

SUPREME COURT OF INDIA

State of J.& K. & Anr.

Vs.

Ajay Dogra

C.A.No.3066 of 2011

(Mukundakam Sharma and Anil R.Dave,JJ.,)

07.04.2011

JUDGMENT

Dr.Mukundakam Sharma,J.,

SLP(Civil)No.23956 of 2002

1. Since, all these appeals involve identical issues both on facts and law, therefore, we have heard all these appeals in one bunch. We also propose to dispose of all these petitions by this common judgment and order, as the issues urged before us are identical.

2. Delay condoned.

3. Leave granted.

4. The appellants herein issued an advertisement inviting applications for making direct recruitment to the post of Prosecuting Officers in Jammu & Kashmir Police, in the State of Jammu & Kashmir. There are altogether two such advertisement/notices, the one issued on 24.3.2000 and the other dated 5.3.2003. In the aforesaid advertisement/notices, various criterion were laid down as essential suitability conditions. One such condition was with regard to age/physical qualifications to be possessed by the applicants. In the said advertisement, it was clearly mentioned that applications of only such candidates would be considered for selection who conform to the following physical standard fixed by the Government:-

"(i) Height - `5-6"

(ii) Chest Unexpanded 32 =", Expanded 33 ="

5. In the said advertisement/notices, it was specifically indicated that Rule 176 of the Jammu & Kashmir Police Rules, 1960 (hereinafter referred as "the Police Rules") would be applicable to the advertisement. The aforesaid advertisement/notices also prescribed amongst

other criteria, the age/physical qualifications that must be possessed by the applicants. It also stated that the applicants must possess certain additional qualifications such as (i) A degree in law from a recognised University and (ii) Minimum 2 years of actual experience at the Bar.

6. Since the aforesaid advertisement refers to and specifically states that the said Rule would be applicable to the advertisement, the relevant part of the said Rules is required to be stated at this stage.

7. The said Rule 176 of Police Rules prescribes amongst other things, the physical and educational qualifications required for direct appointment as Inspectors, sub-Inspectors or Assistant Sub-Inspectors. It reads as follows:-

"176. Qualification for direct appointment as Inspectors, Sub-Inspectors or Assistant Sub- Inspectors (1)***** ***** ***** ***** (2)***** *****
***** ***** applications of only such candidates will be considered for selection who conform to the following physical standards fixed by the Government:
(i) Height `5-6"
(ii) Chest Unexpanded 32 ="
Expanded 33 =" "

8. The respondents herein submitted their applications pursuant to the aforesaid advertisement. However, during the course of selection it was found that none of the respondents possesses the necessary physical qualifications as they do not fulfil the physical standards fixed by the Government either with regard to height or with regard to chest. Since the respondents were disqualified on the basis of aforesaid laid down standard on physical qualifications, they filed writ petitions in the High Court seeking for relaxation of the aforesaid Rules regarding minimum physical standards/qualification laid down in the advertisement as also in Rule 176 of the Police Rules.

9. The aforesaid writ petitions filed by the respondents were heard by a Single Judge of the Jammu & Kashmir High Court. The learned Single Judge considered the contentions raised by the respondents. On perusal of the respective contentions, the High Court found that it is only the standard of physical qualification which the respondents are lacking inasmuch as either in the minimum width of the chest they are not fulfilling the criteria or they do not possess the required and the advertised height. It was also observed that Prosecuting Officer has to appear in the Court and therefore, such officer would be required to exhibit mental ability rather than physical strength and therefore, the physical qualifications are not to stand in the way of such candidates. The High Court further held that neither the height nor the chest or chest expansion, being physical qualifications, could be the reason for rejecting the applications of the respondents. It was also held that the candidature of the respondents cannot be rejected merely on the ground that they do not fulfill physical criterion in view of the fact that the prescription of physical standard cannot be said to be a criteria which has no nexus with the object sought to be achieved. Consequently, it was directed that the cases of

all the respondents be considered for their appointment as against the posts advertised and for which they had submitted their applications.

10. Being aggrieved by the aforesaid orders passed by the learned Single Judge, the appellants preferred appeals before the Division Bench of the High Court. The said appeals were registered as Letters Patent Appeals.

11. The Division Bench of the High Court held that the Single Judge has not committed any error in concluding that prescription of physical qualification in regard to width of the chest or with regard to height has no nexus with the object and therefore, no case of interference is made out.

12. Being aggrieved by the aforesaid judgments and orders passed, the present appeals were filed on which we heard the learned counsel appearing for the parties who have taken us through the contents of the advertisement, Rule 176 of the Police Rules, other relevant documents and various decisions which were relied upon during the course of the arguments.

13. In the light of the same, we propose to dispose of all these appeals by giving our reasons.

14. A perusal of the writ petitions would prove and establish that the only prayer made in those writ petitions was to grant relaxation to the criteria and standard of physical conditions prescribed for and required to be fulfilled. In aforesaid writ petitions, neither the validity of Rule 176 with regard to physical conditions were challenged nor such conditions prescribed in the advertisement were challenged on the ground of its validity contending inter alia that there is no nexus of the said conditions with the object sought to be achieved. We find that the physical conditions prescribed in the advertisement are in consonance with Rule 176 of the Police Rules which are statutory Rules. No where in the pleadings, it is stated that such conditions prescribed are illegal or invalid. Constitutional validity of the aforesaid Rule was never challenged in any of the writ petitions.

15. The High Court, however, without there being any pleading in that regard went beyond the pleadings and held that such physical conditions laid down are bad and arbitrary as what has been prescribed have no nexus with the object sought to be achieved.

