
(1999) 07 AP CK 0100

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17621 of 1998

P. Venkatesh

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 28-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 ALT 176

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : E. Parvathi Devi, for the Appellant; V. Srinivas, for the Respondent

Final Decision : Dismissed

Judgement

S. Ananda Reddy, J.—The writ petitioner, who is an employee of the 1st Respondent Company, is seeking a writ of Mandamus directing the respondents to add additional 3 marks for obtaining the LL.B., degree holding that the promotion exercise-1998 to the post of Senior Assistant without awarding the said additional 3 marks to the petitioner is clearly arbitrary, illegal, discriminatory and violative of the Articles 14, 16 and 21 of the Constitution of India.

2. The petitioner is working in the category of Assistant in the 1st respondent Company. He is entitled for promotion to the next post of Senior Assistant. While so there was a notice inviting applications by the 1st respondent for promotion to the post of Senior Assistants in respect of eight sanctioned vacancies. As per the said Notification the last date for making application was 5-6-1998. As there was further sanction of two more vacancies they were also notified and applications are invited fixing the last date as 24-06-1998. As per the Rules for promotion weightage would be given for seniority, academic qualifications as well as for the work record. Insofar as the weightage for qualifications the prescribed maximum marks are 20. In response to the said Notification the petitioner applied along with others. It is also a fact that as per the Rules the General Academic qualifications possessed by the candidates would be considered as on 31st

December of the previous year. As per the Rules a graduate is entitled for 12 marks; whereas a post-graduate or a double-graduate is entitled for 15 marks. It is also the case of the petitioner that out of ten vacancies two are reserved for Scheduled Caste candidates and the petitioner is a contender for one of the posts. It is also stated that the petitioner has obtained the LL.B. degree having appeared for the said examination conducted in November/ December, 1997 by the Osmania University. However, the results have been declared in March, 1998 due to the pendency of a dispute before this Court. It is also stated that even the exams were conducted belatedly though they were supposed to be held in August/September, 1997. But, in fact, they were held only in November/ December, 1997 and the results were declared only in March, 1998. It is also stated that this position was explained by the petitioner to the 2nd respondent who sought clarification from the 1st respondent whether he could be awarded 15 marks for having acquired LL.B. degree. But the 1st respondent replied that since the cut off date was 31st December, the petitioner could not be awarded extra marks for additional qualification. This clarification is being questioned by the writ petitioner by contending that the action of the respondents is arbitrary, discriminatory and violative of the Articles 14 and 16 of the Constitution of India. It is also stated that with reference to the Insurance qualifications a different date was prescribed i.e., if the results for insurance qualifications are declared after the base date i.e., 31st December, but, before the last date for making applications that would be taken into consideration. This prescription of two different dates for two qualifications-one for academic qualification and another for Insurance qualification is contended as discriminatory.

3. According to the learned Counsel for the petitioner as the petitioner was not awarded the additional three marks, in the list prepared by the respondents for promotion he was being down to No. 11 among the Scheduled Caste candidates. According to him if three additional marks are awarded for obtaining the LL.B. degree he would have been placed at No. 3 position and would have been promoted in the existing vacancies. It is, therefore, contended that there is absolutely no rational in prescribing different dates - one for Academic Qualifications and another for Insurance Qualifications. The learned Counsel also relied upon the decisions reported in *Nirmal Chandra Bhattacharjee and Others Vs. Union of India (UOI) and Others*, ; *L. Prathap Reddy Vs. The High Court of A.P. and Others*, and *M. S. Patel v. District Primary Edn. Officer AIR 1995 (5) 605*. Relying on the said decisions it is contended that there was absolutely no rational in prescribing the base date for Academic qualifications as 31st December of the previous year and both the academic and insurance qualifications have to be considered with reference to the last date for making applications to the post for which the applications were called for.

4. The other alternative contention advanced by the learned Counsel for the petitioner is that the publication of the results is not relevant and in fact it dates back to the date of examinations. According to him the examinations were conducted in the month of November/ December, 1997 and even though results

were published in the month of March, 1998 it dates back to the month of November/ December, 1997. Therefore, the petitioner should have been treated as possessing the LL.B. degree as on 31st December, 1997. The learned Counsel also relied upon an unreported decision of this Court in *P. Krishna Reddy v. Government of A.P.* (W.P. No. 108 of 1976, dated 26-10-1977).

