1988; Uttar Pradesh Ordinance, 1997; Andhra Pradesh Judicial Service Rules; Uttar Pradesh Subordinate Executive Services (Naib Tehsildar) Rules, 1978 - Rule 9

Appeal No. : C.M.W.P. Nos. 30063 and 30755 of 1999

Appellant : Surendra Kumar Singh and Another

Respondent : State of U.P. and Another

Advocate for Def. : S.K. Singh, Adv.

Advocate for Pet/Ap. : A.K. Dixit and ;Ashok Khare, Advs.

Judgement :

S.R. Singh, J.

1. These petitions are based on common cause of action and since the reliefs claimed are common, these petitions were together for convenient disposal by a common judgment. Learned counsel appearing for the petitioners in each of these writ petitions as also Sri S.K. Singh, learned counsel representing the U. P. Public Service Commission and the standing counsel representing the State were heard for and against the reliefs claimed in these petitions.

2. It appears that the U. P. Subordinate Services Commission had advertised certain posts including the post of Regional inspector (Technical)/Assistant Regional Inspector (Technical) vide advertisement No. 2/96-97. The cutoff date for the purpose of determining the prescribed age limit was 1.7.1996. The last date for submission of applications was 26.11.1996. But before it could hold any examination pursuant to the said advertisement the U. P. Subordinate Service Commission was abolished by U. P. Ordinance No. 16 of 1997 and the posts falling within the purview of the U. P. Subordinate Services Commission were brought within the purview of the U. P. Public Service Commission. The petitioner was within the age limit as per advertisement issued by the U. P. Subordinate Services Commission but when the posts were re-advertised by the U. P. Public Service Commission vide advertisement No. A-4/E-1/1999, he surpassed the age limit by operation of the 'cut-off-date' namely, 1st July of the calendar year in which the advertisement was issued i.e., 1.7.1999. The cut-off-date so fixed in the advertisement is statutorily provided by the U. P. State Services (Age-Limits) Rules, 1972, as amended by 5th Amendment Rules, 1984. The petitioner admittedly became over-aged on the first date of July of the calendar year in which the vacancies for direct recruitment came to be advertised by the Public Service Commission. Since the candidature of the petitioner was liable to be rejected in terms of the advertisement itself, he filed the instant petition before he received an order of rejection of his candidature. This Court invited counter-affidavit and permitted the petitioner to take the examination of Assistant Regional Inspector (Technical) /Regional Inspector (Technical) subject, of course, to the ultimate decision of the writ petition. The result of the examination has been declared but so far as the petitioner is concerned, his result has not been declared ostensibly for the reason that he was permitted to appear in the examination subject to the result of the writ petition. Now the matter has come up for final disposal.

3. It has been submitted by the learned counsel appearing for the petitioner that the petitioner was well within the age limit prescribed by the relevant service rules as per advertisement issued by the U. P. Subordinate Service Commission but outran the age limit when the vacancies were re-advertised by the U. P. Public Service Commission. The petitioner, it has been submitted by the counsel, cannot be fastened with any blame owing to the fact that the Subordinate Services Commission was abolished and the posts were brought within the purview of the U. P. Public Service Commission. It has been further submitted for the petitioner that in respect of the posts of Naib Tehsildar a provision was made in the advertisement itself that the candidates who had applied for the posts pursuant to the advertisement issued by the Subordinate Services Commission within the prescribed age limit as per advertisement then issued could apply pursuant to the advertisement issued by the U. P. Public Service Commission while no such benefit was given in relation to the post of Regional Inspector (Technical)/ Assistant Regional Inspector (Technical) and this, proceeds the submission, is arbitrary and violates the equality clause of the Constitution.

4. For the respondents, it has been submitted by Sri S.K. Singh that the rules governing recruitment to the post of Regional Inspector (Technical) / Assistant Regional Inspector (Technical) do not permit any relaxation in age limit. The petitioners, it has been submitted by Sri S.K. Singh, are not entitled to claim parity with those candidates who had applied for the post of Naib Tehsildar and other subordinate services of executive branch. It has been further submitted by Sri S.K. Singh that in Writ Petition No. 49699 of 1999. Ran Vijai Singh v. State of U.P. and another, a similar plea of parity was rejected by a learned single Judge by judgment and order dated 15.12.2000. Reliance has also been placed on a Division Bench decision of this Court in C.M.W.P. No. 33765 of 1999, Advocate Association v. State of U. P. and another decided on 11.8.1999 wherein the plea of relaxation of age was rejected by the Court holding that as the rules stood, the candidates who had become over aged were not entitled to appear in the examination. The same view was reiterated in the subsequent Writ Petition No. 38671 of 1999, Advocates Association and others v. State of U. P. and others, decided on 21.12.1999.