16. The aforesaid decision rendered by the High Court is contrary to and inconsistent with the law laid down by this Court in the case of *V.K. Majotra Vs. Union of India & Ors. reported in'* In the said decision also what was urged before this Court was neither raised in the pleadings nor it was urged before the High Court by any of the parties to the writ petition. In the said case, the issue was as to whether a person not having judicial experience could be appointed as Vice Chairman of the Central Administrative Tribunal. This Court found that the aforesaid issue was not raised in the writ petition and similarly, vires of the section was also not challenged. This Court in the aforesaid context, held as follows:-

"8.It is also correct that vires of Sections 6(2)(b), (bb) and (c) of the Act were not challenged in the writ petition. The effect of the direction issued by the High Court

that henceforth the appointment to the post of Vice-Chairman be made only from amongst the sitting or retired High Court judge or an advocate qualified to be appointed as a judge of the High Court would be that Sections 6(2)(b), (bb) and (c) of the Act providing for recruitment to the post of Vice- Chairman from amongst the administrative services have been put to naught/obliterated from the statute-book without striking them down as no appointment from amongst the categories mentioned in clauses (b), (bb) and (c) could now be made. So long as Sections 6(2)(b), (bb) and (c) remain on the statute-book such a direction could not be issued by the High Court....."

In paragraph 9 of the said decision, this Court has discussed the issues in the following terms:-

"9. We are also in agreement with the submissions made by the counsel for the appellants that the High Court exceeded its jurisdiction in issuing further directions to the Secretary, Law Department, Union of India, the Secretary, Personnel and Appointment Department, Union of India, the Cabinet Secretary of the Union of India and to the Chief Secretary of the U.P. Government as also to the Chairman of CAT and other appropriate authorities that henceforth the appointment to the post of presiding officer of various other Tribunals such as CEGAT, Board of Revenue, Income Tax Appellate Tribunal etc. should be from amongst the judicial members alone. Such a finding could not be recorded without appropriate pleadings and notifying the concerned and affected parties."

17. Similarly, in the case of *Secretary to Government and Anr. Vs. M. Senthil Kumar reported in*², this Court in the context of there being no challenge to the constitutional validity of the policy providing 10 per cent special quota to the children/wards of serving/retired/deceased personnel of Police and like forces held that since there was no challenge to the policy decision contained in the two government orders, it was not proper for the High Court to uphold the challenge to the policy decision and to hold that the policy decision was unconstitutional and that also overlooking the fact that the applicants were seeking relief under the policy decision.

18. In *State of Maharashtra & Ors. Vs. Jalgaon Municipal Council & Ors. reported in*³ this Court has observed that in absence of any challenge, the constitutional validity of the amendment cannot be gone into.

19. We may also appropriately refer to the decision of this Court in *Sanjay Kumar & Ors. Vs. Narinder Verma and Ors. reported in*⁴ wherein also it was contended before this Court that in absence of any challenge to the relevant Rules, it was impermissible for the High Court to depart from such recruitment rules. It was also submitted that it is not open to the High Court to ignore the recruitment rules and to introduce a criterion which is not even contemplated by the applicable rules.

20. This Court while upholding the aforesaid contentions held in paragraph 16 thus:-

"16. Having heard the learned counsel on both sides for the different contending parties, we are of the view that the impugned judgment of the High Court needs to be interfered with. As already observed, there was no challenge to the Rules in the writ petition. The learned Single Judge was, therefore, justified in applying the Rules and upholding the selection process made by the State authorities. It was wholly unjustified on the part of the Division Bench to have interfered with the selection process on the basis of the criteria which were not laid down in the Rules and that too on an erroneous appreciation of the Rules. The High Court failed to see that the Rules made no distinction, whatsoever, between degree-holders and diploma-holders at the stage of recruitment for the purpose of minimum qualifications. In other words, no distinction was made between the two categories at the stage of recruitment, but a greater weight age was given to the degree holders in the post-recruitment period in the form of a higher starting pay and also lesser number of years of service requirement for qualifying for promotion to the higher post. We agree with the contention expressed by the learned counsel for the appellants that there was sufficient inbuilt balance maintained between the two categories of candidates and the impugned judgment of the High Court completely throws the Rules out of balance. What the executive did not think fit to do by prescription in the Rules, could not have been done by a judicial fiat."

21. The qualifications to be possessed by the applicants have been prescribed in the Rules and also in the advertisement for the reason that some of them are required to be posted at high altitude and therefore they are required to have proper physique so as to be able to be posted to those places.

22. In our considered opinion, the ratio of the aforesaid decisions of this Court are squarely applicable to the facts of the present case. There was no challenge to the constitutional validity of Rule 176 of the Police Rules so far as it relates to prescribing physical conditions regarding the height and the chest. The stipulations in the advertisement regarding standard of physical condition was also not challenged in the Writ Petition. The High Court was not justified in going into the validity of the aforesaid criterion in absence of any such challenge. The High Court also has not specifically declared the Rule prescribing minimum height standard and chest standard ultra vires and, therefore, so long as that Rule exists in the statute book, no such direction as issued by the High Court could be issued. Consequently, the directions issued by the High Court in the present case are required to be set aside.

23. We, therefore, hold that the High Court was not justified to decide the validity of the aforesaid Rule and the advertisement without there being any challenge to the same. We also hold that it was not appropriate for the High Court to set aside the said conditions which are mandatory in nature.

24. Considering the aforesaid facts and circumstances of the case and in the light of the settled principles of law of this Court, we allow these appeals and set aside the judgments

and orders passed by the High Court both by the Division Bench and by the Single Judge and dismiss the writ petitions.

¹(2003) 8 SCC 0040

²(2005) 3 SCC 0451

³(2003) 9 SCC 0731

⁴(2006) 6 SCC 0467