

Mohan Kr. Singhanian and Others

Vs

Union of India and Others

Civil Appeals Nos. 5439-52 of 1990

(S.R. Pandian, Smt. M.S. Fathima Beevi, K. Jayachandra Reddy JJ)

07.12.1990

ORDER

1. We have heard all the learned counsel appearing in their respective appeals and also the learned Additional Solicitor for respondents for a very considerable length of time. The main thrust of the argument advanced on behalf of all the appellants is that the second proviso to R. 4 of the Civil Services Examination Rules (published in the Gazette of India, Extraordinary, Part-1 Section, dated December 17, 1988) is offending Art. 14 of the Constitution of India and is contrary to law. As the above question requires a careful examination with regard to the individual cases listed for consideration and as we are informed that the Central Services Examination commences on 17-12-1990, we are constrained to give the following directions on the basis of the conclusions arrived at by the Central Administrative Tribunal, Principal Bench, New Delhi in its judgment dated 20th August 1990. The relevant conclusions as they appear from the concluding portion of the judgment of the Tribunal. are as follows:-

5(ii). A candidate who has been allocated to the I. P. S. or to a Central Services, Group 'A' may be allowed to sit at the next Civil Service Examination, provided he is within the permissible age limit, without having to resign from the service to which he has been allocated, nor would he lose his original seniority in the service to which he is allocated if he is unable to take training with his own Batch.

6. Those applicants who have been allocated to the I.P.S. or any Central Services, Group 'A', can have one more attempt in the subsequent Civil Services Examination for the services indicated in Rule 17 of the C.S.E. Rules. The Cadre Controlling Authorities can grant one opportunity to such candidates.

7. All these candidates who have been allocated to any of the Central Services, Group 'A', or I.P.S. and who have appeared in Civil Services Main Examination of a subsequent year under the interim orders of the Tribunal for the Civil Services Examination in 1988 or 1989 and have succeeded are to be given benefit of their success subject to the provisions of Rule 17 of the C.S.E. Rules. But this exemption will not be available for any subsequent Civil Services Examination.

2. It is pertinent to note that the respondent has not challenged the above directions given in the concluding part of the judgment. So far as the conclusions under paras Nos. 6 and 7 reproduced above, the learned Additional Solicitor General states that the respondent has no objection to have

them sustained. So far as the directions under para No. 5(ii) is concerned, the Tribunal has allowed the candidates who have been allocated to the I.P.S. or the Central Services, Group 'A' to sit at the next Civil Service Examination subject to the condition that they must be within the permissible age limit and without having to resign from the service to which they have been allocated nor would they lose their original seniority in the service to which they are allocated if they are unable to take training with their own Batch. The Tribunal has used the expression "may be allowed to sit at the next Civil Service Examination but it did not restrict it only with regard to the preliminary examination as now contended by the learned Additional Solicitor, according to whom those candidates are not eligible to sit for the main examination since the Tribunal has upheld the validity of the second proviso to Rule 4 of the CSE Rules.

3. In order to properly understand and appreciate the conclusions arrived at by the Tribunal under para 5(ii), we shall reproduce some interim orders made by the Tribunal during the hearing of the O.As.

4. In M.P.No.1269/90 in OA No.1074/ 90 dated 31-5-1990 which has given rise to SLP (Civil) Nos. 13525-38/90, the C.A.T. New Delhi has passed the following order:-

"We have heard the learned counsel for the parties and considered the matter. In our opinion, a direction should be issued to the respondents to permit the applicants to appear in the Preliminary C.S.E. 1990 without pressing for their resignations from the service and respondents may also grant them necessary leave etc. This interim order will be subject to the order in O.A. 206/ 1989 and connected cases."

