

# SUPREME COURT OF INDIA

Lakshmana Rao Yadavalli

Vs.

State of Andhra Pradesh.

S.L.P (Civil.) No. 23807-23808 of 2012

(Anil R. Dave and Dipak Misra, JJ.)

06.12.2013

## JUDGMENT

**Anil R. Dave, J.**

1. Leave granted.

2. Being aggrieved by the Judgment delivered by the High Court of Andhra Pradesh in W.P.No.34683 of 2011 and 894 of 2012 dated 17th July, 2012, the appellants have filed these appeals. 3. The facts giving rise to the present litigation in a nut-shell are as under: The appellants, Shri Lakshmana Rao Yadavalli and Shri Dunna Ramulu were desirous of being appointed as District and Sessions Judges (Entry Level) in the A.P. Higher Judicial Service and therefore, had applied for the post and they also found their names in the select list at serial nos.9 and 12 respectively.

3. Before they could be appointed to the post in question, Writ Petition Nos.34683 of 2011 and 894 of 2012 had been filed in the High Court wherein their selection had been challenged on the ground that the appellants had been working as Assistant Public Prosecutors and as such, they should not have been considered as advocates having standing of seven years at the Bar and according to the submissions made in the petitions, challenging their selection, a person working as a Public Prosecutor cannot be said to be an advocate practising at Bar because of his being in employment of the State of Andhra Pradesh. Moreover, Lakshmana Rao Yadavalli, the first appellant's selection had also been challenged on an additional ground that he had not completed 35 years of age at the time when the post in question had been advertised. According to the submissions made before the High Court, a person cannot be appointed to the post in question till he completes the age of 35 years.

4. After hearing the concerned parties, the aforesaid petitions had been allowed and therefore, the present appellants who were respondents in the aforesaid petitions have not been appointed to the post in question.

5. In the aforesaid circumstances, the appellants have challenged the validity of the aforesaid Judgment delivered by the Andhra Pradesh High Court.

6. The learned counsel appearing for the appellants has submitted that the issue involved in the present appeals had also arisen in Civil Appeal No.10836 of 2013 titled Sasidhar Reddy Sura vs. The State of Andhra Pradesh & Ors. decided on 05th December, 2013 as well as in the Judgment delivered by this Court in the case of *Deepak Aggarwal vs. Keshav Kaushik and others* <sup>1</sup>. In the above referred case a question that had been raised before the court was whether a Public Prosecutor/Assistant Public Prosecutor/District Attorney/Assistant District Attorney/Deputy Advocate General, who is in full time employ of the Government, ceases to be an advocate or pleader within the meaning of Article 233(2) of the Constitution of India.

7. Ultimately, this Court came to the conclusion that the appellant in the said case had been practising as an advocate, therefore, he was eligible for the judicial post. Similarly, in the case on hand the appellants were practising advocates though they were full time employees and therefore, they are eligible to be appointed as Judges.

8. In the case of Deepak Aggarwal (supra) this Court has held that simply because a person has been appointed as an Assistant Public Prosecutor and as such he is in employment of the Government, cannot be a ground for not selecting him to a judicial post on the ground that he was not an advocate practising at the Bar. The ratio of the said judgment is that an Assistant Public Prosecutor is also an advocate who is practising at the Bar.

9. In view of the aforesaid legal position, in our opinion, the High Court was not right in considering the appellants as dis-qualified candidates as they were in full time employment of the Government.

10. So far as appellant no.1 herein is concerned, the additional ground which had been raised against him before the High Court was that he had not completed 35 years of age at the time when the advertisement inviting applications for appointment to the post in question had been published. This Court has taken a view in Civil Appeal No.10836 of 2013, that it is not necessary that a candidate should have completed 35 years of age for being appointed to the post of a District and Sessions Judge (Entry Level) in the A.P. Higher Judicial Service. The reason given by this Court is that the recruitment rules framed for appointment to the post in question by the Andhra Pradesh High Court do not provide for any minimum age and simply because the Shetty Commission had recommended that only a person who had completed 35 years of age should be appointed to the post of a District and Sessions Judge (Entry Level) could not have been the reason for not appointing the present appellant no.1.

11. For the aforesaid reasons, in our opinion, the reasons assigned by the High Court for not appointing the appellants to the post in question, are not correct and therefore, we quash and set aside the impugned judgment so far as it pertains to the present two appellants. The appeals are allowed with no order as to costs.

12. We direct the High Court and the respondent-State to give appointment to the appellants to the post in question with effect from the date on which they ought to have been appointed, however, we clarify that they shall not be paid salary for the period

during which they have not worked as District and Sessions Judges. The appellants shall also be placed at the appropriate place in the seniority list of the District and Sessions Judges after considering their position in the merit list. We are sure that the respondent-High Court as well as the respondent-State shall do the needful for giving the appointment to the appellants at an early date.

*Judgment referred*

*12013(1) SCALE 0564*