

# SUPREME COURT OF INDIA

Jamaluddin

Vs.

State of J&K. & Ors.

C.A.No.8093 of 2004

(J.M. Panchal and H.L.Gokhale, JJ>.)

29.09.2011

## JUDGMENT

**H.L.Gokhale,J.,**

1. This appeal seeks to challenge the order passed by a Division Bench of the High Court of Jammu and Kashmir dated 24.2.2004 in LPA No. 133/2003, confirming the order dated 8.9.2003 passed by a learned Single Judge dismissing the Writ Petition No. SWP 994/2002 filed by the appellant.

Facts leading to this appeal are this wise -

2. The appellant belongs to a Scheduled Tribe. He is born on 31.1.1965. He was appointed as an adhoc Munsif in the Jammu & Kashmir Judicial Service on 13.8.2001. Subsequently, he applied for the post of Munsif in the Scheduled Tribe category when a notification was issued by the Jammu and Kashmir Public Service Commission on 4.12.2001 for the regular appointments. The notification required the person to be of not more than thirty five years of age as on the 1st January of the year in which the notification was issued. In view thereof, the Commission informed him by communication dated 21.5.2002 that his application was rejected since he was overage by eleven months.

3. Being aggrieved by that order the appellant filed the above referred Writ Petition. A Single Judge who heard the matter, noted that as per rule 7 of Jammu and Kashmir Civil Services (Judicial) Recruitment Rules 1967 (Judicial Services Recruitment Rules for short), the appellant was in fact overage. This rule reads as follows:-

"7. Age. No person shall be recruited to the service who is more than 35 years of age on the first day of January preceding the year examination is conducted by the Commission for Recruitment to the Service."

While dismissing the petition, the Single Judge noted that by the time that matter was heard, the appellant had crossed the age of 37 years which he claimed as the permissible age for the

Scheduled Tribe candidates. The Division Bench which heard the Letters Patent Appeal also accepted the view taken by the learned Single Judge, and therefore dismissed the appeal.

4. Shri Ambrish Kumar, learned counsel appeared for the appellant, and Shri Gaurav Pachnanda, learned Senior Additional Advocate General of Jammu and Kashmir appeared for the respondents. The State of Jammu and Kashmir, the Public Service Commission of Jammu and Kashmir and the High Court of Jammu and Kashmir through its Registrar General are joined as the respondents to this appeal.

5. It is pointed out on behalf of the appellant that earlier there was no appropriate reservation for the Scheduled Castes and Scheduled Tribes in the services of State of Jammu and Kashmir, and also in the services of the High Court. Hence, the then Minister of Law and Justice, Union of India wrote to the Chief Justice of the High Court on 15.5.1979 drawing his attention to this position. The Union Law Minister stated in his letter as follows:-

"1....

2. From the information received from the Jammu and Kashmir High Court last year, it transpires that there is no provision for reservation for Schedule Castes and Scheduled Tribes in direct recruitment to the State Judicial and Higher Judicial Services.

3. .... You will appreciate that in their present stage of development, it would be difficult for the Scheduled Castes and Scheduled Tribes to be represented adequately in the State Judicial and Higher Judicial Services unless special measures like reservation are undertaken. Since such reservation exists in other services, there does not seem to be sufficient reason why it should not be there in the State Judicial and Higher Judicial Services of the State....."

6. In view of this letter from the Union Law Minister, this subject was taken up in the Full Court Meeting of the High Court held from 23 rd February to 26th February, 1982, wherein following decision was taken:-

PREAMBLE

RESOLVED

14. Reservation of Seats for Schedule 14. Considered the report of Registrar castes and Scheduled Tribes in the and also the relevant record. We are of Judicial Service and Minister Services. the opinion that the general rules framed by the Government of J&K in this behalf are also applicable to the Judicial Service as also to the Ministerial services of the Judicial Department; and such reservation are made accordingly. The Government be informed accordingly.

7. Based on this resolution, it is submitted on behalf of the appellant, that whatever are the general rules applicable to the Government employees in Jammu and Kashmir ought to be deemed as applicable to the Judicial Services as also the Ministerial Services of the Judicial Department. The age limit for entering into Government Service was upto thirty eight years of age for Schedule Castes and Schedule Tribes, and therefore the appellant ought to have been allowed to give the examination for recruitment to the post of Munsif since at that time his age was less than thirty eight years. It was submitted that the Public Service Commission was therefore in error in rejecting his application, and so also were the learned Single Judge and the Division Bench of the High Court.

