

SUPREME COURT OF INDIA

Ajithkumar P & Ors.

Vs.

Remin K R & Ors.

C.A.No.8536 of 2015

(J.Chelameswar and Abhay Manohar Sapre, JJ.,)

13.10.2015

JUDGMENT

J.Chelameswar, J.,

1. Aggrieved by the common judgment dated 08.08.2014 of the High Court of Kerala in O.P.(KAT) No. 239 of 2014 and O.P.(KAT) No. 112 of 2014, the unsuccessful petitioners therein preferred these two special leave petitions.

2. Leave granted.

3. The above-mentioned Original Petitions (writ petitions) were filed aggrieved by the order dated 20.02.2014 passed by the Kerala Administrative Tribunal (for short 'the Tribunal') by which the Tribunal disposed of the three original applications O.A. Nos.2395/13, 2587/13 and 58/14.

4. The background facts of the instant litigation are as follows:

“The Kerala Public Service Commission (for short 'the Service Commission') issued a notification dated 28.09.2007 inviting applications from the qualified candidates for appointment to the posts of Sub-Inspector (Trainee). The notification did not specify the number of posts sought to be filled up but mentioned that the posts are sought to be filled up from three sources. They are, “(1) “Category No.315/2007 – Open market (2) Category No.316/2007 – Graduate Ministerial Staff of Police and Vigilance Department, Fingerprint Experts, Fingerprint Searchers of the Finger Print Bureau.

(3) Category No.317/2007 – Graduate Police Constables, Head Constables and officers of the corresponding rank in the police Department.”

5. It is also specified in the notification that the vacancies will be apportioned among the three categories mentioned above in accordance with certain orders issued earlier by the

Government of Kerala, the details of which are not necessary for the purpose of this judgment.

6. There are a set of rules known as 'The Kerala Public Service Commission Rules of Procedure' (for short "Rules of Procedure"), containing the procedure to be followed by the Service Commission in making selections for filling up any posts in the service of the State of Kerala. When the Service Commission is so called upon, the Service Commission is authorised to conduct one or more of the examinations indicated under Rule 3 of the said Rules to assess merit of candidates who seek appointment. The relevant portion of the Rule reads:

“3. The Commission may conduct all or any one or more of the following examinations to assess the merits of candidates considered for recruitment to a service or post;

(i) Written Examination

(ii) Practical Test

(iii) Physical Efficiency Test

(iv) Oral Test (Interview)

(v) Any other test or examination, which the Commission may deem fit to hold.”

7. Further, under Rule 4 wherever the Service Commission decides to conduct either a written examination or a practical test or both for filling up any posts, the Service Commission is required to announce the following information:

“(i) Announce:

(a) the qualifications required of the candidates for the examination;

(b) the conditions of admission to the examination including the fees;

(c) the subjects, Scheme or syllabus of the examination; and

(d) the number of vacancies to be filled from among the candidates for the examination.”

8. In response to the notification, the Service Commission received about 42,000 (forty two thousand) applications.

9. For the recruitment in question, the Service Commission admittedly decided to hold a written examination followed by an oral test (contemplated under Rule 3, hereinafter referred

to as 'Rule 3 examinations' for the sake of convenience). However, in view of the large number of applications received, the Service Commission thought it fit to shortlist candidates who could be permitted to appear for the Rule 3 examinations by conducting a preliminary examination for all the 42,000 applicants.

10. The Commission initially opined that 2000, out of the total 42000, applicants could be short-listed through such examination process. After the examination was conducted, on examining the list of 2000 successful candidates (who stood at the top of the list), the Service Commission reached a tentative conclusion that subjecting only those 2000 candidates for the Rule 3 examinations may not yield enough candidates to fill up vacancies belonging to various reserved categories (SC, ST and OBC). Therefore, the Service Commission decided to permit some more candidates belonging to various reserved categories. The last of the abovementioned 2000 candidates secured 49 marks out of a total of 100 marks for which the examination was conducted. The Service Commission, therefore, decided to permit various reserved category candidates, who secured marks above the cut-off marks specified in that behalf by the Service Commission. The cut-off marks so specified with respect to each of the reserved categories are as follows:-

“Ezhava 46

Viswakarma 46
SIUC Nadar 46

Dheevera 46
Hindu Nadar 44”

11. Pursuant to such exercise, another 657 candidates became eligible to appear in the Rule 3 examinations.

12. The decision of the Service Commission to relax cut-off marks with respect to reserved category candidates came to be challenged initially before the Kerala Administrative Tribunal. In view of the Tribunal's decision dated 13.09.2012 dismissing the applications, the matter was further carried by way of writ petition to the Kerala High Court unsuccessfully. Eventually, the matter reached this Court in SLP....(CC) No. 14564 of 2013, which stood dismissed by an order dated 26.08.2013.