5. I have given my anxious consideration to the submissions made across the bar. The candidates who had applied for the posts in question pursuant to the advertisement No. 2/96-97 issued by the U. P. Subordinate Service Commission could not take the examination due to the abolition of the U. P. Subordinate Service Commission and the posts which were earlier advertised by the U. P. Subordinate Service Commission came to be advertised afresh by the U. P. Public Service Commission wherein the cut-off date for the purpose of determination of age limit was set out with reference to the year of recruitment as provided in the rules and in the meantime, the petitioners became over-aged. Equity may lean in favour of such candidates but equity cannot prevail over statutory law which prescribes certain age limit for the post in question as also the cut-off-date for the purpose of determining the prescribed age limit. The Court cannot issue a direction the compliance of which may lead to violation of such rules. I have, therefore, no option but to follow the aforesaid decision relied on by Sri S.K. Singh. Concededly the rules governing appointment to the post of Regional Inspector (Technical)/ Assistant Regional Inspector (Technical) do not provide for any relaxation in the age limits and the advertisement issued by the U. P. Public Service Commission prescribed the cut-off-date as per the requisition received from the Transport Commissioner which was in accordance with the U. P. State Services (Age-Limits) Rules, 1972 as amended by Vth Amendment Rules, 1984. Rule 6 inserted by the 5th amendment Rules, 1984 has an overriding effect in that it provides that notwithstanding anything to the contrary contained in any service rules, for the services and posts, whether within or without the purview of the Public Service Commission, a candidate must have attained the minimum age and must not have attained the maximum age as prescribed from time to time on the 1st day of July of the calendar year in which the vacancies for direct recruitment are advertised by the Public Service Commission or any other recruiting authorities or, as the case may be, such vacancies are intimated to the Employment Exchange. The U. P. Subordinate Services Commission had advertised these vacancies in the year 1996-97 and as per the advertisement issued by the U. P. Subordinate Services Commission, the petitioners herein were, perhaps, within the prescribed age limit but the U. P. Subordinate Services Commission Act, 1988 came to be repealed by the U. P. Ordinance No. 16 of

1997 which in turn came to be repealed and replaced by U. P. Act 5 of 1998 with the result that the Uttar Pradesh Subordinate Services Commission came to be abolished. The repealing Act does not contain any saving clause in respect of the vacancies advertised by the U. P. Subordinate Services Commission. Section 6 of the U. P. General Clauses Act, 1904 will be unavailing inasmuch the petitioners acquired no right or privilege to appear in the examination pursuant to the subsequent advertisement issued afresh by the U. P. Public Service Commission merely because they had applied pursuant to the advertisement earlier issued by the U. P. Subordinate Service Commission.

6. The view I am taking finds support from the decision of the Supreme Court in *I. J. Divakar v. Government of Andhra Pradesh*, AIR 1982 SC 1555. In that case, the Andhra Pradesh Service Commission had invited applications for filling posts of Junior Engineers and in response to the advertisement, several candidates applied for the said posts and appeared at the viva-voce test. While the Commission was in process of finalising the select list, the Government of Andhra Pradesh issued a Government order under the proviso to Article 320(3) of the Constitution excluding the posts of Junior Engineers from the purview of the Public Service Commission. The Government regularised the services of the Junior Engineers without subjecting them to any test written or oral. The candidates who had applied in response to the advertisement issued by the Commission challenged the validity of the Government order excluding the post of Junior Engineers from the purview of the Commission and also the validity of the decision by the Government to regularise the services of the temporary employees. While conceding the Government's power of framing regulations excluding any post under the proviso to Article 320(3), it was urged before the Supreme Court that since the advertisement had been issued by the Commission inviting applications for the posts of Junior Engineers and Commission was in process of selecting candidates, the power under the proviso to clause (3) of Article 320 of the Constitution could not be exercised. The Hon'ble Supreme Court rejected the contention with the following observations :

'The only contention urged was that at the time when the advertisement was issued the post of Junior Engineer was within the purview of the Commission and

even if at a later date, the post was withdrawn from the purview of the Commission. It could not have any retrospective effect. There is no merit in this contention and we are broadly in agreement with the view of the Tribunal that inviting the applications for a post does not by itself create any right to the post in the candidate who in response to the advertisement makes an application. He only offers himself to be considered for the post. His application only makes him eligible for being considered for the post. It does not create any right in the candidate to the post.'

7. Reliance was, however, placed for the petitioners on a decision of the Supreme Court in *State of Andhra Pradesh v. T. Ramakrishna Rao and others*. AIR 1972 SC 2175. The respondents therein were candidates for the post of District Munsif in Andhra Pradesh State Judicial Services which were to be filled in by direct recruitment as distinguished from recruitment by promotion. Rule 5 of the Andhra Pradesh Judicial Service Rules empowered the Commission to prepare a list of persons considered fit for appointment to the post of District Munsif 'after holding such examination, if any, as the Governor may think necessary.' Rule 5 thus conferred on the Governor adiscretion to decide whether an examination should be held or not or if held, whether it should be written or oral. The question arose as to whether Rule 5 was a conditional legislation properly promulgated in exercise of power under Article 234 and after consulting the High Court and the Commission. The Andhra Pradesh High Court held that Rule 5 in so far as it empowered the Government to determine whether an examination was necessary or not and the pattern of such an examination contravened Article 234 and was, therefore, void. It further held that the said Government orders made under Rule 5 were also void having been issued under an invalid rule. In substance the High Court held that the Commission could not hold the examination under the said Government orders and issued a direction upon the Commission to that effect. The Governor subsequently issued an amended Rule 5 after consultation with the High Court. The Commission then proposed to call fresh applications and hold the examination for the purpose of filling in the vacancies of District Munsifs. Before the High Court a question was raised that the candidates who had applied before the amended rules could not be subjected to written examination under the amended rule as it was prospective and, therefore, it was urged that their applications should be