8. As far as this submission is concerned, it was pointed out on behalf of the respondents that firstly at the time when this resolution was passed by the High Court in February 1982, no age relaxation was provided for entering into the services of the State of Jammu and Kashmir also, and therefore it cannot be deemed that by passing of this resolution the High Court also brought in the provision for age relaxation. At that time, the recruitment to the services under the State Government was governed under SRO No. 394/1981. It provided only for a quantum of reservation which was 8% for the Scheduled Castes. On 28.6.1994 the State Government increased the reservation for Schedule Tribes to 10%, for Schedule Castes to 8%, and for Other Backward Classes to 25%. The appellant had appeared for the selection held in the year 2002, and at that time the same percentage with respect to the quantum of reservation was applied. Under the Judicial Services Recruitment Rules the age limit for Schedule Castes or Schedule Tribes candidates was thirty five years, but there was no further age relaxation for them, and that is how the rejection of the candidature of the appellant was justified by the Public Service Commission.

9. The learned counsel for the appellant pointed out that if we look to the letter of the Union Law Minister, the intention therein was to request the High Court to see to it that the rules in the State Judiciary are brought on par with the rules which exist in rest of India. The resolution passed by the Full Court ought to be looked at from that perspective. In view of this submission on behalf of the appellant, the respondent pointed out that the Union Law Minister's letter dated 15.5.1979 led the High Court to move in the matter. On 24.5.1979, the High Court directed the Registrar to examine the relevant rules and put up the proposal. The Registrar reported on 2.6.1979 that according to Rule 13 of the Jammu and Kashmir Schedule Castes and Backward Classes Reservation Rules 1970, the seats required to be reserved for Scheduled Castes were to the extent of 8%. There was however, no such provision in the Judicial Services Recruitment Rules. He therefore suggested that the State Government may be approached to provide for 8% reservation for the Scheduled Castes by incorporating a specific rule therein. The High Court in its subsequent meeting held on 16.6.1979 asked the Registrar to inquire with the State Government as regards the prevailing position regarding reservation, which he did. By way of a reply, the High Court received a copy of the letter dated 18.6.1979 sent by the State Government to the Secretary Government of India, Law Department, marked for the Registrar of High Court. In this reply it was pointed out that 8% vacancies were reserved for the candidates belonging to the Schedule Castes under the Jammu and Kashmir Schedule Castes and Backward Classes Reservation Rules 1970. It was however, stated that "these Rules are applicable to all the services under

the Government except judicial services as the judiciary has since been separated from the executive."

10. Shri Pachnanda, learned counsel appearing for the respondents pointed out that the resolution passed by the Full Court in February 1982 will have to be looked at in this background. When some other Writ Petitions were filed in the High Court concerning these rules, the Government took a stand that whatever are the rules applicable for entry into the Government Service will apply for the entry into the High Court Service. However, the High Court administration did place a conscious view before the bench that on principle the judicial services under the High Court were separate from other services under the State Government, and the rules governing recruitment to the Government Service cannot be applied for entry into the High Court Service. The stand taken by the High Court administration has been accepted in two Division Bench judgments of the High Court. First is the judgment in the case of *Riyaz Ahmad Gada Versus State of Jammu & Kashmir, decided on 29.9.2009 and reported in*<sup>1</sup> The second judgment is in the case of *Syed Shamim Rizvi & Ors. Versus State of Jammu and Kashmir reported in*<sup>2</sup>. In the second judgment the High Court has relied upon the judgment of this Court in *State of Bihar Vs. Bal Mukund Sah and Ors. reported in*<sup>3</sup> In that matter this Court has held that rules made by the Government cannot be brought into or forced upon the recruitment of persons in the judicial services. The rules framed under Article 309 by the State Government should be treated as general rules, whereas those under Article 233 to 225 should be treated as special rules applicable for the High Court. The learned counsel for the respondents pressed into service the same submission before us by pointing out that the provision of section 110 of the Jammu and Kashmir Constitution is similar to Article 234 of the Indian Constitution concerning the subordinate judicial service.

