

Prabhu Dayal Sesma

Vs

State of Rajasthan and Another

Civil Appeal No. 531 of 1986

(A.P. Sen, B. C. Ray JJ)

28.08.1986

JUDGMENT

A.P. SEN, J. –

1. The short point involved in this appeal by special leave pertains to the determination of age at a particular point of time. The question is whether the appellant having his date of birth as January 2, 1956 had attained the age of 28 years on January 1, 1984 and was therefore disqualified from being considered for direct recruitment to the Rajasthan Administrative Service under Rule 11-B of the Rajasthan State and Subordinate Services (Direct Recruitment by Competitive Examination) Rules, 1962 (for short 'the Rules').

2. Put very briefly, the essential facts are these. The Rajasthan Public Service Commission invited applications for direct recruitment to the Rajasthan Administrative Service and allied services of the Government of Rajasthan by a competitive examination to be held in 1983. Under the directions issued by the Commission, the minimum age prescribed for candidates was 21 years and the maximum 28 years. It was prescribed that the candidate should have attained the age of 21 years on January 1, 1984 and should not have attained the age of 28 years i.e. on the first day of January next following the last date fixed for receipt of application. The appellant was allowed to appear in the written examination, but by an order dated June 12, 1984, the Assistant Secretary to the Commission intimated the appellant that his candidature was rejected on the ground that he had attained the age of 28 years on January 1, 1984 and was therefore ineligible for consideration. Feeling aggrieved, the appellant moved the High Court under Article 226 of the Constitution and contended that his date of birth was January 2, 1956 and that he had not attained the age of 28 years on January 1, 1984. His claim was contested by the respondents who pleaded that the appellant had attained the age of 28 years on January 1, 1984 and therefore his form was properly rejected. During the pendency of the writ petition, the High Court by an interim order dated September 14, 1984 directed the Commission to interview the appellant if he was otherwise eligible for being considered except on the ground of age. The appellant was accordingly interviewed but the result was withheld. A learned Single Judge by his judgment and order dated January 19, 1985 held that if the date of birth of the appellant was January 2, 1956 he would complete the age of 28 years only at the end of the day on January 1, 1984 and therefore he could not be said to have attained the age of 28 years on that date. He accordingly held that the Commission was not justified in rejecting the candidature of the appellant on the ground that he had attained the age of 28 years on January 1, 1984 and therefore was not eligible for consideration.

3. On appeal, a Division Bench disagreed with the view expressed by the learned Single Judge and reversed his judgment on the ground that the words used in Rule 11-B of the Rules are, 'must not

have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application' and not that he should have completed the age of 28 years on that day. They relied upon the undisputed fact that the first day of January next following the last date fixed for receipt of application in this case was January 1, 1984. Accordingly, they held that the appellant was born on January 2, 1956 and, as such, he had attained the age of 28 years as soon as the first day of January, 1984 commenced. They further held that the appellant had not only attained the age of 28 years, but had also completed the same at 12 o'clock in the midnight of January 1, 1984. According to the learned Judges, on January 2, 1984, the appellant would be one day more than 28 years and, as such, he was disqualified to appear at the examination under Rule 11-B of the Rules. The conclusion of the learned Judges may best be stated in their own words :

In calculating person's age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding, the anniversary of his birthday.

4. In coming to that conclusion the learned Judges relied upon the language of Rule 11-B of the Rules which prescribes the age limit for the said examination and also referred to Section 4 of the Indian Majority Act, 1875. They have relied on certain decisions of different High Courts, particularly to that in *G. Vatsala Rani v. Selection Committee for Admission to Medical Colleges, Bangalore Medical College* [AIR 1967 Mys 135 : (1966) 2 Mys LJ 606], and to some English decisions laying down the principle for determination of age.

5. It is argued that the learned Judges were in error in introducing the legal concept of the age of majority as laid down in Section 4 of the Indian Majority Act, 1875 for the purpose of interpreting Rule 11-B. It is said that the purpose of Rule 11-B framed by the government was to prescribe the maximum and minimum age limits for entry into the Rajasthan Administrative Service and allied services of the Government of Rajasthan. It is submitted that as commonly understood, a person attains a particular age after he has completed a given number of years. It is said that there is no reason why the words of Rule 11-B 'must have attained the age of 21 years and must not have attained the age of 28 years' should not be understood in the ordinary sense. At first blush, the contention advanced appears to be rather attractive but on deeper consideration it cannot prevail.

6. Learned counsel for the appellant drew our attention to the fact that the Union Public Service Commission has been interpreting the words 'must have attained the age of 21 years and must not have attained the age of 26 years on the first day of August next following' in the way the appellant contends for. These words are taken from Rule 4 of the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955 framed by the Central Government in pursuance of Rule 7 of the Indian Administrative Service (Recruitment) Rules, 1954. Presumably, there would be similar provisions laying down the qualification as to age in other central services as well. Rule 4 insofar as material reads :

4. Conditions of Eligibility. - In order to be eligible to complete at the examination, a candidate must satisfy the following conditions, namely :

#(i) \* \* \*##

(ii) Age. - He must have attained the age of 21, and not attained the age of 28 on the first day of August of the year in which the examination is held :

Provided that the upper age limit may be relaxed in respect of such categories of

persons as may from time to time, be notified in this behalf by the Central Government, to the extent and subject to the conditions notified in respect of each category.