proceeded with on the basis of oral test only. The High Court rejected the contentions as regards the written and oral test and held that the Commission was entitled to make a selection by first screening the candidates through the written test and make selection by oral test from amongst those who qualified for being called for interview. The High Court, however, directed the Commission to hold a separate examination for those who had applied under the amended rule in respect of original 60 vacancies and to call separate applications and hold a separate examination for the remaining 140 vacancies. The reason given for such a direction was that if the respondents were required to file fresh applications and made appear in the examination along with the rest of the applicants there would be violation of Article 14. The Supreme Court held that the direction given by the High Court was unsustainable. The Supreme Court further held that the Commission and State were perfectly justified in fixing a date for examination and calling for fresh applications for all the vacancies to enable the Commission to prepare an approved list under amended Rule 5 and observed thus :

'The only direction which becomes necessary is that if any of the respondents or other candidates who had applied in 1968 has by this lime become age barred by reason of the delay in holding the examination, he should not be disqualified from appearing in the examination if he was of the qualified age at the time when he had filled his application.'

8. These observations, in my opinion, were made by the Apex Court under Article 142 of the Constitution. This Court has no such power and cannot issue a direction which may lead to violation of statutory rules if the direction is carried out. The Supreme Court has very clearly held that the candidates who had applied under unamended rules did not acquire any right by merely applying for the post either under that rule or otherwise to be selected for the posts.

9. It is true that the respondents have given age relaxation in respect of certain posts even though under the rules there exists no provision for age relaxation unlike Rule 9 of the U. P. Subordinate Executive Services (Naib Tehsildar) Rules. 1978 which enables the relaxation in age limit. There being no enabling provision in the rules governing appointment to the post in question and even the requisition

received by the Public Service Commission from the Transport Commissioner did not visualise for age relaxation to candidates who were within the prescribed age limit as per advertisement No. 2/96/97, relaxation in age limit, if granted, will be illegal. If the respondents granted age relaxation illegally, that by itself is no ground to direct them to repeat the same illegality in respect of the petitioners as well. Article 14 of the Constitution is attracted in such cases.

10. So far as argument based on Section 6 of U. P. General Clauses Act, 1904 is concerned, suffice it to say that it saves 'any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed' and 'any remedy or any investigation or legal proceeding commenced before the repealing Act in respect of any such right privilege, obligation, liability..... ' As stated (supra), the petitioners acquired no right to be considered by the U. P. Public Service Commission merely because they had applied pursuant to the advertisement issued earlier by the U. P. Subordinate Service Commission, 'What is unaffected by the repeal of a statute is a right 'acquired' or 'accrued' under it and not a mere 'hope or expectation of of acquiring a right or liberty to apply for it.' *Banshidhar v. State of Rajasthan*, AIR 1989 SC 1614 at p. 1621 : *Director of Public Works v. H.O.P.O. Song.*, (1961) 2 All ER 721 (PC). It is true that right to be considered for appointment is a fundamental right but right to be considered means right to be considered according to rules. The petitioners became over aged on the cut-off-date, namely. 1.7.1999 as prescribed in the advertisement No. A-2/E-1/98-99 issued by the U. P. Public Service Commission on 6.9.1998 and as laid down in the U. P. Transport (Subordinate) Technical Service Rules, 1980 which defines 'year of recruitment' to mean 'the period of 12 months commencing from 1st day of July of a calendar year' and Rule 10 of the said rule provides that a candidate for direct recruitment must have attained the age of 21 years and must not have attained the age of more than 28 years on January 1 of the year in which recruitment is to be made, if the posts are advertised during the period January 1 to June 30 and on July 1 if the post are advertised during the period July 1 to December 31. The upper age limit has been enhanced to 32 years and Rule 10, to the extent of inconsistency with the U. P. State Services (Age Limit) Rules. 1972 as amended by Vth Amendment Rules, 1984, ceased to operate. The advertisement issued by the U. P. Public Service Commission cannot be treated

as continuation of the advertisement/proceeding earlier issued/commenced by the U. P. Subordinate Services Commission. Benefit of age relaxation cannot be given to the petitioners except on pains of violating the fundamental right of equality of similarly circumstanced candidates who accepted the advertisement and did not apply being over aged.

11. In view of the above discussion. I find no merits and the writ petitions are accordingly dismissed. I make no order as to cost.

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