
(2004) 03 KAR CK 0070
In the Karnataka High Court
Case No : Writ Petition No. 46318 of 2003

P. Jayaseela Rao

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-03-2004

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2004) 2 KCCR 1264

Hon'ble Judges : Tirath S. Thakur, J;Huluvadi G. Ramesh, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; P.S. Dinesh Kumar, Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Tirath S. Thakur, J.—This writ petition calls in question the correctness of an Order passed by the Central Administrative Tribunal whereby O.A. No. 26 of 2003 filed by the petitioner for cancellation of the Scientific Assistants Examination held in January, 2003 has been dismissed.

2. The petitioner is working as a Senior Observer in the Meteorological Department of the Government of India. In terms of the requirement rules as the same stood before the implementation of the 5th Central Pay Commission, 25% of the posts in the cadre of the Scientific Assistants in the pay scale of Rs. 1,400-2,300 were to be filled up by promotion out of the candidates selected in the Departmental Competitive Examination for which Senior Observers in the pay scale of Rs. 1,320-2,040 and Mechanical Draughtsman in the scale of Rs. 1,200-2,040 with five years service in their respective cadres were eligible. The remaining 75% of the vacancies were to be filled up on the basis of seniority. The 5th Central Pay Commission however recommended filling up of the posts in the cadre of Scientific Assistant entirely by promotion out of the eligible Senior Observers and Mechanical Draughtsmen. The rules were accordingly altered to provide for such promotion inter alia stipulating that the feeder cadre for

promotion would be out of Senior Observer with three years service in the grade of Rs. 5,000-8,000 and Mechanical Draughtsmen with six years service in the grade of Rs. 4,5000-7,000.

3. Sometime after the aforementioned rules came into force, providing an altered basis for filling up of vacancies, the employees through the medium of their Associations and Unions filed representations seeking restoration of the provision under which 25% posts in the cadre of Scientific Assistants were to be filled up on the basis of a competitive examination. Upon consideration of the representations, the matter appears to have been referred to the Department of Science and Technology and to the Development of Personnel and Training for approval of the amendment in the Recruitment Rules in so far as the same related to Scientific Assistants in the India Meteorological Department. The Department of Personnel and Training Establishment in turn made a reference to the Union Public Service Commission seeking its concurrence to an amendment proposed in the rules so as to restore the earlier position under which 25% vacancies were to be filled up on the basis of a Departmental Competitive Examination. The Union Public Service Commission after consideration of the said proposal approved the proposed amendment to the Rules and desired that the draft rules may be notified. Consequently, the Ministry of Science and Technology [India Meteorological Department] Scientific Assistant Recruitment Rules, 2000 came to be amended according to which 75% posts in the cadre of Scientific Assistants were to be filled up by promotion, while the remaining 25% vacancies were set apart for being filled up on the basis of a limited departmental competitive examination. The amended rules were published in the Gazette of India, New Delhi on Saturday, May 17, 2003.

4. A Departmental Examination had in the meantime been held for eligible candidates against the aforementioned quota of 25% vacancies while the rules were still at the draft stage. Appointments on the basis of the said examination were however made only after the rules were duly amended and published.

5. Aggrieved by the holding of the competitive examination the petitioner who is serving as a Senior Observer filed O.A. No. 26 of 2003 which has been dismissed by the Tribunal by its Order dated 6.8.2003 impugned in this writ petition. Relying upon the decision of the Supreme Court in Vimal Kumari Vs. The State of Haryana and Others, , the Tribunal held that so long as there was a clear intention on the part of the Government to enforce the draft rules in the near future, it could regulate the appointments and service conditions on the basis of the said rules. The Tribunal also found that although candidates had been selected on the basis of the competitive examination and subsequently appointed to the available vacancies, none of them had been impleaded as parties to the petition before it, it accordingly declined to cancel the examination or quash the appointments made on the basis thereof. The petitioner has assailed the said view in the present writ petition as already noticed above.

6. We have heard the petitioner who appeared in person. We may at the outset

point out that when we advised the petitioner to engage a Counsel for an effective presentation of his case, he expressed his inability to do so on account of what he described as his weak financial position. We therefore offered to provide proper legal assistance to him by requesting a Senior Member of the bar of his choice to appear and argue for him. The petitioner however was not agreeable to that suggestion. He submitted that he has argued more than ten cases filed by him against the Respondents from time to time and that he did not feel any handicap in presenting his case before us. He informed us that he has not only passed his law examination, but he is now pursuing post graduate studies in law from a University in Tamil Nadu. We were in the circumstances left with no alternative except to conclude the hearing with whatever assistance the petitioner was able to provide to us.

