

Md. Usman and Others

Vs

State of Andhra Pradesh and Others

Civil Appeal No. 153 of 1971

(K. S. Hegde, A. N. Grover JJ)

29.04.1971

JUDGMENT

HEGDE, J. -

The principal question that arises for decision in this appeal by certificate is as to the vires of Rule 5 of the Andhra Pradesh Registration Subordinate Service Special Rules, to be hereinafter referred as "the rules". The High Court has struck down this rule on the ground that it is violative of Article 14 of the Constitution. As a result of that conclusion, it has also quashed the recruitment of some of the respondents made in March, 1965, for being posted as Sub-Registrars Grade-II.

2. The petitioners as well as respondents No. 3 onwards in the writ petition were serving as clerks, either in the upper division in the lower division, in the Registration and Stamps Department including the office of the Registrar-General of Births, Deaths and Magistrates and the Office of the Registrar of the Firms. Some of the respondents had been recruited by the Inspector-General of Registration and Stamps, Andhra Pradesh for being appointed as Sub-Registrars. The petitioners challenged the validity of their recruitment on various grounds, by means of a writ petition under Article 226 of the Constitution. But that petition was summarily dismissed by a single Judge of the Andhra Pradesh High Court. Thereafter, the matter was taken up in appeal to a Division Bench of that Court. The Division Bench rejected all the contentions of the petitioners except one, viz. that Rule 5 of the rules is ultra vires Article 14 of the Constitution. As a result of that conclusion is struck down the impugned recruitments. Only two questions were presented before us for decision viz. -

(i) whether Rule 5 of the rules is ultra vires Article 14 of the Constitution; and

(ii) whether the recruitments made are not in accordance with the rules.

At this stage, it may be mentioned that the High Court has held that the impugned recruitments were made in accordance with the rules. In other words, the second question was decided against the petitioners.

3. We shall first take up the question as to the vires of Rule 5. The rules provide for the promotion to the posts of Sub-Registrar as well as for recruitment to those posts. Rule 2 provides that a post of Grade-I Sub-Registrar should be filled up by promotion from Grade-II Sub-Registrar. So far as Grade-II Sub-Registrars are concerned, they are to be appointed either by promotion from reserve Sub-Registrars or by "recruitment by transfer from the clerks of the Registration and Stamps Department including the Office of the Registrar-General of Births, Deaths and Marriages and the Office of the

Registrar of the Firms". Rule 5 deals with qualifications for being recruited as Grade-II Sub-Registrars. That rule reads :

"Qualifications. - No person shall be eligible for appointment to the category mentioned below unless he possess the qualification shown.

Category and qualifications. - (1) Sub-Registrars, II-Grad :- (i) Must be a permanent clerk and must have served for a period of not less than seven years on duty as clerk in the Registration and Stamps Department including the Office of the Registrar-General of Births, Deaths and Marriages and the Office of the Registrar of Firms;

(ii) must have passed the Registration Test; and

(iii) (1) must have taken at the final examination at the end of his school or college course, one of the following languages, namely :

Telugu, Hindi, Oriya, Kannada, Tamil, Urdu or Marathi, or

(2) must have passed Government Translation Test or the Second Class Language Test - Full Test.

'(iv) must have passed the second class language Test - Full Test - in a language other than that taken for S.S.L.C. or University.'

Preference shall be given to person who, in addition to the qualification specified in items (i) to (iii) possess a Degree in Law of a University in the State or any other equivalent qualification or a Pleaders Certificate in the First Grade or who have put in five years service in the category of Upper Division Clerks in the Registration Department."