5. The learned Counsel for the respondents on the other hand opposed the contention of the petitioner. It was stated that Rules have been framed by the Respondents for the purpose of promotions. It is stated that with reference to the Academic Qualifications 31st December of the previous year was taken as a base. According to the learned Counsel the Respondent-Company is an all India based and different Universities would conduct its courses according to their own schedules. There is no common schedule prescribing any particular date for conducting the examinations for any particular course. Therefore to have uniformity the Company thought that the end of the previous year was relevant for considering the academic qualifications. Insofar as the Insurance qualifications are concerned the examinations are being conducted by the Insurance Company every year in the month of October and usually the results are being declared in the month of February/March of the next year. As this is a known fact and also an essential qualification insofar as the work of the respondent-company is concerned, the respondent-company thought it fit to give preference to such qualifications. Hence, it was prescribed that if the results with reference to the Insurance qualifications are published before the last date for the submission of the applications. The learned Counsel contended that by taking into account the various aspects different dates were prescribed and it is not open to the petitioner for his own individual case to contend that the dates prescribed by the respondent-company are discriminatory and violative of the Articles 14 and 16 of the Constitution of India. The learned Counsel relied upon the decisions reported in *State of Rajasthan v. H.K. Bhatt*, 1998-II-LLJ 59; *University Grants Commission Vs. Sadhana Chaudhary and Others*, ; *Union of India and Another Vs. Sudhir Kumar Jaiswal*, and *Reserve Bank of India and Others Vs. C.N. Sahasranaman and Others*, . Relying upon the above decisions the learned Counsel for the respondents contended that it was held by the Hon"ble Supreme Court that prescribing a cut-off date is neither arbitrary nor unreasonable. It is also contended that the exercise of promotion to the post of Senior Assistant is being carried out every year as and when the vacancies are available. The denial of the benefit to the petitioner was only for the vacancies that are considered for the year 1998 and he would be entitled for consideration in the vacancies that would arise for the subsequent year. Hence, there is absolutely no justification to contend that the prescription of base date for academic qualifications as 31st December of the previous year is discriminatory and violative of Articles 14 and 16 of the Constitution of India.

6. Heard both sides and considered the rival submissions and the material on record.

7. The dispute in this writ petition is regarding the validity of fixing of a cut-off date with reference to the academic qualifications for consideration for promotion to the post of Senior Assistant. The 1st respondent-Company is following the Rules framed by the 3rd respondent as the 1st respondent is a subsidiary of the 3rd respondent. As per the Rules for consideration of the promotion to any post the cut-off date with reference to the academic qualifications was 31st December of the previous year. In the present case for filling up of the vacancies of Senior Assistant Posts in the year 1998 the cut-off date is 31st December, 1997. Here we are concerned only with the cut-off date fixed with reference to the Academic Qualifications. Under the Rules the marks to be awarded are fixed depending upon the academic qualifications. As per those Rules a graduate would be awarded 12 marks; whereas a post-graduate or double-graduate would be awarded 15 marks. It was also clarified in the Rules that a person holding B.L./BGL/B.Ed. will be treated as a double graduate. According to the petitioner he had obtained the degree of LL.B. and therefore he should have been awarded 15 marks. But the 1st respondent awarded only 12 marks without taking into consideration the degree of LL.B., obtained by the petitioner. The petitioner appeared for the LL.B., examinations conducted by the Osmania University in the month of November/December, 1997 but the results were declared only in the month of March, 1998. Therefore, the 1st respondent-Company did not take into account the LL.B. degree obtained by the petitioner. The petitioner is, therefore, contending that fixing of the said date as 31st December, 1997 is discriminatory and violative of the provisions of the Constitution of India. It is the contention of the petitioner that insofar as the Insurance qualification is concerned the 1st respondent-Company has fixed the date for qualification as the last date of submission of the applications for promotion. The said fixing of two different-dates for the insurance qualification and academic qualification, according to the petitioner is arbitrary, discriminatory and not for any justifiable reasons. The learned Counsel also contended that even though such Rules are framed by the respondent-company they have to be interpreted in such a way as to benefit the employees and not to cause any hardship. According to the petitioner there was delay in conducting the examinations as well as the declaration of the results due to the pendency of certain proceedings before the High Court and the petitioner was not at fault. Therefore, there was no justification for denial of three marks to the petitioner.

8. In support of his contention the learned Counsel for the petitioner relied upon a decision of the Supreme Court in the case of Nirmal Chandra Bhattacharjee (1 supra). The facts in that case are the appellants and respondents 5 to 9 were working in Class "D" of N.F. Railways in pay scale of Rs. 200-240. Next class above it according to Railway Board Circular dated May 31, 1976 was "C, with posts carrying scale of pay with a maximum {sic. minimum) of Rs. 290 but less than Rs. 900. 331/2 per cent of posts in this class were to be filled by promotion from class "D". One of such posts was the post of Ticket Collector. It was a Class "III" post as compared to post held by appellants and respondents which were

