
(2012) 09 AP CK 0040
In the Andhra Pradesh High Court
Case No : WA No. 1084 of 2012

APSRTC and Another

APPELLANT

Vs

N. Nagesh

RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Citation : (2013) 1 ALD 124 : (2013) 2 ALT 99

Hon'ble Judges : G. Rohini, J;C. Praveen Kumar, J

Bench : Division Bench

Advocate : K.V. Subba Reddy SC for APSRTC, KKAC, for the Appellant; T.C. Krishnan, for the Respondent

Judgement

G. Rohini, J.—The Andhra Pradesh State Road Transport Corporation (for short, "the Corporation") filed this appeal aggrieved by the order passed by the learned Single Judge in Writ Petition No. 7731 of 2012, dated 20.3.2012, whereunder the Corporation was directed to receive the application of the writ petitioner/respondent herein for appointment to the post of Shramik and consider the same in terms of G.O. Ms. No. 1, General Administration (Ser. A) Department, dated 2.1.2012. We have heard the learned Counsel for both the parties.

2. The material available on record shows that in response to the notification dated 27.12.2011 issued by the Corporation inviting applications for filling up the posts of Shramik, the writ petitioner/respondent herein submitted his application. It is to be noted that as per the notification, the maximum age limit prescribed as 30 years as on 1.7.2011. So far as the candidates belonging to the SC/ST/BC are concerned, the maximum age limit is prescribed as 35 years. The respondent herein belongs to BC category and he was born on 1.7.1976. However, his application was not considered and he was orally informed that he was over aged. Aggrieved by the same, the respondent herein filed Writ Petition No. 7731 of 2012 seeking a declaration that the action of the Corporation in rejecting his candidature on the ground that he is barred by age is arbitrary and illegal. The said writ petition came to be disposed of at the stage of admission by the learned

Single Judge relying upon G.O. Ms. No. 1, General Administration (Ser. A) Department, dated 2.1.2012, whereunder the Government has relaxed the upper age limit of 35 years prescribed in Rule 12 of the A.P. State and Subordinate Service Rules, 1996 (for short, "the Rules") by two years. It appears that on behalf of the Corporation, it was represented by the learned Standing Counsel before the learned Single Judge that G.O. Ms. No. 1, dated 2.1.2012 had no application and the services in the Corporation were governed by a different set of rules. However, without going into the said issue, the learned Single Judge disposed of the writ petition at the stage of the admission itself with a direction to receive the application of the writ petitioner and consider the same in terms of G.O. Ms. No. 1, dated 2.1.2012.

3. Hence, the present writ appeal by the Corporation reiterating the contention that G.O. Ms. No. 1, dated 2.1.2012 issued by the Government of Andhra Pradesh amending Rule 12 of the Rules by relaxing the upper age limit by two years for ensuing recruitments through Andhra Pradesh Public Service Commission and other Recruiting Agencies has no application for the purpose of recruitments in the Corporation.

4. We have also heard Sri T.C. Krishnan, the learned Counsel appearing for the respondent/writ petitioner and perused the material available on record.

5. Having given our thoughtful consideration to the submissions made by the learned Counsel on either side, it appears to us that in the facts and circumstances of the present case it is not necessary to go into the controversy whether G.O. Ms. No. 1, dated 2.1.2012 can be made applicable to the services of the Andhra Pradesh State Road Transport Corporation or not.

6. Admittedly this is a case where the writ petitioner/respondent herein was born on 1.7.1976. As per clause (3) of the notification, dated 27.12.2011, issued by the Corporation, the applicant shall not exceed 30 years of age on 1.7.2011. So far as the writ petitioner is concerned, since he belongs to B.C., he shall not exceed 35 years of age on 1.7.2011. Though the writ petitioner completed 35 years of age one day prior to the cut-off date prescribed in the notification i.e., 1.7.2011, in our considered opinion, he cannot be said to have exceeded 35 years of age by the said cut-off date. Be it noted that the expression used in the notification is that the age of the applicant shall not exceed 30 years (35 years for SC/ST/BC) on 1.7.2011.

7. In identical circumstances, in M. Khamar Pasha Vs. Commissioner and Director of School Education, Andhra Pradesh, Hyderabad and another, this Court held that the petitioner therein who had completed 36 years of age one day prior to the cut-off date prescribed in the notification cannot be denied the right to apply for the post since she can be said to have exceeded 36 years only after the midnight between 1st and 2nd July of 1996. Relying upon a decision of the Supreme Court in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, and Union of India (UOI) Vs. B.S. Agarwal and Others, , it was held in M. Khamar

Pasha's case (supra) as under:

It is well settled that in Gregorian Calendar the day starts at 12.00 hours in the midnight as has been laid down by the judgment of Supreme Court in *New India Assurance Co. Ltd. v. Ram Dayal* (supra), and also a judgment of High Court of *United India Insurance Company Limited Vs. Master Bunty and Others*, . Applying the judgment of the Supreme Court to the facts of the present case one will definitely come to the conclusion that by midnight of 30th June, 1996 and 1st July, 1996 the petitioner completed 36 years of her age and her age would exceed by one day by midnight of 1st July, 1996 and 2nd July, 1996. The requirement under the notification was that she should not exceed 36 years, the requirement under the notification was not that she should not be more than 36 years of age on 1st July, 1996. Exceeding 36 years means that she should exceed her age at least by one day because one day is the basic minimum unit in the calendar which can be taken for the purpose of computing the age. Therefore, I am of the view that she would exceed 36 years by midnight of 1st and 2nd July, 1996 and not by midnight of 30th June, 1996 and 1st July, 1996. It is true that she had completed 36 years on 1st July, 1996 but she had not exceeded 36 years of age on 1st July, 1996 which was the requirement under the notification.

8. The facts in the present case being identical, we deem it appropriate to adopt the same analogy. Accordingly, we hold that the writ petitioner/respondent herein can be said to have exceeded the maximum age limit of 35 years only after the midnight of 1st and 2nd July, 2011. Therefore, the Corporation ought not to have rejected the candidature of the writ petitioner on the ground that he is over aged. It appears that during the pendency of the writ petition, the petitioner was allowed to participate in the selection process and he was also interviewed by the Selection Committee. That being so, the Corporation shall proceed to finalize the selection process and pass appropriate orders on merits with regard to the selection of the writ petitioner. The writ appeal is accordingly disposed of with the above directions. No costs.