4. It was urged that this rule is violative of Article 14 of the Constitution because though among the clerks there are U.D.Cs. as well as L.D.Cs., yet all of them had been put in one class for the purpose of recruitment. As per the Ministerial Service Rules the U.D.Cs. had to be selected from the L.D.Cs., after the L.D.Cs. had put in certain number of years of service and after they had passed the Accounts Test as well as the Registration Test. A.U.D.C. holds superior post to that of an L.D.C. His salary is higher and his conditions of service are better than that of an L.D.C. Hence it was urged that as Rule 5 treats U.D.Cs. as well as L.D.Cs. as equal for the purpose of recruitment for the post of a Grade II Sub-Registrar, the rule violates the doctrine of equality. According to the petitioner the equality doctrine is attracted not only when equals are treated as unequals but also where unequals are treated as equals. It was contended on behalf of the petitioners that a statutory provision may offend Article 14 of the Constitution both by finding differences where there are none and by making no difference where there is one. The proposition of law advanced on behalf of the petitioner is unexceptionable. This Court ruled in *Kunnathat Thathunni Moopil Nair v. The State of Kerala and Another* ((1961) 3 SCR 77 : AIR 1961 SC 552 : (1961) 2 SCJ 269) that when the statute obliged every person who held land to pay tax at the flat rate prescribed, whether or not he made any income out of the property, or whether or not the property was capable of yielding any income, there being no attempt at classification in the provisions of the statute, the statute denied equality before law because of lack of classification. Similar views have been expressed by this Court in other decisions. It is not necessary to refer to those decisions.

5. On the other hand it was argued on behalf of the contesting respondents that before considering

the vires of Rule 5, we must first ascertain the reason behind the rule to find out whether in fact there is discrimination. The contesting respondents do not deny that the position of an U.D.C. is superior to that of a L.D.C. But according to them it became necessary for the State to pool together U.D.Cs. as well as the L.D.Cs. for the purpose of recruitment in question for the following reasons.

6. The Grade-II Sub-Registrars are in a state-wise cadre whereas the U.D.Cs. and L.D.Cs. belong to a district-wise cadre. Promotion from L.D.C. to U.D.C. in one district materially differs from another district. It depends on the number of posts available in a particular district. In one district a L.D.C. may be promoted as an U.D.C. as soon as he puts in a service of five years, whereas in another district a L.D.C. possessing the same or better qualifications as well as efficiency may not be promoted as an U.D.C. for fifteen years or more. That being so while making recruitment to a state-wise cadre it was not possible for the State to make distinction between the L.D.Cs. and the U.D.Cs. The only reasonable basis that could have been adopted was to treat the U.D.Cs. and L.D.Cs. as one class for the purpose of recruitment. But at the same time the rule provides for giving preference to the U.D.Cs. who had put in a service of five years or more. There is force in these contentions though there may be some anomaly in the case of L.D.Cs. and U.D.Cs. serving in the same district. But that anomaly cannot be avoided. The validity of a rule has to be judged by assessing its over-all effect and not by picking up exceptional cases. What the Court has to see is whether the classification made is a just one taking all aspects into consideration.

7. On the facts before us we are unable to agree that for the purpose of recruitment with which we are concerned herein the State should have classified the U.D.Cs. and L.D.Cs. separately. If the State had treated the U.D.Cs. as being superior to the L.D.Cs. for the purpose of that recruitment it would have resulted in a great deal of injustice to a large section of the clerks. The fortuitous circumstances of an officer in a particular district becoming an U.D.C., would have given him an undue advantage over his seniors who might have been as efficient or even more efficient than himself, merely because they chanced to serve in some other district. For the reasons mentioned above, we do not think that in the present case the State can be said to have treated unequals as equals. The rule of equality is intended to advance justice by avoiding discrimination. In our opinion the High Court by overlooking the reason behind Rule 5 came to the erroneous conclusion that the said rule violated Article 14 of the Constitution.

8. We agree with the High Court that there is no substance in the petitioners' contention that the impugned recruitments were not made in accordance with Rule 5. It is clear from the affidavit filed on behalf of the State and the Registrar that the Registrar had considered the case of all the qualified clerks, but the Registrar thought that the best basis for recruitment was to prepare a list of all the clerks, U.D.Cs. as well as L.D.Cs. arranging the names in the order of seniority as L.D.Cs. and thereafter consider each name and reject the unfit. In other words, the selection was made on the basis of seniority-cum-merit-the seniors among the clerks were selected subject to suitability. Those persons who were entitled to be given preference under the rules considered separately and recruited at the first instance. Only thereafter the other recruitments were made. The rules do not prescribe that the recruitment should be made on the basis of merit and merit alone. Bearing in mind the fact that the recruitment with which we are concerned in this case is a recruitment by transfer which means recruitment from among the ministerial officials, the method adopted by the Registrar appears to us to be the most reasonable one.

9. In the result this appeal is allowed, the order of the Division Bench of the High Court is set aside and that of the single Judge restored. In the circumstances of the case, we direct the parties to bear their own costs in all the courts.

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