Thote Bhaskara Rao

Vs

A. P. Public Service Commission and Others

Civil Appeal No. 3400 of 1987

(L. M. Sharma, A. P. Sen JJ)

25.11.1987

JUDGMENT

SHARMA, J. –

1. The appellant's application for appointment as a District Munsif by the State of Andhra Pradesh in the quota reserved for Scheduled Castes was rejected by the Andhra Pradesh Public Service Commission (briefly described as the 'Commission'), respondent 1, which the appellant challenged before the Andhra Pradesh High Court by a writ petition. The learned Single Judge allowed the prayer and directed the first respondent to consider the candidature of the appellant for the appointment in question. The respondents challenged the decision under Clause 15 of the Letters Patent in the High Court in Writ Appeal No. 22 of 1985. The appeals was allowed and the writ petition was dismissed. We have granted leave under Article 136 of the Constitution allowing the appellant to appeal against the said decision.

2. The appointment of District Munsifs is regulated by Andhra Pradesh State Judicial Service Rules (hereinafter referred to as the Rules). In response to an advertisement issued by the 'Commission' for filling up a large number of vacancies of District Munsifs by direct recruitment, the appellant applied. Subsequently a second advertisement was issued on May 27, 1984 with reference to vacancies reserved for Scheduled Castes, and the appellant made a second application. His present claim is with respect to these reserved posts.

3. After passing the Law Examination the appellant got himself enrolled as an advocate on the rolls of the State Bar Council on February 24, 1977 and practised law till March 31, 1981. On April 1, 1981 he was appointed in the service of Hindustan Shipyard, an undertaking owned by the Government of India, and claims to have remained in charge of the legal cell. As stated earlier, he applied in pursuance of the second advertisement dated May 27, 1984 notified by the 'Commission'. In the opinion of the 'Commission' the appellant did not fulfil the necessary qualification fixed under the Rules, and was therefore ineligible for appointment.

4. The Rules have laid down three modes for appointment, namely, by direct recruitment, by promotion and by transfer. Rule 12 requires inter alia as an essential qualification for a candidate for appointment as a Direct Munsif that he should be in actual practice and should have been so engaged for not less than 3 years in a court of civil or criminal jurisdiction. Since the appellant was not in actual law practice, reliance has placed on his behalf on the proviso to the aforementioned rule, which is quoted below :

> Provided that in the case of a person who is already in government service and who

applied for appointment to the post of District Munsif by direct recruitment, he must have actually practised for a period of not less that 3 years immediately prior to the date of his entering the government service.

It is contended that as the appellant had practised for a requisite period immediately prior to the date of his entering the service of Hindustan Shipyard, he must be held to be qualified for appointment. The appellant's claim is being refuted by the respondents on the ground that he was not in government service. The stand of the respondents appears to be well founded. The Hindustan Shipyard, although a fully owned undertaking of the Central Government, cannot be equated with the government or State except for the purposes of Part III of the Constitution. The undertaking has a separate legal entity. The expression "State" does not by reason of Article 12 of the Constitution include the undertaking except for the limited purpose which is not attracted in the present case.

5. Mr. Ramamurthi, the learned counsel for the appellant, appreciating this position, contended that the word "Government" should be deleted from the proviso mentioned above, so as to save it from the vice of discrimination. The argument is that no distinction ought to be made between the experience which a candidate acquires in government service and the experience one acquires in any other service, whether public or private in nature. The learned counsel urged that it is true that the appellant cannot claim to be qualified on the strength of the proviso as it stands now but to save it from being struck down as illegal, the court should omit the word 'Government'.

6. There is no doubt that the expression "government service" mentioned in the proviso includes service either under the State Government or the Government of India. Sub-rule (15)(a) of the definition Rule 2 explains that the expression "recruited direct" would refer to a candidate including a person in the service of Government of India or the Government of a State to be recruited directly subject to certain conditions mentioned therein. The learned counsel for the respondents, therefore, rightly said that a servant under the Government of India must be included within the scope of the proviso. Mr. Ramamurthy, learned counsel for the appellant, fairly conceded that the appellant who is in the service of Hindustan Shipyard and is not serving directly the Union of India cannot take advantage of the proviso, if the same as it stands is held to be legally valid. The attack is on its vires on the ground of illegal discrimination. We do not find any merit in this submission. What is forbidden by the Constitution is discrimination between persons who are substantially in similar circumstances or conditions. An equal treatment does not arise as between persons governed by different conditions and different sets of circumstances. It is obviously permissible to classify persons into groups and such groups may be differently treated if there is a reasonable basis for such difference or distinction. Having regard to the difference in the nature of service under the government and that of the other services, therefore, a classification based on that line cannot be struck down on ground of illegal discrimination. The proviso in question must be held to be valid and effective.

7. The High Court in the writ appeal while upholding the proviso has interpreted it differently which does not appear to be correct. However, since the learned counsel of the respondents while defending the decision whereby the appellant's writ application was rejected, has stated that the interpretation put by the Division Bench was not correct and he does not support it, it is not necessary to consider that aspect in detail.

8. In view of our finding in paragraph 7 above, upholding the validity of the proviso, as it is, the appellant must fail. Before closing, however, we would like to point out that the appellant cannot succeed even if the enabling provision in the proviso relaxing the qualification clause of Rule 12 is

held to be ultra vires. Besides, we have serious doubt whether a court can reframe a rule and give effect to it as suggested on behalf of the appellant, but we do not consider it necessary to deal with this aspect any further. In the result, the appeal fails and is dismissed but, in the circumstances, without costs.

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