7. The short question that arises for consideration is whether the examination conducted and the appointments made on the basis thereof were valid while the amended rules were only in a draft stage. The answer to that question is in our opinion provided by the decision of the Supreme Court in Vimal Kumari's case relied upon by the Tribunal. The Appellant in that case was promoted from the post of Tailoring Instructor to that of Superintendent. The promotion was made on the basis of seniority because there were no rules regulating the promotion or prescribing any other criterion. Some individuals challenged the promotion on the ground that they were more qualified in terms of certain draft rules framed in the year 1983 and that they should have been promoted in place of the Appellant. The High Court found favour with that contention. The Supreme Court however reversed the view taken by the High Court and declared that it was open to the Government to regulate the service conditions of the employees for whom the rules are made by those rules even in their "draft stage" provided there is a clear intention on the part of the Government to enforce those rules in the near future. If there is no intention to enforce or notify the rules at all, recourse to the same cannot be taken. The draft rules having been prepared in the year, 1983 had been lying in a nascent state since then. Promotion in the meantime were made on the basis of seniority which in the absence of any rule under Article 309 could be adopted as a sound criterion for such promotions. Under such circumstances, it was not open to the Government or any other Authority to invoke any of the provisions of the draft rules particularly when the Government had not come out with any explanation why the said rules prepared in the year 1983 had not been notified for more than a decade.

8. The draft rules in the instant case were notified in the year 2003 within a few months of the approval by the Union Public Service Commission of the proposal to amend the existing rules. There was therefore a clear intention on the part of the Government to notify the rules and to act upon the same. The holding of an examination when the rules were at a draft stage, as a step preparatory to making a selection in terms of the amended rules could not therefore be said to be legally bad so as to call for interference. Reference may also at this stage be made to the latest decision of the Supreme Court in High Court of Gujarat and

Anr. v. Gujarat Kishan Mazdoor Panchayat and Ors. 2003 (4) SCC 712 where their Lordships reiterated that appointments can be validly made under the rules even in their draft stage if there is a clear intention of the Government of enforce them in the near future. What is significant is that on the date the appointments against the vacancies were made, the rules already stood modified to provide for the method which was followed for making the appointments. It was not therefore a case where the appointments were made contrary to the rules on the subject, merely on the basis of certain amendments proposed to the existing rules. It was a case where the appointments were made only after the rules had been properly amended to provide for appointments in terms of the altered procedure. There was therefore no violation of the statutory rules in force on the date of the appointments. The appointments were in consonance with the rules as they stood after the amendment to the same.

9. It was argued by the petitioner that the petitioner did not have any knowledge about the draft rules or the competitive examination proposed to be held on the basis of the same. We have no hesitation in rejecting that contention also. We say so for two reasons. Firstly, because the petitioner has not laid any foundation for the case he sought to make out at the hearing. There is no averment in the writ petition filed in this Court or the application filed before the Central Administrative Tribunal to the effect that he was unaware of the proposed amendments or the conduct of the examination. Secondly, because Original Application No. 26 of 2003 was filed by the petitioner in January, 2003 in which the petitioner had made an interim prayer also for suspension of the Scientific Assistants Examination circular issued by the Regional Meteorological Centre at Chennai. What is significant is that instead of seeking a direction permitting the petitioner to participate in the said examination, he had sought a stay of the conduct of the examination itself. It was not as though the petitioner was willing to appear in the examination but was being prevented from doing so for any reason. His case on the contrary was that holding of the examination on the basis of the draft rules which were taking away 25% vacancies for being filled up on the basis of the said examination was itself bad. That is not the same thing as saying that the petitioner did not have an opportunity to appear in the examination or that he was unaware of the issue of the circular on the basis of the draft rules. The record belies the assertion of the petitioner made in that regard.

10. It was lastly argued by the petitioner that the diversion of 25% vacancies for being filled up on the basis of a competitive examination would result in stagnation of the Officers in the cadre who have been waiting for years to get promoted to the next higher post on the basis of seniority. There is in our view no merit in that submission either. The amendment to the rules to restore the earlier provision under which 25% vacancies could be filled up by competitive examination held for Departmental candidates was demanded by the Association of the Officers in representations filed by them before the Government. The grievance that was made in those representations was that the absence of any

departmental examination for such of the candidates as were meritorious and eligible to appear in the same was causing stagnation and frustration among them. Copies of some of the representations have been placed on record by the petitioner himself. In one such representation, the jurisdiction for the amendment to the existing revised rules is given in the following words:

This provision of competitive examination encourages the scientific employees of the department to have competitive ability and aptitude, which increases the efficiency of the individual employee, thus giving an increase of the national productivity in the field of meteorological sciences.

11. It is therefore obvious that the amendments in question were introduced at the request made by the Employees Associations/Unions which amendments were intended to promote merit and avoid frustration implicit in any stagnation especially for those who are professionally competent and qualified to hold higher posts, but who are on account of seniority rules deprived of any such opportunity.

In the result, this writ petition fails and is hereby dismissed, but in the circumstances without any orders as to costs.