13. The Service Commission conducted the Rule 3 examinations, selected 838 candidates and published a “ranked list”[1] on 07.09.2015.

14. Thereafter, candidates were sent for training. Those who successfully completed the training were appointed and given posting. The appellants are among candidates so appointed, belonging to various reserved categories. They were appointed against open category vacancies. However, they were not among the top 2000 candidates identified in the preliminary screening test, but appeared for the Rule 3 examinations by virtue of the relaxation granted in favour of the candidates belonging to various reserved classes.

15. Meanwhile, various original applications, out of which the instant appeals arise, came to be filed before the Tribunal. The relief sought in one of the applications is:

“(a) declare that the inclusion of the candidate, who secured less than 49 marks in the preliminary examination, in the main list of Annexure A6 is illegal.

(b) direct the 3rd respondent to remove the candidates who secured less than 49 marks in the preliminary examination from the main list of Annexure A6.

(c) direct the 3rd respondent not to advise and respondents 1 and 2 not to appoint any candidate who secured less than 49 marks in the preliminary examination against the vacancies available for open competition candidates”.

16. Prayers in the other two original applications are similar.

17. By its order dated 20.02.2014, the Tribunal allowed the said original applications.

18. The Service Commission challenged the said order in Original Petition i.e. O.P. (KAT) No. 136 of 2014. The appellants in SLP (C) No.28428/2014 sought a review of the order dated 20.02.2014 of the Tribunal on the ground that the said order would adversely affect their interest though they were not parties to the said proceedings. However, by an order dated 04.04.2014, the review petition was rejected by the Tribunal. Therefore, the unsuccessful review petitioners preferred Original Petition (KAT) No.239 of 2014 challenging the order of the Tribunal dated 20.02.2014. The petitioner in SLP (C) No. 28743 of 2014 was the 2nd petitioner in Original Petition (KAT) No.112/2014 filed challenging the order dated 20.02.2014 of the Kerala Administrative Tribunal. Both the Original Petitions along with other similar petitions were heard together and dismissed by a common judgment and order, impugned in the instant appeals.

19. The selection and appointment of the appellants is challenged on the ground that they are not among the 2000 candidates who secured 49 marks and above in the preliminary screening test and therefore, they would not have been eligible to appear for the Rule 3 examinations but for the relaxation granted subsequent to the preliminary examination. Therefore, they cannot be appointed to open category posts. According to the contesting respondents, relaxation was granted only to ensure that there are sufficient number of candidates to fill up reserved category posts. By allowing the appellants to compete for the open category posts, the Service Commission acted in violation of Articles 14 and 16 of the Constitution of India.

20. The posts in question are governed by the Kerala State and Subordinate Services Rules 1958 (for short “Kerala S&S Rules”), made in exercise of the power under Article 309 of the Constitution of India. Rule 14 enables the State to reserve some of the posts in question in favour of the Scheduled Caste, Scheduled Tribes and other backward classes. Indisputably, some of the posts in question are so reserved.

21. This Court in *R.K. Sabharwal & Others v. State of Punjab & Others*¹, held that where certain number of posts are reserved in favour of candidates belonging to socially and economically backward classes, meritorious candidates belonging to those classes should not be appointed to such reserved posts but shall be appointed to posts falling in the open category.

22. The said principle is reiterated in *Ritesh R. Sah v. Dr. Y.L. Yamul & Others*², in the context of admissions to the educational institutions (medical colleges) where seats are reserved in favour of students belonging to socially and economically backward classes. This Court on examination of various judgments including *R.K. Sabharwal* (supra) held;

“17. In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. ...”

23. It is application of the above principle which is the subject matter of dispute in the instant appeal. As already noticed, appellants secured good marks in the Rule 3 examinations, therefore they should be entitled for appointment against open category posts by operation of the principle of law laid down in the above-mentioned judgments. The contesting respondents however disputed application of the above-mentioned principle of law on the ground that appellants could appear for the Rule 3 examinations only pursuant to a concession granted by the Service Commission, and cannot therefore be treated as more meritorious candidates who are entitled to be appointed to open category posts.