5. Interim order passed on 4-6-1990 in Regn. No. OA/ 160/90 by CAT, New Delhi which has given rise to Civil Appeal No. 5470/90 reads thus:-

"The learned counsel for the applicant states that the applicant has applied for the 1990 Civil Services Preliminary Examination well in time and has also received Roll Number from the Union Public Service Commission and that he is not being allowed to appear in the Examination in view of the power conferred by the second proviso to Rule 4 of the Civil Services Examination 1987. The examination is going to be held on 10-6-1990. In view of this, we direct that if it is convenient and administratively possible, the respondents shall allow the applicant provisionally to appear in the said examination. Respondents may also consider granting him necessary leave etc. for the purpose. Issue-dasti."

6. In M. P. No. 1251/90 in O.A. No. 944/ 1989 which has given rise to Civil Appeal No. 5471/90, CAT, New Delhi has passed the following order :-

"We have heard learned counsel for the parties and we think it will be in the interest of justice to allow the prayer for interim order to enable the petitioner to sit in the preliminary C.S.E. 1990. Learned counsel for the petitioner states that the petitioner has received the admission card. He is directed to give the Registration No./ Roll No. to the Secretary, UPSC by 4-6-1990. We direct the respondents to permit the petitioner to appear in the preliminary C.S.E. 1990 without pressing for his resignation from the service and also grant him necessary leave etc. for appearing in the said examination. This interim order will be subject to the order in OA 944/1089. The Misc. Petition is accordingly disposed of Order dasti."

7. In OA 913/90 (MP 1133/90) and OA No. 914/90 (MP 1134/90), which have given rise to Civil Appeals Nos. 5506-5525/90 the Tribunal has passed the following order on 17-5-1990:-

"As regards interim relief, the respondents are directed to permit the applicants to appear in the Civil Services Examination 1990 and to provide necessary facilities like leave etc. . to enable them to appear in the ensuing Civil Services Examination, 1990 subject to the decisions in the bunch of cases including O.A. No. 206/89 Alok Kumar v. U.O.I. List the matter on 29-5-1990. Orders (Dasti)"

8. It seems no clarification has been sought for from the Tribunal by the respondents as to whether the expression "next Civil Service Examination" is confined only to the preliminary or whether it includes the main examination also. Though some of the interim orders passed by the Tribunal which we have extracted above show that the said interim orders were passed permitting the candidates to sit for the preliminary Central Service Examination of 1990 subject to the decisions of the O. As, in the final judgment, no restriction is shown. In other words, the conclusion under para 5(ii) is not limited subject to any contingency; but on the other hand, it is absolute.

9. Therefore, that expression in the absence of any specific restriction, has to include both the preliminary as well as the main examinations. Hence in the absence of any challenge to the directions embodied in the impugned judgment, we hold that all those candidates falling under para No. 5(ii) can sit both for the preliminary as well as the main examinations subject to their eligibility otherwise. The condition incorporated in the later part of the impugned proviso that they should resign from the service to which they have been allocated would not operate against them for the main examination of 1990 lest that direction would be meaningless.

10. Hence we permit all those candidates falling under Paras Nos. 5(ii), 6 and 7 to sit for the main examination subject to the condition that each candidate satisfies the secretary, Union Public Service Commission that he/ she falls within these categories and that the concerned candidates have passed the preliminary examination of 1990 and have also applied for the main examination within the due date. This permission is only for the ensuing examination. As we are now permitting those who have passed the preliminary examination of 1990 and have applied for the main examination on the basis of the unquestioned and unchallenged directions given under paras 5(ii), 6 and 7 of the judgment of the CAT, Principal Bench, New Delhi, the same benefit is extended to the other appellants also who satisfy those conditions as mentioned under paras 5(ii), 6 and 7.

11. The Secretary, Union Public Service Commission will make the necessary arrangements enabling the candidates to sit for the main examination of 1990.

12. We will give the judgment touching on the constitutionality of the second proviso to R.4 of CSE Rules later. We would once again like to state that the above directions are given only on the basis of the unchallenged conclusions arrived at by the Central Administrative Tribunal, Principal Bench, New Delhi.

Order accordingly.

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