7. Undoubtedly, the Union Public Service Commission has been interpreting the provision as to attainment of age in a like manner. This would be clear from the advertisement issued by it on December 8, 1984 which is in these terms :

Age limit : (ka) The candidate should have attained the age of 21 years on August 1, 1985, but should not have attained the age of 26 years, that is, he should not have born before August 2, 1959 and after August 1, 1964.

We are afraid, the interpretation of Rule 11-B of the Rules cannot proceed upon the basis adopted by the Union Public Service Commission.

8. Rule 11-B of the Rules provides :

11-B. Age. - Notwithstanding anything contained regarding age limit in any of the service Rules governing through the agency of the Commission to the posts in the State Service and in the Subordinate Service mentioned in Schedule I and in Schedule II respectively, a candidate for direct recruitment to the posts to be filled in by combined competitive examinations conducted by the Commission under these Rules must have attained the age of 21 years and must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application.

9. It is plain upon the language of Rule 11-B that a candidate 'must have attained the age of 21 years and must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application. Last day fixed for receipt of application in this case, was January 1, 1983. First day of January next following that day would be January 1, 1984. The object and intent in making Rule 11-B was to prescribe the age limits upon which the eligibility of a candidate for direct recruitment to the Rajasthan Administrative Service and other allied services is governed. At first impression, it may seem that a person born on January 2, 1956 would attain 28 years of age only on January 2, 1984 and not on January 1, 1984. But this is not quite accurate. In calculating a person's age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding, the anniversary of his birthday. We have to apply well accepted rules for computation of time. One such rule is that fractions of a day will be omitted in computing a period of time in years or months in the sense that a fraction of a day will be treated as a full day. A legal day commences at 12 o'clock midnight and continues until the same hour the following night. There is a popular misconception that a person does (sic not) attain a particular age unless and until he has completed a given number of years. In the absence of any express provision, it is well settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday.

10. In Halsbury's Laws of England, 3rd edn., vol. 37, para 178 at p. 100, the law was stated thus :

In computing a period of time, at any rate when counted in years or months, no regard is, as a general rule, paid to fractions of a day, in the sense that the period is regarded as complete although it is short to the extent of a fraction of a day.....

Similar, in calculating a person's age the day of his birth counts as a whole day; and he attains a specified age on the day next before the anniversary of his birthday.

11. We have come across two English decisions on the point. In *Rex v. Scoffin* [LR (1930) 1 KB 741], the question was whenever the accused had or had not completed 21 years of age. Section 10(1) of the Criminal Justice Administrative Act, 1914 provides that a person might be sent to Borstal if it appears to the court that he is not more than 21 years of age. The accused was born on February 17, 1909. Lord Hewart, C.J. held that the accused completed 21 years of age on February 16, 1930 and that he was one day more than 21 years of age on February 17, 1930 which was the Commission day of Manchester Assizes.

12. In *Re Shurey, Savory v. Shurey* [LR (1918) 1 Ch 263], the question that arose for decision was this : Does a person attain a specified age in law on the anniversary of his or her birthday, or on the day preceding that anniversary ? After reviewing the earlier decisions, Sargant, J. said that law does not take cognizance of part of a day and the consequence is that person attains the age of twenty-one years or of twenty-five years, or any specified age, on the day preceding the anniversary of his twenty-first or twenty-fifth birthday or other birthday, as the case may be.

13. From Halsbury's Laws of England, 4th end., vol. 45, para 1143 at p. 550 it appears that Section 9 of the Family Law Reforms Act, 1969 has abrogated the old common law rule stated in *Re Shurey Savory v. Shurey* [LR (1918) 1 Ch 263].

14. It is in recognition of the difference between how a person's age is legally construed and how it is understood in common parlance. The legislature has expressly provided in Section 4 of the Indian Majority Act, 1875 that how the age of majority is to be computed. It reads :

4. Age of majority how computed. - In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of Section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of Section 3, at the beginning of the eighteenth anniversary of that day.

The section embodies that in computing the age of any person, the day on which he was born is to be included as a whole day and he must be deemed to have attained majority at the beginning of the eighteenth anniversary of that day. As already stated, a legal day commences at 12 o'clock midnight and continues until the same hour the following night. It would therefore appear that the appellant having been born on January 2, 1956, he had not only attained the age of 28 years but also completed the same at 12 o'clock on the midnight of January 1, 1984. On the next day i.e. on January 2, 1984, the appellant would be one day more than 28 years. The learned Judges were therefore right in holding that the appellant was disqualified for direct recruitment to the Rajasthan Administrative Service and as such was not entitled to appear at the examination held by the Rajasthan Public Service Commission in 1983. We affirm the view taken by the learned Judges as also the decision in *G. Vatsala Rani case* [AIR 1967 Mys 135 : (1966) 2 Mys LJ 606].

15. It is rather unfortunate that the appellant should upon the construction placed on Rule 11-B of the Rajasthan State and Subordinate Services (Direct Recruitment by Competitive Examination) Rules, 1962 fail to secure entry into the Rajasthan Administrative Service and allied services of the Government of Rajasthan merely because he exceeds the upper age limit just by one day. The government ought to consider the question of relaxing the upper age limit in the case of the

appellant in order to mitigate the hardship, if otherwise permissible. There is need for a provision like the proviso to Rule 4 of the Indian Administrative Service (Appointment of Competitive Examination) Regulations, 1955, conferring the power of relaxation on the State Government under certain conditions without which a deserving candidate would be rendered ineligible for appointment.

16. The result is that the appeal must fail and is accordingly dismissed. There shall be no order as to costs.

</html