24. This submission found favour with the Administrative Tribunal and the High Court. In substance, both the fora held that but for the concession the appellants would not have been able to participate in the Rule 3 examinations at all, consequently whatever be the performance of the appellants in the examination, their chance appearance in the Rule 3 examinations does not confer any right on them to claim open category posts and they are entitled to compete only for those posts which are reserved in favour of the respective class to which each of the appellants belongs. For reaching such a conclusion, the High Court relied upon Rule 14(e)[2] of the Kerala S&S Rules and Rule 4[3] of the Rules of Procedure. The High Court held:-

“32. Reading of these judgments would show that in none of these cases, Supreme Court had occasion to consider a rule similar to Rule 14(e) or the third proviso to Rule 4 of the Rules of Procedure. On the other hand, the Apex Court had generally dealt

with the legal position that when relaxation or concession is given at the preliminary stage, which has no impact on the final ranking, the relaxation so given cannot have any relevance in so far as the final ranking is concerned. While we respectfully follow these principles, in our view, having regard to the fact that Rule 14(e) of the 3rd proviso to rule 4 of the Rules of Procedure govern the selection in question, the general principles laid down by the Apex Court in the judgments relied on by the learned counsel for the petitioners cannot be applied to the facts of these cases.” and distinguished three earlier judgments of this Court *Chattar Singh & Others v. State of Rajasthan & Others*³, *Andhra Pradesh Public Service Commission v. Balaji Badhavath & Others*⁴, and *Jitendra Kumar Singh & Another v. State of Uttar Pradesh & Others*⁵,

25. In our opinion, the conclusion reached by the High Court is erroneous. The preliminary examination for shortlisting candidates who would be eligible to take the Rule 3 examinations has no statutory basis. Neither the Kerala S&S Rules nor the Rules of Procedure contemplate such preliminary examination. However, this Court recognized[4] existence of a legal authority to conduct a preliminary examination wherever an unmanageably large number of applications are received for filling up a limited number of posts. Rule 14(e) of the Kerala S&S Rules and Rule 4 of the Rules of Procedure relied upon by the High Court refer to ‘ranked list’

- a defined expression under Rule 2(g) of the Rules of Procedure. Such ‘ranked-list’ is prepared only pursuant to the Rule 3 examinations. A preliminary screening test is outside the purview of the Rule 3 examinations. Therefore, irrespective of the content of Rule 14(e) of the Kerala S&S Rules or the 3rd proviso to Rule 4 of the Rules of Procedure relied upon by the High Court, these Rules can have no application in the context of preparation of a ‘shortlist’ pursuant to a preliminary examination.

26. Therefore, the basic premise on which the High Court sought to distinguish the three judgments relied upon by the appellants (referred to supra) is legally untenable. The impugned judgment rightly understood the 3 judgments relied upon by the appellants herein as laying down a principle that a relaxation or concession given at the preliminary stage cannot have any relevance in determining the merit of the candidate.

27. In the circumstances, we are of the opinion that the impugned judgment is unsustainable and is accordingly set-aside. The appeals are allowed with no order as to costs.

Judgment Referred.

¹(1995) 2 SCC 0745

²(1996) 3 SCC 0253

³(1996) 11 SCC 0742

⁴(2009) 5 SCC 0001

⁵(2010) 3 SCC 0119

[1] A defined expression Rule 2(g) of the Kerala Public Service Commission Rules of Procedure, which is reproduced below:

“Ranked List’ means the list of candidates arranged in the order of merit either on the basis of the interview or examination or by both;

[2] Rule 14 (d). Notwithstanding anything contained in this rule, posts to which, appointments are made by direct recruitment from a common ranked list prepared on the basis of a common test or interview or both, shall be grouped together for the purposes of observance of the rules relating to reservation of appoints.

(e) A supplementary list of sufficient number of suitable candidates, not less than five times the reservation quota, if available, from each community or group of communities for the purpose of satisfying the reservation quota, shall be prepared and published.

Note. ‘Suitable candidates’ for the purpose of this rule shall mean candidates with notified minimum qualifications and marks in selection procedure lowered to the extent necessary.”

[3] Rule 4. Where a written examination and/or a practical test is conducted by the Commission for recruitment to a service or post, the Commission shall – Announce:

the qualifications required of the candidates for the examination; the conditions of admission to the examination including the fees; the subjects, Scheme or syllabus of the examination; and the number of vacancies to be filled from among the candidates for the examination.

Provided that where the exact number of vacancies to be filled is not ascertainable, the Commission may either announce the approximate number of vacancies to be filled or state that the number of vacancies has not been estimated.

[invite applications and consider all the applications so received,

(iii) make all arrangements for the conduct of the examination for the candidates whose applications are found to be in order, and

(iv) prepare a list in the order of merit of such number of candidates as the Commission may determine from time to time.

Provided that the Commission may also prepare separate ranked lists in the order of merit of candidates coming under separate groups in accordance with the qualifications or other conditions as stipulated in the notification.

Provided further that for the purpose of satisfying the rules of reservation of appointment to Scheduled Castes, Scheduled Tribes and Other Backward Classes also the Commission may prepare such supplementary lists as found necessary from time to time in the order of merit of the candidates belonging to such classes.

[4] Andhra Pradesh Public Service Commission v. Baloji Badhavath & Others, (2009) 5 SCC 1; Duddilla Srinivasa Sharma & Others v. V. Chrysolite, (2013) 16 SCC 702