holding Class "IV posts. As a result of restructuring from 1-8-1983 65% of the posts of Group "D" were upgraded to a higher scale of Rs. 260-400 though the duties and responsibilities remained almost the same and there was no change in the designation also. The appellants were placed in the higher scale and consequently became Group "C" employees. The respondents 5 to 9 being juniors did not get this benefit. Despite the claim of upgradation persons continued to exist in the recruitment rules for promoting Pointsman and Cabinmen as Ticket Collectors in the pay scale of Rs. 260-400 on the basis of a Test. In the test conducted for promotion the appellants were successful and were promoted as Ticket Collectors whereas the respondents 5 to 9 failed. The respondents challenged the appellants' promotion in the Tribunal on the ground that the appellants who were already Group "C" employees could not be promoted to the other Group "C" posts carrying identical scales. The Tribunal upheld their stand. But on appeal the Supreme Court reversed it. The Hon'ble Supreme Court held technically the Tribunal appears to be correct but practically it has resulted in such a grave injustice that the benefit the appellants got in restructuring would make them worse off, if they were to be deprived of chance of promotion to higher scale. By this process, the juniors who could not be selected, are likely to be seniors and better placed than those who were placed in Group "C". That indeed would be very unfair. No rule or order which is meant to benefit employees should normally be construed in such a manner as to work hardship and injustice, specially when its operation is automatic, as in the scheme of upgradation where the seniormost employees falling within 65% quota were likely to get higher scale. If any injustice arises then the primary duty of the Court is to resolve it in such a manner that it may avoid any loss to one without giving undue advantage to other. For getting further promotions, the appellants had first to be promoted as Ticket Collectors. That is why despite restructuring, Pointsman and Cabinmen were treated as Group D employees while Ticket Collectors as Group C. It will therefore be unjust to deny promotion to the appellants as Ticket Collectors. A rule cannot work to the prejudice of an employee who was in service prior to that date. Besides the appellants were promoted against vacancies which arose prior to the restructuring. The selection process in respect of Ticket Collectors had also started prior to August 1, 1983. If the Department would have proceeded with the selection well within time and would have completed it before August 1, 1983, then the appellants would have become Ticket Collectors without any difficulty. The mistake or delay on the part of the department, therefore, should not be permitted to recoil on the appellants. In fact, the restructuring order itself provides that vacancies existing on July 31, 1983 should be filled according to procedure which was in vogue before August 1, 1983. The appellants should therefore be restored their promotion as Ticket Collectors.

9. The next decision relied upon by the petitioner is in the case of L. Prathap Reddy (2 supra). In this case the grievance of the petitioner was that though he was qualified on the date when the vacancy was filled his case was not

considered for promotion. Aggrieved against the non-consideration the petitioner filed the writ petition and sought for a direction. The High Court after considering the claim of the petitioner, having found that though on the date when the vacancy arose he was not qualified but when it was filled up he was qualified and therefore when the vacancies were filled it is the duty of the head of the institution to consider the claims of all the eligible candidates and therefore this Court allowed the writ petition directing the respondent to consider the case of the petitioner duly taking into account the vacancy that has been filled up in the month of May, 1988 and which was filled subsequent to the petitioner acquiring qualification for being considered to the promotion post. It is also directed however if the petitioner and the respondents 3 and 4 have already been promoted their seniority shall be refixed.

10. The next decision relied upon by the petitioner is in the case of M.S. Patel (3 supra). In this case the respondents invited applications for filling up the posts of Primary Teachers. One of the condition is that a person holding additional qualification of TCWG would be awarded two marks. This also is a required qualification to be eligible for appointment as a Primary Teacher. The petitioner did not possess the requisite qualification on the last date for submission of the application which was 20-11-1991. But, however, by that date she has appeared for the said examination. She was required to appear for the interview for the said post of Primary Teacher in September, 1993. She had already passed the said course and she claimed that on that basis she was entitled to two marks more in the process of selection for being selected to the post of Assistant Primary Teacher. As she was denied the two additional marks consequently she was not qualified. Hence she filed a petition. The Gujarat High Court following some earlier orders passed by it held that if the petitioner has already passed any additional course before the date of interview credit for passing that course has to be given by awarding additional marks, notwithstanding the fact whether such qualification was possessed by the petitioner on the last date of making application. According the said writ petition was allowed.

11. In all the above decisions, relied upon by the petitioner, the facts as well as the rules or situations are totally different. The ratio laid down in these cases is not of any assistance to the petitioner. In fact the view taken by the Gujarat High Court is quite opposite to the decision of the Supreme Court in *State of Rajasthan v. H.K. Bhatt* (4 supra) relied upon by the respondent. In the said decision the Supreme Court held that if a candidate does not possess the requisite qualifications as on the last date of the applications even though subsequently acquired such qualification he would not be entitled to any benefit or consideration.

12. The learned Counsel also relied upon an unreported decision of this Court in *P. Krishna Reddy's case* (W.P. 108/76, dt. 26-10-1977). In that case the dispute was whether the declaration of the results will date back to the date of examination. A Division Bench of this Court held after considering the

contentions as well as certain Government Orders that the declaration of the results would date back to the date of examination. Hence the date of examination is relevant.

