

(1990) 03 SC CK 0016

In the Supreme Court Of India

Case No : Civil Writ Petition No. 226 of 1986 and Civil Appeal No. of 1990

Majeet Singh, UDC and others

APPELLANT

Vs

Employees' State Insurance Corpn. and another
K.
Prakasam and others Vs T. Subrahmanyam and others

RESPONDENT

Date of Decision : 22-03-1990

Acts Referred:

Constitution of India, 1950 — Article 32

Employees State Insurance Act, 1948 — Section 17(2), 2A, 97(1)

Citation : AIR 1990 SC 1104 : (1990) 2 JT 180 : (1990) 2 LLJ 392 : (1990) 1 SCALE 525 : (1990) 2 SCC 367 : (1990) 2 SCR 119 : (1990) 1 UJ 601 : (1990) 3 UPLBEC 1527

Hon'ble Judges : Ranganath Misra, J;M. M. Punchhi, J;K. Ramaswamy, J

Bench : Full Bench

Advocate : K. Parasaran, P.P. Rao, Sushil KumarJain, Pratibha Jain and Sudhanshu Atreya, for the Appellant; Madhva Reddy, Vivek Gambhir, S. K. Gambhir, R.D. Upadhyaya and Surender Karnail, for the Respondent

Final Decision : Disposed Of

Judgement

1. Petitioners are employees under the State Insurance Corporation, respondent No. 1. According to the notification dated 22nd of April, 1977, issued in exercise of powers conferred by Section 97(1), (1, 2)(xxx), Section 2A and Section 17(2) of the Employees State Insurance Act, 1948, (hereinafter referred to as 'the Act') which came by way of super session of the Employees State Insurance Corporation (Recruitment) Regulations, 1965, the post of Insurance Inspector/Manager Grade II was treated partly as selection and partly as non-selection. There was no age limit for departmental candidates and two-thirds of the vacancies were to be filled up promotion and one-third by competitive examination under the Rules. By advertisement dated 6th August, 1983, applications were invited for filling up the one-third vacancies by direct recruitment to the category of post of Insurance Inspector/Manager Grade II. The petitioners in this application under Article 32 of the Constitution responded

to the said advertisement and were in due course declared as successful in the test. In consideration of the fact that a good number of vacancies were then existing and in anticipation of the position that more vacancies were about to occur, a select list was drawn up for the existing and future vacancies. In the said select list petitioners featured at Sr. Nos. 114, 116, 121, 159, 171, 172 and 188 respectively. The panel was notified and in accordance with the practice petitioners along with other successful candidates were individually intimated by respondent No. 2 on 1.9.1984.

2. As already, indicated, the direct recruitment was on the basis of examination and interview. The advertisement did not prescribe any pass marks in the interview though for the written examination 40% was prescribed. Selection was, however, made on the basis of 40% in the interview test and those who did not secure 40% in the interview were not selected. Challenge was made by the unsuccessful candidates questioning their rejection by contending that in the absence of any prescription of pass marks for the interview test, there was no justification to apply the 40% basis. Writ Petitions were also filed when the respondents instead of appointing people from the panel of successful candidates went on filling up existing vacancies out of the category of promotees. Such petitions were pending before the Calcutta, Madras and Andhra Pradesh High Courts when the Central Administrative Tribunals came to be set up. These were transferred to the respective Benches of the Central Administrative Tribunals and on being clubbed were disposed of by a common judgment dated 28th of April, 1989, by the Hyderabad Bench of the Central Administrative Tribunal. The Tribunal held:

We would direct in these cases that the respondents shall work out and estimate the vacancies available up to 20th June, 1986 accurately (we have used the word 'accurately' as an apprehension has been expressed that direct recruits are not getting their due since over 320 posts were filled up between May, 1986 and December, 1988 by promotees on ad-hoc basis or otherwise). After such estimation, the respondents shall deduct there from 116 vacancies which have already been filled and make available the remaining vacancies to the applicants and others who took the examination on the basis of aggregate marks, i.e. total marks obtained in the written test and the oral interview. Such of the applicants in all the three cases before us and heard by us at Hyderabad, Madras and Calcutta, who come within the zone of selection in accordance with this procedure as directed by us would be entitled to appointment.

3. The writ petition is by the successful candidates whose names appear in the panel but who have not been given appointments. They have contended that the respondents were entitled to the issue of appointment orders to them inasmuch as vacancies exist and there was no indication that the life of the select list would expire either at the end of one year or on the expiry of the further extended period of six months and when there has been no fresh select list as yet.

4. The decision of the Central Administrative Tribunal referred to above has been

assailed by special leave challenging the direction of the Tribunal that the fresh select list filling up the remaining vacancies as on 20th June, 1986, should be prepared on the basis of total marks obtained in the written examination and interview in disregard of the qualifying marks for the latter. We granted special leave and have heard the writ petition and the civil appeal together.

5. As already indicated, the last list on the basis of recruitment examination was drawn up in 1984. There have been a good number of vacancies then existing and subsequently a number of them have arisen as against which only 116 appointments have been made, including 16 out of the reserved categories. At one stage of the hearing we had indicated to Shri Madhav Reddy, appearing for the respondent-Corporation that the existing vacancies should be filled up out of the panel of 1984 and in answer to this suggestion, an affidavit has been filed to say that candidates have been waiting for the holding of fresh recruitment examination and if out of the panel of 1984 all the existing vacancies are directed to be filled up, they would be frustrated. There is force in the submission. The Tribunal in its decision has indicated that even up to 20th June, 1984, there were some vacancies which were available to be filled up out of the panel. On account of respondents' inaction in holding of annual recruitment examinations, vacancies have accumulated. Keeping all these aspects in view, we direct that 50% of the vacancies existing up to 31st of December, 1989, relating to the one-third quota should be filled up out of the panel after giving credit to 116 appointments noticed by the Tribunal. The remaining vacancies should be filled up by holding of a fresh recruitment examination latest before 30th of September, 1990.

6. So far as the remaining question that was debated before the Tribunal is concerned, we are of the view that the scheme intended for recruitment should be on the basis of an examination comprising of written test and interview. We agree with the submission of Shri Madhav Reddy that interview has its own place in the matter of the selection process and the choice of the candidate. Once this is recognised, it would be appropriate to require every candidate to pass the interview test and for that purpose there should be a basic limit provided. In the absence of any prescription of qualifying marks for the interview test the same prescription of 40% as applicable for the written examination seems to be reasonable. That has been the view expressed by one of us (Punchhi, J.) in a decision (*Rajesh Sood and Ors. v. Director-General, Employees State Insurance Corporation and Anr.* decided on August 7, 1985) to which our attention has been drawn. We approve of the view. Accordingly, we modify the direction of the Administrative Tribunal and hold that in the oral examination the pass mark shall be 40% and 40% pass marks shall be insisted separately for the written as also the oral test for qualifying in the selection.

7. The appeal is partly allowed and both the matters are disposed of by this common judgment. There shall be no order as to costs.