11. The counsel for the appellant pointed out that Jammu and Kashmir Higher Judicial Service Rules 1983, provided for a relaxation of two years for the candidates belonging to Scheduled Castes and Scheduled Tribes, and therefore, similar relaxation should be made available for the entry to the Subordinate Judicial Service. Shri Pachnanda accepted that there was an anomaly in that since such relaxation of two years was provided only for the Higher Judicial Service. The age group expected for the Higher Judicial Service from the general category was 35 to 45 years, but for the Scheduled Castes and Scheduled Tribes and Other Backward Classes a relaxation in age of two years was permissible. He submitted that, this was because the candidates from these categories were not easily available for the Higher Judicial Services. That difficulty was however, not there at the Munsif level. Therefore, no such relaxation was provided at the level of entry of Munsifs into the judicial service.

12. It was pointed out on behalf of the appellant that the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, specifically provide in Rule 3 (2) that they apply to all Government employees except to the extent excluded. On this Shri Pachnanda pointed out that Judicial Services Recruitment Rules came in force subsequently in 1967, and under Rule 1(3)

thereof, all previous rules stand repealed. Rule 2 thereof, specifically states that these rules will apply to the selection of Munsifs. They are specific rules, and therefore, Civil Services (CC & A) Rules of 1956 will not apply to the entry of the Munsifs in the Judicial Services.

Consideration of the rival submissions -

13. We have noted the submissions of both the counsels. We quite appreciate the submission made on behalf of the appellant, and we quite see that there is some kind of anomaly in the sense that there is no age relaxation at the level of Munsifs, though it is so provided at the level of entry into the Higher Judicial Service. The respondents have already given their explanation as to why this distinction is made and according to them the same stands to reason. That apart, the rules made by the High Court will govern the recruitment at the Munsif level as well as at the level of the Higher Judicial Service, and they have the force of law in view of the provision of Article 234 of the Constitution of India as interpreted by this Court in *Bal Mukund Sah (supra)* which is comparable to section 110 of Constitution of Jammu and Kashmir.

14. Shri Ambrish Kumar, learned counsel for the appellant had contended that the provision for age relaxation available for recruitment to the services in the State Government should be deemed to be included in the Judicial Services Recruitment Rules. Shri Pachnanda on the other hand submitted that such a course of action was not permissible. Our attention has been drawn in this behalf, to a judgment of this Court in *Umesh Chandra Shukla Versus Union of India & Ors.* reported in [1985 (3) SCC 721]. That matter was concerning the candidates who did not qualify for the viva-voce test in the selection to the posts of Subordinate Judges in Delhi Judicial Service, since they fell short in the written examination by one or two marks only. After the finalisation of the list of candidates who had qualified for viva-voce test, a moderation of the marks in the written test was done so that such candidates with less marks become eligible. This Court held that no such ideas outside the Rules can be brought in. The Court held that these rules are to be read strictly. At the end of paragraph 13 the Court held as follows:-

".....Exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court has no such power under the Rules. We are of the opinion that the list prepared by the High Court after adding the moderation marks is liable to be struck down....."

15. In the present case the advertisement of the Public Service Commission issued in the year 2002, required the persons concerned to be of less than thirty five years of age at the relevant time. That age limit applied to all the candidates. There was no age relaxation in favour of the candidates belonging to the Scheduled Castes or Scheduled Tribes, though there was a

quantum of reservation provided for them. The earlier resolution of the Full Court of the High Court passed in February 1982, will therefore, have to be read as providing only for the quantum and not for any age relaxation. If there is no age relaxation in the rules, the same cannot be brought in by any judicial interpretation. In the circumstances we do not find any error in the judgment of the Single Judge or that of the Division Bench.

16. Although, we are not inclined to interfere with the order passed by the High Court on the judicial side, we do feel that the High Court on its administrative side should examine the issue as to whether age relaxation should be provided to the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes appearing for the Judicial Service Examination at the Munsif level as is provided to the candidates appearing for the Higher Judicial Service Examination. We hope that this will be done without much delay.

17. For the reasons stated above the appeal stands dismissed, though there will be no order as to the costs.

Judgment Referred.

<sup>1</sup>*JKJ (HC) (Suppl.) 2009 600*

<sup>2</sup>*(2010) 1 SLJ 0281*

<sup>3</sup>*AIR 2000 SC 1296*