13. The learned Counsel for the respondents on the other hand opposed the claim of the petitioner stating that the base date was fixed as 31st December of the previous year for the academic qualifications taking into account that the respondent-Company is an All India based company and different Universities are conducting their courses on different dates. Therefore, taking into account the usually conducting of the examinations in the first half of the year they fixed the cut-off date as 31st December of the year. The learned Counsel also contended that the said date is being followed without any deviations. Therefore, the date fixed by the 1st respondent-Company would not be considered as unreasonable or without any basis. The Corporation has fixed the date after taking all the relevant factors. The learned Counsel also stated that, however, insofar as the insurance qualifications are concerned as it is a known fact that the insurance institute was conducting examinations in October of every year and the results are being declared in the month of February/March of the subsequent year, a different date was prescribed for such insurance qualification. Further it is his contention that the said qualification is essential for the employees of the Respondent-Company. Hence, the date was fixed as the last date due for making applications.

14. The learned Counsel has relied on certain decisions of the Supreme Court insofar as the jurisdiction of this Court to interfere with the dates fixed for eligibility either for appointment or for promotion. The first decision is of the Supreme Court in the case of Union of India v. Sudhir Kumar Jaiswal (6 supra). The Hon''ble Supreme Court was considering the reasonableness of the date fixed as 1st August of the year for the eligibility in the matter of age of the candidates for the examination for recruitment to the Indian Administration Service etc., it was held that the fixation of a cut-off date can be regarded as arbitrary only if the fixation is "very wide off any reasonable mark". The Court also observed that when a Court is called upon to decide such a matter, mere errors are not subject to correction in exercise of power of judicial review; it is only its palpable arbitrary exercise which can be declared to be void. The Hon''ble Supreme Court has also noted the observations made by Justice Mc. Kenna in Metropolis Theater Co. v. City of Chicago ((1912)57 L Ed 730 : 228 US 61) which is as follows:?

"It may seem unjust and oppressive, yet be free from judicial interference. The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review, It is only its palpably arbitrary exercises which can be declared void..."

So holding the Hon"ble Supreme Court has reversed the order of the Administrative Tribunal.

15. Similar is the view expressed by the same Court in the case of University Grants Commission v. Sadhana Chaudhary (5 supra). Here the dispute was with reference to the date fixed for exemption from eligibility test. In an advertisement given for recruitment of the Lecturers. Here also the Hon"ble Supreme Court while accepting the contentions of the appellants held it is a settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When fixing a line or a point is necessary and there is no mathematical or logical way of fixing it precisely, the decision of the Legislature or its delegate must be accepted unless it is very wide off the reasonable mark. While holding so the Hon"ble Court upheld the date fixed for granting exemption from appearing a qualifying test.

16. The other decision relied upon by the learned Counsel is in the case of State of Rajasthan v. H.K. Bhatt (4 supra). In this case no ratio has been laid down with reference to the fixation of any particular date. The respondent though did not possess the requisite qualifications on the last date of applications to be submitted, but later obtained before the date of interview and got appointment by virtue of the orders of the Court. It was held that as the respondent did not possess the requisite qualifications he is not entitled to be called for the interview and selection and even if he was appointed and if he is in service, he is not entitled for the same. It was also observed that there may be other persons who would have applied had they known that the date of acquiring qualifications was flexible. They may not have applied because they did not possess the requisite qualification on the prescribed date. Relaxing the prescribed requirements in the case of one individual may, therefore cause injustice to others.

17. In the light of the above decisions the power of judicial review with reference to the date fixed either by the Legislature or its delegates is very limited. Admittedly a fixed date i.e., 31st December of the previous year, was fixed insofar as the academic qualifications are concerned. The further requirement is that the results must be declared as on that date and not mere qualification. In the present case admittedly the results were declared only in the month of February/March, 1998 i.e., subsequent to the cut-off date. Therefore the petitioner is not eligible for getting the additional three marks for obtaining the degree of L.L.B.

18. At the time of hearing, however, the learned Counsel for the petitioner contended that in the case of one Mr. Koteswar Rao, the respondents have awarded additional three marks though the results have been declared in January, 1996. Even assuming that the respondent-Company has committed a mistake in awarding the marks to Mr. Koteswar Rao in the year 1996, it does not entitle the petitioner for a similar relief, unless the petitioner satisfies this Court

that he is entitled for such relief. As already held the scope of judicial review with reference to the date fixed by the authorities is very limited and therefore I am not inclined to hold that the date fixed for academic qualifications as 31st December of the previous year, is in any way unreasonable or arbitrary.

19. Under the above circumstances, the writ petition is dismissed as devoid of merits. No costs.