

Chairman, Public Service Commission, J&K and Another

Vs

Sudarshan Singh Jamwal and Another

Civil Appeal No. 2819 of 1985

(S. P. Bharucha, V. N. Khare JJ)

14.01.1998

ORDER

1. Rule 7 of the Jammu and Kashmir Civil Service (Judicial Recruitment) Rules, 1967, provided that no person should be recruited to that service who was more than 35 years of age on the first date of January preceding the year the examination for recruitment was conducted by the appellant-Commission. The first respondent was age-barred, but sought to rely upon an order dated 14-2-1985 in the following words :

"Sanction is accorded to the relaxation of upper age bar by two years, eight months and twenty-three days in favour of Shri Sudarshan Singh Jamwal, Librarian, High Court of Jammu and Kashmir.

By order of the Government of Jammu and Kashmir.

Sd/- (Secretary to Govt. Law Department)"

Meeting with resistance from the appellant, the first respondent moved the High Court of Jammu and Kashmir in a writ petition. The writ petition was allowed on the basis that the State Government was competent to relax the age bar.

2. The said Rules had earlier provided for such relaxation in Rule 9-A, which read thus :

"9-A. Notwithstanding anything contained in Rules 7 and 9 of these Rules, the Governor may, on the recommendation of the Court, exempt any person who holds any post under the Government by virtue of which he has kept himself in touch with and gained sufficient experience in the knowledge and application of law, from the operation of Rules 7 and 9."

The appellant moved the High Court in review pointing out that Rule 9-A had been deleted from the said Rules by reason of an amendment made in August 1974. The High Court rejected the review petition holding, "Even if the provisions of Rule 9-A would have been placed before us, in our opinion it would not have any effect on the judgment as the order on the basis of which the age bar was relaxed is passed by the Government in exercise of its inherent powers, which always exists with the Government for which we can safely place reliance on the authority of their Lordships of the Supreme Court reported in Sampat Prakash v. State of J&K (AIR 1970 SC 1118 : (1969) 2 SCR 365) paras 11 and 12."

3. The decision in the case of Sampat Prakash (AIR 1970 SC 1118 : (1969) 2 SCR 365) speaks of the application of Section 21 of the General Clauses Act. Section 21 of the General Clauses Act says that where by any Central Act or Regulation a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. The order, upon which the first respondent relied, was, according to the High Court itself, issued in the exercise of the State Government's inherent power, meaning, apparently, the power derived from Section 21 of the General Clauses Act. The order was not issued in exercise of the power to make the said Rules and power was not exercised in the like manner and subject to the like sanction and conditions which operated for the making of the said Rules. Reliance upon the judgment in the case of Sampat Prakash (AIR 1970 SC 1118 : (1969) 2 SCR 365) was, therefore, misplaced as also reliance upon Section 21 of the General Clauses Act. The exemption order did not, therefore, entitle the first respondent to appear at the recruitment examination.

4. The appeal is allowed. The order under appeal is set aside and the writ petition filed by the first respondent is dismissed. No order as to costs.